



‘Good night with the
Stars and Stripes,
Army, Navy and
Mister *damned*
Wilson’

When the United States declared war against Germany in 1917, outpourings of patriotism were followed by reactionary fears that led to the persecution of German immigrants. In Lewistown, Montana, for example, a mob (below) burned German-language textbooks on Main Street on March 27, 1918.

by Clemens P. Work



Montana's Central Role in the Repression— and Eventual Recognition—of Free Speech

TWO WEEKS after the United States declared war on Germany in 1917, Lewistown, Montana, like many other communities across the country, put on a parade to show its support for the nation's crusade to "make the world safe for democracy." Hundreds of children waved flags as they marched down Main Street. Prominent citizens gave patriotic speeches about the nation's "life and death struggle."¹

Less than a year later, a mob of five hundred Lewistown residents grabbed German textbooks from the high school, piled them in the middle of Main Street, and burned them as the crowd sang "America" and the "Star-Spangled Banner." A man suspected of being "pro-German" because he resisted buying Liberty Bonds was dragged before citizens in a pool hall and found guilty of sedition. The high school principal was made to kiss the flag. Another man was nearly lynched. And then the citizens, now two thousand strong, held another parade with more speeches while the "crowd cheered lustily." A week later, the high school burned down.²

How had patriotism become so perverted?

Empire Studio, photographer, Lewistown Public Library, Lewistown, Montana



The story begins one hundred years ago, in 1905, with the birth in Chicago of a radical labor organization, the Industrial Workers of the World (IWW). The union was formed in angry reaction to the injustices caused by a growing gap between the great wealth produced by the United States' industrial might and the miserable working conditions endured by those on the lower rungs of society, on whose backs, IWW organizers believed, such wealth had been created. Within a few years, the IWW's aggressive confrontation of industrial ills and its absolute hatred of capitalism had spread through Montana and other parts of the West, where it met equally intransigent corporate and political powers.

This often-violent confrontation escalated with the United States' entry into the war against Germany in 1917. While most trade unions lined up behind the president, the IWW wasn't about to endorse Wilson's crusade, but it was in no position to stop the American war juggernaut. Instead, the IWW helped foment widespread strikes in the lumber and mining industries, which threatened to severely curtail the country's war production. Industrialists did not hesitate to point to strike leaders as troublemakers. Suppression of dissent was couched in patriotic terms, giving citizens permission to engage in extreme behavior that would have repelled them in ordinary times. In this climate of fear and hysteria, most citizens cheered—or at least did not protest—governmental and private actions against dissenters. The cancer of fear metastasized and spread throughout the body politic.

In Lewistown, as elsewhere, clues to this malady were all around. On the day of the first parade, ex-congressman Tom

Ex-congressman Tom Stout, publisher of Lewistown's *Fergus County Democrat-News*, expressed a common sentiment when he declared, "We are done with the days of a divided allegiance in this broad land of liberty. . . . [T]here can be but two classes of American citizens, patriots and traitors!"

He is pictured right, in profile, with David Trepp in 1906.

Stout, publisher of the Fergus County *Democrat-News*, declared: "We are done with the days of a divided allegiance in this broad land of liberty. With our sacred honor and our liberties at stake, there can be but two classes of American citizens, patriots and traitors! Choose you the banner beneath which you will stand in this hour of trial."³

For the immigrants who comprised one-fourth of Lewistown's population, the warning served to underline a

growing xenophobia. As in so many places, Stout the patriot, spreading fears of "pro-Germans" and tales of sabotage by radical groups such as the IWW. Encouraged by the governor and the Montana Council of Defense—an ostensibly humanitarian organization created in 1917 by the Council of National Defense to assist the war effort—local loyalty and "third-degree" committees questioned those

suspected of disloyalty. Over the next eighteen months, the hysteria so starkly displayed on the streets of Lewistown would envelop the whole state.

In this climate of fear, Governor Samuel V. Stewart urged the Montana Legislature to pass a sedition bill. On the morning of February 14, 1918, Governor Stewart sat in his office in the northeast corner of the State Capitol, fiddling with the latest draft of the speech he would give



Industrial Worker, December 26, 1912

When union strikes, especially by the Industrial Workers of the World (IWW), threatened war production in the lumber and mining industries, suppression of the dissent resulted in behavior that would have repelled the public in ordinary times.



MHS Photograph Archives, Helena



MHS Photograph Archives, Helena

The Council of National Defense organized a Montana branch in 1917. Ostensibly an organization created to mobilize citizens in the war effort, its members established “third-degree” committees to question those suspected of disloyalty to the United States.

that afternoon to lawmakers meeting in joint special session. Only twice before had Montana governors called a special session, but this one was unavoidable. Congress had declared war a month after the last regular session adjourned. It was a different world now.⁴

Stewart examined the typed draft, double-spaced on nine legal-length pages. It had already been circulated to newspaper editors, with instructions to hold on to it until

after Stewart’s delivery that afternoon. When the war had come to the United States, Stewart noted, loyal citizens had sprung to their duty “with a promptness that evidenced the spirit of patriotic devotion which has ever impelled and inspired the men and women of the great West.” New laws, predicated on this great struggle, were now needed.⁵

The acquittal of Ves Hall by Montana federal district judge George M. George Bourquin just three weeks earlier

1. Anna Zellick, “Patriots on the Rampage: Mob Action in Lewistown, 1917–1918,” *Montana The Magazine of Western History*, 31 (January 1981), 30–43.

2. *Ibid.*

3. *Lewistown (Mont.) Democrat-News*, April 23, 1917, cited in Zellick, “Patriots on the Rampage,” 31.

4. Special session per diem and travel expenses for 123 legislators plus staff added up to more than twenty thousand dollars. But clerks, janitors, pages, stenographers—even a legislator or two—wrote to the governor and volunteered to work for no remuneration. *House and Senate*

Journals of the Extraordinary Session of the Fifteenth Legislative Assembly of the State of Montana (Helena, Mont., 1918), House:5; “Draft of speech by Gov. Sam Stewart to Montana State Legislature, Feb. 14, 1918,” folder 5, box 10, Extraordinary Legislative Session: 1918, Montana Governors Papers, Manuscript Collection 35 (hereafter MC 35), Montana Historical Society Research Center, Helena (hereafter MHS Research Center).

5. *House and Senate Journals of the Extraordinary Session of the Fifteenth Legislative Assembly*, House:4, 5; “Draft of speech by Gov. Sam Stewart.”

had shown the urgency of this need. A resident of Ashland, Montana, Hall had allegedly made seditious remarks between July and October 1917. According to court records, “in badinage with the landlady” in the kitchen of the hotel where he boarded as well as at a picnic, on the street, “in hot and furious saloon argument,” and at times in the presence of a young man who had registered for the draft, Hall allegedly declared that if the United States wanted him as a soldier to fight the Germans they would have to kill him first; that Germany would whip the United States; that men who were drafted and crossed the water were damn fools; and that Germany had the right to sink the *Lusitania* and kill Americans without warning. He also had some choice things to say about President Woodrow Wilson, allegedly calling him a “Wall Street tool,” a “British tool,” “the richest man in the United States,” and “the crookedest son of a bitch that ever sat in the President’s chair.”⁶

Hall, a U.S. citizen, was charged with violating a section of the 1917 Espionage Act, which punished the “making . . . of false statements with intent to interfere with the operation [of U.S. military forces in wartime].”⁷ Across the country, hundreds of people were being tried and convicted under the same section; like Hall, their opinions were considered false statements, a broad reading of the law that most judges endorsed.

After the testimony in the three-day trial in Helena ended, Matt Canning, the defense attorney, asked Bourquin to acquit Hall. Bourquin did so, hurriedly issuing a written opinion “because of the grave issues involved, and the necessity for interpretation of the Espionage Act.” The Espionage Act, Bourquin noted, was “not intended to suppress criticism or denunciation, truth or slander, oratory or gossip, argument or loose talk . . . nor any slander . . . of the President . . . but only false facts, willfully put forward as true.” Even if Hall’s “unspeakable” slanders of the president and nation could be considered false reports and statements, Bourquin added, their natural consequence would be “a broken head for the slanderer,” not interference with military forces. In this case, since “the declarations were made at

a Montana village of some 60 people, 60 miles from the railway, and none of the armies or navies within hundreds of miles” convicting Hall of attempting to interfere with the American war effort was “absurd.”⁸

Bourquin had been a thorn in the side of the political establishment for years, but especially since the start of the war.⁹ He threw out federal attempts to draft aliens in the state, granted habeas corpus petitions releasing federal prisoners because their constitutional rights may have been violated, and generally embarrassed the state’s war effort with his refusal to go along with the program. While the U.S. Department of Justice, with the mass arrests of IWW leaders across the country, was beginning to take the kind of action long sought by Stewart and other western governors, the Espionage Act was clearly a dead letter in Montana as long as Bourquin was judge. Conservatives thought a state sedition law could improve the situation.

