

In the midst of WWI Montana enacted a Sedition Act that criminalized anything said, written or published that was considered unpatriotic to the United States.¹ Criticizing the government or inciting resistance to the war effort could be punished with a maximum penalty of 20 years and a \$20,000 fine. Montana's sedition law was the model for the less severe federal Sedition Act of 1918.

Montana's legislature also created the Council of Defense that was vested with the authority to enact regulations restricting the content of publications and speech. Among the Council's edicts was the banning of books about Germany and publicly speaking German.

The Sedition Act had long ago faded away to be just another historical footnote, when Clemens Work shined a spotlight on it with the October 2005 publication of his book, *Darkness Before Dawn: Sedition and Free Speech in the American West* (University of New Mexico Press). Work, a University of Montana journalism professor, detailed the law's vigorous enforcement against Montanans for doing things such as expressing support for Germany, refusing to buy Liberty Bonds (U.S. government bonds), criticizing the U.S.'s entry into the European war, or refusing to kiss the national flag.

Work also related that the Council of Defense's decrees were taken very seriously. Illustrative of that is what happened in the central Montana town of Lewistown, where a mob of 500 people burned German books on Main Street as they sang The Star Spangled Banner. One of Lewistown's citizens was found guilty of sedition because he didn't buy any Liberty Bonds.

Considering the vigorousness of the Sedition Acts enforcement and its effect on the people of Montana, Work described the law as "probably the harshest anti-speech law in the history of this country."²

A representative sampling of Montana's "Seditionists"

Herman Bausch, a German immigrant said, "I do not care anything about the Red, White and Blue; I won't do anything voluntarily to aid this war; I don't care who wins this war; ... We should never have entered this war and this war should be stopped immediately and peace declared."³ Convicted of sedition, he was sentenced to 4 to 8 years in prison and served 28 months at the old Deer Lodge State



Herman Bausch

Montana Governor Pardons 78 Wrongly Convicted Of Sedition in WWI

By Hans Sherrer

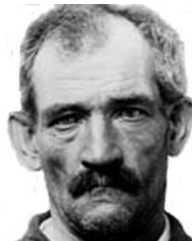
Penitentiary. After his release, Bausch wrote, "I do not regret what I have done or rather what I refused to do. I have lost much, but I am more than ever in possession of my soul, my self-respect, and the love and affection of my beautiful wife."⁴



Ben Kahn

Ben Kahn was a traveling liquor salesman from San Francisco when he said to the owner of a Red Lodge hotel, "Mr. Pollard, this is a rich man's war." Then in response to a question about the sinking of the Lusitania he said Americans "had no business in that boat. They were hauling over munitions and wheat." He also said that wartime food regulations were a "big joke."⁵ Later that day Kahn was arrested and charged with sedition. After his conviction he was sentenced to 7 1/2 to 20 years imprisonment. The Montana Supreme Court denied his appeal on May 20, 1919. Kahn served 34 months before his release on parole.

Martin Wehinger was an immigrant from Austria. In the spring of 1918 he was prosecuted for sedition after saying about the United State's entry into the war, "we had no business sticking our nose in there and we should get licked for doing so."⁶ Sentenced to 3-6 years imprisonment, Wehinger served 18 months at Deer Lodge before being released on parole. He died four months later.



Martin Wehinger



Janet Smith

Janet Smith was the postmistress in Sayle, Montana. She and her husband were well-to-do, owning close to 1,000 acres, a large numbers of sheep, 300 head of cattle, 35 horses, and other assets. The couple were arrested for sedition after Janet allegedly "advocated turning the stock into the crops to prevent helping the government, and killing off all the cripples, insane, and convicts in order to save food instead of making all the food restrictions." She also allegedly said the Red Cross was "fake."⁷ She denied making

the statements, but after her conviction she was sentenced to 5-10 years in prison. One of only two women at the state penitentiary in Deer Lodge, she was released after 26 months imprisonment. Her husband William was also convicted based on his alleged statements that included, "The war was for the benefit of the rich people and the Liberty Bonds of the United States were By God all a damn graft."⁸ He was sentenced to 10-20 years in prison, plus a \$20,000 fine. Eighty acres of the couples land was sold to pay the fine. During William's sentencing his judge told him, "If I could follow the dictates of my own judgment, I would either sentence you to a term in the state prison for your natural life, or I would order you banished entirely from the country."⁹ William was paroled after 24 months imprisonment.



