The Federal Government v. The Appeal to Reason

by David L. Sterling

Understandingly and justifiably it has been customary for historians of civil liberties and for legal scholars to focus on the collision between the First Amendment and Title XII of the Espionage Act of 1917 and on the subsequent suppression of Socialist and other publications during World War I. The record of the Wilson Administration has been exhaustively scrutinized; the excesses of Postmaster General Albert S. Burleson have been deplored; the acquiescence in press censorship by the federal courts and by the Supreme Court in the Masses and Milwaukee Leader cases has been dissected. But at the same time, the persistent efforts of the Roosevelt and Taft administrations to quell the blaring and blaring criticism of the Appeal to Reason by the prosecution of its officers and associates has been almost completely neglected.

The Appeal to Reason, founded by Julius A. Wayland in 1895 and emanating from Girard, Kansas, was the most widely circulated Socialist weekly in the decade prior to the First World War; its subscribers soared from approximately two hundred thousand in 1907 to over a half a million six years later. In its pages, often printed in red ink, appeared passages from Edward Bellamy's Looking Backward, Henry Demarest Lloyd's Wealth Against Commonwealth, and in 1905 in its entirety in serial form, Upton Sinclair's The Jungle. It attacked the frivolties, licentiousness, and corruption of the wealthy and the powerful; it savaged Theodore "Rusylt" and William Howard Taft; it scorned the labor leaders Samuel Gompers, "that great faker," and Terence Powderly as collaborators with capitalism. It implored its readers to investigate the Pennsylvania mining areas, the New England mill towns and the great city slums, and to "see the little ones their forms slight and bent, their faces prematurely aged and their features marked by that selfishness which alone preserves them in the merciless struggle for existence." Demeaning capitalism was held responsible for their physical and spiritual degradation, and Socialism was championed as the cause which would inevitably come to their rescue.

In June 1901 Fred D. Warren, twenty-eight years old and a descendant of a Revolutionary War hero, joined the Appeal staff, and within a year he had taken over the editorial direction of the newspaper; Eugene Victor Debs, since 1895 a contributor to its pages, became an Appeal fixture with his byline appearing two or three times a month. It was in fact a March 1906 article by the Socialist party standard-bearer that first attracted the attention and the ire of the Roosevelt Administration. A month earlier the leaders of the Western Federation of Miners, Charles H. Moyer, George A. Pettibone, and William D. Haywood, were abducted with the connivance of Colorado officials and taken by train to Boise, Idaho, to stand trial for the murder of that state's...
former governor, Frank Steunenberg.6 It was a blatant kidnapping and the Appeal and Debs did not hesitate to so characterize it. The Appeal printed a special "Kidnapping Edition" with a distribution of more than a million copies, and on March 10, it published Debs’ article under the headline, "Arouse, Ye Slaves!", illustrated by a line drawing of five men, one of whom was swinging from a scaffold. In short paragraphs, spread over four columns, Debs excoriated the governors of Colorado and Idaho, "the Mine Owners’ association...and their Standard Oil backers and pals in Wall Street...." "These gory-beaked vultures," he wrote, "are to pluck out the heart of resistance to their tyranny and robbery, that labor may be stark naked at their mercy." Almost twenty years ago "the capitalist tyrants" had executed the Haymarket martyrs, and they were now, according to Debs, attempting to repeat their murderous plot to convict with "the purchased, perjured testimony of villains, and then strangle" the federation leaders "with the hangman’s noose." But "let them dare!...Get ready, comrades, for action!...If the plutocrats begin the program, we will end it."7

Among the readers of "Arouse, Ye Slaves!" was the President of the United States. Roosevelt was "furious"; the article was "infamous." "Is it possible," he questioned Attorney General William H. Moody, "to proceed against Debs and the proprietors [sic] of this paper criminally?" "Please notify," he instructed, "the Post Office Department so that this paper may not be allowed in the mails, if we can legally keep it out."8