A Montana sedition law could also help quiet the Nonpartisan League (NPL), a radical farmers’ organization that was beginning to engage the attention of Montana farmers—who felt poorly served by the railroads and grain elevator operators with their questionable weighing and grading standards and who felt the Anaconda Copper Mining Company was not paying its fair share of taxes. With the nation at war, positions hardened. Farmers assailed the monopolistic trusts in the railroads and in the mining industries that had already profited immensely from the war. They stepped up their demands for reform, including the establishment of state-owned grain elevators and fairer taxes. Industrial interests led by the Anaconda Company called the farmers disloyal and pro-Bolshevik. In sardonic counter-

measure, a handful of legislators cheerfully adopted “bolshewiki” as a nickname.

The NPL even helped stir opposition to the idea of a state sedition bill. When Stewart addressed a farmers’ congress in Great Falls at the beginning of February, he drew applause for his patriotic homilies and his attack on the IWW, but the delegates turned down his idea for a sedition bill. In newspapers owned by the Anaconda Company,



As the hysteria seen on the streets of Lewistown enveloped the entire state, Governor Samuel V. Stewart (above, 1918) urged the Montana Legislature to pass a sedition bill.

6. *United States v. Hall*, 248 F. 150 (D.C.D. Mont. 1918); grand jury indictment in U.S. Department of Justice (hereafter DOJ) file 9-19-1707, General Records of the Department of Justice, Record Group 60 (hereafter RG 60), National Archives, Washington, D.C. (hereafter NA); *United States v. Hall* trial transcript, *ibid.*

7. *Espionage Act of 1917*, title I, sec. 3, enacted June 15, 1917.

8. *United States v. Hall* transcript; *Hall*, 248 F. 150; *Helena (Mont.) Independent*, January 27, 1917, clipping in DOJ file 9-19-1707, RG 60, NA, Washington, D.C.

9. Arnon Gutfeld, “George Bourquin: A Montana Judge’s Stand against Government Despotism,” *Western Legal History*, 6 (1993), 51-68.

that action had aroused the suspicion that legislators with NPL sympathies would try to gut the bill. "There is unfortunately in Montana, a class interested in confiscating the property of others, one that has been interested in conducting a war within our own borders while the nation is beset with the enemy outside. . . .

Under the camouflage of the right of free speech, the foul hand of traitor [*sic*] will seek to throttle such legislation," the *Daily Missoulian* growled.¹⁰

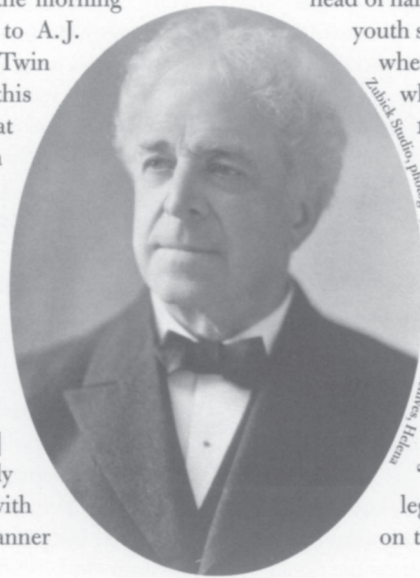
Public sentiment too was on the governor's side. His mail contained many letters enthusiastically endorsing measures to halt seditious talk. On the morning of February 14 Stewart responded to A. J. Wilcomb, the cashier of the Bank of Twin Bridges, who wrote: "I hope that this special legislature will pass a law that will enable the authorities to deal with unamerican utterances, and kindred acts, without too much 'red tape.'" "The Legislature will start off today and I am hoping they will deliver the goods," Stewart assured him. That same morning he had received a resolution from the Missoula Chamber of Commerce expressing the hope that any obstacles "to [bringing] the prosecution of the war to a speedy and successful conclusion be dealt with summarily and decisively and in a manner commensurate with the gravity of the offense." The resolution was signed by its president, Arthur L. Stone, former editor of the *Daily Missoulian* and now dean of the new School of Journalism at the University of Montana.¹¹

Politically, the sedition bill erased party divisions. The night before the assembly, Republicans, who had a slim majority in the Senate, held a caucus at the Placer Hotel. They gave unqualified support to Democrat Governor Stewart's agenda. "It's a question now of patriotism and not of politics' was the sentiment of the meeting," the *Daily Missoulian* reported. Speaking for the caucus, two senators predicted they could wrap up the special session in three days.¹²

10. Arnon Gutfeld, *Montana's Agony: Years of War and Hysteria, 1917-1921* (Gainesville, Fla., 1979), 95; *Missoula (Mont.) Daily Missoulian*, February 19, 6, 1918.

11. A. J. Wilcomb to Governor Sam Stewart, Governor Stewart's Correspondence files, box 17, MC 35, MHS Research Center, Helena.

*"It's a question now of
patriotism and not of politics."*



Among conservatives, the acquittal by Montana federal district judge George M. Bourquin (above) of Ves Hall, an Ashland man who had allegedly made derogatory remarks about the president and the nation, underscored the need for Stewart's bill.

Escorted by three House members, Governor Stewart arrived at the House chamber on February 14 at 2:00 P.M. He stepped up to the platform with its ornate carved rail.¹³ Behind him, the great Charles M. Russell mural, *Lewis and Clark Meeting the Indians at Ross' Hole*, reminded the

assembled legislators of their heritage, while the marble columns and ornate copper fixtures assured them of the state's wealth.

As the applause receded, Stewart put on his reading glasses and unfolded his text. Recognized as a commanding orator, the governor at forty-five already had a silver head of hair. His tall, muscular frame hinted at his

youth spent on a farm in southeastern Kansas, where the family had moved to from Ohio when he was ten. Earning a law degree in 1898, Stewart struck out for Montana at age twenty-six. Soon he became city attorney of Virginia City and quickly ascended the political ladder to chairman of the Democratic State Central Committee. Voters elected Stewart governor in 1912 and re-elected him in 1916. "High destinies doubtless are reserved for him," puffed a contemporary biographer. Indeed, Stewart would go on to a rare "political trifecta" as a one-term state legislator and then as an associate justice on the Montana Supreme Court for seven years before his death in 1939. But it was Stewart's fate to preside over a troubled state in desperate times, and it was his destiny to propose one of the most repressive pieces of anti-speech legislation in American history.¹⁴

Stewart probably had read the lead editorial in that day's *Anaconda Standard*, owned by the Anaconda Company and one of the most influential newspapers in the state, that contained a succinct declaration of support for his bill. "Let not this state be made a place of refuge for those who wish in safety to desecrate the flag of our

12. *Missoula (Mont.) Daily Missoulian*, February 14, 1918. In fact, Stewart's politics were closer to the Republicans' than to those of his fellow Democrats.

13. *House and Senate Journals of the Extraordinary Session of the Fifteenth Legislative Assembly*, Senate:4.

14. Butte Newswriters' Association, *A Newspaper Reference Work: Men of Affairs and Representative Institutions of the State of Montana* (Butte, Mont., 1914); Merrill G. Burlingame and K. Ross Toole, *A History of Montana* (New York, 1957), 44.

country, for those who would revile our president and our government, who would slander the boys who are fighting the battles of this nation. . . . They are not wanted in Montana, and if they utter seditious expressions in this state, they should be punished with utmost severity," it read.¹⁵

Stewart also would not have missed that day's other headlines. Five Montana soldiers had been killed off the coast of Scotland when a German U-boat sunk their transport, the *Tuscania*, on February 6. "Torpedoed," wrote *Daily Missoulian* editor Martin Hutchens, "by one of the Hun pirates of the underseas, and their torn and lifeless bodies were driven against the rocks of a Scottish coast. Now they rest in foreign soil, gallant sacrifices of their home state to the cause of human liberty." Ten months into the war, American casualties were still very light, with 136 men killed in combat and 134 more in accidents. The news of five dead Montanans must have been shocking indeed.¹⁶

Stewart went Hutchens's rhetorical flourishes a few turns better. Delivering a speech that drew repeated applause, Stewart conveyed his message. Germany's defeat, "no matter what may be the sacrifice of treasure and of blood," can never come while there were "vipers circulating the propaganda of the junkers," he warned. Germany's spy system, which "reaches its poisoned tentacles into every part of the world," would surely carry "every disloyal utterance and every treasonable act . . . in exaggerated form" back to German soldiers, thereby causing "some certain company or unit to make just one more stand for the Kaiser and autocracy."¹⁷

Then Stewart twisted the knife. "Who knows but that [some Montana] mother, wakened from her troubled sleep by some occult influence wafted clear across the ocean by a medium unseen, unheard and little understood, may in reality be recoiling from the terrible pain of the smothering gas, or the sharp point of a bayonet, directed at her boy, her own flesh and blood, by the relentless barbarians, spurred on, strengthened and emboldened to make just one more stand by the stories that America is disunited, that the timber of her manhood has decayed, that the luster of her womanhood has tarnished." The only thing to do, "to make strong the good right arm of America's offensive

and defensive," he boomed, is to "enact a law here in Montana that will make available a mighty means of throttling the traitor and choking the traducer."¹⁸

Finally, Stewart delivered his oratorical coup de grace: "The free air of Montana is too pure, too sacred, and too precious a heritage here in this mountain region to be used as a medium by the vicious, the traitorous and the treasonable to breathe forth sentiments of disloyalty against our cause and to extend comfort to the enemies of the country."¹⁹

With applause ringing in the chamber and "tears running down the cheeks of many legislators," the governor added a cautionary note: "Care should be taken that no machine be created for the oppression of the innocent."²⁰ Had dead silence gripped the chamber at that moment, Stewart's warning might have been heard. But the legislators were buzzing from the governor's exhortation against the "Huns" and their loose-lipped allies here at home. They were in no mood for due process.