Fred Rodewald

Fred Rodewald was a German immigrant who was charged with sedition after allegedly saying the people in United States "would have hard times unless the Kaiser didn't get over here and rule this country."¹⁰ Sentenced to 2-5 years imprisonment, he was paroled after 19 months.

Ellsworth Burling was a native of Illinois prosecuted for sedition after a witness alleged he said in a store, "If he had \$10,000 he would not buy a Liberty Bond because the Liberty Bonds were nothing but a damn graft," and that the European war "was a rich man's war and let the rich men buy bonds."¹¹ Sentenced to 1-2 years imprisonment, Burling was paroled after 9 months.



Ellsworth Burling

The Montana Sedition Project pursues pardons

After reading Work's book, Jeffrey Renz, Director of the Criminal Defense Clinic at the University of Montana Law School joined forces with Work to document the cases of people convicted of violating the state's Sedition Law with an eye toward seeking their posthumous pardons from Montana's Governor. They called their effort The Montana Sedition Project, and set up a website, <http://www.seditionproject.net>.

Work and three of his journalism students, and Renz and seven of his law students scoured court and state prison records, and

Montana Pardons cont. on p. 7

Montana Pardons cont. from p. 6

did other research to compile a list of everyone convicted of violating the Sedition Law, along with as many details as possible about the circumstances of the convictions. They identified 76 men and 3 women that had been convicted of violating the law. One of the men was pardoned in 1921.

A total of 63-1/2 years in prison was served by 41 of the convicted seditionists, for an average imprisonment of 19 months. Three others were sentenced to prison but didn't serve any of their sentence, and the other 35 were fined only.

Pardon Petition filed in April 2006

On April 13, 2006, just six months after Work's book was published, a Pardon Petition was formally submitted to Montana Governor Brian Schweitzer. One of the letters included with the petition that was signed by academics from around the country stated in part:

"In 1918 and 1919, 40 men and one woman were convicted and incarcerated at the Montana State Penitentiary in Deer Lodge for terms of up to 20 years because they criticized the government during wartime. Another 37 persons were convicted but did not go to prison.

We ... urge you to grant these men and women posthumous pardons... We respectfully urge you to do this for two basic reasons: (1) to affirm Montana's commitment to free expression; and (2) to bring a measure of justice and redemption to these people and their living descendants.

The state law under which these people were convicted, signed by then Governor Sam Stewart on Feb. 23, 1918 ... Anyone who in wartime uttered or published any "disloyal, profane, violent, scurrilous, contemptuous, slurring or abusive language about the form of government of the United States" could be convicted of sedition, sent to prison for up to 20 years, and fined up to \$20,000.

Beginning in March 1918 and continuing for about a year, even after the Armistice had been signed, county prosecutors charged some 150 people in the state with sedition; about half were convicted. As the formal petition record makes clear, the trials took place in an atmosphere of suspicion and fear, at a time when any dissent was rooted out and punished.

...

... The crabbed conception of free speech reflected in the Montana state court decisions has long since been rejected in Montana and

throughout the nation. It has been replaced, to draw from Justice William Brennan's opinion for the Supreme Court in *New York Times v. Sullivan* (1964), with "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." Montana's own right to participate in government, and to criticize it in the most severe terms is preserved in the Montana Constitution.