But no congressional legislation then existed to prosecute Debs or to deprive the Appeal of access to the United States mails. The Socialist party leader reiterated his charges in the columns of the Appeal: "To the Rescue" with captioned quotations from the unlikely trio, Wendell Phillips, William Lloyd Garrison, and Napoleon Bonaparte; "Show Your Hand" in January 1907 after the the United States Supreme Court in Pettibone v. Nichols conceded that no warrants for the arrests "could have been properly or legally issued" by Colorado’s governor, but held nevertheless that the Western Federation leaders could still be tried in Idaho. "No obligation was imposed," said Justice John Marshall Harlan in the majority opinion, "by the Constitution or laws of the United States upon the agent of Idaho to so time the arrest of the petitioner, and so conduct his deportation from Colorado, as to afford him a convenient opportunity before some judicial tribunal sitting in Colorado, to test the question whether he was a fugitive from justice and as such liable, under the act of Congress, to be conveyed to Idaho for trial there." "This decision," wrote Debs, "constitutes the blackest chapter in the annals of that tribunal. It not only LEGALIZES KIDNAPPING, but


Copies of the Appeal to Reason stacked and waiting for the mail train at Girard.
means that the workingman has no right the capitalist is bound to respect. We shall see!"9

The challenge of Fred Warren to the Supreme Court opinion was more serious than the rhetoric in the Debs article. At the time that the Supreme Court, while not condoning the abduction of Moyer, Pettibone and Haywood, ruled that Idaho could try the federation leaders for murder, a former Kentucky governor, William S. Taylor, was living in Indiana, a fugitive indicted for conspiracy to kill William Goebel. Goebel, Taylor's Democratic opponent in the 1900 gubernatorial election, was about to assume office when he was struck down by an assassin's bullet. What better way to demonstrate the hypocrisy of capitalist justice than to aid in the apprehension and return of Taylor, a "personal friend" of Theodore Roosevelt, to the state of Kentucky.10 On January 12, 1907, under the instigating headline in heavy type "$1,000 Reward! The Appeal to Reason Will Pay $1,000.00 in Gold to the Person or Persons Who Will Kidnap Ex-Governor Taylor and Return Him to the State Officials of Kentucky," Warren interpreted the Supreme Court decision to mean that any person "is at liberty to sandbag" the former governor, "carry him across the border and deliver him to the authorities of Kentucky, and it will be a perfectly legal procedure and upheld by the highest court in the land."11

If it were a "legal procedure" to abduct William Taylor, it was not legal, according to the Justice Department, to send material through the United States mails urging his kidnapping and offering a reward for his apprehension. On May 7, 1907, the federal grand jury, district of Kansas, third division, indicted Warren for sending through the mails an envelope on the cover of which, printed in red letters, was the announcement of the $1,000 reward, "language constituting "a scurrilous, defamatory and threatening character" in violation of the congressional act of September 26, 1888.12 The editor of the Appeal was arrested by United States marshals, appeared in Fort Scott for trial, but the case was then continued at the motion of the government. At a preliminary hearing in November 1907 before Federal District Judge John C. Pollock, the defense moved to quash the indictment. Warren's attorney, ex-attorney general Louis C. Boyle, argued that "there had been no offense within the meaning of the statute." Assistant U.S. District Attorney J. S. West countered

11. Appeal to Reason, January 12, 1907.
12. Ibid., November 2, 1907.

Judge John C. Pollock sustained the indictment against Warren and became a principal character in the government's prosecution of Appeal staff.

with the ad hominem charge that it was "the clear intent of the publication...to bring the supreme court of the United States into ridicule and contempt." Judge Pollock, after offering the hypothecate of the Kentucky state authorities circulating through the mails a postcard with the offer of a $100,000 reward and asking rhetorically, "would that have been a violation of the law?" took the motion to quash the indictment under advisement.13

Given Judge Pollock's statement at the preliminary hearing that he could not distinguish between the hypothetical postcard and the Appeal envelope, it came as a surprise to Warren and his attorneys that the federal judge overruled the defense motion in February 1908 and held that the editor would have to stand trial. "I have arrived at the conclusion," wrote Judge Pollock in sustaining the indictment, "the manner in which this language is set forth on the envelope, and the nature of the language employed, that it was obviously intended by the defendant to reflect upon the character of ex-Governor Taylor."14

13. Ibid., November 30, 1907.
But no trial followed; twice more the government asked for and obtained continuances. The *Appeal to Reason* believed that the Roosevelt Administration was stalling until after the November presidential election, that it was attempting to crush the newspaper with costly legal expenses, that the post office was burning copies rather than delivering them, and that “FREE SPEECH AND THE LIBERTY OF THE PRESS” were at stake. “Is the Government Afraid?” the *Appeal* asked on May 9, and a week later reported the conversation of “two gentlemen, on the opposite sides of the case.” “You do not dare to face the issue,” declared the friend of Warren and the supporter of the *Appeal*. ‘We dare to face the issue and will face it when we get good and ready,’ answered the other, “but we may take time enough to bleed the reptile to death.”

