

LIBERATOR PAMPHLETS

**MAX EASTMAN'S ADDRESS
TO THE JURY IN THE
SECOND MASSES TRIAL**

INDEXED IN VF

**In Defence of the
Socialist Position
and the Right
of Free Speech**

No. 1

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SUMMATION FOR THE DEFENSE

by Max Eastman

FRIDAY, October 4, 1918.

YOUR Honor and Gentlemen of the Jury: I am going to confine my argument principally to the question of intent. I think that if I can prove to you that we had in the publication of these articles no intention to promote mutiny or disloyalty or refusal of duty in the army, or to obstruct recruiting or enlistment, I shall have proven that we are not guilty of any of the crimes charged in any of the counts in the indictment. The District Attorney has offered no evidence whatever and made no attempt to prove that we actually succeeded in obstructing recruiting or enlistment. He has only endeavored to show that we were wilful to do it. He has not charged us with succeeding in stirring up a mutiny or in promoting disloyalty. He has only charged us with attempting to do it. And in addition he has charged us with a conspiracy.

Thus in three of the counts of the indictment there occurs the word "attempt." In three of the counts there occurs the word "wilful." And in one of the counts there occurs the word "conspiring." Each of these words implies an intention. We could not *attempt* to do something without intending to do it, we could not *wilfully* do it without intending to do it, and we could not *conspire* to do it without intending to do it. Therefore, I think that the legal question in this case is exactly the same question that any common sense man would ask about the case: Did we *intend* to ob-

struct the military enterprise of the United States? And I shall answer that question in complete and candid detail, that we did not have such an intention. On the contrary, our intention was to issue into the general current of public opinion our satirical and argumentative and poetic and pictorial comments upon the general policy of the Government from a socialist point of view.

In order that you should fully understand our "intent" in publishing these articles, it is necessary for you to take into consideration two underlying conditions: One is that we were artists and literary men in a state of revolt from the commercial magazines. The other is that we were socialists. We had created this magazine, which belonged to us jointly, because we all of us desired to have one place in which we could say exactly what we wanted to, in exactly the tone of voice that we wanted to, and no editor and no owner of a publication could tell us to say anything else or to say it in any different way. On the inside cover of the magazine it is stated exactly what the policy of this magazine was, and there can be no dispute about this. It is stated in every issue that we ever published. Our policy was, to do as we pleased—each of us—and conciliate nobody, not even our readers. That is what we had the magazine for. That is what we were doing. That was our policy.

And what was our mood? Our mood was the mood that accords with that policy. It was a mood of extreme and proud and rather obstreperous individual expression. We were most of us young, and most of us enthusiastically dissatisfied with the present state of affairs in art and politics and society. And we had this one place in which to say so, and we were accustomed from the beginning to say so in extremely vigorous and sometimes extravagant language. That was our

mood and our policy. And that mood and policy brought us a good deal of fame and a good deal of recognition from high and wide sources. And though you may think it was not an appropriate mood for a socialist magazine in war times, and you may be right, still it is the mood in which a good deal of the greatest art, and the greatest literature, and much of the truth of the world, has been uttered. I have no disposition to apologize for it. I only ask you to realize that that is what we had been doing for five years before the war was declared, and that was the way in which we had been doing it. And I ask you, therefore, not to be misled by the extremeness and the passion with which some of us presented our points of view, into thinking that this was something new and something adopted with a special animus upon the entrance of this country into the war. It was what we had been doing all the time. We never had any meeting to discuss our attitude toward this war. We never adopted any policy toward this war. We never adopted any policy toward anything. We simply continued to express, each in his own chosen way, his own opinion and emotion about the policies of our Government.

Again you must remember in judging our underlying intention—and you must remember it all the time in your deliberations if you want to give a just verdict on this case—that these things were published then, and not now. They were published before this country had got into the fight. They were published before one single man of our fellow citizens, so far as was publicly known, had set foot in the trenches of Europe. Now, I think that it can legitimately be said that we continued our mood of satire longer than was in good taste. Other things can be said, of course, but that is one thing that can be said, and I myself have testified that

I was rather shocked at what seemed to be the "flip" character of Jack Reed's caption to that clipping from the *Tribune*. I am older than Jack Reed, and I think I was sobered a good deal more quickly than some of the editors of the *Masses* to a realization of the fact that the United States had really got into a world war, and could not get out except by carrying it forward in a diplomatic and military way to some sort of conclusion. But at the time when most of these articles were published, none of us, and not half of the American people, had taken into their breasts the full sense and tragic significance of the fact that we are in this war, and that thousands of our friends are going to die.

THE District Attorney has made some point, although not so much in this trial, of the charge of conspiracy. I think we have demonstrated by exhibiting to you the purpose for which we started the magazine, and the policy under which we conducted it, that there was never in the world anything less like a conspiracy than the way in which the articles and cartoons were contributed to this magazine, and the magazine brought out. Our one principle was that we would not "conspire," we would not agree, we would not try to agree, and we would not give anybody the power to tell anybody else what he should do. To that principle we clung throughout all the diversities and all the changes in our editorial board.

With all the detectives in the Department of Justice, and the Navy Department and the Treasury Department if he wants them—a good many thousands of men at his service—with all of our letter-files for as long as he wanted them in his office—for almost a year—and he has dug through them all—the District Attorney has never produced one let-

ter that shows that any of us ever met together for any purpose whatever in all the time that was described in this indictment. He has never produced one letter that I wrote to Art Young and said: "Art, come on over Sunday—I want to talk to you." Not one letter that I wrote to Reed, or that I wrote to Merrill Rogers, or that I wrote to Floyd Dell. He has never produced one single secret-service agent in this court who could say anything to the effect that he ever saw any of us together, or that we ever got together, or that we ever said one word to each other either about this subject or about any other. Generally when you set out to prove that there was a conspiracy to accomplish something, you go into court with evidence to the effect that the people who are charged with the conspiracy got together and tried to accomplish something. He has produced a few letters which were written by Merrill Rogers, and which prove, if they prove anything at all, that Merrill Rogers was trying to sell this magazine and trying to be affable to all our contributors, and was acting in complete innocence of the fact that what he was doing could possibly have any relation whatever to any law. That is all that his letters prove, and that they prove conclusively.

There is nothing against Merrill Rogers after the passage of the Espionage Law under which we are indicted, except the testimony of a salesman, who came down here at the time of our first trial, reading about it in the newspapers, and went to the District Attorney and said:

"I have got something on this man, and I am an American patriot, and I would like to testify against him." And what was his testimony? That he went in and tried to sell a machine to this man, and he talked to him a long time about the machine, and then quite suddenly Merrill an-

nounced to him that "he would like nothing better than to see the entire military and naval program of the United States go to smash." Now, I don't believe that Merrill Rogers ever said those words to any man in his life. He never said anything like that to me. Nothing like that was ever said around the office of the *Masses*, and it was never thought, and it was never felt by any of us. We never desired the defeat of this country or its failure in the war at any time. We never—most of us—even desired a separate peace. I cannot give you anything perhaps except my own conviction that Merrill Rogers never uttered any such words, except this—that if he had been such a character and such a fool that he would announce to a salesman—an ordinary salesman with whom he had only a business acquaintance—that he would like to see the whole enterprise of the United States go to smash, then he would have been saying it to everybody all the time, and the District Attorney, with all the detective service of the United States at his command, could very easily have brought plenty of people in here to prove that he actually said it, and said it under circumstances when a sane man could believe that he really did say it. The only thing there is to prove that I or any of the rest of these defendants conspired with him to do anything, is the letter which was written in the late autumn, and which absolutely proves that we never did conspire to do anything. It is a letter which he wrote to some potential subscriber, telling him that we had gotten a new mailing privilege from Burleson, and that we were not going to change the policy of the magazine; and he wrote that letter at the same time that I was telling Mr. Burleson that we were going to change the policy of the magazine in accordance, not with the Espionage Law, but with his extreme interpretation of the Espion-

age Law. If that does not prove that the business office and editorial office never co-operated at all, and did not know anything about what each other was doing, what could prove it? I was writing to Burleson telling him I was going to change the policy of the magazine—he was writing to a subscriber telling him that he was not. And that is all the evidence that there is after the passage of the Espionage Law to prove that Merrill was in combination, conspiracy, co-operation or any kind of agreement or communication with any of us.

