

Seymour Stedman's Summing Up

MR. STEDMAN: May it please the Court and you gentlemen of the jury, the evidence in this case is upon a very wide range, all the way from the University of Pennsylvania to international finance and politics; from the Mexican border to Bagdad, and in fact we have been engaged in digging into all parts of the world during the last two days to a certain extent; and all the evidence that has been admitted as a legal proposition and under your oaths as jurors has been admitted solely to define and for the purpose of deciding an issue within a very narrow compass.

The indictment in this case, with the counts which have been submitted to you for your judgment, consists of two charges against two individuals—I am speaking of the corporation as an individual—the charge against the Rand School is that it attempted, wilfully attempted to cause insubordination, disloyalty, refusal of duty and mutiny within the military and naval forces of the United States; and that the Rand School—I am not going to give it any other name but its popular name now—did obstruct the recruiting and enlistment service of the United States.

These two charges against the Rand School are predicated and based upon the pamphlet called "The Great Madness."

The same two charges are made against Scott Nearing. You are to consider the evidence against each

one separately and apart from the other. It is true that you are to take cognizance of the fact that "The Great Madness" was published by the Rand School, but Nearing is not responsible for what may have been in the mind of the Rand School and its officers; neither is the Rand School, for the purpose or what was in the mind of Nearing. So that considering this as jurors, they are two separate and distinct defendants, taking the evidence that has been admitted as to each separately, and determining from that the question of guilt or innocence.

The Rand School was started some twelve years ago, its principal donor at that time was a woman who was generally known to the public—Carrie Rand, and who, I believe, was a pioneer abolitionist. They commenced in a private building, an old stone building, a private residence. The scholarships continued to increase, the classes grew, and in 1917, upon the expiration of a lease to the place, there were some of them who conducted—who suggested that they should purchase a new and a larger building.

The photographs which have been offered in evidence here will picture to you the building which was under contemplation and which is now the home of the Rand School on 15th Street.

In 1917, during the summer and the late spring, the entire forces of that organization were engaged in sending out letters and communications for the purpose of raising \$60,000 or more. It was during that time that a young man, who had charge of the book department, was away on his vacation. Among those who had addressed classes and had become instructors in this institution were many who were very prominent in the universities in this country. The courses of the studies were somewhat extensive, running from his-

tory to office technique, civics and literary lines, even running classes in English for persons who were not proficient in the English language.

They also had a big book department, the primary object of which was to carry a class of alert literature, and I mean by that a class of literature that might be distinguished from Thackeray or some of the writers whose books are only sold in large sets, and which involve a great expenditure, in handling. The books that they were handling were necessarily of a class which were readily sold and where storage expenses would not be great and the capital invested would be very limited; books which were popular.

There were contributors or writers of pamphlets whom they recognized as men of authority and whose views they generally understood, and whose manuscripts were accepted without challenge outside of perhaps literary correction.

They issued a year book, and your attention has been called to the year book of 1916, and also to the year book of 1917 and 1918. Mr. Barnes referred to that and quoted passages from that book, passages from the St. Louis platform of the Socialist Party, passages from the immediate program. You will find a great deal more in that book. You will find quotations from the platforms and documents of various political parties. Primarily, however, it is labor and socialistic.

The book store was run for the purpose of selling books on all sides of the subject. The fact that in the Year Book they did not cover the ground of the World Almanac or the Daily News Almanac or the statistical record would prove nothing, because in that field there was no function for them to perform and no particular work, but there was something in the other.

For instance, if you gather up some books and look them over, you will find a record such as we find on pages 16, 17, 18 and 19 here, and I call your attention to just a few instances. For instance, this page contains the different bills introduced in the legislative bodies throughout March, April, May, June, July and August in 1917. That is the record of the bills introduced to abolish child labor law restrictions and suspending the limitation of the hours of labor for children, and eliminating the restrictive conditions of women's work and general reactionary legislation.

Now, it was a legitimate thing for the organization to publish that book. To publish these things tabulated in form so that anyone buying the book might read it. That certainly does not determine any mental attitude in opposition to recruiting or obstructing recruiting or having a tendency to create insubordination and disloyalty.

Now the issuing of this pamphlet "The Great Madness" came about from the sending in of the manuscript, the book being written probably during the period that the selective draft law was in consideration, was received by the society after the first of August and published by them after the first of August and circulated mostly of course after that.

The proprietor of the bookstore read portions of it and recognized the fact that it would be a good seller. It had Scott Nearing's name attached to it. And mark you, gentlemen of the jury, this evidence comes from the government's witnesses. They are to prove the case against the defendants. And when they put witnesses on the stand against the defendant called by them, and their own witnesses testified that they had no evil intent, they are precluded by that fact. In other words, the evidence as to the Rand School cir-

culating that, comes from the stand here and comes here vouched for by the government, and when a lawyer puts a witness on the stand, the prosecution or the defense, he vouches—he does not guarantee—but he vouches for the truthfulness of his statements. These were not men produced by us but by the prosecution. They put them on the stand and did that to show the printing and circulation. They proved the contents. Mr. Cohen, did you read it? Mr. some other man, did you read it? Mrs. Mailly, did you read it? What was the purpose of the examination? To show knowledge. Yes, and coupled along with such knowledge as they had, came the evidence that they did not publish it for the purpose of obstructing the recruiting and enlistment service, or for causing its subordination and disloyalty. The government's witnesses exonerated the defendant, this school.

The charge in the indictment in this case is confined to the particular function named. We are not concerned with what may be generally termed as a "state of mind." The state of mind generally means nothing when it comes to the proof of a prosecution in a criminal case. The question as to whether the person proposed the accomplishment of the criminal act charged is material. Not only whether they proposed to accomplish the result, but now what result they intended to accomplish and pursued the course to accomplish that end. In other words, one is knowingly and the other is intentionally. Intentionally, that is with the purpose. Wilfully, that is, with complete knowledge and a determination—a will to act and accomplish the prohibited end.