At the same time the government had made repeated overtures to Warren to plead guilty, promising that he would be given only a small fine, but the intrepid editor had staunchly refused. “In fighting for acquittal,” the *Appeal* explained, “Warren is fighting a battle for the liberty of the press and not for himself. He would not accept a fine of only one penny, because it would leave a precedent that would continually menace a free press.”

On May 8, 1909, Fred D. Warren went on trial for printing envelopes and sending them through the United States mails with the defaming and threatening reward announcement intended to “reflect injuriously on the character” of William S. Taylor. The facts were largely uncontested; Warren had written the reward on the envelopes and a mailing had been made. But had he “defamed” Taylor? Had he “reflected injuriously” on the former governor’s character? From the witness chair William Taylor intentionally or inadvertently had a lapse of memory; the ex-governor testified that he was no longer under indictment in January 1907 when the *Appeal* editor first offered the reward for his apprehension.

The defense attorneys, contrary to Judge Pollock’s earlier ruling, contended that the 1888 statute was not meant to cover the fact pattern of the *Warren* case; U.S. District Attorney Harry J. Bone in his summation denounced “this sheet...as the Appeal to Treason”; and the jury, composed of Kansas farmers, all Republicans, brought in a verdict of guilty as charged after nearly a day of deliberations.” If the editor of the *Appeal,* wrote Eugene V. Debs, who had attended the trial, “can be sent to the penitentiary simply because he is a Socialist, some other man can be convicted for being something else, and in that case the freedom of the press is destroyed and a censorship is established as odious and infamous as that which prevails in Russia and Mexico.”

On July 1, 1909, Judge John Pollock sentenced Warren to a prison term of six months and a fine of $1,500 and costs. In April 1910 the *Appeal* editor appeared in St. Paul, Minnesota, to argue his own case before the United States Court of Appeals for the Eighth Circuit. Warren was defiant. He told the eighth circuit that it could “no more impartially consider the questions involved in this case than could the judges appointed by the English king consider impartially the questions which arose between that monarch and his American subjects.” He went on to say that the federal courts had been on the side of the slave power in the antebellum period; they are today the forums of the employing class antagonistic to the interests of working men and their families. “You are serving,” he accused the judges, “those to whom you are indebted for your position and responsible for your power. I am simply trying to show to the working class of the world—the character of the federal court to which must be submitted their liberties and their lives.”

For the United States Court of Appeals the only question in the *Warren* case was whether the reward announcement on the envelope that enclosed the January 12. 1907, issue of the *Appeal* violated the 1888 congressional law. The First Amendment’s guarantee of freedom of speech, wrote the judges in a memorandum opinion of November 21, 1910, affirming the conviction, was not involved. The power of Congress to regulate the United States mails was plenary; the federal legislature could “prescribe what can be carried...and what shall be excluded.” Under the federal Constitution there is liberty and there is freedom of speech, but these guarantees do not mean the unrestrained right to do and say what one pleases at all times under all circumstances and “certainly...do not mean that...one may make of the post office establishment...an agency for the publication of his views of the character and conduct of others.” Fred Warren had assailed the personality of the former governor of Kentucky. He had intended to injure reputation. And it was irrelevant whether his characterization was true or whether he was “actuated by public spirit or private malice.” He was not a law enforcement agent, nor did he by his words provide information on the envelope designed to serve the object of delivering the newspaper. “If there

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15. *Appeal to Reason*, May 9, 16, July 4, 1908.
16. Ibid., November 7, 1908.
19. Ibid., April 27, 1912.
was an undisclosed," the eighth circuit concluded, "and admissible purpose in the mind" of Fred Warren, he had used "an illegal method...to accomplish it." 20

U.S. District Attorney Bone was jubilant. "It gives me considerable pleasure," Bone wrote to U.S. Attorney General George Wickesham, "to advise you that last week the Circuit Court of Appeals handed down the decision affirming the conviction of Mr. Warren." 21