The heart of the sedition bill was a single sentence, a 376-word legal Godzilla whose essence boiled down to fewer than two dozen words: Anyone who during wartime criticized the government or communicated an intent to incite resistance to the war effort was guilty of sedition.²¹ The crime was punishable by a fine of up to twenty-thousand-dollars and imprisonment for up to twenty years.

The kind of language to be prohibited was "any disloyal, profane, violent, scurrilous, contemptuous, slurring or abusive language" and "language calculated to bring . . . into contempt, scorn, contumely or disrepute." To be protected from such vile language were the U.S. form of government as well as its constitution, flag, soldiers and sailors, and military uniforms.²²

The terms in the bill were subjective and imprecise. What was "disloyal" language? What language would bring the government into disrepute? What exactly did "calculated" mean and was it the same as "intended"? Could anyone who criticized the government or its sacred objects be punished, or only those who were viewed as disreputable enemies of the state? Where was the line between honest opinion and "abusive language"?

More broadly speaking, hadn't the concept of criminal punishment for sedition—long used by the British

15. *Anaconda (Mont.) Standard*, February 14, 1918.

16. *Missoula (Mont.) Daily Missoulian*, February 14, 1918; Meirion Harries and Susie Harries, *The Last Days of Innocence: America at War, 1917-1918* (New York, 1997), 210.

17. *House and Senate Journals of the Extraordinary Session of the Fifteenth Legislative Assembly*, House:6.

18. *Ibid.*

19. *Ibid.*

20. Robert E. Evans, "Montana's Role in the Enactment of Legislation Designed to Suppress the Industrial Workers of the World" (master's thesis, Montana State University, 1964), 88.

21. *Laws, Resolutions and Memorials of the State of Montana Passed by the Extraordinary Session of the Fifteenth Legislative Assembly* (Helena, Mont., 1918), 28-29.

22. *Ibid.*

23. *Great Falls (Mont.) Tribune*, February 6, 1918.

24. *House and Senate Journals of the Extraordinary Session of the Fifteenth Legislative Assembly*, House:62, 30; Senate:17.

25. *Great Falls (Mont.) Tribune*, February 17, 1918. Davis was not finished harassing the press. The next day he introduced a resolution appealing to "the oft-demonstrated patriotism of the press" to eliminate the "useless duplication of news items and editorial expressions" by publishing just one or two daily newspapers in the state, thus releasing more than one thousand men for employment in industries needed for prosecution of the war. That resolution was also defeated. *Great Falls (Mont.) Tribune*, February 19, 1918.

Crown to suppress dissident political thought in the colonies—been repudiated with the adoption of the First Amendment’s guarantees of free speech and a free press? True, the Alien and Sedition Acts of the John Adams administration in 1798, which gave the president extraordinary powers to punish false, scandalous, and malicious publications against the United States, were never held unconstitutional. But these acts had been politically repudiated in the firestorm of reaction to prison sentences for anti-Federalist newspaper editors, which led to Jefferson’s election in 1800.

The bitter history of the Alien and Sedition Acts seemed to have been forgotten by 1917. The nation’s engagement in the Herculean task of making the world safe for democracy had pushed any semblance of calm reason from the minds of most people. As the *Great Falls Tribune* confidently noted: “While we are in the death grapple of war we can not be too squeamish about the personal rights of men who are insisting in abusing these rights to the detriment of all the rest of us. Under existing conditions no real American is in any danger from any law that the Montana legislature is likely to pass.”²³

The “bolsheviki” of the House doubtless considered themselves “real Americans.” But they feared that a state

sedition law might be used against them. Lacking the political strength to derail the bill, they proposed an alternative—a joint memorial to Congress calling for a stronger federal law. The resolution was approved by the legislature but not before the conservatives amended it. Aiming straight at Judge Bourquin, they changed the wording from “Whereas . . . successful prosecutions of persons *cannot be maintained*” to “has not been maintained in the Federal District of Montana.” The opposition’s impotence was underscored when all of its members ended up voting for the sedition bill anyway.²⁴

But the bill did not pass before the legislators had a little fun with the press. Retaliating against Anaconda Company-controlled newspapers for the charges of disloyalty they had hurled against farmers, Representative Clarence C. Davis, a Democrat from Conrad, offered an amendment making the sedition bill applicable to “the editor or manager of any newspaper who shall publish or cause to be published untruthful statements that any citizen of the country is disloyal to the United States.”²⁵

The amendment failed, as its supporters undoubtedly realized it would. The only amendment that passed was one offered by Representative Ronald Higgins of Missoula that doubled the prison term for sedition to twenty years.



MHS Photograph Archives, Helena

The Nonpartisan League (NPL), a radical farmers’ organization that advocated tax equity and questioned corporate war profits, was another group that proponents hoped could be quieted with a sedition act. These farmers, pictured in front of Wibaux’s NPL office, are gathered for a conference.



Signed by Governor Stewart on February 23, 1918, Montana's sedition law took free speech hostage. Most convictions were based on offhand outbursts, and even denigrating Liberty Bonds and other war measures sometimes resulted in a prison term. Lewistown's Empire Bank and Trust Company (above) encouraged all citizens to buy bonds to support the war effort.

Within forty-eight hours of its introduction, the House approved a sedition law for Montana by a vote of seventy-six to zero.²⁶

The Senate attempted to reduce the maximum prison term specified in the bill from twenty years back to ten. This action may have been proposed to mollify the president of the Montana Federation of Labor, Mortimer M. Donoghue, who feared that the harsh provisions of the sedition law would be used against union organizers. Saying its provisions "reach to the very vitals of unionism," Donoghue vowed to fight the sedition bill "to the last ditch."²⁷

Donoghue's ditch proved a shallow one. A conference committee not only reinstated the twenty-year term, but also doubled the proposed maximum fine from ten-thousand dollars to twenty-thousand dollars. The Senate concurred unanimously, and Governor Stewart signed House

26. *Great Falls (Mont.) Tribune*, February 17, 1918; *House and Senate Journals of the Extraordinary Session of the Fifteenth Legislative Assembly*, House:30.

27. *House and Senate Journals of the Extraordinary Session of the Fifteenth Legislative Assembly*, Senate:16; *Anaconda (Mont.) Standard*, February 17, 1918.

Bill 1 into law on the morning of Saturday, February 23, 1918. An emergency measure, it took effect immediately.²⁸

The state legislature also reorganized and funded the state Council of Defense, empowering it to boost Montana's war effort. The council's overzealous interpretation of that charge would lead to the ferreting out of anyone perceived as disloyal and to a series of infamous orders, including the banning of German textbooks and the preaching of German from the pulpit, that helped create the atmosphere of hysteria in which the state's new sedition law would be used.²⁹

28. *House and Senate Journals of the Extraordinary Session of the Fifteenth Legislative Assembly*, House:49, 72. The Texas legislature passed the first state sedition bill during World War I, weeks after the United States' entry into the war. Tennessee, however, had had a sedition law (Michie's Code, sec. 11026) since 1858.

29. *An Act Providing for the Creation and Appointment of the Montana Council of Defense and County Councils*, in *Laws, Resolutions, and Memorials of the State of Montana Passed by the Extraordinary Session of the Fifteenth Legislative Assembly*, chap. 1, p. 3. The full story of Montana's state and county councils of defense remains to be told, but there is an excellent 1966 University of Montana thesis by Nancy Rice Fritz, "The Montana Council of Defense." See also Arnon Gutfeld, *Montana's Agony*; and Dave Walter, "Patriots Gone Berserk: The Montana Council of Defense, 1917-1918," *Montana Magazine*, September-October 2001, 78-85.