As for Art Young, he was in Washington—he was in Washington practically all of the time described in the indictment. He was the political correspondent in Washington for the *Metropolitan Magazine*, and his pictures and his comments on Congress were published there every month. He came up here to New York to attend the argument before Judge Hand in this Court on the exclusion from the mails of the August number, and that is the only time that any of us can remember that he came, and after that conference we left him, and I don't remember meeting him again until late in the autumn. And the District Attorney has offered no proof either in letter or in testimony of anybody who saw him in town—no proof whatever that he was ever here or ever communicated with us in any way, except to mail his cartoons in to the *Masses*. Can it be asserted that Art Young was involved in a conspiracy during those months, which took place at 34 Union Square, New York?

Reed was acting at that time as a reporter for one of the New York papers—was extremely busy as I remember, earning his living, and although he had a house in Croton he was very rarely up there, and I very rarely saw him when he was there. And then early in August—that is just about

the middle of the alleged conspiracy—he left for Russia, and never was heard from again until winter, when we telegraphed him and told him to come home because we were under indictment. No proof has been offered that Reed met with us or communicated with us. As a matter of fact we had no meeting of these editors at all during all that period. It has been testified that Floyd Dell was taking a vacation, during this summer—during the months when I was not taking a vacation. And that was always what we did during the summer months. I would take a vacation one month, then I would stay around, if we did not have an assistant, and see that the magazine got through, when he was not there. And during one month, and while one whole issue of the magazine was brought out, neither Floyd Dell nor I was there. It has been testified to you that this issue of the magazine was brought out by Dorothy Day, who was hired as an assistant to stay in the office and keep the magazine going when we were away. And I want to call your attention to the fact that this issue of the magazine—the October issue—is very much more moderate in tone than the August issue, which was the first one excluded from the mails, except for this cartoon. And if I remember the proceedings, Your Honor, this cartoon was admitted only against the corporation and not against any of us as individuals—on the ground that Dorothy Day herself published it, and that none of us had anything to do with publishing it, and that I, in fact, did my best to keep it from publication, and thought I had done so. Am I right?

THE COURT: If the conspiracy existed at the time, it is binding against the individuals.

MR. EASTMAN (continued): But otherwise—if the conspiracy has not been proven—this cartoon is not binding

against any of us as individuals. It is only binding against the corporation, because it was published by an assistant editor and without the knowledge of any of the defendants.

There is just one string to Mr. Barnes's argument that there was a conspiracy in that office, and that is the fact that each of us defendants happens to believe that the proletariat ought to replace the bourgeoisie in the position of social and industrial and political control of our civilization. And Mr. Barnes, I believe, is going to make the most that he possibly can of that fact. He is going to try to prove to you that we conspired to overthrow the enterprise of the United States Government because we believe in that philosophy of historic development which asserts that the next step in the progress of democracy beyond what we have now, is the coming into political power of the working class, and the taking over by the working class—by the mass of the people as a single whole—of the instruments of production. And if that is a proof of conspiracy, if everybody who holds that opinion about history and about the changes which are going on under our eyes today, is liable to the assumption of conspiracy, then we are conspiring with Albert Thomas, who is the minister of munitions in the French Cabinet, and who was appointed there exclusively because he holds these opinions, and because so many millions of people in France hold these opinions that they could not form a Cabinet which the people would trust unless they took him into it. He is one of the most important members of the French Cabinet, and he is a revolutionary socialist—no less. And he says so all the time. And he goes as a delegate from France to the international meetings of the Socialist Party. We have been conspiring with him. We have been conspiring with him for thirty years. And we have

been conspiring with Jules Guesde, who also and for the same reason, that he is a revolutionary and Marxian socialist, was taken into the French Cabinet, because there are so many socialists in France that they could not run the Government with the consent of the people unless they had a revolutionary socialist in the Cabinet. And we have been conspiring with forty per cent. of the members of the Italian Parliament, and with members of the Italian Cabinet, some of whom were readers of our magazine, and many of whom are friends of Arturo Giovannitti, who is one of our editors. And we have conspired with Arthur Henderson, who is the Chairman of the British Labor Party, which comprises practically all of the laboring class in Great Britain, and who is generally considered the man next in power to Lloyd George in England, and the man who stands the best chance of being the Premier in England after Lloyd George is gone. And we have been conspiring with Emile Vandervelde of the Belgium Cabinet, who attends the international socialist conferences in London, to which we, the Socialist Party of America, are regularly invited and expected to send delegates, and he at the same time attends the great war councils of the Governments that are prosecuting this war in Europe. These are our co-conspirators in the opinion that the next development in the history of democracy is the passage from a state of merely political democracy to a state in which the working classes will take possession of the power and make democracy industrial as well as political.

And as to Russia—the court has stated to you that the facts about Russia are in public dispute and that we had better not dispute about them here. And so we will not dispute about those facts, as we cannot. But we will be permitted to assert what is our opinion about those facts. It is

our opinion that there is in Russia the beginning of the Socialist state—that there is not anarchy in Russia, that there is no pro-German intrigue on the part of any of the people who are in power in Russia—that there is no wanton or indiscriminate reign of terror in Russia—that an offer of co-operation with the United States Government in the war against Germany was formally made by Lenine and Trotsky through Raymond Robbins, the head of the Red Cross and the virtual representative of President Wilson in Russia, and that John Reed saw that offer in writing in three languages and read it while it was held in Raymond Robbins's hand. It is our opinion that there is the beginning in Russia of a co-operative system of production, in which human brotherhood and not a reign of terror will be the prevailing mood and the prevailing fact. I have said this, because I think that the District Attorney has accomplished a very pretty trick in this trial, and I admire his skill in accomplishing it, but I don't intend to let him get away with it at all. He has succeeded in introducing into the evidence *our sympathy with what we believe to be the state of things* in Russia, but he has succeeded in keeping out of the evidence *our opinion about what the state of things in Russia is*. And his intention is by playing upon our confession of sympathy with that state of things, and then using *his* opinion, or perhaps *your* opinion, of what that state of things is, to influence your minds against us—to make you think that we believe in pro-German intrigue and a general reign of terror. Therefore, I want to say this—that if there is pro-German intrigue on the part of the people who are in power in Russia, then we are not in sympathy with those people. If there is an indiscriminate reign of terror in Russia, then we are not in sympathy with the conditions which prevail in Russia. If there is a movement to

overthrow and ruin civilization and establish a condition of anarchy in Russia, then we are not in sympathy with Russia. Now, I ask you to remember that, when Mr. Barnes is calling us by the name of "Bolsheviki" without explaining what our interpretation of that name is.

The charge of conspiracy to overthrow this Government and to obstruct its military enterprises and to break down the foundations of democratic civilization is not proven. The only thing that is proven against us is that we agree in believing in the philosophy of socialism. We are socialists. Mr. Barnes has given you an account of what he thinks socialism is, and I am going to tell you in some detail what socialism is.