Is there any evidence in this case that the Rand School by publishing twenty thousand copies of a 56-page pamphlet, in the face of issuing some 350,000 pieces of literature in a year, that these people were go-

ing to jeopardize the life of their school, with these four thousand pupils; that they were going to take a chance on going to the penitentiary by issuing a 56-page pamphlet dealing with a theoretical cause of the war?

Nothing but a war mania could have brought about a prosecution of that case before this jury or any jury, and you know it. Some very stupid person, possibly, might have issued a pamphlet of 56 pages to accomplish the result of that kind, but no one with brains, no one like these people, would ever do it in the world. If they wanted to obstruct the recruiting, do you suppose they would issue a pamphlet of this kind? Do you think they would have issued a theoretical document? Not at all.

Let us see the document they might have issued: Suppose it had been about four pages, and they said, "Young men of America, you have been reading the papers for the last four years—for the last three years, and you have read how heaps and heaps of men were dead between the trenches, that is between the French and German trenches, and how they poured oil on them, and they burned them, and the smoke, the blue smoke, the fumes went one way and the other, and the odors and the stench from it, and the thousands and thousands that are raving maniacs in Germany and in France."

They would have pointed out the conditions that the newspapers were calling their attention to day after day; they would have called their attention to their peaceful homes and their mothers and their brothers and their sisters, and then the situation here. They could have emphasized the fact that the traditions of this country were to keep out of foreign alliances and foreign intrigues. All the way from the pest house all over the field they could have illustrated that the whole of Europe was one great madhouse, and could

have made references to arouse their passions and their prejudices, and then said, "Young men, are you going to enlist? We are civilized men. We are not beasts that we should be crowded into such as that. Young men, do not enlist. One will stand by the other."

And they could have sent that out by the hundreds of thousands—they would have done so. That is what I mean when I say that they would have done something active, something real in that line, if they had intended any such thing. That is what these people would have done, and that is what they would have had the courage to do, if they had believed in and desired that end.

We must judge men and women by three general standards in a case of this kind: First, what was the defendant's object? Second, the intelligence and accomplishments that they possessed and their ability to accomplish that object. Third, the courage to carry out that intent.

There is only one theory upon which you can assume that these people committed the offense charged here, and that is that they are arrant cowards, that they did really believe that way, but they didn't have the courage to do it. Maybe. But I submit that we have created an issue here that does not sustain that theory. We would not have published a document for that purpose containing 56 pages, or a pamphlet such as has been offered here, and the district attorney knows that. He knows that very well. That is why he drew an economic issue into this case and why the government put in the other issue of bonds. That is a question of taxation and the determining of the question of the desirability of an action.

Hundreds of people differ on the question of raising revenue by one method or another. President Wilson

insisted that it should be paid for as we went along. He changed his opinion on that, or perhaps if he didn't change his opinion, he didn't continue to emphasize it, because he saw that it was not perhaps a practical proposition.

Now to take a few illustrations! I venture to say that in your experience, you never knew of a person being tried for smuggling and evidence being permitted to be introduced before the jury that they believed in free trade. Counsel in answering that in his opening, and I anticipated it, said:

"If a person believed in free trade and they said I will not pay the tax, and then they were caught with diamonds, walking through the revenue office, that would be competent evidence."

He put in his statement before you, "If they said I will not pay the tax," and then "the diamonds were found in the pocket, that would be a part of the transaction."

That is entirely a different thing. He may probably tell you gentlemen when he sums up, that if a man was opposed to the tariff, that that would be competent evidence to prove as an element, that he was a smuggler. That is the question; would it?

Suppose as opposed to a trust law, but believing that trusts are the logical and natural growth of industrial society and on a prosecution for forming a trust, the prosecution called the man to the stand and you say, "Mr. Roberts," or you say, "Mr. Rogers," or you use any other name, "Mr. Harriman," or any other man: "Do you believe in the organization of industry in its highest trustified form? A. Yes." It is contended that that is evidence to prove that they were parties in forming an illegal combination.

We have had trust cases in the United States, a great many of them, and in all States of the Union.

If you can find one authority to show that any trust magnate on the stand was ever asked such a question and permitted to answer it, as an indication that he was guilty of a crime, I will retire from this case and ask my client to plead guilty. And yet that is precisely the question that is asked of him.

"You believe in war? No." That is a general statement, a general theory, not a specific one. It is the same as if a person believed in prohibition. I say, "You believe in prohibition? A. Yes." All right. Perhaps I had better say: "But you are opposed to prohibition." Perhaps in these times that would be more in point—"Do you oppose prohibition? A. Yes." Does that make you guilty of violating the law, for importing liquors against the law?

Counsel in his opening statement said, "Why it is true that if a man says 'I am going to violate the prohibition law,' and then he puts a quarter on a dummy that goes up and down, you can introduce evidence to show that he was not intending to buy cigars." Naturally, that is part of an immediate act.

If Nearing had said to anyone, when he sent this manuscript, "I hope the people will read that so they will become insubordinate; I hope that people will read that because I believe it will obstruct the recruiting or enlistment service," that would be a part of the proper evidence to produce here in regard to that matter.

I want to suggest another illustration: We are charged here with obstructing the recruiting and enlistment service of the United States. That language is fairly plain, and we have a right to assume that it is written for the understanding of the average citizen of the United States. We have a right to assume that it is not simply a trick clause, to trick people.

Now, what do you understand by "service"? And I understand I may say that maybe the court will disagree with me on my definition here. I am mentioning it particularly because it goes to the question of wilfulness.

What do you understand by "service"? A person who serves. What do you understand by the "civil service"? The civil laws where political qualifications are eliminated in favor of merit. Departments which are operated by the city, state or the government; in time of peace the United States can pass a law like this one, and in that law say, "Whoever shall obstruct the civil service of the government, the postal department," or any other department, "shall be punished by imprisonment from one to twenty years, or a fine of from one to ten thousand dollars."

They can pass that precisely as this act, and instead of putting in "army" put in "postal service," or "patent office" or any other public department.

Now, if you can carry this question to a purely business basis, in an act of that kind we will just reason a little on that subject and see where it would lead us to.