"Pollock and Bone," wrote Debs to the Appeal editor on December 2, 1910, "are entitled to all the comfort they can extract from you going to jail over their game of poker. They are sufficiently damned in their degeneracy," 22 In an article entitled "Warren Has Triumphed," the Socialist leader argued that "the simple truth" was that "the editor was pronounced guilty at Washington" and the "higher up and lower down" corporation attorneys in the capitalist bench...executed orders from their masters. And again in an "I will come to Girard" letter, Debs advised Warren that "we must make hell howl when you go to jail and heaven smile when you emerge from it," and he promised that "we will make the six months capitalism has in jail cost six years in its life." 23 Demonstrations must be organized in every "village, town and city;" the support of labor unions must be secured; Lincoln's birthday must be celebrated with a massive protest; and "every tool of the capitalist bench" must be "made to realize that he is the servant of the people." 24

Harry J. Bone's pleasure and Eugene V. Debs' portrait of Warren manacled in Pollock's "prison cell" and his plan for a national revolt were premature. On January 23, 1911, President William Howard Taft transmitted a petition from Kansas congressman Philip Campbell to Attorney General Wickesham. The President insisted that the record of the Warren case be examined and the matter be "promptly disposed of," and asked for a Justice Department recommendation "as soon as possible." 25 Then on February 1, Taft issued a statement commuting the sentence to a fine of $100 collectible by civil process. Fred Warren was "clearly guilty," but the sentence was "excessive." It might have been justifiable given the fact that the defendant was "the editor of a newspaper engaged in a crusade against society and government...by wildly and palpably false accusations." But at the same time it would not be wise to deal seriously with Warren. "His violence, his exaggerations, his wild accusations and mock heroes ought to be treated with ridicule." Fred Warren craved "martyrdom." He would not get it from the Taft Administration. 26

The President of the United States in his memorandum of February 1 had intended that the Appeal editor had been prosecuted and severely punished because of his often vituperative criticism of capitalist society and his personal attacks on industrial leaders, Wall Street bankers, and government officials. He knew that to confer the mantle of "martyrdom" on Warren would be counterproductive. He knew that the Appeal editors had used Warren's prosecution and conviction to sustain a substantial and successful subscription campaign. He may have had a few twinges of legal conscience. 27

If Taft counselled patience and forbearance to avoid allowing Warren to portray himself as the "victim of government prejudice," the U.S. district attorney, Harry Bone, was intent upon destroying the Appeal to Reason. In April 1911 the Appeal began the publication of a series of articles on conditions at the federal penitentiary at Leavenworth. Week after week the newspaper was filled with a lurid narrative of brutality, sodomy, graft, and murder, complete with testimony from former inmates and prison guards and affidavits from women complaining of sexual experiences with Leavenworth's deputy warden, Frank H. Lemon. Lemon was depicted as a veritable Caligula who preyed on innocent women, tortured prisoners, encouraged sodomy, corrupted young men, and beat to death Clarence Maitland, "a sixteen year old British sailor-boy." 28 The Appeal reported that Justice Department agents had been hurried to the federal prison to investigate, but concerned about a "whitewash," the newspaper would not be deterred from printing its revelations. "The penitentiary rests," Warren wrote in a dramatic preface to the

21. Harry J. Bone to George Wickesham, received December 5, 1910, Justice Department.
27. In a memorandum to the attorney general in December 1910, Assistant Attorney General William R. Harr stated that he believed that the prosecution of Warren was "ill-advised and calculated to do more harm than good, by making a martyr of Warren in the eyes of many people." William R. Harr to Wickesham, December 9, 1910, Justice Department. Adams, "A Crime Without a Name," presents a sympathetic view of the Warren case, and points out that Taylor was mistaken in his denial that he was still under indictment as of January 12, 1907. For the reaction of Warren to the commutation of sentence, see Appeal to Reason, February 4, 11, 1911.
28. Appeal to Reason, April 25, 1911.
McDonough addressed the audience at a Girard public meeting sponsored by the Appeal. According to the newspaper, McDonough, educated for the priesthood and master of seven languages, was an army enlistee who had been sentenced to ten years for striking a sergeant; he was now in the employ of the Appeal to protect him from economic retaliation for telling his shocking story. In May 1907 he had been in an isolation cell at Leavenworth when Frank Lemon and a few of his “brutal satellites” had taken Clarence Mainland to a “noisome dungeon,” hanged the young man “half-naked” to its grill door, and beaten him “unmercifully while he swung there in that helpless condition.” A few days after, “the poor boy died in shackles,” and McDonough had later seen the “poor-shackled corpse hustled away to the prison death house.” This was not an unusual incident in Leavenworth’s grim history. “It is,” McDonough declared, “a veritable hot-house for the raising of moral perverts, drug degenerates, habitual criminals, and masculine prostitution and a hell for the ruination of juvenile offenders.”