THE Socialists believe in liberty and democracy. They believe in all the liberty and democracy that is possible in an organized, busy community like ours. And they believe in liberty and democracy exactly in the same way that Thomas Jefferson and Patrick Henry and Samuel Adams, and all the rest of the true revolutionary fathers whose hearts are in the Declaration of Independence, believed in liberty and democracy. Only it is their opinion that real democracy does not consist merely in letting the people elect the officials who shall govern them, and they believe that true liberty is not guaranteed to a citizen merely by the possession of the right to vote. They think that democracy will begin when the people rule in industry as well as in politics. And they believe that true liberty involves the right to work and to possess all that you produce by doing your work. I think it is pretty obvious, if you just look along the street, that only those people are really free who possess an adequate source of income—only they are free from anxiety and worry, and

the danger of ruin and poverty, and from the domination of some man or some corporation which holds their luck and their happiness in its power. That is so obvious that I think you might say the Socialists are only the ones who take the word "liberty" very seriously, and really mean the thing definitely when they say it.

And the same with the word "democracy." It is very important that democracy should exist in politics, and that everybody should have the right to vote, and Socialists believe in it. But after all, how much of our time, how much of our interest, and how much of our life does politics influence? Is not the main occupation of our time, and the main engagement of our interest, determined by business rather than political considerations? And is it not true that those who rule business, whoever they may be, rule the better part of our lives? I think there will be no dispute about it. And so the Socialists say that if it is possible, we ought to bring the rule of the people into the sphere of industry, as well as of politics.

And, of course, you will agree that if it is possible, we ought. But you will say that it is not possible, that it is impractical, and it cannot be accomplished. I tell you that it can be accomplished, and it is being accomplished under your eyes at this very moment, to a very considerable extent. A popular government has taken over, and is successfully running the railroads, and all we have to do is to dispose of the stock and bond indebtedness of the railroads, and we will have Socialism, so far as the railroads are concerned. And the railroads are a big industry, and a complicated industry, and one fit to become a test as to whether or not it is practical for a people to run any industry. This is being done exactly because it is the practical thing to do. It is the

simple, quick, sensible thing to do in an emergency. But Socialists believe that the fact that 10 per cent. of the people own 90 per cent. of the wealth, and that 2 per cent. of the people own 60 per cent. of the wealth, is an emergency, and that we ought to do the simple, quick, sensible thing on that account, and do it everywhere, and do it a little more thoroughly.

That is all there is to Socialism, except this—we know just as well as you know that it would not be practical to expect the rich people, the capitalists, those who benefit by the present system of politics and industry, to be the ones who are going to want to change it. We know perfectly well that the people who are going to want to change it are the poorer people—the working people—the small farmers—the small business men, who are not very sure of their jobs, and who are immediately under the domination of somebody, and do not feel very free. It is the people who will benefit by the change, who can be depended upon to change the world.

And so the Socialists try to band together all these people who live upon wages, or the pay which they receive for their work. They try to band them together into a group which will ultimately become a majority, and will therefore have power to change our system of life into an industrial, as well as a political democracy. Those people are the proletariat, and those people are what we mean when we use loosely the expression "working classes." And we expect to find lined up against us in this effort another class which we loosely describe as the capitalists, and by the capitalists we mean those who, no matter how hard they may work because they want to, do not live upon wages or pay which they receive for their work, but upon the profits and interest from

invested capital. Those are the capitalists, and those again are the "Bourgeoisie." The two words mean practically the same thing, only with a different historic flavor.

Now that is the whole of Socialism so far as it applies to the conditions within a nation. One of the jurors, when he was questioned as to whether he had a prejudice against Socialism, said that he had no prejudice, except against that part of it which opposes religion. Well, there is no part of Socialism which opposes religion, and there never has been, and the assertion that there is, or that there ever has been, is merely one of the malicious lies which those who are trying to promote a propaganda against it have indulged in. The Bishop of the Diocese of Utah, Bishop Spalding, a little while ago was one of the most prominent Socialists in this country, and a very good friend of mine, and his successor, Bishop John Paul Jones, was also a Socialist—a member of the Socialist Party, and a good friend of ours. There are hundreds of millions of Socialists all over the world, and it is obvious that they must comprise in their numbers every kind of religion. As for me, my father and mother were both ministers, and I was brought up with the utmost love for the character and the beauty of the teachings of Jesus of Nazareth, and I count Him much nearer in His faith and His influence to the message of the Socialists than to the message of any other political body of men.

BUT Socialists have also held a certain belief about the relations between nations, and naturally, since they desire to create a new civilization, and they desire to make men free, and make them happy, they have been trying to prevent war, which destroys civilization, and makes men unhappy, and enslaves them. And they have had a belief that the

working classes, just as they would be personally interested in making the world more democratic, would also be personally interested in preventing war. It is a fact well known to history that most wars—not all of them, but most wars—have been wars over thinly disguised conflicts of business or commercial interests. Most wars have been wars about wealth. And the Socialists have believed that the working people, since they really do not have any wealth to go to war about, would be the ones to prevent war. And so they formed an international union of working men, and this international union, familiarly known all over the world as "The International," stood as a pledge between large bodies of Socialist working-men in all the countries—a pledge that they had no quarrel with each other, and that they could have none, and that if their governments went to war, they would oppose the war with all their strength. And when this war in Europe came, in each of the countries some of the Socialists were true to their pledge, and some of them, for better reasons or worse, were not. But in this country—in America—so remote as it was from the passions of contact in battle, so remote from the danger of invasion, so free to take the course of peace-maker if it chose, it seemed to the Socialist Party that there was very little reason, and no reason at all, why as men and women of integrity and courage they should not keep their pledge. And so they kept their pledge. They adopted that St. Louis resolution, absolutely condemning the entrance of the United States into this war.

And I want to say that in so doing, they were only exercising their assured rights as American citizens under the Constitution. If there is liberty in this country, even in a civil sense, if there is democracy, even in a political sense, it will stand or fall with the right of the minority to

express to the full force of language its opposition in public to the policies of the government. And it will stand or fall with the courage of the minority so to express itself.

In saying this, I do not ignore the right of a state to pass extraordinary laws in an emergency. I do not ignore the right of the government to defend its armies with a military and war-time censorship. I am not a bigoted or fanatical advocate of the mere abstract principle of free speech. I simply say that if a government avails itself of this right of war-time censorship, in order to suppress and whip into the jails as criminals the candid and sincere spokesmen of a political minority which is opposed to its policies, then that government is violating not only the principles of the United States Constitution, but the spirit and the principles of free government as they have existed in the earth from the beginning. And I predict that the acts and enactments—the laws and the interpretations of law, which this government has created, which are in violation of this right of the minority to express its public opposition—those acts and enactments will die, and they will die soon, and they will die whether this war continues or not. On the other hand, I predict that the St. Louis resolution will live, and will occupy a place in the soberly written history of these times not without tranquil honor. As a member of the party that adopted it, and as an American citizen who still dares to believe in his rights, I have no hesitation in telling you that I endorsed that resolution. And although subsequently, during last winter and spring when Germany was invading Russia, I passed through a period of extreme doubt, and was almost ready to lay the resolution aside as an expression of abstract principle no longer applicable to the current of affairs, that period of doubt has passed. I think that the Socialists were right in

judging this war to be a war to which their general principle of opposition to all international war properly applies. I had no hand in writing the St. Louis resolution, and it contained modes of expression that would not be mine, but as for the principles that it proclaimed with courage in a time of stress, they are my principles.