The horrors made possible by Montana's sedition law would be made manifest in the 130 or so sedition cases tried in Montana in 1918 and 1919. Commenting on the case of a man imprisoned for ten to twenty years under the law, who had filed a federal habeas corpus petition, Judge Bourquin cited George Bernard Shaw's observation on the behavior of courts during the war: "During the war the courts in France, bleeding under German guns, were very severe; the courts in England, hearing but the echoes of those guns, were grossly unjust; but the courts of the United States, knowing naught save censored news of those guns, were stark, staring, raving mad."³⁰

These sedition cases demonstrate what can happen when wartime hysteria takes freedom of speech hostage. Citizens saw themselves engaged in a titanic struggle for humanity's future, their foe the brutal, despotic Huns. Those who spoke against the country—its president, military, war aims, flag, even its uniform—were disloyal and therefore guilty of sedition. Virtually all sedition convictions in the state were based on offhand outbursts, often in saloons. Most defendants worked at menial, blue-collar, or rural jobs. More than half were farmers or ranchers. Others worked as butchers, carpenters, cooks, teamsters, bartenders, and saloon janitors. At a time when xenophobia was near its zenith, it is not surprising that more than half of the men sent to prison had been born in Europe, many in Germany or Austria. Only three trials involved the printed word.³¹

While connections to the IWW carried two-to-one odds favoring a sedition conviction, almost as dangerous was the statement, repeated countless times in a nation reluctantly drawn into a war on another continent, that "we have no business being there." Liberty Bonds and other war measures such as savings stamps and food rationing occupied a hallowed niche; those who denigrated them risked prison terms. A wine and brandy salesman visiting Red Lodge received a seven-and-a-half- to fifteen-year sentence for saying that the wartime food regulations were a joke.³²

Foul language, the kind that still is represented by dashes in mainstream newspapers, figured in many cases and probably contributed to convictions. Statements that questioned the chastity of women or the morality of the nation's soldiers were dangerous too. A Rosebud County farmer got eight to sixteen years for making the curious

remark that "These free taxi rides given to the soldiers at Miles City were just for the purpose of getting them into private houses, so that they may have intercourse with [the wives, sisters and daughters of the town's citizens] and get war babies."³³

By setting a stiff criminal penalty the legislature conveyed the seriousness of the crime. So, too, did prosecutors. Sedition, deputy Lewis and Clark county attorney J. R. Wine told one jury, "is the most heinous act that a citizen of this country can commit." His boss, county attorney Lester H. Loble, later a state district court judge, told another jury, "I believe that this man tomorrow morning at dawn should be led out into the jail yard and forced to face a firing squad."³⁴

That may have been hyperbole for the benefit of the jury, but at least one death can be linked to a sedition case.

Charles Zastrow of Clancy, implicated in the pages of the *Helena Independent* as a ring-leader of loyal Germans, shot himself to death while out on bail after his arrest, the day before formal charges were to be filed against him.³⁵ He would almost certainly have been convicted.

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Forty men and one woman, a group whose average age was forty-five, would collectively be sentenced to more than 164 years in the state penitentiary at Deer Lodge. They would end up serving more than 63 years at hard labor, an average of nineteen months apiece, for criticizing or bad-mouthing the government. Of the seventy-four persons convicted of sedition, twenty-nine received fines of as much as \$20,000 (equal to \$265,000 in 2005 dollars). Four were handed both fines and prison sentences. Just eleven men were acquitted, twenty-four cases were formally dismissed, and a score or more other cases were not accounted for. Newspaper articles suggest that eighty to one hundred more persons were arrested for sedition in Montana in 1918 and 1919 but were not formally charged.³⁶

The number of state sedition cases in Montana may have been affected by Judge Bourquin's roadblock to prosecution of federal sedition cases under the Espionage Act. Bourquin's acquittal of Ves Hall and Burton K. Wheeler's position as U.S. attorney effectively froze federal prosecutions in Montana.

Wheeler, who first made a reputation in Butte representing labor against the Anaconda Copper Mining Company,

30. *Ex parte Starr*, 263 F. 145, 147 (D.C. Mont. 1920).

31. The statistics are the author's conclusions based on his examination of the files of the sedition prisoners in county courthouses across the state.

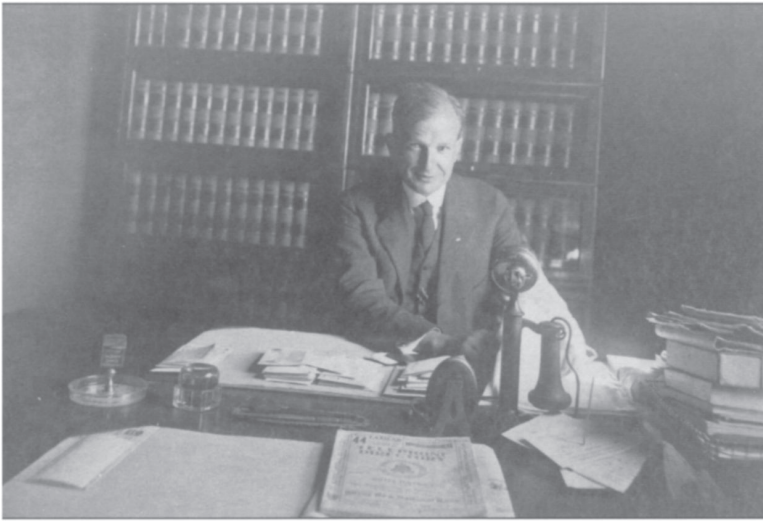
32. *State v. Kahn*, 183 Pac. Rptr. 107 (Mont. Sup. Ct. 1919).

33. *State v. Arnoldy*, Rosebud County Case No. 299, Rosebud County Courthouse, Forsyth, Montana.

34. *Helena (Mont.) Independent*, July 28, 20, 1918.

35. *Clancy (Mont.) Jefferson County Courier*, September 19, 2001, p. 11.

36. Statistics are the author's conclusions based on examination of the prisoners' files.



MHS Photograph Archives, Helena

Montana U.S. district attorney Burton K. Wheeler refused to yield to reactionaries and used the Espionage Act to effectively freeze federal sedition prosecutions in Montana.

had become the nation's youngest U.S. attorney in 1913 at age thirty-one. His independence—for example, his refusal to charge IWW organizer Frank Little under the Espionage Act for fiery speeches in Butte in the days preceding Little's lynching on August 1, 1917—complemented that of Bourquin.

State sedition cases were concentrated along a great south-bending arc across the Montana, corresponding roughly to what is now the Interstate 90 and 94 corridors, extending from Thompson Falls in the northwest to Sidney in the far east. The biggest cluster of sedition cases was located in the southeast. Prosecutors tried thirteen cases in Miles City, seat of Custer County, and another four in Forsyth, seat of neighboring Rosebud County, resulting in a total of fourteen convictions. The next biggest cluster was in Helena, where eleven cases resulted in ten convictions.³⁷

The clusters of cases reinforce the impression that successful sedition prosecutions depended more on the zeal of the county attorneys and the local press and the prevailing political conditions (which affected jury attitudes) than on any organized or coherent political dissent that might give rise to seditious utterances. Butte and Silver Bow County, then the state's most populous city and county, had long been wracked by labor strife and were probably the biggest pocket of strength in the state for the IWW. Yet they had only seven sedition cases, resulting in two convictions.³⁸ The county certainly had stridently conservative newspapers in the *Butte Miner* and to a lesser extent in the *Anaconda Standard*, but its prosecutors knew from

37. District court records, Lewis and Clark County Courthouse (hereafter LC County Courthouse), Helena, Montana.

38. *Missoula (Mont.) Daily Missoulian*, March 30, 1918.

experience that it was hard to get a Butte jury to convict on a charge like sedition.

The sedition trials in Helena may collectively have had the greatest impact. Eight Germans were tried, most of them associated with German beer halls in the capital. In Helena, as in many other communities, Germans ran many of the saloons. They knew beer, and they worked hard and therefore prospered in hard-drinking, blue-collar neighborhoods. But after the United States declared war against the Central powers, and especially after February 1918, when the state sedition law was passed, being a vocal German became a dangerous exercise. Perhaps recognizing this danger, German beer hall operators in Helena had "put the kibosh," as one bartender put it, on all war talk in their establishments.³⁹ All meant all, neither boasting of the U.S.'s prowess nor cheering the Kaiser. Not in English, not in German, not in any language.

As war hysteria tightened its grip on Montana in spring 1918, rumors and articles about German spies became common. Curiously, some persons chose to employ Germans to ferret out "pro-German" disloyalty, despite the obvious risks. Lewis and Clark county attorney Lester Loble, for one, decided to employ this stratagem to trap seditionists. To make this plan work involved some high-stakes maneuvering at the highest levels of state government.