I am a young man on the street, and I am addressing a meeting, and I say, "I would not recommend anyone to enter the service of the United States or of the city. You go into the civil service departments of the city or the government and you will find men who started there when they were young, and they have lost their ambition. They finally reached the position where they have not the courage to leave the service and strike out for themselves. They are demoralized, dependent upon their salary week by week, they became a part of that machine, you cannot tear them out of it. For that reason I would recommend that no man enter

the postal service or patent office or any other civil service department of the government."

Would I be obstructing it? According to the construction which Mr. Barnes has placed upon it today under this statute, I would be guilty of a crime. Do you believe that liberty is so absolutely paralyzed and dead in this country that you could not make the remarks which I have just mentioned? You do not. You know that if a law of that kind were passed, that I would still have a right to persuade an individual, and persuade a group, not to enter the postal department or to enter any of the City Hall positions, or to take a civil service position, because the opportunities outside were better. That would be a legitimate discussion. I would be appealing to their judgment upon that proposition. I would be appealing against the civil service law, against the civil service department, against what might be conceived by me as a sacrifice of their lives in the civil service position for life. That would be legitimate.

When this law was passed and the average man read it he understood "service" to be exactly what the word means in plain English, and in every single dictionary that may be found in the English language. You can not define service except on the theory that you are serving someone, some group, or state or some individual.

Counsel may suggest, that these are times of war, and therefore a different rule applies. My answer is that it does not apply; that the same rules of law apply at one time as apply at another. He will tell you that it was unnecessary to show actual obstruction. I say that it is. The indictment in this case says they obstructed. It does not say that Nearing attempted to obstruct. The indictment does not say

that the Rand School attempted an obstruction; the count under which they are charged there says that they did, intending voluntarily to obstruct the recruiting and enlistment service of the United States, and it is necessary for them, under this count of the indictment, to prove the obstruction, not that it was calculated to do that, not that it was possible, not that it possibly might do something, or that the natural reasonable possibility of creating an obstruction; we are charged here with an obstruction, and under that it is necessary, in my judgment, to show by evidence that warrants you in the belief beyond a reasonable doubt, that there was an actual obstruction.

Counsel may contend and say, well, that which would naturally lead a person, who was making a rush for a recruiting station, to hesitate, to pause, would be an obstruction. That is an interpretation which counsel may place on it. It may be an interpretation which the court may place on it. I will assume it was exactly the argument or even that it is true. In other words, I will assume that obstruction does not mean an obstruction, but it means a mental condition where a person hesitates when he is going, we will say, to the recruiting station. Then I say that in that category they proved nothing, they failed to prove it because—they lack evidence, and it is merely a conclusion they have been unable to prove that anyone was actually affected that way. But his contention is that they don't have to prove it because that is the natural meaning and intent of those words. I reply, let us assume that that is so. If in the course of nine or ten months a leaflet has been out, and you find anyone who has been affected by it, with the public forces at the hand of the district attorney, the command of the secret service and the government's police detectives, and the men who are in private organizations in camps

of these conscientious objectors, and they have found no one during all that time who comes forward and says, "I read it and I did not enlist." What would be your natural inference? What can you draw from that except that it didn't have that effect?

In other words, if a man is five feet from a man and he shoots forty shots at him, and he is a good shot, and doesn't hit him, there is but one conclusion, and that is, that he didn't intend to hit him.

If there are twenty thousand pamphlets going out and not a single individual is brought in who is influenced by it, the logic of it is that the persons that read it never understood it in the way the prosecuting attorney has understood it. And he will not bring in any one here, he has not suggested that anyone was influenced by it at all.

If you knew that the Postmaster of New York, or that the Postmaster General with the corps of officers in his employ, was reading every particle of literature that was in circulation, and especially that coming from organizations that they regarded as not wholly in favor of our interest in the war, and that those articles were copyrighted, and that it went for one month, for two months, for three months, for four months, for five months, in fact from August to May, without a single protest from the postal department, would you regard that as a fair circumstance to indicate that not only the defendants, but the government departments did not regard it as violating this section?

Counsel will argue that they are two different departments. That is true. He will argue that one does not necessarily have any control of the other. That is true. He may suggest that Mr. Lamar is solicitor-general for the Post Office, and that he has in his department, operating particularly on these matters John Lord O'Brien, who is particularly in charge of

those matters, and I say to you, if the men who are in charge of the postal department, and are looking for violations, did not find this criminal in its character, it is a circumstance to be reckoned with in determining the question of whether it was obviously and plainly a violation of the law, and as to whether it came within the provisions which are denounced by the act.

The first proposition that we called to your attention was this, whether you as jurors will consider that the reasonable hypothesis of innocence, was not discarded with the throwing out of the two counts which were the first in the indictment in this case. However, we are not concerned with that. We are concerned, however, with the subject of a reasonable doubt.

We are concerned with the presumption of innocence which surrounds the defendants in this case, and that presumption if carried into this case negatives the theory upon which they now ask for a conviction.

When I think of the evidence in this case in its entirety, I find that it occurs to me that there are relatively few details to really argue. As I listened to Mr. Nearing this morning while he was addressing you, I was wondering how a man could address a jury, discussing a general economic theory which he advanced so consistently and so consistent with the theories which were advanced from the witness stand, and yet leave any doubt in any juror's mind or a district attorney's mind as to what his general bent was and what his general purpose and object was. How a person who has been so open, and so plain in his statements, and the books which he has written, which disclose his entire motive and his entire object and his entire purpose could leave any question in the mind of any man as to whether or not he intended to specifically do the thing which is charged in this case. If

it were not that we were in war times a case of this kind would never be brought, and I do not mean by that, that if it were not for war there might be a statute of this kind. But I do mean that when an indictment was returned in this case, it was returned as is plainly evident, to stop a certain line of discussion and not because there was actually any faith in the fact that a crime was committed, or a jury would find that there had been a crime committed.