I believe that they are the principles of my co-defendants here. And they are the principles of hundreds of thousands of good American citizens—not so many American citizens as of the citizens of Europe—and we confess that we are a good deal more lonely in this court than we would be in a court in France, where millions of people would understand us, and where the jury would not need to be told that our faith is noble and scientific and sincere, and not traitorous, whatever else it may be. Still there are hundreds of thousands of American citizens who hold this faith, and the number is growing greater with the illumination that comes in a period of great stress and endeavor. There were, before this war came, approximately thirty million Socialists all over the globe. Today there are hundreds of millions. And that is natural, because war not only emphasizes the evils of the present situation, but what the governments accomplish during war is so gigantic that it proves to practical minds that it is possible to accomplish gigantic things, even so gigantic a thing as the change from a capitalistic to a Socialist civilization.

And so I ask you that, whatever your own judgment of the truth or wisdom of our faith may be, you will respect it as one of the heroic ideas and ardent beliefs of humanity's history. It is a faith which possesses more adherents all over the surface of the earth who acknowledge its name and subscribe to its principles, than any other faith ever had, except those private and mysterious ones that we call religious.

It is either the most beautiful and courageous mistake that hundreds of millions of mankind ever made, or else it is really the truth that will lead us out of our misery, and anxiety, and poverty, and war, and strife and hatred between classes, into a free and happy world. In either case, it deserves your respect.

(At this point the court called a recess until 2 o'clock.)

Friday afternoon, October 4, 1918, 2 P. M.

YOUR HONOR and Gentlemen: I have outlined to you in the first half of my summing up what was the underlying intention of our publication throughout this period—the intention to publish a free, vigorous, satirical, humorous and somewhat reckless magazine, with poetry and picture and argument addressed to the people from the socialist point of view.

I want to take up now the question of our more specific intent as it is shown in the evidence that has been produced here. First, let me call your attention to the fact that we are accused of violating a law which was passed on June 15, 1917, and in order to establish an intent upon our part to violate that law, the District Attorney has gone back to a point a good deal more than two months before the passage of the law. And again, one of the chief acts of which he is accusing us, relates to the provisions of another law which was passed on May 18th, and he goes back to a time more than one month before the passage of that law, when a violation of either one of these laws would have been physically impossible. From the things that we said at that time—two months before one law was passed, and one month before the other, he tries to establish our intent to violate the law.

As a citizen, who has never before been accused of a crime, I feel it to be my moral right, whether it is my legal right or not, to have you believe that no matter what I may have thought, or what I may have said or done before a law was passed, I would after the law was passed conform my conduct to the best of my ability to the provisions of the law. That is the way I feel about it. That is the way it presents itself to my intelligence. But His Honor has ruled otherwise. He has ruled that things which we said before either of those laws was passed may be proof of our intent to violate the laws.

THE COURT: You are laboring under a misconception. It is some evidence of the intent of the defendants at the time it is alleged that they committed the offense—that is the period between the time the law was enacted on June 15th, and November.

MR. EASTMAN: I must have misspoken. I meant to say that.

THE COURT: I wanted to clear it up.

MR. EASTMAN: It is evidence of our intent as having continued after June 15th.

And the first thing the District Attorney produces—I am not going to weary you by taking up all of these articles that he produces, in detail. I think there are a few crucial points in them all, which if explained will explain the whole tenor and intent of the magazine and each of the contributors.

The first of them, and perhaps in some points of view the worst, is the telegram which I sent on the day of the declaration of war. To me it only proves what I already knew—

that a person with a hot head is an "easy mark," and it proves that I had a hot head on that day. I was mad, and I expressed my emotions in a telegram, and I have been duly humbled before my more prudent and self-contained friends in the city by the publication of that telegram in the newspapers. But I don't believe that any man of warm feeling will really think that this expression of emotion proves that I was entering upon an intrigue to create riots at the time when the United States should conscript soldiers for the army. And if it did prove it, would not that proof be absolutely disestablished and overthrown by the evidence of Norman Thomas, who came on the stand and said that before the conscription law was passed I told him over the telephone that I was advising all my friends to register and submit to physical examination in due course, and that he was at liberty to use my name publicly to that effect wherever he wished to?

The second thing that the District Attorney advances which seems to me of great importance is this article "Advertising Democracy," and particularly the last half of it in which I say—"we want them to resist the war fever— resist, etc.; resist conscription if they have the courage." I think I have abundantly and candidly acknowledged what was my purpose in writing that article at that time. My friends told me after I was cross-questioned by Mr. Barnes that I had admitted a good deal more than was true, under the stress of his peculiar way of putting questions. I think he asked me whether I wanted at that time to obstruct the plans of the Government—to oppose the formation of an army, and perhaps I said, "Yes." If I did, I did not mean quite that. What I meant to say was that I intended to persuade socialists, in accordance with the Socialist philosophy, to stay out of the war, to withhold their money, their bodies, from the

support of the war. To that extent the evidence is exactly as it stands. But if I said that I had in mind a desire to obstruct and stop the plans of the United States Government at that time, it is false. I never had that deliberate intention at any time. I was nevertheless still in that extremely rebellious mood which I have described to you, when I wrote this article—this was written, you will remember, immediately after the declaration of war. And I felt that to say as the President had said in his speech to Congress demanding a declaration of war, that we were going to fight for liberty, but that we were going to adopt conscription, was a contradiction of terms, and that it was an insult in the face of the American people. My feeling was based upon the established tradition of the American Republic—a tradition which is summed up, by the way, in another article quoted from the *New York World* in our July number. I will read this, merely as an example of what everybody knows. "It has been our pride and our boast that unlike the monarchies of the old world our Government has never been compelled to resort either to conscription of its citizens or the employment of foreign mercenaries. It is a treasured and honored tradition of the Anglo-Saxon race that exemption from extorted military service is one of the peculiar privileges of free men." I think it will be admitted that that has been the attitude of our country and of our race—that it was exceedingly surprising that with so little argument in Congress, and with so little public opposition of any kind, our Government could adopt this principle of conscription, substituting the ideal of military efficiency for the ideal of personal liberty.

And still under the influence of that mood of mind—which was almost it seems to me not the mood of a radical but of an old fashioned American—I read this appeal from the Russian

Republic to our President to endorse their democratic peace terms, and I observed that that appeal was not answered in the affirmative by our Government, and it was answered in the negative by the British Government. I was again aroused in my emotions, and I wrote this article "Conscription—for what?" which seems to me a more passionate and less deliberate thing than anything else here printed. And the reason for that is that it is the transcript of a speech. It is the transcript of a speech which I made at a meeting in Madison Square Garden called to demand from our Government the endorsement of the Russian peace terms. And the speech did contain, and the article does contain, and conclude with, the demand that we should endorse those Russian peace terms. That is its underlying and fundamental intent. Nevertheless it contains extremely vigorous assertions, that I do not believe the Government has a right to conscript men to a foreign war, and that I still doubt if the American people will peaceably submit to it. This was written, and that speech was made, remember, at least ten or twelve days before the conscription law was passed.

