

A 1910s postcard of Isaac Gilberg, the "leader of Topeka radicalism."

Liberty in the Line of Fire: The Topeka Antidraft Conspiracy during World War I

by Thomas Rosenblum

On January 15, 1918, in a federal courtroom in Kansas City, Kansas, Ike Gilberg arrived with three other defendants charged with violating the 1917 Selective Service Act, which made it a misdemeanor to obstruct the recruiting service of the United States. They also stood charged with violating sections 37 and 332 of the U.S. Penal Code, which declared it a felony to enter into a conspiracy to commit any offense against the United States or to induce another to violate a federal law. Each faced a prison sentence of up to two years and/or a fine of \$10,000. Gilberg, a tailor by trade, sewed as he sat in the dock.¹

The charges stemmed from an alleged anticonscription meeting held the afternoon of May 27, 1917, at the Topeka Unitarian Church on Kansas Avenue. On May 31, acting on warrants issued by Fred Robertson, U.S. attorney for the District of Kansas, federal authorities arrested six Kansans for conspiring to obstruct the Selective Draft Act, which was scheduled to go into effect June 5. Taken with Gilberg were physician Eva Harding, garage owner Fred Felten, and carpenter Ernest Newman of Topeka. In Lawrence, U.S. marshals took University of Kansas professor George Kleihege into custody and in Olathe, store clerk Earl R. Browder. Also caught in the federal net under warrants issued by Francis Wilson, U.S. attorney for the Western District of Missouri, and charged with conspiring to obstruct the draft law in that state were Raymond I. Moore; his wife, Lenora Warneson; Harvey Kleinschmidt; and three others, all members of the Federation for Democratic Control (FDC), a Kansas City, Missouri, antiwar organization. Because of Browder's involvement with the FDC, federal agents transported him to Missouri to face legal proceedings. On June 27, authorities

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1. The law was also known as the Selective Draft Act, "An Act to Authorize the President to Increase Temporarily the Military Establishment of the United States," enacted May 18, 1917, Pub, L 65-12, 40 Stat., *U.S. Statutes at Large, Public Laws of the Sixty-Fifth Congress, 1st Session*, vol. 40, ch. 15 (Washington, DC: Government Printing Office, 1919), 76; Indictment, *The United States v. Raymond I. Moore, et al.*, case 4371 (D. Kan., October 12, 1917), National Archives and Records Administration, Kansas City, MO (hereafter cited as NARA-KC); Request for Instructions, *U.S. v. Moore*, Case 4371, NARA-KC; and "Gilberg Sews in Court While His Lawyer Argues," *Topeka State Journal*, January 15, 1918. For discussions of the Topeka antidraft conspiracy, see Herbert Pankratz, "The Suppression of Alleged Disloyalty in Kansas during World War I," *Kansas Historical Quarterly* 42 (Autumn 1976): 295; and Bill Wagon, "Countering 'Disloyalty' in Topeka," *The Home Front, Shawnee County during World War I*, Shawnee County, Historical Society Bulletin 69 (November 1992): 141-48.

rearrested Moore, Warneson, and Kleinschmidt on warrants charging them for their participation in the Topeka meeting.²

Although Kansas was not a hotbed of antiwar dissent, the experiences of the Topeka radicals vividly dramatized the campaign to crush dissent at home. While the U.S. Congress did not intend that the series of laws it passed to successfully prosecute the war would become weapons to suppress free speech, in the hands of the Department of Justice, these laws became efficient tools to silence any who expressed disapproval of the war or advocated peace. Discussion of the justice and wisdom of pursuing the war became perilous. It was against this background that the case against the Kansas antiwar dissenters would be decided.