The story begins in Butte. Oscar Rohn, proprietor of the South Butte Mining Company and president of the Butte Employers Association, had employed a man named Carl von Pohl, ostensibly to find good men to work his mine but really as a spy to make sure none of the men he hired were IWWs or other scum. For that service Rohn paid von Pohl more than five thousand dollars. Von Pohl was like a dime-store novel caricature of a German spy. He sported a pointed goatee, favored green-gray suits that only foreigners wore, told fantastic tales of "portable wireless equipment relaying messages through Mexico and Paraguay to Berlin," and was said to have a "svelte, elusive and dark-eyed" woman associate who would from time to time mysteriously vanish from dinner parties "with a swish of silken skirts and a flash of lingerie into the darkness of a closed automobile."⁴⁰

But was von Pohl using Rohn for cover while spying for Germany? Many folks in Butte thought so. Even Rohn was not entirely certain of von Pohl's allegiance, yet he was satisfied with the man's work so had kept him on. In fall 1917 William Campbell of the *Helena Independent* accused von Pohl of transmitting information to Berlin by means of a secret wireless station in the forest west of Missoula. He

39. *Helena (Mont.) Independent*, July 19, 1918, pp. 1, 3.

40. Burton K. Wheeler, *Yankee from the West* (Garden City, N.J., 1962), 145, 147; *Helena (Mont.) Independent*, June 4, 2, 1918.

41. *Helena (Mont.) Independent*, October 17, November 17, 1917, quoted in Charles S. Johnson, "An Editor and a War: Will A. Campbell and the *Helena Independent*, 1914-1921" (master's thesis, University of Montana, 1970), 107, 108.

labeled von Pohl a “pretty important wheel in the Kaiser’s spy machine” and called for his arrest.⁴¹ With America in the war, von Pohl’s passport and pro-German statements were impossible to ignore. In October U.S. Attorney Burton K. Wheeler had von Pohl arrested and interned as an enemy alien.

Some months later another “von” came along—Eberhard von Waldru—and accepted the same job as von Pohl had held. Von Waldru, thirty-one, said he had served in the German army and owned a German passport—exactly the kind of person who should have been on the German side of the trenches. But his wits and charm allowed him to navigate many ticklish situations. Now he was able to convince Rohn that he was just the right man to root out German spies.

To spy on disloyal pro-Germans, von Waldru joined the IWW and the Metal Mine Workers Union (MMWU). He dropped the “von,” obtained a “rustling card” for working in the mines, and set about

gathering information, his base a fake real estate office. There he and another of Rohn’s employees would hang out with the likes of Bill Dunn, then just an electrician, and with radical miners, presumably collecting tidbits of information. The office enjoyed a good view of Finlander Hall, where the IWW and the MMWU had their headquarters.

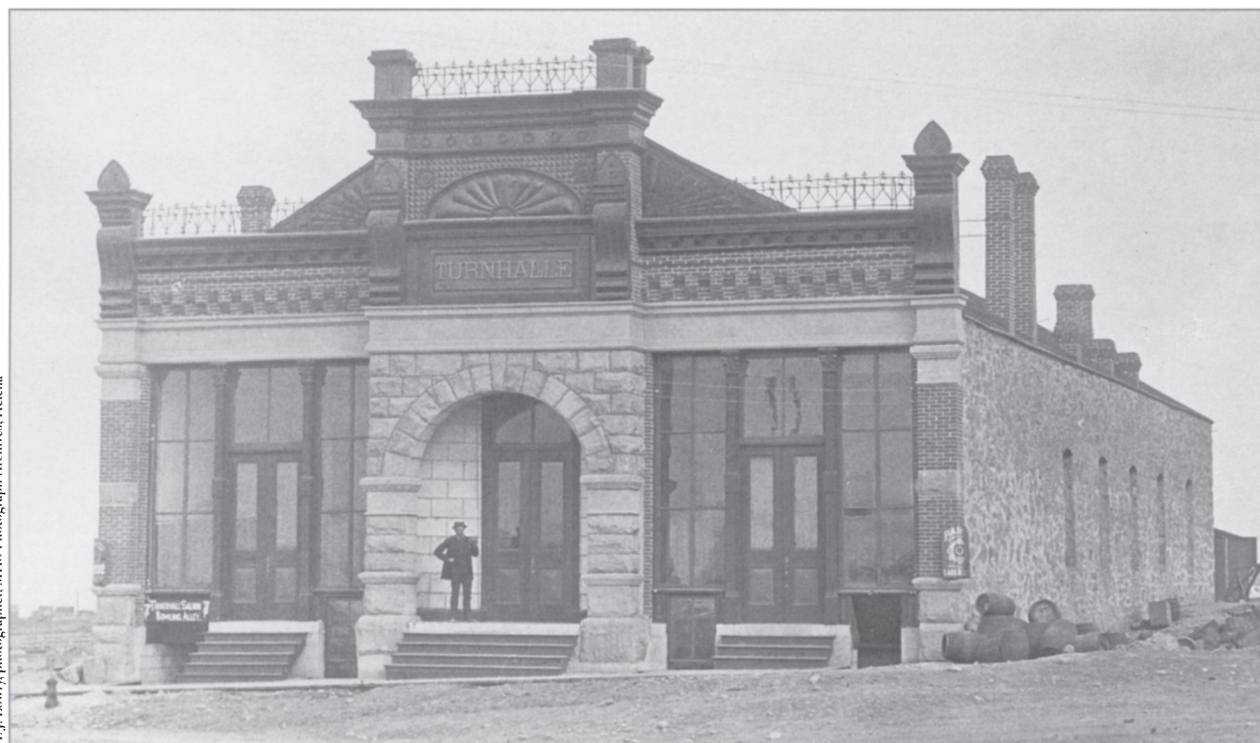
In April von Waldru moved his spying operation to Helena under the aegis of Thomas A. Marlow, president of the National Bank of Montana. Marlow also sat on the board of directors of the Anaconda Company and headed the Lewis and Clark County Council of Defense. Within a few weeks of his arrival in Helena, von Waldru had the goods on a bunch of beer hall Germans and was waiting to testify against them. The men were about to be arrested.

But there was a problem. The connections of the first German spy, von Pohl, to Butte mine operator Rohn were poisoning Rohn’s



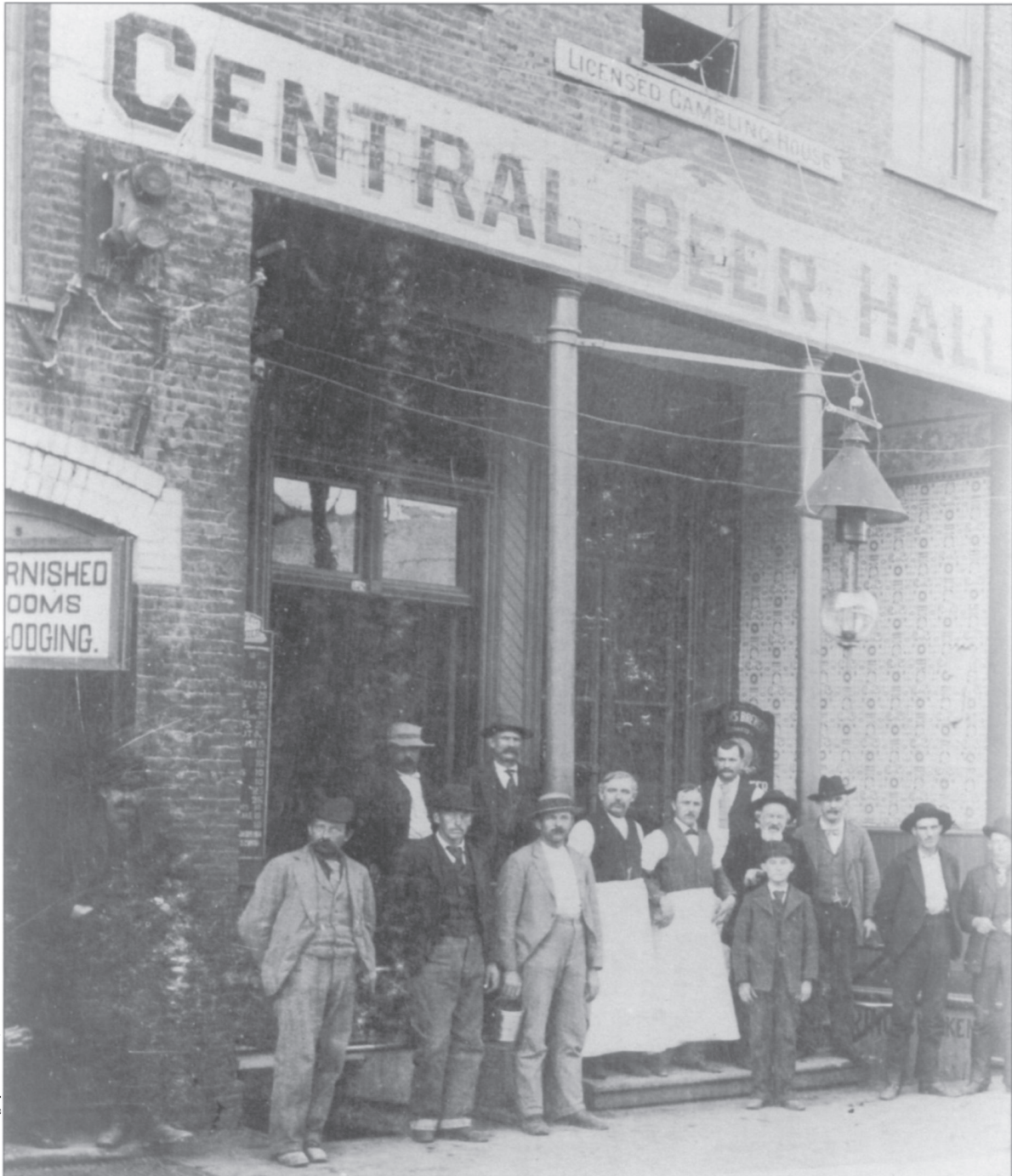
Helena (Mont.) Independent Record, April 13, 1917

Successful prosecutions under the state’s seditious law depended more on local political conditions than any organized efforts. In Helena a German fraternal organization, Sons of Herman, defended its members’ patriotism, which had been called into question in a local newspaper article.