On July 29, 1911, after printing Leavenworth features for ten weeks, the Appeal to Reason announced that the federal investigators had completed their report and had recommended the summary and immediate dismissal of Frank Lemon and five other prison officials, and that Warden McCloughry would be allowed to retire because of “failing health and great age.” A week later the newspaper gave further details. Lemon had resigned; McCloughry would retire; but the “most regrettable feature” was that the attorney general had not followed the special investigators’ report and immediately discharged the former deputy warden. Wickersham had “permitted a man proven guilty of unspeakable immoralities and even brutal murder…to resign, instead of ousting him in disgrace…” The Appeal was of the opinion that Lemon should be indicted for the murder of Clarence Mainland; if he was not, Harry Bone, along with the attorney general, would “stand as sponsor for whipping prisoners to death.”

The U.S. district attorney was in no temper to take the advice of the Appeal to Reason. In fact, he regarded the Leavenworth expose as an opportunity to imprison its staff and to silence the Socialist newspaper. He believed that the editors of the Appeal had used the scandal to titillate their readers and to increase subscriptions. In November 1911, in a signed article

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29. Ibid., April 15, 1911.
30. Ibid., May 6, 1911. The Appeal later printed a letter, dated April 15, 1908, from Wickersham to the warden of the United States Penitentiary in Leavenworth ordering the discharge of the prison guard, Appeal to Reason, April 15, 1912.
31. Ibid., April 29, 1911.
32. Ibid., May 27, July 1, 1911.
33. Ibid., May 6, 1911.
34. Ibid., July 29, 1911.
35. Ibid., August 5, 1911.
entitled "An Open Letter to Harry J. Bone," Fred Warren reported that he was about to be indicted for sending "obscene," "lewd," and "lascivious" materials through the United States mails. Bone "may be able to convince the grand jury that the Appeal is a very bad, bad paper and that its editors are very bad, bad men, and that they ought to be indicted, convicted and sentenced to long terms in the penitentiary...." But the U.S. district attorney would not coerce the Appeal into suspending operations, Warren wrote. He would not curtail the dissemination of Socialist doctrines; "for every Socialist editor locked up, a thousand loyal comrades will spring to take his place."37

The grand jury convened at Fort Scott on November 13, 1911, and witnessed an angry confrontation between Warren and Bone during which the federal prosecutor blurted, "I have received my instructions from Washington," and again, "I am running this grand jury and I want you to distinctly know it." The jury then dutifully returned an indictment in "type-written form." Julius A. Wayland, Fred D. Warren, and Charles L. Phifer were charged with depositing at the federal post office at Girard the April 29, 1911, issue of the Appeal to Reason, containing "certain indecent, filthy, obscene, lewd and lascivious printed matter, the said printed matter purporting to be the copy of an affidavit made by a woman whose name was not given, and who was at the time of executing said alleged affidavit the wife of a citizen of Leavenworth, Kan."38

Having secured one indictment against the editors, the U.S. district attorney, not yet satisfied, prepared to bring another against Fred Warren. On November 21 he sent to Washington a copy of the "Open Letter" and overzealously proposed, if the U.S. attorney general "deem[ed] it advisable," to proceed against Warren for 37. Appeal to Reason, November 18, 1911.

38. Ibid, November 25, 1911, March 16, 1912. Bone's report on the grand jury proceedings and the indictment of Wayland, Warren, and Phifer may be found in Bone to Wickersham, November 21, 1911, Justice Department.
charges against Warren, Wayland and their legal counsel Jacob I. "Jake" Sheppard, based on an affidavit signed by Julius P. McDonough. McDonough, the former Leavenworth prisoner employed by the Appeal, had come to Harry Bone with a story that on April 12, the editors had promised to give him a draft for $250 to influence his testimony, should he be called as a witness in the "obscenity" case, or to leave the jurisdiction of the federal court. The arrangements for the transfer of funds had been made by Eugene Victor Debs.42

On May 7, 1912, Julius P. McDonough took the witness stand in federal district court and, under cross-examination, offered three versions of the money transaction. He had been paid the $250 due him as past salary or to leave Kansas or to stay and falsely testify. According to the Appeal, the story was either "ridiculous" or "absurd." Concededly, the funds had been given to McDonough, but only for the purpose of allowing him to go to California and to begin "a new life." After listening to the testimony, Judge John Pollock ruled that the prosecution's case was insufficient to demonstrate bad motive and discharged the defendants. Julius P. McDonough seemingly had been discredited. Harry J. Bone left the courtroom "in a daze"; he had made an "ass" of himself.43

41. Ibid., May 18, 1912. See also Bone to Wickersham, May 15, 1912. Justice Department.

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42. Appeal to Reason, May 7, 1912.