ONE of the members of my father's family three or four generations back, was named Daniel Webster, and Daniel Webster's speech on the subject of conscription in the war of 1814 was, more than any other one thing, the thing which determined the policy of this country toward conscription for a period of more than 100 years. That speech is one of the most noted and important state papers in the history of the United States. I am sure it is well known to the District Attorney and to His Honor and to everybody else who has read American history. I think His Honor will grant me the permission to read these excerpts from a historic docu-

ment of which there is no doubt. I read these in order to show you that I am not the first member of the family who could get mad at the idea of conscripting American citizens for service in a foreign war. And I want to tell you the time in which this speech was made. It was made in the middle of a war with England, and just after an invading British force had sailed up the Potomac and taken possession of the City of Washington and walked into the capital and driven the Government out of the capital. It was the time of our greatest national peril, if we omit the Civil War, which was an internal peril. The speech itself contains evidence that that was the time when it was written. "No man had foretold," he says, "that our means of defense would be so far exhausted in foreign invasion as to leave the place of our own deliberations insecure, and that we should this day be legislating in view of the crumbling monuments of our national disgrace. No one had anticipated that this city would have fallen before a handful of troops . . . while the Government was in full flight."

Those were the conditions under which he delivered the speech on conscription, and he predicted that the American people would not "stand for" conscription. He said, "On the issues of this discussion, I believe the fate of this Government may rest. Its duration is incompatible in my opinion, with the existence of the measure in contemplation. A crisis has at last arrived, to which the course of things has long tended, and which may be decisive upon the happiness of present and of future generations. If there be anything important in the concerns of men, the considerations which fill the present hour, are important."

"When the present generation of men shall be swept away, and that this Government ever existed shall be batter of his-

tory only, I desire that it may be known that you have not proceeded in your course unadmonished and unforewarned."

Now one of the things that has been advanced as particularly showing our un-American and disloyal intent, is that we attacked the Government in time of war. I want to show you how Daniel Webster attacked the Government—and he said these things not only in Congress but out of Congress and all the time, because he believed them. He said, "It is time for Congress to examine and decide for itself. It has taken things on trust long enough. It has followed executive recommendation till there remains no hope of finding safety in that path. What is there, sir, that makes it the duty of this people now to grant new confidence to the administration and to surrender their most important rights to its discretion? When it calls thus loudly for the treasure and lives of the people, what pledge does it offer that it will not waste all in the same preposterous pursuits which have hitherto engaged it?"

I call that blocking the subscriptions to the Liberty Loan—"The same preposterous pursuits which have hitherto engaged it." And then he declares that the conscription law is unconstitutional, and it has been so held ever since that declaration of his up to May, 1916. He says, "Is this, sir, consistent with the character of a free Government? Is this civil liberty? Is this the real character of our Constitution? No, sir, indeed it is not. The Constitution is libelled, foully libelled. The people of this country have not established for themselves such a fabric of despotism. They have not purchased at a vast expense of their own treasure and their own blood a Magna Charta to be slaves. Where is it written in the Constitution, in what article or section is it contained, that you may take children from their parents, and parents

from their children, and compel them to fight the battles of any war in which the folly or the wickedness of Government may engage it?"

And this was just a little while after a British force had taken possession of the City of Washington, and when a conscription law had been recommended by the President.

He speaks of the principle of personal liberty under the Constitution—

"The supporters of the measures before us act on the opposite principle. It is their task to raise arbitrary powers, by construction, out of a plain written charter of National Liberty. It is their pleasing duty to free us of the delusion, which we have fondly cherished, that we are the subjects of a mild, free, and limited Government, and to demonstrate, and to demonstrate by a regular chain of premises and conclusions, that Government possesses over us a power more tyrannical, more arbitrary, more dangerous, more allied to blood and murder, more full of every form of mischief, more productive of every sort and degree of misery than has been exercised by any civilized Government, with one single exception, in modern times."

I said that I felt as though when President Wilson asked us to fight for liberty, and at the same time told us he was going to adopt the principle of conscription, he was saying, "Come on boys, get on your chains, we're going to fight for liberty!" I made the most of that paradox, and that paradox is made the most of in this speech by Daniel Webster.

"A free constitution of Government is to be construed upon free principles, and every branch of its provisions is to receive such an interpretation as is full of its general spirit. No means are to be taken by implication which would strike us absurdly if expressed. And what would have been more

absurd than for this Constitution to have said that to secure the great blessings of liberty it gave to Government an uncontrolled power of military conscription?"

And again, "A free Government with arbitrary means to administer it is a contradiction; free Government without adequate provision for personal security is an absurdity; a free Government, with an uncontrolled power of military conscription, is a solecism at once the most ridiculous and abominable that ever entered into the head of man."

And he not only denounced this law as unconstitutional in and out of Congress, but he invited the American people to view the horrors of the war, and he brought forward everything that his imagination and his eloquence could produce to persuade people to stay out of it, if the country adopted the principle of conscription.

"Sir," he said, "I invite the supporters of the measures before you to look into their actual operation. Let the men who have so often pledged their own fortunes and their own lives to the support of this war, look to the wanton sacrifice which they are about to make of their lives and fortunes. They may talk as they will about substitutes, and compensations, and exemptions. It must come to the draft at last. If the Government cannot hire men voluntarily to fight its battles, neither can individuals. If the war should continue, there will be no escape, and every man's fate and every man's life will come to depend on the issue of the military draft. Who shall describe to you the once happy villages of this country? Who shall describe to you the distress and anguish which they will spread over those hills and valleys, where men have heretofore been accustomed to labor, and to rest in security and happiness. Anticipate the scene, sir, when the class shall assemble to stand its draft,

and to throw the dice of blood. What a group of wives and mothers and sisters, of helpless age and helpless infancy, shall gather round the theatre of this horrible lottery, as if the stroke of death were to fall from heaven before their eyes on a father, a brother, a son or a husband. And in a majority of cases it will be the stroke of death. Under present prospects of the continuance of the war, not one-half of them on whom your conscription shall fall will ever return to tell the tale of their sufferings. They will perish of disease and pestilence, or they will leave their bones to whiten in fields beyond the frontier. Does the lot fall on the father of a family? His children already orphans, shall see his face no more. When they behold him for the last time, they shall see him lashed and fettered, and dragged away from his own threshold, like a felon and an outlaw."

"Nor is it, sir, for the defense of his own house or home, that he who is the subject of military draft is to perform the task allotted to him. You will put him upon a service equally foreign to his interests and abhorrent to his feelings. With his aid you are to push your purposes of conquests. The battles which he is to fight are the battles of invasion—battles which he detests perhaps and abhors, less from the danger and the death that gather over them, and the blood with which they drench the plain, than from the principles in which they have their origin. . . ."

And if this does not encourage resistance to conscription in advance, I don't know what could. "If, sir, in this strife, he fall—if, while ready to obey every rightful command of Government, he is forced from his home against right, not to contend for the defence of his country, but to prosecute a miserable and detestable project of invasion, and in that strife he fall, 'tis murder. It may stalk above the cognizance of

human law, but in the sight of heaven 'tis murder; and though millions of years may roll away, while his ashes and yours lie mingled together in the earth, the day will yet come when his spirit and the spirits of his children must be met at the seat of omnipotent justice. May God, in his compassion, shield me from any participation in the enormity of this guilt."

Now, I have no doubt that my friend, the District Attorney, will call your attention to the fact that when those utterances were made there was no Espionage Law on the Statute Books, and no Conscription Law on the Statute Books. And I hope he will, because I want to call your attention to the same point, and also to the point that when *these* utterances were made, and when *these* articles were written, there was no Espionage Law on the Statute Books and there was no Conscription Law on the Statute Books. And if these articles can prove that I in writing them at that time when a conscription law recommended by the President was in contemplation, had a criminal intent to violate the law, supposing it should be passed, then those utterances of Daniel Webster prove that he had a criminal intent, and was a lawless citizen, and was ready to fight the Conscription Law and Espionage Law supposing that they should be passed. He was against the whole principle of conscription and the military laws and the Espionage Laws which go with it. And so was I, and he was supported in his contention by an absolute conviction that such a conscription of American citizens for service on foreign soil was illegal and unconstitutional. And so was I. And at the very time when I was writing those articles Mr. Hannis Taylor, who is the leading authority on constitutional law in America, was announcing in Washington that he did not believe this proposed law was constitu-

tional, and that he was ready, if anybody would resist it, to take his case before the Supreme Court to prove that the Government could not ship American citizens to Europe.