H. J. Lowry, photographer, MHS Photograph Archives, Helena

Vocalizing support for Germany invited trouble, and German beer hall owners in Helena “put the kibosh” on war talk. A Helena German club, Turnverein, had a saloon and bowling alley in the basement of the Turnhalle (above, circa 1890) where the group also hosted concerts and other community gatherings.



MHS Photograph Archives, Helena

Based on Eberhard von Waldru's evidence, Sheriff Ed Majors arrested eight Helena men, including Tony Diedtman, who worked as a janitor at the Central Beer Hall on south Main Street, pictured here.

reputation. Despite von Pohl's internment, rumors of his duplicity continued to swirl and intensify with the growing war hysteria.⁴² Those privy to von Waldru's mission, probably including Campbell and Governor Stewart and highly placed officials at the Anaconda Company, worried that his connection to Rohn would damage von Waldru's

credibility at the upcoming sedition trials. Surely the defense would question von Waldru's allegiance. The state Council of Defense confirmed that von Waldru was not under investigation by the Department of Justice and the immigration service in Washington. Then, its members would add its own imprimatur.

With Governor Stewart as ex-officio chairman and Will Campbell and other arch-conservatives as members, the Council of Defense was the patriotic nerve center of Montana. Given new blood, greater authority, and a budget in the February 1918 special session, the council was eager to step into the quasi-official shoes supplied it by the legislature—and even to stretch the shoes a size or two. It was the perfect vehicle for sanitizing both Rohn and von Waldru.

The fact that the Council of Defense lacked authority to hold hearings was easily countered: at its monthly meeting on May 28 the council issued orders arrogating the power to hold “hearings and investigations in all matters pertaining to the public safety and the protection of life and property” along with the power to issue subpoenas.⁴³

A second problem surfaced. That same month U.S. Attorney Wheeler—no fan of the Council of Defense—had von Waldru arrested as an enemy alien. If the German were interned and not allowed to testify, the sedition trials could never take place because he was the star witness. In fact, his enemies believed, that was why Wheeler ordered the German to be arrested. Wheeler denied it, blaming the arrest on a lack of communication between him and his investigator while Wheeler was out of town. If, however, Wheeler was trying to throw a wrench into the sedition trials, if for no other reason than his sincere doubts about von Waldru’s credibility, he could not have admitted it, for such a “pro-German” move would have been political suicide.

The council’s hearings on both Rohn’s and von Waldru’s probity began almost immediately, on June 1. In the closed-door session (thoroughly leaked by the *Helena Independent*), Governor Stewart, county attorney Loble, and Campbell himself reviewed in detail Rohn’s dealings with von Pohl.⁴⁴ They also brought out von Waldru’s curious background.

According to von Waldru, he was educated in law and history and then became a socialist. He had served a year as a private in the German army and been a commissioned

officer for twenty-four hours. He told the Council that he had been kicked out for gambling, although he had earlier told employers that he left the army because his politics were in danger of getting him in trouble.

Von Waldru came to the United States in 1913 with forty-five dollars in his pocket, he said. After working as a reporter for German-language newspapers in New York, Charleston, and Chicago for about three years, he found work on a ranch near Fort Benton. There he forged a twenty-dollar check and drew a prison sentence. On the

way to the penitentiary, the deputy sheriff taking him was called back—so von Waldru continued faithfully on his own and turned himself in. In prison he single-handedly thwarted a riot plot, turning over notes written with invisible ink to Warden Frank Conley, thus earning a shortened sentence. He washed up in Butte, where he found an even better way to capitalize on his newfound talent for stool-pigeonry.

The end result of five days of hearings came as no surprise. The

council exonerated both Rohn and von Waldru. Rohn received a slap on the wrist for his involvement with von Pohl. He was cleared of any disloyalty, but also called “indiscreet in employing

Carl von Pohl, alien enemy, to do detective work for him.” Von Waldru was cleared to testify on one condition: he would have to sleep in the county jail. His deportation would be on hold.

On May 31 Sheriff Ed Majors had arrested seven Helena men for sedition based on von Waldru’s evidence. Adam Steck was a night bartender at the Trocadero Saloon. Tony Diedtman was trained as a baker but worked as a swamper—a janitor—at the Central Beer Hall. Frank Heil was a swamper at the Milwaukee Saloon. John Milch, his boss, was the owner of the saloon. John’s brother, Joe Milch, was a tailor and part-time bartender. August Lembrecht, also a former German army officer, was a blacksmith. Leo Reno was a short-order cook at the lunch counter in the Black Eagle Saloon. An eighth man, Richard Lohe, would be arrested later.⁴⁵

45. *State v. Steck*, Lewis and Clark County Case No. 1454, LC County Courthouse, Helena; *State v. Diedtman*, Lewis and Clark County Case No. 1460, *ibid.*; *State v. Heil*, Lewis and Clark County Case No. 1456, *ibid.*; *State v. [John] Milch*, Lewis and Clark County Case No. 1455, *ibid.*; *State v. [Joe] Milch*, Lewis and Clark County Case No. 1457, *ibid.*; *State v. Lembrecht*, Lewis and Clark County Case No. 1458, *ibid.*; *State v. Reno*, Lewis and Clark County Case No. 1459, *ibid.*



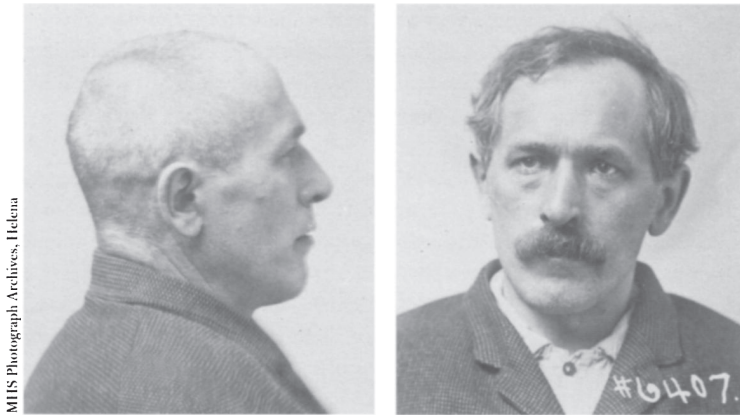
MHS Photograph Archives, Helena

Thomas A. Marlow (above), the head of the Lewis and Clark County Council of Defense as well as an Anaconda Company board member and president of the National Bank of Montana, hired von Waldru, a former German soldier, to spy on many of the Helenans accused of sedition.

42. Wheeler, *Yankee from the West*, 147. Wheeler said the tales were spread mostly by William A. Clark Jr., the son of the copper baron William A. Clark, who was jealous of Rohn for corresponding with Clark’s former wife.

43. “Order Number Seven, Montana Council of Defense (May 28, 1918).” Montana Council of Defense Records, 1916–1921, Record Series 19, MHS Research Center, Helena.

44. *Helena (Mont.) Independent*, June 3, 1918.



MHS Photograph Archives, Helena

It took two trials to convict Tony Diedtman, seen here in prison mug shots. His conviction turned more on the credibility of informant von Waldru's testimony than on Diedtman's alleged seditious remarks—"this damn country is not worth a damn" and "me for the old country." The Montana Supreme Court reversed the conviction after Diedtman had served twenty-two months of his ten- to twenty-year sentence.

Bond for each man was set at five thousand dollars; none made bail immediately. All were housed in the county jail, along with von Waldru and another informer planted there to overhear their conversations.

All the suspects, while engaged in conversation with von Waldru, had supposedly said disloyal things within a ten-day period between the end of April and the beginning of May, according to the charges prepared by County Attorney Loble.