Mr. Barnes down in his heart does not believe that there has been, that either of these defendants in this case are guilty of the crime charged. He is performing his duty. He is clearing up the remnant cases that were started in this court during the time when that war was in its height, and in its progress, and when they thought that someone might step over the border line. He will never be able to suggest before you any theory upon which intelligent men and intelligent scholars and intelligent women would issue a document of this kind and to accomplish the result which he says they intended in this case.

The court will instruct you that motive does not make any difference. That is, supposing he was interested in the child labor question. Supposing on that question you can picture the children twelve years old and thirteen years of age in the factories, which aroused his thoughts and ambitions to change their mode of life. You might even picture hundreds of them standing here at the bar pleading for him who pleaded for them when they were unable to speak for themselves, yet that motive would not justify the acts charged here because whether his object was to do good or bad, the court may instruct you it makes no difference. We will concede that for the sake of argument, but we then meet the other: If that wasn't his purpose, what was

it? Was it the purpose of the Rand School, when they published this book, to cause—that is was the result in—subordination and obstruction or was that the object of their conduct?

The fact that they were against the war is not evidence that can be used against these gentlemen on this issue. The issue is not that, and there is nothing in the evidence here that he was or that the school was, except "The Great Madness." There is nothing in "The Great Madness" where there is any solicitation or advice—and I use "solicitation" and "advice" because they were used in the indictment—nothing there about soliciting anyone to become insubordinate or not to enlist.

What is their theory? Their theory is this: We have gone into the language of the book. There is no solicitation in the language of the book; there is no advice given not to enlist, but did it have that effect?

First, in point, did it have that effect upon a person who was predisposed not to enlist because that would be monstrous, that would not be considerable? In other words, a person who would issue a book describing the form and the method of the commission of a murder, as a part of a story, and someone went and took that and committed murder, you cannot hold the man who wrote the book as guilty of murder, as that is a part of his story.

If a person advances a theory and someone predisposed in the beginning says, that that forfeited him in his belief not to do what he knew he should do, and said that that deterred him from doing it, that would then not be within the purview of the intent which we are trying to prove here. It is not a matter of, did it have that effect on anybody. It is this: What was the

necessary and the natural effect of that book on the average normal individual, and would it in such individuals result in obstruction? Would it on such officers and persons in the service cause them to mutiny or to be disloyal?

Now, if the effect must be upon the average human being and not on one who is demented or predisposed, then cannot you say, that they would be able to produce some witnesses, some one who would say that they were affected by it? If the government had any such, do you think for a moment that they would not have been produced, if there had been the slightest evidence of anybody that had been affected that way? Would this have the effect upon thinking people, the result of producing what the government claims was calculated to be produced, would it have the result upon the average human being? And suppose there were a thousand people in the country who had heard a certain thing, placed before them a certain idea, don't you suppose that there would be at least a few persons of those thousand who could be found who would testify to that effect upon them, if it was calculated to have effect upon anybody, and did have an effect upon anybody? If that is so, would not there be one of them here to prove this was a fact in at least one instance?

Gentlemen, I will hurry along. The Court will instruct you in this case as to the law, but I want to return to the Rand School for a moment.

A corporation is responsible for the acts of its agent within the rule of the real or implied scope of his authority. In explanation of that let me say that if a person is running a book store and an agent of the book store went out and bought a ton of dynamite it

would be perfectly apparent he would not be acting within the scope of his authority.

So that if the man went out and made that purchase for some purpose or other, that would not be in the direct line of his work, that is, within the real authority that he had, that would be an individual act of his. That is, if a corporation does what it does, it has to do that through its agents and board of directors. If the board of directors had instructed him to go out and perform some specific act, then that is within his scope of authority, that is, within the authority delegated to him by that board.

Now in this instance the boy who was in the book store was not instructed by them to publish this particular thing, this particular book, in violation of law. Now bear this thing in mind, that there were lawyers on that board of directors: there was Mr. Hillquit at one time; and there were other men of affairs on that board of directors, for instance, like Mr. Lee, an Alderman of the City of New York, was also associated with them on that board, and he was the educational director. All these persons were associated on that board.

Now unless they specifically directed the man to do it, or if it was not within the implied scope of his authority, they cannot be held liable for the character of literature that they published.

In other words, suppose you went over to a publishing firm, like Houghton, Mifflin Company, or some man went over there and handed to a clerk a manuscript of a book to have it published and the book was a book on burglary and that book was published; and that book treated on methods of burglarizing the safe in a bank, the use of various tools, electric torches and electric drills and possible curtain effects to be used in connection therewith, and all of those things, and

such a book was published by that concern, you could easily see that the stockholders of that company could not be held responsible unless this particular book and its publications, that is, the contents of the book and the authorization for the publication thereof had been brought to their attention and they had passed upon it before it was published.

Of course, along with that, if you found that they had been publishing books or treatises on the art of picking pockets and other crimes of that character, then you might well say it is within the same classification of books that they have been publishing and you could well say that it was their design, and that it was the same general purpose of their entire literature.

Now it will be pointed out that the general literature published by the Rand School was for the purpose of violating no law of the United States, military or otherwise. And at this time it may be proper to call your attention along with the other literature to which I have referred, to the books that have been published in opposition to socialism, to the fact that there were publications put out by this book store in favor of the war, that is, for the side of the propagandists also, gotten out by those who were specifically in favor of the war and its conduct, as well as those who were opposed to it.

And in that connection I come to the "Menace of Peace" by George D. Herron, and to a passage in that book which says:

"A peace based upon a drawn battle between the Germanic Powers and the Allies is nothing else than the capitulation of the world to Prussian might and mastery. And it would not only be a German triumph that such a peace would procure, but a triumph im-

measurably more terrible in its full and final results than Germany could have won by force of arms, even had they been successful.

"I believe I am safe in predicting that the victory of the Allies will lead to the banishment of war from our planet. But if Germany remains armed, the rest of the world must remain armed also, and the armament increased instead of decreased. A defeated Germany is the only condition of universal peace. A peace that left Germany with her weapons in her hands would be no peace but a preparation for wars immeasurably more terrible than the one that now baffles our hopes for humanity. Germany would soon be ready to fight more advantageously than she is fighting now; and, against the greater German menace, England and France would be obliged to maintain the large conscriptive armies their peoples detest.