Again, I am only asking you to realize the time in which these articles were written. It is customary when a law and a system of law, and a whole system of civilization, is under consideration by this country, for the people who do not believe in it to go about the country denouncing it in unmeasured terms, and it is not customary for them suddenly to stop as though they were timid of their rights and liberties, the moment the law is passed. The only thing that these articles prove is that I was one of the citizens who were violently opposed to that change, and that I chose to talk at least until the day of the passage of the law in question. Why, even if I had gone round the country making this speech everywhere, shouting it all over the land, and with no other specific intent but to oppose the law, that would not prove that after it was passed I would not conform my conduct to its provisions. But I did not go round shouting it over the country without any other specific intent. I made these remarks just once, and the place at which I made them was a meeting called to demand of our Government an endorsement of the Russian peace terms. That was my announced public intent in making the speech, and that is the intent which is contained in the conclusion of the speech itself.

I HAVE described to you in my testimony how after the passage of that law my feeling of rebellious opposition to the war was sobered by the law, and how it gradually transferred itself from a negative opposition to the war, to a more positive demand that we should endorse these Russian peace terms, which I believed would lead us quickly out of the war

to a democratic and just settlement. I do not make these assertions about my change of mood without support. I call your attention to a circular of May 25th, which Mr. Barnes introduced into the testimony, in which I published a reprint of my editorial "Advertising Democracy" (and in order to save time I am not going to ask him to find this) and in that circular I reprinted only the first half of it. That half is devoted entirely to posing those four questions, saying to the President: "If this is a war for democracy, will you do so and so. If it is a war for democracy, will you do so and so." And the circular ends with the statement, "I call for some proof that this is a war for democracy." Now, if I had been engaged on May 25th in this intrigue, which has been imputed to me, to obstruct the military enterprise of the United States by getting people not to register and to be conscientious objectors and to riotously resist conscription, would I have happened to omit from my circular, of which I had twenty-five or thirty thousand sent out—the part of my article which alone has anything to say about going into the war or not going into the war? I assert that I would not.

I have produced evidence here also to prove that before the conscription law was passed, but when its passage seemed to be assured, I was publicly advising people that they should register—people whom I believed might be going to be conscientious objectors—that even if they were, they should register and comply with the provisions of the law to the limit that they were able.

I advised Merrill Rogers not to be a conscientious objector, and I did not do this because he has something the matter with his eye-sight. I may have to inform the District Attorney that this is a selective draft, and that people are drafted

whether they have to see through glasses or whether they can see through their own eyes. They are drafted and put to the tasks which are appropriate for them. And under the impression that Merrill Rogers was subject to very immediate call in this draft, I advised him not to be a conscientious objector, because he came to me in doubt. And the fact that he was for a moment in doubt was to me enough basis for advising him not to be a conscientious objector.

On the other hand, I never advised anybody to be a conscientious objector. I could not imagine my giving that advice. It is a far more terrible thing to be a conscientious objector than it is to be a soldier. My feeling when Norman Thomas was put on that stand and the District Attorney asked him whether he was a conscientious objector—I thought he turned a little pale and said, "Yes"—my feeling for him was pity. I think they suffer. I remember a friend who—no, that is a mistake—I have thought about him so much and have read his diary, that I have come to think he is a friend, but I did not know him. I know his brother. He was drafted and he was a conscientious objector, and when he got into camp he told the authorities that he did not believe in military service, that he did not believe in killing, that he could not kill, and that he could not put on his uniform and go ahead and be a soldier. And he was brought up before one commander after another, and before one tribunal after another, and they browbeat him, and called him a coward, and called him "pro-German," and called him a traitor, and beat down his moral courage, and denied that he was acting upon his conscience, and denied that he had any principles at all, except the desire to save his own skin. And finally he got to such a state of desperation, with his assertion that he was an internationalist and a lover of men and for that reason he could

not kill, and his inability to prove it to them, that he sat down and wrote a letter home to his family and said, "I cannot prove to these people that I am not a coward in any other way except by dying for my belief," and he borrowed a gun from a soldier who had one, and he shot himself through the heart. Now, I admire the moral courage of that man, and I admire his physical courage, too, and I will admire it just as long as I admire Jesus Christ, or Abraham Lincoln, or the soldiers who have enlisted in the army, or anybody else who is ready to die and to suffer for his principles.

I think I have demonstrated by the testimony here, leaving out any assertions of mine, that during the time after this conscription law was passed and while I was demanding an endorsement of these Russian peace terms, although I was not for the war, I was not for our *withdrawing from the war* either. I never demanded that. I never spoke for it. I was not for the *defeat* of this country.

Mr. Barnes has demonstrated a thing that surprised me somewhat—that he has in his files the account of the moneys that I received in support of *The Masses*. And if he has that, he knows whom I received them from. And if there was any suspicion or taint of suspicion at any point in my accounts that I ever took a cent from any source that was sympathetic to the cause of Germany or to any of the central empires, he would have produced that evidence here. But he has not produced it here, and I did not produce it either, for the reason that if it were produced it would be all over the front pages of the New York papers tomorrow. For the people who believed in our sincerity and honesty in *The Masses*, and who gave us money to keep it going, are people prominent in the commercial and civic life of this city.

I WAS not for the defeat of our armies. I was not even for a separate peace. My whole argument at that time was for the possibility of getting a general democratic peace soon, by endorsing the Russian peace terms. And that is why Mr. Barnes could find nothing in all of these three issues in which there are fifteen solid pages of my writing—fifteen solid pages of earnest and vigorous socialistic writing in those three magazines included in the indictment—he cannot find a single thing that even mentions the subject of conscription, or that he can possibly twist into a sly intent to promote resistance to the draft—except two little paragraphs. And one of them does not mention the subject of conscription at all, but is merely an attempt to secure for a couple of people for whom I had a friendly feeling, one of whom had expressly asked me to do it, a decent hearing before the courts of the United States.

Alexander Berkman and Emma Goldman probably have as unsavory a reputation with average American middle-class people who believe everything they read in the newspapers, as anybody in the country. And they have a political philosophy of anarchism, with which I am entirely out of sympathy and which I have been at pains to criticize and oppose in *The Masses* a good many times. But I have had for three or four years a friendly acquaintance with them, and we have warm mutual friends, and I believe that they are absolutely honest and sincere, and have always been working according to their belief for the welfare of humanity. And whatever the newspapers of this community, and the people who believe everything they read in the newspapers, may choose to say and think about it, I respect Alexander Berkman and Emma Goldman, and I admire their courage and devotion. And that is all that paragraph says.

I shall not go into it any further except to remind you that in two places in that paragraph I took pains to make it plain to my readers that, in expressing admiration for their character, I was not endorsing anything that they had done, or discussing the nature of the act of which they had been accused. If you gentlemen are convinced by the evidence that has been produced here that I am such a person that I would write an article like that, and slyly try to make it evident that I was *not* endorsing their act, and yet also slyly try to convey to those who were on the inside that I *was* endorsing their act, then the article is an evidence that that was my intent. But if that was my intent, why does it not appear anywhere else in these fifteen pages of socialistic writing about the war?