As recounted by von Waldru, the men's remarks were strikingly similar. They heatedly expressed their anger about the United States and the war. "This damn country is not worth a damn and as soon as Germany gets here, me for the old country," Tony Diedtman was reported to have said while in the Central Beer Hall.⁴⁶ John Milch, the saloon proprietor, allegedly said, "What did this country ever do for us except take taxes . . . and don't give a damn thing in return. . . . This is supposed to be a free country but I be damned if it is. They tell you what to eat and what to drink. . . . They are [be]ing so God damn foolish they will tell you what name you have got to wear, but I be damned if I change my name. My name is Milch and I am German and I am damn proud of it."⁴⁷

Others allegedly expressed pride in and loyalty to Germany. "I know I would die for our kaiser and Fatherland the same as the boys in the trenches," Adam Steck allegedly said. "All they need is a good licking and they are

46. Information filed May 31, 1918, in *State v. Diedtman*, Lewis and Clark County Case No. 1460. See also *Helena (Mont.) Independent*, June 1, 1918, p. 1, for an article reporting the charges filed against the German men.

47. Information filed May 31, 1918, in *State v. [John] Milch*, Lewis and Clark County Case No. 1455.

going to get it before William gets through with them," predicted Frank Heil. "I know this damn government is getting nutty but it won't last long," said August Lembrecht.⁴⁸

Joe Milch was said to be distressed at the "damn lies" in the newspapers. "The damn sonofabitch French, American and English aeroplanes bombarded some of the towns in Germany," he allegedly said. "You don't see a sonofabitch thing about that in the paper but when the German aeroplanes bombarded places in England and France, you always hear they kill women and children. They never kill men. They call the Germans Huns!"⁴⁹

And, as damaging as anything else, the men allegedly laced their remarks with expletives and contempt for the flag and for the president. "I wish they would come after me some night to take me out to kiss

the dirty rug what they call the American flag," said Steck. Likewise, Joe Milch declared the president and Uncle Sam should go f— themselves.⁵⁰

Reno topped them all: "I be damned if I would kiss this rotten flag. I would take it to the shithouse. . . . To hell with them. . . . Just wait until the Germans bring the black, white and red over here, then we will get even with them and then some. Then good night with the Stars and Stripes, Army, Navy and Mister damned Wilson."⁵¹

Expressed openly to "red-blooded Americans," every one of those statements would have invited a punch in the nose or worse. But all of these statements were made *in German*, to a German snitch sent into beer halls to engage German men in incriminating conversations. Nevertheless, such tawdry crumbs were considered prima facie evidence of sedition.

Tony Diedtman drew the short straw. His was the first trial—and the second, for the first ended in a hung jury. His two trials set the tone for the subsequent sedition trials in the state. Diedtman's conviction was critical to the prosecution, for it would make it easier for Von Waldru to testify in the trials of the other men.

Diedtman's alleged remarks—"this damn country is not worth a damn" and "me for the old country"—received

48. Information filed May 31, 1918, in *State v. Steck*, Lewis and Clark County Case No. 1454; information filed May 31, 1918, in *State v. Heil*, Lewis and Clark County Case No. 1456; information filed May 31, 1918, *State v. Lembrecht*, Lewis and Clark County Case No. 1458.

49. Information filed May 31, 1918, in *State v. [Joe] Milch*, Lewis and Clark County Case No. 1457.

50. Information filed May 31, 1918, in *State v. Steck*, Lewis and Clark County Case No. 1454; information filed May 31, 1918, in *State v. [Joe] Milch*, Lewis and Clark County Case No. 1457.

51. Information filed May 31, 1918, in *State v. Reno*, Lewis and Clark Co. Case No. 1459.

little attention during the trial. The bartender simply denied having made any of the statements to von Waldru. Instead, the case was largely a battle over von Waldru's credibility.

More details of von Waldru's curious past emerged. The witness said his father was a member of the Reichstag and that their estate in Prussia had been in the family since 1155—a date that must have boggled a jury in a state settled by whites only eighty years earlier. Unfortunately, von Waldru added, his entire distinguished family had perished in the Great War.

Prosecutor Loble's job (other than to keep a straight face) was to convince the jury that this man's evidence was worth believing, for there were no other witnesses to the remarks. His job became even harder when it developed that von Waldru had torn up the notes he made and relied on typewritten "transcripts" made later.

Von Waldru testified that his investigative method had been fairly straightforward. On a tip from a federal immigration inspector, he had gone out to Clancy to talk, as one loyal German to another, to Charles Zastrow, who gave him a list of more than a hundred other "loyal" Germans in the Helena area. That had led him to some of the German saloons. His modus operandi, under the alias Charles Stone, was to stand around and listen to incriminating conversations and to engage those involved in further discussions.

As there was no other direct evidence of Diedtman's disloyalty, other than an Iron Cross ring he wore, most of the testimony centered on the character of the defendant and the bona fides of the star witness. Loble did what he could to cast doubt on Diedtman's loyalty, getting him to admit that he thought the United States wrong for shipping arms to the Allies and that he believed that some of the reports about German atrocities in Belgium were false. To bolster von Waldru, Loble emphasized that he had been checked out by the Justice Department and the immigration service.

Judge Smith, Diedtman's lawyer, hammered at von Waldru's credibility. In his closing argument, he pulled out the long guns, or, as the *Helena Independent* reported, "viciously attacked the state's chief witness, heaping upon him abuse and villification [*sic*], characterizing him as a Hun, a spy, an informer, and even asserting that . . . he was working here in the interests of the German government and had deceived federal, state and county officials."⁵²

52. *Helena (Mont.) Independent*, July 20, 1918.

53. *Ibid.*, pp. 1–2.

54. *Ibid.*

55. *Ibid.*

56. *Helena (Mont.) Independent*, July 21, 1918.

Von Waldru was simply unbelievable, Smith declared. "Are our courts to be trifled with and our juries fooled by the high state of public feeling in this time of war? Why, you wouldn't convict a dog of stealing a bone on such evidence as this!"⁵³

Smith reminded the jurors of their duty. Von Waldru was counting, he said, on a jury not having the guts to render a verdict of not guilty in the face of public opinion. "I would like to be able to say to our boys, if they come back," Smith added, "that we not only supported them in the trenches but have kept the constitution for them inviolate."⁵⁴

Loble, too, appealed to the juror's patriotism, asking them to help "uproot the insidious German activities in this country." Upon their heads, he told the jurymen, rested the question of whether sedition in this country would go unpunished. The Hun was in the room, he said. "As our boys went away to war they need not have waited to reach Germany to see the Iron Cross—they could have looked at the hand of some fat German bartender over the curtain of some saloon."⁵⁵

After more than twenty-four hours of deliberations, foreman J. M. Brandt told Judge Lee Word that the jury was hung.

The *Helena Independent's* page-

one headline read, "Diedtman Jury Unable to Agree, Fired." The newspaper's account of the jury deliberations was typically incendiary. The factions for and against acquittal had almost come to blows over von Waldru's credibility, the paper reported. Under the subhead "Pidgeon Swallows Smith's Pills," juror E. G. Pidgeon, a railroad agent, was reportedly greatly impressed by Smith's arguments that von Waldru was a German spy. Under the subhead "Verdict Disappointing," the *Independent* stated, "The responsibility for the failure of the jury to reach a verdict is placed by several jurors upon Juror [W. H.] West, whose strenuous and aggressive campaign [succeeded in putting together seven votes for acquittal]."⁵⁶

And under the subhead "Lightweight Americanism," the *Independent* related how West and another juror had told fellow panel members they had heard worse sedition than what Diedtman had said but had not reported it. While identifying jurors by name and address was a common practice, implying that they were unpatriotic during a

(overleaf) During Diedtman's trial, his lawyer admonished the jury, "I would like to be able to say to our boys, if they come back, that we not only supported them in the trenches but have kept the constitution for them inviolate." It is a reminder that bears repeating whenever Americans defend the nation. Here, World War I recruits parade down Helena's Main Street circa 1917. Edward M. Reinig, photographer. MHS Photograph Archives, Helena





period of jumpy vigilantism seemed very close to an invitation to a necktie party or at least a visit from the sheriff.⁵⁷

To top it off, in an editorial the same day, titled "A Streak of Yellow," Campbell (who had once been convicted of contempt of court for publishing information on a defendant's criminal background that was not part of the trial record) attacked defense counsel Smith. He assailed "men who consciously or unconsciously serve the German kaiser—men who are un-American, selfish, political soldiers of fortune and bankrupts seeking to regain their financial prestige by doing service for the pro-Germans."⁵⁸

Smith objected strenuously to the paper's articles on the hung jury, arguing that they "were published with the object of intimidating jurors (of this and future trials) so that they would not dare vote for acquittal."⁵⁹ Evidently, Campbell received no admonition. Loble opted for an immediate retrial.