"The present German mind is in truth the deadliest enemy, the harshest and yet subtlest seducer that the soul of the world has ever had to meet."

By the way, this that I am reading here is in italics.

"Say not we are the enemies of the German race who thus speak. Not we, but themselves, are the real enemies of the German peoples. We stand against that for which Germany fights; we are against the Prussian idea, against its power over Germany, against its purpose to conquer; but for the German peoples we wish only well. It is for their freedom as well as for ours we contend, and contend with pain in our hearts. Germany's true lovers are they who now stand against her, they who make war upon the lie that enslaves and slays her soul. The France that Germany has invaded is sacrificing her sons for Ger-

many as well as for herself. There are Germans, yes, there are thousands of understanding Germans, who are today praying for Germany's defeat as her only hope of salvation. As Edward Bernstein has recently said, 'Unless the war ends for Germany in definite defeat' her middle class parties will 'by hook or crook' maintain her existing militarism, and the menace of German militarism means the eventual madness of mankind.

"To me, there are no two ways, there is but one way wherein believers in freedom and fraternity, or they who hold to the true socialist faith, or the followers of the faith that was in Christ, may consistently walk. Before us, beckoning along that way, are the banners of Alfred of England and Albert of Belgium. The swords of Jeanne d'Arc and St. Louis are there; and the tread of the Garibaldians and the first French Republicans. The voices of Milton and Mazzini and Lincoln; and the visions of the Divine Assisian and the Patmos Apostle."

This is a book of the style that they had on sale there that was in favor of war, this was one among many that they had. The point of it all is to show that there was literature on both sides. They were not asking people to their store to buy only one specific line of literature, but they gave both kinds, both sides, each was equally free to be purchased that would throw light either on one side or the other of the proposition.

Now you must believe that within Karpf's actual authority now, that he published this pamphlet, and that he published it with the intent of violating the law; that they authorized him to violate the law and that it was within the implied scope of his authority, one of those two. That is, considering first the general work and the general publishing that he got out, that

they or he expected, and it was within their obvious intention, that they were publishing the work quite in violation of law.

Now as to reasonable doubt. Of course some of you who have served on juries have had that explained. Generally, courts define a reasonable doubt as a doubt based on reason which you know. That has always appealed to me as not as clear as has been defined by Chief Justice Field of the Supreme Court of Massachusetts, who defines reasonable doubt as a doubt which would cause a reasonable and prudent man to pause and hesitate in the greater affairs and transactions of life.

Bear in mind, gentlemen, that the presumption of innocence is always with the defendant and if, after considering all the evidence any juror in his mind pauses and hesitates as to what his verdict may be, the law steps in and demands a verdict of not guilty.

Now I doubt not the Court will say to you and so instruct you, that you have no right to conjure up capricious doubts, fanciful theories, for the purpose of creating doubt when no doubt should in fact exist. That is true equally as to your duty after there is some doubt. You should to conjure up capricious reasoning or fanciful reasoning, for the purpose of destroying or dispelling the doubt to try to say that there is no doubt when there is.

That explanation works equally on both sides.

Now returning again for a moment to Nearing, before closing: the Army and Navy League issued leaflets and issued their other publications, which were not for general circulation. Mr. Nearing commented on them and called your attention to them. The whole tenor of their publications from beginning to end was one of commercialism. In no instance in all that I read from there did they maintain that their argument for

preparedness was to secure or maintain human rights permanently above all rights; neither was it even for a localized national integrity.

Just one or two portions that I wish to read to you from here:

"Do Americans realize that one of the reasons why we must of necessity be intensely concerned in the submarine and trade warfare now waged between Germany and the Allies is that in not having any ships of our own with which to carry our four billion dollars worth of merchandise and the German ships being unavailable, that we will lose our two billion dollars worth of export trade unless merchant shipping of the Allies are free and able to carry our goods?"

"This question faces us squarely in this country:

"Will we continue to jeopardize our four billion-dollar trade with the world by trusting to luck, fate, or the good will of fighting nations which may have the shipping in which to carry our goods to safety or destruction?"

Again we see the idea is to afford avenues for the products of labor to be reinvested in foreign lands—another capitalistic outgrowth.

Then again:

"German standards of militarism would, of course, be impossible among Anglo-Saxons—" I don't know why they so defined it, and limited it—"but this does not minimize the fact that world empire is the only natural and logical aim of a nation that desires to remain a nation.

"We have now on our hands, it seems to me, a white elephant to some, a Republican Empire, and no longer such a question of doubting whether or not to have a navy as large as England's. The navy, for a coast line such as the United States possesses, a navy which could uphold the Monroe Doctrine, now moribund,

such a navy must be at least twice the size of the British navy. And the first step to be taken so as to secure that sized navy is for the American citizen to shake off the timorous manner which is our characteristic, in asserting our Federal rights. The imperialism of the American is a duty, a credit to humanity. He is the highest type of imperial master. He makes beautiful the land he touches, beautiful with moral and the physical cleanliness which sounds rather prosaic but is nevertheless the principal, happiness for the savage if not for the imperialist."

We are getting now to where we are going to have the savage in our midst satisfied.

"England certainly owns or has in some way a very large portion of the earth's land surface and practically has for some time, until quite recently, controlled the oceans which cover the hidden land surface. There should be no doubt that even with all possible morals, it is the absolute right of a nation to live to its full intensity, to expand, to found colonies, to get richer and richer by any proper means such as armed conquest, commerce, diplomacy."

In reply to this, when we are already developing along those lines, with those theories advanced by such governmental authorities as this that I have quoted you, is it any wonder that Nearing, in reading it, expressed his opinions as any American having the good of his country at heart, of mankind at heart, would have expressed them, or at least laid them before his countrymen for their consideration. The same theory that the economic basis provided, he emphasizes. What is the difference? This: they are publishing one for commercializing, and the other article, let me recall to you, was insisting upon this policy so that there might be large dividends to munitions manufacturers, etc. Their publication went out as a

trade journal, to give information to those who were guarding the commerce of the country, those who understood and are prosecuting or sustaining the industrial institutions and welfare of the country.