It comes then to this one little moralistic paragraph in all these fifteen pages—this one which is entitled “A Question.” This single obscure, modest suggestion or plea to the newspapers to be a little less contemptuous of these people (reading “who are resisting the conscription law on the ground that they believe it violates the sacred rights and liberties of men”—these people “who are going to jail because they would not do what they do not believe in doing”—characterized as conscientious objectors. I plead with the American newspapers to be a little less contemptuous of them, and I ask a question: I say, “I wonder if the number is few to whom this high resolve was the distinction of our American idealism”—the resolve to recognize independence in the individual, and I say, “Perhaps there are enough of us, if we make ourselves heard in voice and letter, to modify this ritual of contempt in the daily press, and induce the American Government to undertake the imprisonment of heroic young men with a certain sorrowful dignity that will be new in the

world." It seems to me that when you write an article and definitely state that your intention is to induce the Government to put people in jail in a certain way, you ought to be assumed, if there is nothing to prove the contrary, to have had that intent in your mind when you wrote the article—especially when it is one little idealistic and-almost religious sentiment expressed in the midst of fifteen entire pages, in which there is nothing else on the subject.

That is all that he could find then, to prove that I was engaged in this intrigue, with this malicious intent, during the period after the passage of the Espionage Law.

And what has he got on Art Young? Art Young who for forty years has been making the American people laugh, and making the American people feel good, and feel generous, and feel neighborly to each other, and love each other, and making them hate greed, and avarice, and evil, and all the forms of tyranny and oppression that straddle the backs of the common people everywhere; Art Young, who with Mark Twain, and Finley Peter Dunn, and Artemus Ward, is surely one of the four or five leading humorists that this country has produced; Art Young, who is loved by every artist as well as by every literary man in New York City, and almost all over the country, and who will be loved for hundreds of years after he dies because of his cartoons which have been selected from the magazines, from "Puck" and "Judge" and "Life," and published in books—what has he got on Art Young? Art Young was down in Washington and he heard these Congressmen talk, just the way I heard them talk, about the reasons we were in the war and what we were fighting for. And he heard ministers talk about it, and he heard Roosevelt get up and say, "No, it is not a war of democracy," and he heard Root say, "No, we are fighting to defend our

national interests," and he heard other people say other things, and he drew a picture of all these excited people, each of whom had his own pet hobby, and each of whom is saying that this whole conflict of the world is for the purpose of his particular hobby. And he made fun of them. And he was free to do that with extreme vigor, because he is a pacifist, because he does not believe in any war, as he has very frankly stated.

And then he drew a picture of big business saying, "Run along," to Congress, "we got through with you when you declared war." And he added the words "For us," because he has echoes in his mind of a socialist philosophy which asserts that absolutely everything is caused and regulated and dominated by business, and it was just as natural for him to add "for us" to that, as though he were a Presbyterian theologian and that were part of his theology. It is the regular socialist doctrine. None of us believed that big business had been the exclusive cause of this war. And we did not say so in *The Masses*.

Finally, Mr. Barnes brings in here a couple of military men that he did not have at our last trial—and he felt it was the one thing lacking—to show that our magazine circulated among military men. He has not been able to bring in a single man liable to the draft who ever read it, to prove that it influenced him in any degree, except to be sincere and honest and go ahead according to his convictions. He has not been able to prove that anybody liable to the draft ever even read it, although that is freely conceded. But he brings two officers in here, and one of them was a Lieutenant when he began taking *The Masses* and he has been elevated to the position of a Captain, and he confesses with a genial smile on his face that he wrote this letter, and gave us \$18 to help this

magazine along and ordered a lot of books. And let me say this as to the character of those books: We were not running a book store. We were merely advertising to all our readers that they could help us support the magazine by buying their books through us. And we stated in every issue of the magazine that we would get *any book they want*, and we would receive the commission on it. And so he sent us \$18, because as a Lieutenant who was going to be a captain, he liked our magazine, and wanted to help us.

And then he brings the Judge Advocate over here who sentenced a man named Henkes, about whom I suppose we have all read in the press, who wrote a letter to the Secretary of War after he got over in France, stating that his father was a German and his mother was a German, and that he has relatives in the German army, and that he was afraid that if he went into action he might do something to the detriment of the military forces of the United States, and would they please either accept his resignation or give him service in some other field. And that was all he did.

MR. STEDMAN: His father was a confederate soldier.

MR. EASTMAN: Well, that is irrelevant. That was all he did. And when Mr. Barnes tried to persuade the Judge Advocate to say that there was something else involved in that trial, the Judge Advocate could not do it. He simply repeated the fact that this man had given that statement to the War Department. And in that little circular there which is in the evidence, that fact, and that letter of his, is repeated at least six times with the statement "This is all he had to say. He has nothing to add and nothing to offer." So all he had to say was, "I am of German descent, and I cannot help my feeling, and I am afraid at a critical time I might do something to the detriment of *our* army." And he was

sentenced to twenty-five years at hard labor. That may be all right—it may be the military law, and if it is, I have no comment upon it. But I say that if it is the military law, he, as an officer in the United States army, probably knew it, and in writing that candid letter to the Secretary of War, and coming back here and taking his penalty like a soldier, he did just exactly what he ought to do. He protected the interests of the United States Government at war.

THAT is the end of my *defense* against Mr. Barnes's assertion that we had an intention in these articles to obstruct the draft and the enlistments, to promote disloyalty, mutiny, insubordination, refusal of duty in the army, and that we conspired to do this. I shall now for about ten minutes take the offensive. I mean that I will show the things we did, which prove that we did *not* intend any such thing.

And the first is this: Way back in June when there was somebody first appointed in the position which seemed to us similar to the position of military censor, as it was established in Europe, we sent our business manager down to this man, George Creel, and opened our magazine before him, and asked him if there was anything unlawful in it. And although Mr. Barnes brought Mr. Creel here as a witness on his own side at our previous trial, I notice that in this trial he omits any testimony of Mr. Creel, and the reason is that the testimony of Mr. Creel was to the effect, and I am quoting his own words, "That it was the purpose of our visit to find out whether there was anything unlawful in our magazine or not."

That is the first thing. Second we have Creel's letter to me after Merrill Rogers's visit. I think it was in the testimony, too. I am not sure. Creel wrote a letter to me saying that

Merrill Rogers had been down there, and he had seen the magazine and told him to go ahead. And I may say that George Creel was a friend of mine, and a former contributor to the magazine, and he knew all about it and was one of the writers in New York who was in this rebel spirit. He wrote to me and said. "Tell the boys to be as moderate as they can, and if you get into any trouble with the Post Office, write to me, and I will go over there and fix it up for you." He told me that, *after* this visit of Merrill Rogers, and after he had looked over the June issue.

Well Creel did not turn out to be the censor after all, but Burleson turned out to be the censor. And so we sent a letter to Burleson about the August issue, and asked him to give us a ruling, and give us definite specific terms as to what we could do, because we were socialists and some of us were against the war—and in every war in every country there are always some people against war, and the Government has to find some way to get along with them. They have to be dealt with. We knew we had to be dealt with, and so we wrote down there and said, "Tell us what to do—what our rights are," and we got no answer to our letter.

Then Merrill Rogers went down to see Burleson. I sent him. And he saw Lamar, and Lamar would not tell him anything—merely "I don't like your magazine." And he came back, and told me that the Postmaster General did not like my magazine, and that was all he could get out of them. And I ask you, as an American citizen, whether after being merely told that the Postmaster General, whom I conceived to be a reactionary southern politician, did not like my magazine, I should be expected to give it up, and quit this enterprise which I had spent five years of my life trying to get afloat?