43. Ibid., May 18, 1912.
He had also made a defendant of himself. Jake Sheppard filed suit in Kansas State courts against Bone for $10,000 damages to his reputation and character, and the Appeal printed a bizarre tale, told from the witness stand, about the background of the McDonough contretemps. The ex-convict had come into Fred Warren's office, brandishing a revolver and demanding money and the return of his affidavit relative to conditions in Leavenworth penitentiary. Wayland, who was present, walked into the "muzzle" of the gun. "While threatened with instant death," the Appeal publisher had calmly pushed McDonough into the hall where the former prisoner "broke down" and sobbing was led away by Debs, "promising in his kindly way to see that he got justice." The "victim" of capitalist justice would be saved by the grace of Socialist clemency.

Stymied at least temporarily by Sheppard's defense at the contempt hearing, Harry J. Bone was not yet prepared to end his personal vendetta against the Appeal to Reason. Pending before the district court was still the indictment against Warren, Wayland, and Phifer in the obscenity case. And Bone still had plans to bring the trio of Wayland, Warren, and Sheppard to justice on the contempt charge. In October 1912 the federal prosecutor wrote to Attorney General Wickersham that he had hired Helmut F. C. Dueberg of Los Angeles and that he wished to secure the services of A. W. Lovejoy of Girard to find further evidence that could be used against the Appeal to Reason. Dueberg and Lovejoy were "very enthusiastic about this matter," but their identities and their government service would have to be carefully concealed: "The prime necessity in this case is caution," and to this end Bone had devised a "private code" for use in telegrams. The Socialists and their sympathizers were everywhere, "telegraph operators, mail carriers and postal clerks"; "the fact is we are dealing with a class of people who are as smart as snake doctors."

The identities of Helmut Dueberg and A. W. Lovejoy did not remain secret for very long. On November 16, 1912, the Appeal to Reason printed two stories: a laconic but startling black-bordered announcement that Julius A. Wayland had committed suicide, "hounded to his death by the relentless dogs of capitalism"; and dated Saturday, November 9, a revelation of the activities of government detectives, Dueberg and Lovejoy. "Exhibit A" was a letter of October 4, 1912, on Justice Department stationery sent to Lovejoy by J. A. Fowler, acting attorney general, informing the Girard resident that he had been appointed a "special employee" under the direction of A. Bruce Bielaski, chief of the Bureau of Investigation, and that his stipend would be paid from the "appropriation for Detection and Prosecution of Crimes." There was a lengthy affidavit, signed by Lovejoy, in which the "special employee" told of conferences, during which Bone had informed him of a recent visit to Washington. The federal prosecutor had met with the attorney general and with President William Howard Taft, and "the work of suppressing the Appeal to Reason" had been approved.

What Bone wanted from Lovejoy was new evidence against Wayland, Warren, Debs, and Sheppard "that would put them behind the bars for a long term of years." There were further meetings with the district attorney and Helmut Dueberg, a trip to Kansas City, and a plan to indict Wayland for "some charge of a disgraceful nature in connection with some woman or women." There was a detailed description of an elaborate plot, suggested by Dueberg, to coerce false testimony from J. N. Lasater. Lasater, a suspended mail carrier, was to be terrified by threats of prosecution and seduced by promises of immunity into saying "what the government wanted him to say." A dictaphone was to be placed in Lovejoy's home. Lasater was to be invited and if he failed to cooperate, a "mimic" would imitate his voice. He would "say what was wanted," and witnesses "at the other end of the dictaphone [would] swear that the testimony given by the mimic was in fact Lasater's." Dueberg and Lovejoy had devised a similar ruse to trap Appeal to Reason writer C. L. Phifer. He had doctored Lasater's affidavit with the addition of two letters which in part were in the detective's handwriting. With these Bone would go before the grand jury and obtain an indictment against Wayland, Warren, Debs, and Sheppard for the obstruction of justice.