As against that, his goes to another class: they went to the man on the street, to the man in the factory, or the elevator, to the average man who has as much right to have a full and complete knowledge of the facts presented to his mind as any other man has.

The distinction between the autocracy and the democracy is the fact that the man on the street has a right to all the facts necessary to judge, and after forming his judgment to attempt to cause changes in the opinion of those who are supposed to represent him.

We believe, at least in theory, that our purpose of having different parties is that a few men have not the right by a chance of an election, to arrogate to themselves the complete guiding of the destiny of the American people, that they being wholly informed and they having the facts and knowledge sufficient to know to what extent their country and its systems and policies are drafted—that is the common people's right. There can be no policy in a republican government that is definite or settled, if the average man representing the minority of the people of the country, has not the right to express his opinions based on all of these general facts which are common knowledge, and we claim that he has a right to urge his theories to convince if he can, the people to his way of thinking. The moment you strike down the right of those having theories to advance, to try to bring the majority of the people to their way of thinking, you strike down the right under the constitution of the minority to try to have their opinions adopted by the majority. The moment you destroy the privilege of a minority to

speaking, whether it is a single individual or a party, you stop progress, and all chance of progress, and you simply ossify and become fixed in character and type. If they are not allowed to tell you what else they believe, and to meet the objections to the existing conditions, we would then have imperial America to all intents and purposes.

I say even to you now, that I doubt not, once we take the position, that if the system under which we live is to prevail, America must be imperialistic, that is indispensable and it must be so of necessity. There is no other existence possible in the direction in which she is leaning if her citizens do not have the opportunity of entering their objections, not only one or two, but what occur to them by way of advocating their theories. Because, in becoming imperialistic, you begin investing entirely in foreign lands and the time comes that the foreign fields of investment are exhausted. Then what happens? They have been deflecting your industry from the states, of Connecticut, of Kentucky, of Maine, Washington, Florida, or any other states of the Union, and the investments are made in foreign lands and when you make your investments outside of any country, that is outside of one's own country, there surely will come a time when those investments will proceed still farther, just as you start a current going from within, it keeps going and enlarging until it gets to the coast, and then it goes over the coast line, and then as it goes over the coast line ultimately you run down to where you can go no further, and in this case in your investments and exports. If you go outside of your own states, it follows that with the constant expansion, which is the only life under which the socialists contend the country can exist under what we speak of as the capitalistic system, the point comes when you can go no further. It is

there, where the Army and Navy League differ entirely from Nearing. Nearing is stating a solution, when you reach that point, and his is an attempt to point that out before we reach it, that it may not come to us unadvised.

I want to read a portion, a couple of paragraphs here, beginning with the third book in "Social Sanity," which was an attempt to show by that book:

"That changes were bound to occur, and that if we are wise and far-sighted, and if we understand what is coming, they can occur sanely and intelligently and constructively, but that if we are stupid and dogged, and refuse to see what is coming, the changes come, overtake and wreck our civilization."

That is not the language of a man who is reckless of the law, reckless of his responsibility, or who believes in chaos or discord. That is not the language of a man who is going out into the country counselling and persuading or trying to get half a dozen soldiers not to go into the army, not to go into the service themselves, not with that sort of language; nor is that the language of a man who is going around to try to induce a corporal to kill his captain or a private to kill his colonel. An idiotic proposition of that kind is almost impossible for you gentlemen or for me to think of, and think of this case seriously, for a moment. But if we use the ordinary logic and reasoning that we use in our ordinary affairs, you see how impossible it is for us to think so.

Suppose that a man should come in here and state, we will say into some railroad station or any other place, and state that when the train comes in he is going to stop the functioning of the government, he is going to overcome the present government by stopping the sale of postage stamps, and he is going to urge that on the people. Such a proposition as that,

such a suggestion as that would appeal to you as utterly absurd and impossible.

The same proposition might be applied to the stopping of men going into the police service or the secret service, and he might take the position that he was going in this way to overcome all the present forms of government, especially the one under which he is living. You gentlemen can see how absurd such a proposition as that would be.

Right here you come and take up this proposition, here a lone man, a lone individual, issues a pamphlet for the purpose, it is claimed, of stopping voluntary enlistments or recruiting in an army of five million men, with the public sentiment and the public press in thousands of papers large and small, and speakers in the cities and the towns, all of them whooping it up and declaring aloud the necessity for the war, and against that public sentiment, against that press, against all these periodicals, and against the stump speeches, and the counselling of these thousands of men, and against the private organizations that are in existence in many of the states for the purpose of rooting out pro-Germanism, etc., all over the country, throughout every state and city, this man alone, with the Rand School, publishes a couple of pamphlets for the purpose of effectively stopping enlistment in the army. I cannot conceive of anything more absurd. It is too bad that Mark Twain is not alive now, he is the man that really ought to defend a case of this kind.

"I tried to point out," says he "that the ruling class in society, the people in charge and in control of any society would do well to realize that progress is bound to be made, and do well to study the problems of progress and see that they were sane rather than the chaotic progress. Changes will come anyway, and

the question is whether they will come wisely or insanely."

What do you think of a man writing like that? And he writes like that before we are in our present situation, which is more or less serious. We all regret the present industrial situation both in the United States and in other countries. We live in a country where suggestions from men of ideas are the foundation of our government, and those ideas, whether lawful or unlawful, the expression of them you can never prevent except upon the theory of abolishing the government's own act in passing the First Amendment to the Constitution of the United States. You cannot suppress expression. The only thing you can do is drive it into subterranean methods. No country has ever succeeded except, perhaps, one, and that one existed in the thirteenth century where the persecution was so intense, that it practically destroyed their life, their national life, and at the same time those with religious views different from their own; and yet in the end, notwithstanding hundreds and hundreds were tortured, buried, killed, yet the movement continued on until we reached the point in the latter part of the eighteenth century or even in the seventeenth century, that real progress could only come from permitting men to discuss different subjects, especially those pertaining to the state.