Well, I didn't do that, and as it happens, the thing that I did do is a positive proof that I had not an intention to violate the law. I wrote to the President, and asked him to look at the August issue of *The Masses* and take it up with the Postmaster. And he wrote back and said that he would. And I have every reason to believe that he did. But he evidently disapproved of the magazine and the Postmaster did not take any action.

Then I went into the courts. *We* took this case into the United States courts and not the District Attorney. We went before this very court, and we said, "We believe that we have not violated any law, and that the Postmaster General has no right to exclude our magazine from the mails." And we said, "He won't tell us why he has excluded it. He won't tell us what our rights are. Now you tell us what our rights are and we will defend them as we understand them." And we argued that case before Judge Learned Hand, and he answered, "Your rights under the United States Constitution are so broad that you are entirely within them in publishing this August issue and demanding that it shall go through the mail." That decision of Judge Learned Hand was held up on the instance of the District Attorney by a Judge of the Circuit Court of Appeals until the case could be appealed, and the Post Office was put under bond to secure us of our damages if we should win on the appeal. And so it was left. But I read the argument of Judge Learned Hand, and I believed that I was within my rights under the Constitution and under the laws. And so although my own writings became more moderate, because I was coming into a realization of the solemnity of the war, and that it was really impossible to publish a satirical socialist magazine after the Government was really in the fight, still we went on

exactly as we had in the matter of our principle of editorial freedom—with one exception, and that was that I considered the cartoon of Glintenkamp under the circumstances so extremely crude and raw, that I sent it back to him. I took that extraordinary step to keep it out of the magazine. Aside from that, both of these issues were published under the influence of Judge Learned Hand's decision, sustaining us in our thought that we had this right to criticize the policies of the Government at war.

So we brought out the September issue. And that was held up in the mails, and then I sent another letter to Mr. Burleson, and subsequently a telegram, and got no answer to these either.

And then I went into the courts again, and asked another Judge to tell me what my rights were in this matter—that I could not get any statement from the Postmaster or the Government at Washington, and that I believed I had rights—at least I had a right to find out what rights I had. And that Judge decided on September 12th, after both these issues in the indictment were published, that I was not within my rights—no; he decided that the Postmaster General *was* within his rights in declaring that he would not circulate this magazine through the mail. He decided, not that I had violated the law, but that the Postmaster General had *not* violated the law—that he had discretion about it. And after that I brought out the November issue of *The Masses*, in which there is not a thing which could possibly be made the basis of an indictment, and you will notice that it was I and not Mr. Barnes who introduced that into the testimony here.

And further, at that same time, I again wrote to the President, congratulating him as you will remember on his letter to the Pope, but also alluding to this matter of the exclusion of

my magazine from the mails. And after the President had taken up this matter once with the Postmaster General, and presumably had seen the August issue and disapproved of it, he wrote me that second cordial letter which I have read to you here, telling me that he wished he could agree with me about the things we talked over at the White House—that is, the civil liberties that should prevail in war-time—but that he believes that war involves a special condition, and that things which are innocent in times of peace are harmful to the public welfare in times of war. And this letter was an additional element in bringing me to realize that it was impossible to publish a perfectly free and arrogantly satirical Socialist magazine in times of war.

Finally, after Augustus Hand rendered his decision sustaining the Postmaster General, and I had really got, as I thought, a statement from the authorities as to what I could do, I went down and opened the whole matter before Mr. Burleson himself, and asked him for a new mailing privilege, saying that the courts had sustained him in the matter, and that there was no question about his having the right of a censor. I asked him as a man having that right to give me a careful specification as to what regulations he wanted me to follow, and stated that I would follow them if I applied for a new mailing privilege. And he promised to give me an answer to my application within a week. He treated me with great courtesy, and even understood and in a measure accepted my criticism of him for not having so treated me before, and he gave me a piece of paper containing his interpretation of the Espionage Law, and told me what to quote from it in-making my application. And then my old friend Mr. Scripps, who has a temper, got mad at him, and sailed into him and got him mad, and the interview went to smash, and

the result was that instead of getting a new mailing privilege I got an indictment, and that, I believe, is how we came into this court. We came into this court because the United States Government—the Postmaster General—has hopelessly bungled a job which is the job of every Government which goes to war—the job of handling in a businesslike and courteous way the people who are opposed to the war on political grounds, but who want to conform to the regulations and don't want to impede the military operations of the Government.

THE COURT: Mr. Eastman, I do not like to interrupt you, but you have no evidence to support that statement. It is just your opinion.

MR. EASTMAN: Yes. What I want to lead up to in that statement is merely the summary of the whole thing: First I went to Creel. Then I wrote to Creel. Then I wrote to Burleson. Then I wrote to the President. Then I went into court. Then I went to Burleson. Then I telegraphed Burleson. Then I wrote to the President again. Then I went into court again. Then I went to see Burleson. Then I wrote to Burleson. Then I wrote to him again, and I telegraphed him twice—*fourteen times* I appealed to the authorities, either in the courts or in Washington, to find out what my rights were under this law as a Socialist who did not believe in the war as it was being conducted by the Government. And I ask you if it is reasonable to believe that I would have made these efforts to find out what my rights were as a Socialist under this law, if I had been intentionally trying to break the law—trying to promote mutiny in the army, and disloyalty and refusal of duty, and to create resistors to the draft, and conspiring to obstruct enlistment

and recruiting. To me it is absolutely inconceivable. And it is absolutely false.

Gentlemen, that is the end of my defense. I do not ask anything more of you than what would spring out of your natural sense of justice toward the most humble of men. I ask of you four things. First, that you will diligently employ your imaginations, in order to go back to the time when these articles were written, and fully realize that they were written before this country had begun to fight. They were written before a single United States soldier had gone down in a ship or put his foot in the trenches of Europe. They were not written now, when thousands of our own friends and dear fellow-citizens are over there, and have given up their lives, and when our own hearts are quivering with admiration for those that are brave and with pity for those that are stunned. They were not written now, and you must go back to those earlier and lighter times in your imagination, if you intend to render a verdict that will be just.

That is the first thing that I ask of you. The second is that you will diligently employ your reason, in order to distinguish between a sly and underhand intrigue and intention to use our opinions about public policy, in order to promote trouble and resistance to the draft, and refusal of duty in the army—distinguish between that and a vigorous and satirical, and sometimes rather light, and always very reckless, statement of our opinion about public policies from a Socialist point of view. You must make the distinction between an effort to put out into the general flow of public opinion our attitude toward the policies of the Government, and an attempt to obstruct the military operations of the Government. The principle of free speech is always involved in such cases

as this, and its true scope and generosity is really for the jury to determine. That is the second thing.

And the third. I want you to exercise a very judicial poise and restraint in a few minutes, when the District Attorney gets up and begins to attack us, and tries to paint us as a red and bloody bunch of "Bolsheviki," who are trying to introduce anarchy and overthrow civilization, and who have not any respect for the institutions of popular government, and when he says that we have been calling American soldiers and sailors "blackguards," which is absolutely false, and all the other things it is necessary for him to say. I don't want you to fail to give him your utmost attention, but I want you to judge us by what you remember that we have actually said, and not by his description of what we said.

And fourth, I ask you to believe implicitly that every word I have uttered in this court room is true. I am not afraid to spend the better part of my life in a penitentiary, if my principles have brought me to it. I have decided, after experimenting a little in the inside of my own mind and heart, that I am more afraid to betray my principles.

I want to thank you in behalf of myself and my co-defendants for your very courteous and very intelligent attention.

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