The U.S. district attorney was before the federal grand jury in the Fort Scott courtroom on November 12, 1912. Eugene Victor Debs, Fred Warren, and Jake Sheppard were indicted for "obstructing the orderly processes

45. Bone to Wickersham, October 31, 1912. Justice Department.
of justice,” the same charge that Judge Pollock had dismissed in the May 1912 contempt hearing.49 “Almost incredible,” wrote A. M. Simons in the Coming Nation. Incredible that, having received almost one million votes in the recent presidential election, Eugene V. Debs should now be indicted for “alleged tampering with a witness.”50 “I do not believe,” Debs told Fred Warren, “that the poor corporation lackey, rightly named Bone, is proceeding in these cases on his own initiative after butting his bone head into a stone wall as often as he’s done. He is no doubt being prodded vigorously from the rear.”51

November 1912 was an eventful month: the suicide of Wayland, the rumored arrest of Debs, the hearing on the motion to quash the indictment against Warren and Phifer in the Leavenworth “obscenity” case. Through all this it was clear that, if not prodded, the U.S. district attorney still enjoyed the support of the Justice Depart-

49. For Bone’s explanation of the indictment against Debs, Warren and Sheppard, see Bone to McReynolds, May 13, 1913, Justice Department.

50. Appeal to Reason, November 50, 1912.

51. Debs to Warren, November 29, 1912, Debs Papers.

ment. Attorney General George Wickersham had earlier written that Warren was a “scoundrel who, if he had his just deserts, would be sent to prison for life.”52 He had justified the “obscenity” charges on grounds that, given the federal investigation, the editors of the Appeal to Reason could not plausibly respond that the Leavenworth expose had been “made in the public interest.”53 He was now explaining the indictment of Debs by using a precis of the “facts” as reported to the department by Harry J. Bone.54

But if Wickersham was unwavering in his approval of the activities of the U.S. district attorney, his subordinate in the Justice Department, William R. Harr, was beginning to express serious doubts. On January 2, 1913, in a memorandum addressed to the attorney general, Harr argued that the “action of U.S. Attorney Bone in securing indictment [against Debs, Warren, Wickersham to Hilles, March 10, 1912, Taft Papers, Series 6, Case File 659.

53. Wickersham to Frank R. Willis, April 27, 1912, Justice Department.

54. Wickersham to William Kent, January 3, 1913, and Bone to McReynolds, May 15, 1913, Justice Department.

The Appeal’s May 18, 1912, headline read “The Appeal Wins Great Victory in Federal Court.” This was followed by a cartoon of U.S. District Attorney Bone having his balloon burst.
and Sheppard] seems to be ill advised.” “Practically,” he said, “if not legally, it is putting them twice in jeopardy for the same offense and exposes the Department to the charge of overzealousness.”

Bone had no such qualms. In a five-page memorandum filed with the federal district court, he contended with legal citations that the congressional statute, making obstructions of justice a criminal offense, covered potential witnesses as well as those already subpoenaed. Debs, Warren, and Sheppard knew that the Leavenworth “obscenity” case had been “commenced and was pending and undetermined.” They knew that McDonough had information and that he intended to testify as a government witness. And with knowledge of the undecided case and the impending testimony, they had attempted to induce McDonough into leaving the jurisdiction of the federal district court. The defendants, therefore, clearly fell within the reach of the congressional law.

The U.S. district attorney was also trying to keep Helmuth Dueberg on the federal payroll. According to Bone, Dueberg was responsible for a Los Angeles Times article with “considerably [sic] information about the Appeal and its methods.” Dueberg had encouraged the Girard Times to “fight the Appeal... openly,” and the opposition of the Times and other newspapers in the area had proven “very annoying” to the Appeal editors. Dueberg’s services had, in short, been invaluable and justified permanent employment.

Harry Bone had to be concerned about his own tenure and the fate of his campaign against the Appeal to Reason. In April 1913 with Woodrow Wilson in the White House and James McReynolds as attorney general, the U.S. district attorney from Kansas was authorized to come to Washington for conferences about the Appeal to Reason cases. There was a personal interview with the attorney general about the charges brought against him by Jake Sheppard, his approaching resignation from office, and his “regret” that “any action adverse to him might ‘be taken...at this particular time...just before some of these prosecutions will come up for trial at Fort Scott...at the term beginning May 5th, 1913.”