And along with that, let me mention another thing: it may be suggested by counsel that the first amendment is not an absolute license to say what you wish or what you will. For instance, you cannot slander a man or a woman, if you do, you are amenable for that. That is not a parallel instance, nor a license for any such action.

If, for instance I call a man a thief, and people know of it, he is specifically injured by that. If I say "here

is a storekeeper selling or putting sand in sugar," he is specifically injured by that, and he may sue me for it. If I say "this man is a leper," and he is shunned by society, he may prosecute me. You know how that is, and see the difference between that and discussing an economic policy, yes, of course; because there is no special damage in discussing a general policy.

There may be the class damage. For instance, thousands of men have their money invested in breweries and distilleries throughout the United States. The prohibition law is passed by legislative enactment, and instantly that mass of property is destroyed or damaged greatly, and that man may receive compensation or those men may receive compensation, depending upon whether or not in the Court of Claims, the Government recognizes it, and that is the way those questions are tested, when millions and millions of dollars' worth of property are destroyed and wiped out. That is a class damage.

And men in business, they are buying and selling goods, and the raising or lowering of tariff, along with it the industry rises or falls; that is a class damage. That is not a damage to a person.

So the suggestion that it does not guarantee free expression may be true, but it does not apply to the question of discussing a governmental policy. And along with that proposition of the prohibition we have it tallying to some extent with the theories which are after all simply an analysis of events and conditions and prospective conditions—we have the theories advanced by the defendant.

A defendant can have any theory he wants, legally, and if he believes that he can secure a majority of the American people to agree with him, all well and good, then his theory prevails. But if they disagree with him, then we say he is not right, those who do not agree

with him. We only know of one way of advance and that is by getting the majority to agree with you. That is his trouble. If he gets them, then it is done that way, and in that way the majority of the people believe in that theory which is not his theory today; but the minority today fail to accept the theory of the majority and reserve to themselves the right to still convince the other people that they are wrong.

You cannot take away the right of the minority today without realizing that tomorrow you may need the minority. There is no chance that you will be in the majority a day hence or a month hence or a year hence, with the kaleidoscopic changes going on, no man knows when his so-called status in a religious sense or his ideas or his point of view may be attacked. They may be modified by great changes that are coming, and by important circumstances.

I mentioned the First Amendment to the Constitution quoted by the defendant not to antagonize the theory of the law, which no doubt the Court will give you, and when I say no doubt, of course no man can guess exactly what the Court will give the jury, no more than I can, counsel's argument, except with a measured degree, he may say that the First Amendment is not, and cannot be used by the defendant to excuse the commission of a crime. That is true.

In other words, if Scott Nearing says, "I am going to stop recruiting; I am going to obstruct the service; I am going to create insubordination; I am going to protect myself under the First Amendment to the Constitution"—if that was in his mind of course he could not use it; but if he believed in that, believed in it with the faith which Americans for a long time had in it, and were proud of it, and we were brought up to be proud of it in our schools, we then would go to the question as to whether or not he wilfully—it would

be an element in determining, whether he wilfully was violating a law with which he is charged with a violation of here. If he had full faith in the fact, that is if he thought that the interpretation of that gave him the right to express his belief, then it would go to that. In other words, to show that there was not a stubborn and reckless attempt to break the law which he has been charged with violating here.

In this case the minor act charged, the one that you are to determine really by your verdict, so far as the record is concerned, is limited; and the other one is quite broad; that is the one to the degree of tolerance which the American people propose now to show, and which they must show now or show not at all, — I mean by that, you cannot make one degree of law during war time and one during peace; and we will show in the other the degree to which the American people reverence traditions of their country, and revere the constitution.

I think, and I may say, to you gentlemen, that the history of this country can hardly be written without a list of the names of a few of my ancestors. I think that the tradition of this country on the conscription law was the most alarming thing that had taken place. What do we understand the word, tradition, to mean? It is the habit of thought. I still believe the ordinary man moves his body virtually by the development of personal habits. He has a way of looking when he is crossing the street. His feet move habitually, he has learned it after a struggle, a considerable struggle, when he was an infant; he has certain habits of dress and in doing work; and it follows a constant mental attitude which was a habit as of the people of this country for many, many years, that we would not send an expeditionary force to any other country; that European concerns were none of ours—

I don't say but what they may have been, but I am showing what the thought generally was; that we did not believe in standing armies and if an army were needed we would simply call upon the States, and let each State furnish its quota in such way as it might be able.

England resisted conscription for years, for a long time; Ireland resisted it, and England went about to enforce it, but it was never enforced upon them. Canada did not enforce conscription at all until after we did it. Australia not at all. We changed almost over night. Can you wonder that Lord Northcliffe said about the American people, when looking at them through a window of one of our buildings: "A most docile people, a most docile people."

And when a nation breaks its habits so easily, it indicates that there is a want in the measure of stability which we ordinarily expect in an individual who has fixed habits, and people who have kept true to these traditions, that is, that the privilege and the right of speaking should be protected completely under the law.

We need never fear one great and substantial principle and that is, say what you please, accept the law as the majority declare it; that is, that power must reside with a free and pure selection, with a full and complete opportunity for every voter and every person who should be a voter—and by that I include the women—the right to express their opinions, and when that law is made, you will accept and obey it, always carrying with that the right to oppose that, to change that, to remedy that, to modify or repeal it. With that we will have absolute and final safety to our course of progress and development, but the moment you strike that down, you can measure almost in years, the time when those who will have sown the wind will

reap the whirlwind, that is inevitable. Neither can any body or group of men belong in the majority who attempt to hold up the rights of others and stifle thought and growth of expressions of others. You cannot do that, gentlemen, you cannot do it in conscience, you cannot do it.

And still we have this question right here: this man here has expressed his honest, conscientious view and he is trying to carry out his theory of the economic purposes and programme; he is a member of a political party which has millions and millions of men both in the United States and other countries. As he declared on the stand, they were in the army of Germany and France, Italy and England, the soldiers there were socialists, and had declared their belief as such; the Italian socialists believed that war was the result of economic conflict, those in France the same as those in Germany, as well as in other places, and they believed that the economic support of economic life of the nation was vital, and that economically you can bring about changes.