Clemens Work, author of *Darkness Before Dawn*

Should you exercise your authority to pardon those punished for exercising what we now acknowledge to have been their constitutional right to question their own government, you would be acting in accord with a tradition dating back at least as far as 1840, when President Martin Van Buren posthumously pardoned Vermont newspaperman Matthew Lyon. The former Revolutionary War hero, later a Congressman, had been convicted under the Sedition Act of 1798 for speaking out against President Adams' "unbounded thirst for ridiculous pomp, foolish adulation, and selfish avarice." In June 1927 California Governor Clement C. Young pardoned Charlotte Anita Whitney after the U.S. Supreme Court upheld her state conviction for criminal syndicalism. In 1921, President Warren Harding pardoned Socialist leader Eugene Debs, who had been convicted of violating the federal sedition act during World War I. Four years later, New York Gov. Al Smith pardoned another socialist leader, Benjamin Gitlow, who had been convicted of violating a New York law by publishing "The Left Wing Manifesto." In much the same spirit, President Franklin D. Roosevelt in 1933 restored voting rights and other civil liberties to approximately 1,500 men and women who had been convicted of seditious utterances under federal law during World War I. More recently, in 2003, New York Gov. George Pataki posthumously pardoned pioneer stand-up comedian Lenny Bruce for a 40-year-old obscenity conviction based on biting comedic political commentary.

Granting the posthumous pardon petitions herein requested would ease the hearts of the living descendants of those convicted and would provide justice and a measure of redemption. ...

By pardoning the men and women convicted of sedition in Montana during a time when fear and hysteria gripped the nation, you affirm our state and national commitment to free speech in America. You there-

by affirm freedom. In that American spirit, we respectfully urge you to grant the posthumous petitions herein requested."¹²

Governor Schweitzer issues 78 pardons

On May 3, 2006, three weeks after receiving the Pardon Petition, Governor Schweitzer signed a Proclamation of Clemency that posthumously granted unconditional pardons to 78 people convicted of violating Montana's Sedition Law. About 50 relatives of eight of the pardoned persons attended the ceremony held in the Capitol rotunda in Helena.

Many of the sedition convictions were based on eyewitness reports of casual, but colorful statements by working folk after a few drinks in a saloon. Schweitzer recognized that "Freedom of speech is a fundamental and a constitutional right in times of war and peace alike. Neighbors spying on neighbors and hindering freedom is not the America or Montana way."¹³

A grandson of German-speaking immigrants, Schweitzer said, "Across this country, it was a time in which we had lost our minds. So today in Montana, we will attempt to make it right. In Montana, we will say to an entire generation of people, we are sorry. And we challenge the rest of the country to do the same."¹⁴

Schweitzer's 78 pardons were the first issued posthumously in Montana history.

Endnotes and sources:

1 "Whenever the United States shall be engaged in war, any person or persons who shall utter, print, write or publish any disloyal, profane, violent, scurrilous, contemptuous, slurring or abusive language about the form of government of the United States, or the constitution of the United States, or the soldiers or sailors of the United States, or the flag of the United States, or the uniform of the army or navy of the United States or shall utter, print, write or publish any language calculated to incite or inflame resistance to any duly constituted Federal or State authority in connection with the prosecution of the War shall be guilty of sedition." 1918 Montana Laws chapter 11, section 1.

2 78 convicted of sedition in Montana pardoned, by Charles S. Johnson, *Billings Gazette*, May 4, 2006.

3 The Montana Sedition Project, <http://www.seditionproject.net/MontanaSedition.htm>

4 Pardoned!, The Montana Sedition Project, <http://www.seditionproject.net/pardonproject.html>

5 What They Allegedly Said, The Montana Sedition Project, <http://www.seditionproject.net/profiles.html>

6 *Id.*

7 The Montana Sedition Project, *supra*.

8 *Id.*

9 What They Allegedly Said, *supra*.

10 *Id.*

11 Ellsworth Burling web page, *The Montana Sedition Project*, <http://www.seditionproject.net/BURLING.htm>

12 Letter and Petition to Governor Schweitzer, March 27, 2006, <http://www.seditionproject.net/petitionletter.html>.

13 Governor Schweitzer Signs Pardons for Those Convicted Under MT Sedition Act, *Governor's News Release*, May 3, 2006.

14 78 convicted of sedition in Montana pardoned, by Charles S. Johnson, *Billings Gazette*, May 4, 2006.