Much the same evidence appeared at Diedtman's second trial. Four days later the case went to a new jury. Smith again lambasted von Waldru, asking the jury, "Are you going to convict this man, even if he were born in Germany, on the testimony of a man . . . who still owes allegiance to those hell-hounds over there?" For his part, Loble lobbed the patriot card. Recalling schoolmates fighting in the war, he said, "I can see them in their dugouts, waiting with gas masks on, to go over the top into No Man's Land to almost certain death, and I wonder if they are going over the top for the seditionists and others like this defendant . . . The kaiser laughs because we have spent two weeks time and \$1,500 trying to convict one seditionist and we haven't been able to do it yet."⁶⁰

After eighteen hours the second jury returned a verdict of guilty—with a recommendation of leniency. Judge Word ignored them. He sentenced the bartender to the maximum term of ten to twenty years. At the sentencing hearing on July 31, attended by many state and county officials, Judge Word told the defendant, "At a time when the United States was at war with Germany and needed the support of every loyal citizen, you saw fit to belittle your own country and praise its enemies."⁶¹

Diedtman entered prison the same day and was assigned to the bakery. The news he received twenty-two months later, on May 8, 1920, must have made him want to bake a giant celebration cake: the Montana Supreme Court, in a unanimous opinion, had reversed his conviction. Judge Word had committed reversible error in the examination of jurors during the trial and in the instructions to the jurors, the high court said.⁶²

The court faulted Judge Word in particular on the handling of von Waldru's testimony. Letting in evidence that von Waldru had been cleared by the Justice Department before his character was even in issue "violated the most elementary rules of the law of evidence." In a case where jurors had to rely on von Waldru's word alone that the seditious words were spoken, the improperly introduced character evidence undoubtedly influenced the jury to overlook his forgery conviction and other credibility problems. "It would be easily conceivable that a jury of laymen would be impressed profoundly by the favorable findings of the Department of Justice at Washington and the Attorney General, after an investigation into von Waldru's history. . . . [T]he verdict rests largely, if not altogether, upon the support which von Waldru's reputation received from the [improper] hearsay testimony."⁶³

Judge Word had also been biased in favor of the prosecution, unduly restricting defense counsel's attempts to cross-examine von Waldru, the court added. This was the defendant's only means of testing the credibility of a "detective employed for hire to ferret out violations of the sedition statute." The errors in this respect, the court said, "are too numerous to be treated separately."⁶⁴

The Supreme Court's opinion was a sharp rebuke to both the prosecution and the judge, but it came too late to forestall other sedition prosecutions in Lewis and Clark County. However, at least one other beer hall defendant benefited. The county attorney dismissed charges against Joe Milch, who received a three-thousand-dollar fine and a three- to six-year prison term but had been out on bail.⁶⁵

It is fair to conclude that prosecutors recognized that Milch's case, as well as those of the other beer hall Germans, may have been fatally infected by von Waldru's tainted testimony, the only witness testimony in their trials. But none of the other defendants appealed, so the errors attributed to Judge Word may or may not have re-occurred. A different judge presided over the other trials, which were postponed until 1919 because of the influenza epidemic. Skimpier court and newspaper records of these later cases obscure any thorough examination of the record.

Steck and Lembrecht received one- to three-year sentences. Frank Heil received a one- to two-year sentence but was placed on probation. John Milch was assessed an eighteen-hundred-dollar fine.⁶⁶ Only Leo Reno remained in prison when the Diedtman opinion came down. Like Diedtman, Reno had received a ten- to twenty-year sentence. The fact that he broke out of jail for a few hours before his trial, by sawing a bar in half and sneaking out

57. Ibid.

58. Johnson, "An Editor and a War," 151–52; *Helena (Mont.) Independent*, July 21, 1918.

59. *Helena (Mont.) Independent*, July 23, 1918.

60. Ibid., July 28, 1918.

61. Ibid., August 1, 1918.

62. *State v. Diedtman*, 69 Mont. 13, 190 Pac. Rptr. 117 (1920).

63. Ibid.

64. Ibid.

65. *State v. [Joe] Milch*, Lewis and Clark County Case No. 1457.

66. *State v. Steck*, Lewis and Clark County Case No. 1454; *State v. Lembrecht*, Lewis and Clark County Case No. 1458; *State v. Heil*, Lewis and Clark County Case No. 1456; *State v. [Joe] Milch*, Lewis and Clark County Case No. 1457.

through the cellar, may have contributed to his long sentence. The saloon cook spent twenty-seven months in Deer Lodge. On April 19, 1921, he was transferred to the state insane asylum at Warm Springs. He died there four days later at age forty of chronic inflammation of the kidneys. A medical text of the time described his disease as particularly prevalent in male middle-aged beer drinkers.⁶⁷

The repression of free speech engendered in this hysterical era almost seamlessly continued after the Armistice in the Red Scare of 1919–1920. Eventually, however, it produced a reaction. Led at first by scholars and intellectuals such as U.S. Supreme Court justices Oliver Wendell Holmes Jr. and Louis Brandeis, then slowly adopted by the general populace, a broader, more generous view of free speech rights began to take hold. This idea of giving more breathing room to dissident speech was most eloquently expressed by Justice Louis Brandeis in 1927 in his opinion in *Whitney v. California*: “Fear of serious injury cannot alone justify suppression of free speech and assembly,” wrote Brandeis. “Men feared witches and burnt women. It is the function of free speech to free men from the bondage of irrational fears.”⁶⁸

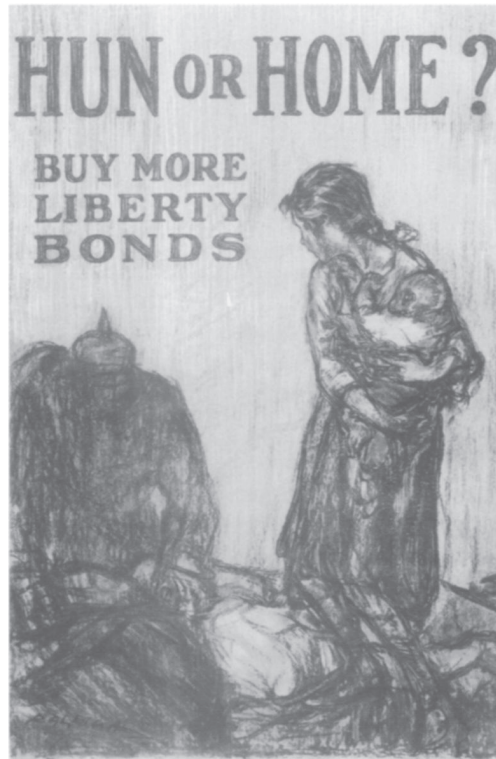
Eventually, Brandeis’s and Holmes’s dissenting views became part of the mainstream, underpinning the broad freedoms of speech that Americans enjoy today. The freedoms of speech, of the press, of association, so wisely reserved for the people in 1791, would finally begin to fulfill their promise. As we cherish it today, freedom of expression guarantees political dissent. This is the freedom that U.S. Supreme Court Justice William Brennan so eloquently expressed in *New York Times v. Sullivan* in 1964, affirm-

ing the constitutional right to criticize government without fear of punishment and reaffirming “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.”⁶⁹

The last seventy-five years or so has not, of course, been an unalloyed golden age. Periods of repression as in the Communist hysteria in the early days of the Cold War remind us that the guarantee of free speech is fragile. Laws and actions by the George W. Bush administration after September 11, 2001, bring home that truth once more. Recent events, such as the passage and implementation of the USA PATRIOT Act of 2001, the increase in surveillance activities by national and state governments, the repression of political street demonstrations, and the detention and harsh treatment of political prisoners have shrunk everyone’s civil liberties and heightened the danger to expression guaranteed by the First Amendment. But these same actions have also provoked vigorous debate and considerable opposition, and court decisions have invalidated some administration actions.

By focusing on this darkest period in America’s history, it is my hope that certain truths may become self-evident: That freedom of expression is indeed the bulwark of our liberty, that its exercise is crucial to democratic self-governance and ultimately to the pursuit of happiness, and that we alone can preserve it. Only with this awesome power can we presume to call the United States a great nation. By looking into this dark mirror, when our freedoms were under siege, we can see ourselves as we once were, and as we might become. ~

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Henry Raleigh, artist, Special Collections, University of North Carolina, Chapel Hill

Montana’s Germans were, predictably, unwilling to acknowledge that their countrymen could commit treasonous acts, and they hated the negative portrayals of their homeland. “I know this damn government is getting nutty but it won’t last long,” said August Lembrecht.

67. *Helena (Mont.) Independent*, December 30, 1918; “Certificate of Death, Leo Reno (D.L. 419),” filed May 1, 1921, Montana Bureau of Vital Statistics, Helena, Montana; Rolla L. Thomas, *The Eclectic Practice of Medicine* (Cincinnati, 1907), quoted in <http://www.ibiblio.org/herbmed/eclectic/thomas/main.html>, accessed October 2004.

68. *Whitney v. California*, 274 U.S. 357, 375 (1927).

69. *New York Times v. Sullivan*, 376 U.S. 254 (1964).