It was absolutely after that kind of a declaration of their feelings that industry and social conditions that existed there could be changed by such methods, that with that in their minds they went into the army and the boys assumed, that is, those that went, that is the youthful and younger members in the United States, assumed that they had a right to know the truth. Is it to our credit, that we equipped an army, or raised an army by fancy fairy tales? Can we only depend on the safety of this country by assuming that it is quite proper to raise an army by half the facts and distorted statements? If the facts were on the side of those in opposition to Nearing, what have we to fear? How many newspapers were denied the right to freely print the facts? How many newspapers in Buffalo,

Chicago, San Francisco, New Orleans, St. Paul—hundreds of them. How many magazines continuously run off by the ream from the press, from the "Saturday Post" to the "New Republic," one paper after another, one magazine after another. The churches, the speakers, the Congressmen, Senators, the President, if they were right, don't you think they could tolerate one man who was wrong? And if the one man is right don't you think it is quite right that the majority should begin to realize that they are wrong?

During the War of the Rebellion, the newspapers criticised Abraham Lincoln, and there was talk, and attempts made to take steps to suppress them—and by the way only one or two editions of one or two papers were suppressed—and he said "No, if they are right, their opinions should prevail against mine, and those associated with me; if they are wrong, then in the course of time they will be discovered by the people and it will do no harm." That is a safe principle upon which to proceed.

Our country was not invaded, it was not in such a grave difficulty as to warrant the arrest or indicting of Scott Nearing in a case of this kind for the issuing of a pamphlet of this kind of forty-four pages, and its publication by the Rand School. A man with a wife and with a couple of young children, four and six years of age, is taking no chance, is not proposing to enter the penitentiary and leave their happiness and their home, he is not walking away from his fireside, he is not walking away from his friends and leaving his family surroundings and his friends and his associates and writing a pamphlet committing an offense of this kind, if it was an offense, as I stated before, if he intended to do a thing like that he would have done it directly and openly and it would have really resulted in something, the actual commission of something,

and there would have something actually resulted therefrom, it would not have simply then been regarded as a readable instrument.

The reasonable doubts that you are supposed and required to have eliminated from your mind before finding a verdict of guilty are not presumptions alone of law, but they are human presumptions. They have a deeper basis than merely legal form,—humanity. It is only by thinking of all of the facts surrounding a given circumstance, a man does certain things, we think of his family, his friends and society in arriving at this question of presumption. It is by that that we can measure their movements.

This is a case prosecuted in the name of the Government. I realize that oftentimes when a prosecution is made in the name of the Government, we are very apt to think by reason of that fact that it leans, or that the line draws slightly to the side of the Government—not at all.

The millions and millions of people in the United States, and the hundreds of thousands of soldiers in the United States, are not after Scott Nearing for telling the truth in a pamphlet, they are not asking his imprisonment in the penitentiary; and counsel in his opening intimated that the punishment was for the Court, that it might be from one day up to ten years, with a fine of from one cent up to ten thousand dollars; but I tell you, and you know it for yourselves, that upon a finding of guilty for this offense, it does not mean an insignificant penalty at all. The penalty will be measured by the gravity of the offense which your verdict determines. Your verdict is not on an insignificant proposition. It is determining whether during a war these two parties, the school with its four thousand pupils and its influence, its teachers, and Scott Nearing with his friends and those with whom

he is acquainted, whether they were engaged in committing a crime against the country by trying to destroy the effectiveness of the internal management of its army. Can you think of any greater crime in war time than for men to try to induce privates to rebel against their superiors? Cannot you see that that would merit a severe punishment? Cannot you see? Can you see anything more severe than such a situation, if you were raising an army, than to have someone go among them and stop them when the country is trying to raise them, and try to obstruct those efforts? The charge is grave, and the punishment will be commensurate with that.

Assuming a logical application of punishment in view of the charge which is made—and I recall this to your mind because counsel brought it out, otherwise I would have said nothing about it because it is not within the purview of an attorney to comment on the punishment, as that is exclusively for the Court. The grave consequences, though, of verdicts, is that which would stimulate in the mind of a jurymen always to be alert to the necessity of keeping the presumption of reasonable doubt alive and, gentlemen, you are now in a position in this case to decide as between the Government on the one hand and these defendants on the other.

When counsel for the Government says it is of grave concern to the Government, I join and say, sure it is, yes, but I want to say that I would not expect and I do not expect a verdict that is not warranted by what has been presented to you, and I think that is well stated, that it should raise a certain hesitancy in your mind, on these facts that have been presented to you here.

We are fighting under the theory that we want the truth; that we are entitled to the entire truth, when

we make up our conclusions, and not that we should be fed on half truths, and when we get an opinion from what we have been able to ascertain as the truth, we want the opportunity to express those opinions freely that others may possibly see our view. We want the information from all sources and to that we are entitled. The people are entitled to change their judgment, for a judgment based on error and only half the truth will never be a good judgment. We ask that you say to the people of the United States by your verdict in this case that its citizens have the right to have the facts fully told, and to also vindicate the right of the people to state their theoretical conclusions and their ideas and their views and also that they should not be imprisoned because of conscientiously and honestly stating them, and because there may be some speculation about someone having committed an offense by a wrongful use of a phrase here and there. You cannot stake the liberty of a nation, which is the liberty of the press and the right to speak on possibilities and the chance of someone being led astray by the publication of a pamphlet or a leaflet or speech. Take no such chance with it, gentlemen, and if there is any leaning to be done, take no chance upon it, take your chances upon the side of the freest possible expression of it, because only in that way can we be sure that a man will not be carrying around harbored in his heart vicious dislike towards the constitution or to the form of the government under which he lives, and that government will command the man's respect which gives the greatest opportunity for praise and blame, and no government, no country is entitled to compliment if it does not rise to meet the light of censure or criticism.