Bone had bad news waiting for him upon his return to Kansas. On April 24, 1913, Judge John C. Pollock sustained the demurrer to the indictment in the Leavenworth “obscenity” case. While the “constituentiality” of the congressional statute was “settled beyond dispute,” the real question was the impact of the affidavits printed in the April 29, 1911, issue of the Appeal to Reason. “Can it be,” rhetorically asked Judge Pollock, “that...the matter complained of tends to corrupt the minds or sully the morals of those who may read the same,” or “does it not...tend rather...to produce the effect of disgust and shame.” The purpose of Warren and Phifer may well have been to expose to public awareness the lamentable conditions that existed at Leavenworth and the scandalous conduct of its deputy warden so that reforms in the public interest could be made at the

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56. Memorandum brief, undated, Justice Department.
57. Bone to Wickersham, January 4, 1913, Justice Department.
58. Ernest Kriebel to Bone, April 16, 1913, Justice Department.
federal penitentiary. “Will the law punish?” Pollock asked again, “if the facts be made public in a manner as little offensive and in language as chaste as the exigencies of the case demand?” “I think not.”

Bone still thought so. On April 28 he wrote to the Justice Department enclosing a copy of Judge Pollock’s opinion and recommending appeal of the Leavenworth case. No matter what the Appeal editors’ purpose, “any matter,” he insisted, “which tends to sully and defile the moral character of those into whose hands it might fall, is non-mailable.” The Justice Department responded with a terse telegram followed by a longer letter. Bone was directed to ask for a dismissal of the charges for obstructing justice against Debs, Warren, and Sheppard; he was told to drop the obscenity case against Warren and Phifer. “I am inclined now,” William Harr explained, “to the view that the statements published in the Appeal to Reason should not be held to be within the statute because their contents show they were not made for the purpose of exciting libidinous thoughts, but simply to call attention to a deplorable condition.” The Appeal to Reason had won its “greatest victory.” “Poor Bone,” wrote Debs to Fred Warren on April 25, 1913, “I am beginning to feel sorry for him. He is now near his finish, and it will be sad and humiliating enough.”

For seven years the Roosevelt and Taft administrations attempted to rid the nation of the caustic and often inflammatory rhetoric of the Appeal to Reason, and in the process to incarcerate its editors and their associates. Convinced that the Appeal was subversive and dangerous, Harry J. Bone exploited the opportunities presented him to secure indictments, retain spies, perhaps even obtain perjured testimony. Under George Wickersham, the Justice Department was fully informed of the activities of the federal prosecutor in Kansas, fully supported him, counseled with him to proceed with the prosecutions, and approved of the employment of government agents. No one in the Taft Administration recognized or acknowledged that there were present in the “reward” and Leavenworth “obscenity” cases tender and important issues of the freedom of the press and the right to “muckrake.” Warren’s commutation of sentence was based on the politics of expediency. The Wilson Administration, confronted by the adverse decision in the Leavenworth expose case, refused to countenance an appeal to the eighth circuit.

The Appeal editors and Eugene Victor Debs, persecuted and prosecuted, often argued in the pages of the newspaper that the First Amendment guarantee of a free press was in jeopardy. They contended that, if the Appeal were bludgeoned into oblivion, the government would then proceed against other Socialist newspapers. Despite the costliness of litigation, they refused to compromise, tone down the invective, or succumb to blandishments and threats. They were in the vulnerable minority; their self-interest dictated a recourse to the First Amendment shield. But self-interest and minority status did not detract from the cogency of their Bill of Rights position.

In July 1917, along with other Socialist journals and newspapers, the Appeal to Reason was denied its second-class mailing privileges under Title XII of the Espionage Act. Sold to Emanuel Haldeman-Julius, it reappeared as the New Appeal, and to the chagrin of Eugene Victor Debs, supported the Wilsonian war policies. “J. A. Wayland,” wrote Debs, December 14, 1917, “would . . . sit up in his grave . . . the Appeal has committed suicide.”

60. Memorandum of Decision, United States v. J. A. Wayland, et al., April 24, 1913, Justice Department.
61. Bone to McReynolds, April 28, 1913, Justice Department.
63. Harr to Bone, May 9, 1913, Justice Department.
64. Debs to Warren, April 25, 1913, Debs Papers.
65. See, for example, Appeal to Reason, November 7, 1908, and with the headline, “Warren and a Free Press on Trial,” August 27, 1910, in which Debs compares Warren to John Peter Zenger. See also The National Riffus, January 1913.
66. Murphy, World War One and Origin of Civil Liberties, 99.
67. Salvatore, Eugene V. Debs, 289.
68. Debs to Louis Klopchin, December 14, 1917, Debs Papers.