With the declaration of war on Germany on April 6, 1917, the Woodrow Wilson administration embarked on a crusade to convince the nation that a conflict waged on distant shores was a heroic undertaking requiring unswerving loyalty, unconditional patriotism, and ungrudging self-sacrifice. Toward this end, Wilson set in motion forces for uniformity and cooperation with the war effort, creating what Harvard law professor Zechariah Chafee, Jr., described in 1919 as “the unprecedented extension of the business of war over the whole nation.” Dissent could be tamed by a sense of duty reinforced by the seamless patter of the government’s propaganda bureau, the Committee on Public Information (CPI), which unleashed a barrage of intensely emotional images and words promoting the justness of America’s cause while dehumanizing the Hun as a lethal pestilence.³

Protest could also be silenced by Wilson’s Department of Justice armed with specific wartime legislation. David Kennedy, in his study of the war on the home front, argued that while the CPI was complicit in suppressing civil liberties, others in the government were “more forthrightly malevolent” and “were less interested in

propagandizing the people, and more disposed to direct methods of extinguishing dissent, by fair means or foul.” The Selective Draft Act and the Espionage Act of 1917 and its amendment, the so-called Sedition Act of 1918, increased the definition of what the government considered dangerous speech, each further blurring the line between protest and sedition. Dissent against the war in Europe, brewing largely out of sight, now erupted into a national concern.⁴

As anti-German propaganda seeped into all aspects of American life, federal prosecutors transformed the law into a full-scale enforcement of loyalty. “There is absolutely no twilight zone insofar as loyalty to the government is concerned,” one of Robertson’s assistant prosecutors proclaimed, warning that while “a certain element in this country is intoxicated with freedom of speech they had best restrain themselves during these times.” The broad language of the Selective Service and Espionage Acts provided prosecutors with wide discretionary authority about whom they might prosecute, and one contemporary observer noted that every U.S. district attorney had become “an angel of life and death, clothed with the power to walk up and down in his district, saying, ‘This one will I spare, and that one I will smite.’”⁵

In an age when the courts had not yet adopted strong First Amendment protections of political dissent, patriotic juries did not hesitate to convict or federal judges to impose harsh sentences for spoken or printed utterances even remotely perceived as undermining the spirit of loyalty that inspired men to enlist or register for the draft. A successful prosecution did not have to offer evidence of any direct harm to the war effort, only proof that such harm was a reasonable and probable consequence of the words. “We do not need to show that any harm resulted,” Robertson noted, “simply that an attempt has been made.” To those “who believe that nothing is worth fighting for,” U.S. Attorney General Thomas Watt Gregory warned, “may God have mercy on them, for they can expect none from an outraged people and an avenging government.”⁶

2. Accounts of Warneson’s arrest noted that she insisted on retaining her maiden name. For more information, see “Indict Pacifists at Leavenworth,” *Alma (KS) Enterprise*, October 19, 1917. Born in Wichita, Kansas, in 1891, Earl Browder joined the Socialist Party of America in 1907. After the war, he joined the nascent Communist Party of America and was appointed secretary general in 1930, serving through 1945. For information on Browder’s early life, see James G. Ryan, *Earl Browder: The Failure of American Communism* (Tuscaloosa: University of Alabama Press, 1997), 8–20. “Nine of Kansas City Draft Plotters Draw Prison Terms,” *Leavenworth Times*, December 7, 1917; “Uncle Sam’s Eye on the Slackers,” *Wichita Beacon*, June 1, 1917; and “Kansas Authorities Arrest K. C. Plotters,” *Topeka Daily Capital*, June 27, 1917.

3. Zechariah Chafee, Jr., “Freedom of Speech in War Time,” *Harvard Law Review* 32 (June 1919): 937.

4. David M. Kennedy, *Over Here: The First World War and American Society* (New York: Oxford University Press, 1980), 75; *Espionage Act of June 15, 1917*, ch. 30, § 3, 40 Stat. 217, 219 (1917); *Sedition Act of May 16, 1918*, ch. 75, 40 Stat. 553 (1918). For a discussion on what were collectively known as the Wartime Emergency Laws, see H. C. Peterson and Gilbert C. Fite, *Opponents of War, 1917–1918* (Madison: University of Wisconsin Press, 1957), 213–15; and Geoffrey R. Stone, *Perilous Times: Free Speech in Wartime* (New York: W. W. Norton, 2004), 135–233.

5. “Federal Agent Here,” *Coffeyville (KS) Daily Journal*, February 13, 1918; Chafee, *Freedom of Speech*, 75.

6. “Arrest Topekans Today for Fight on Conscription,” *Topeka Daily Capital*, May 31, 1917; David M. Rabban, *Free Speech in Its Forgotten Years*

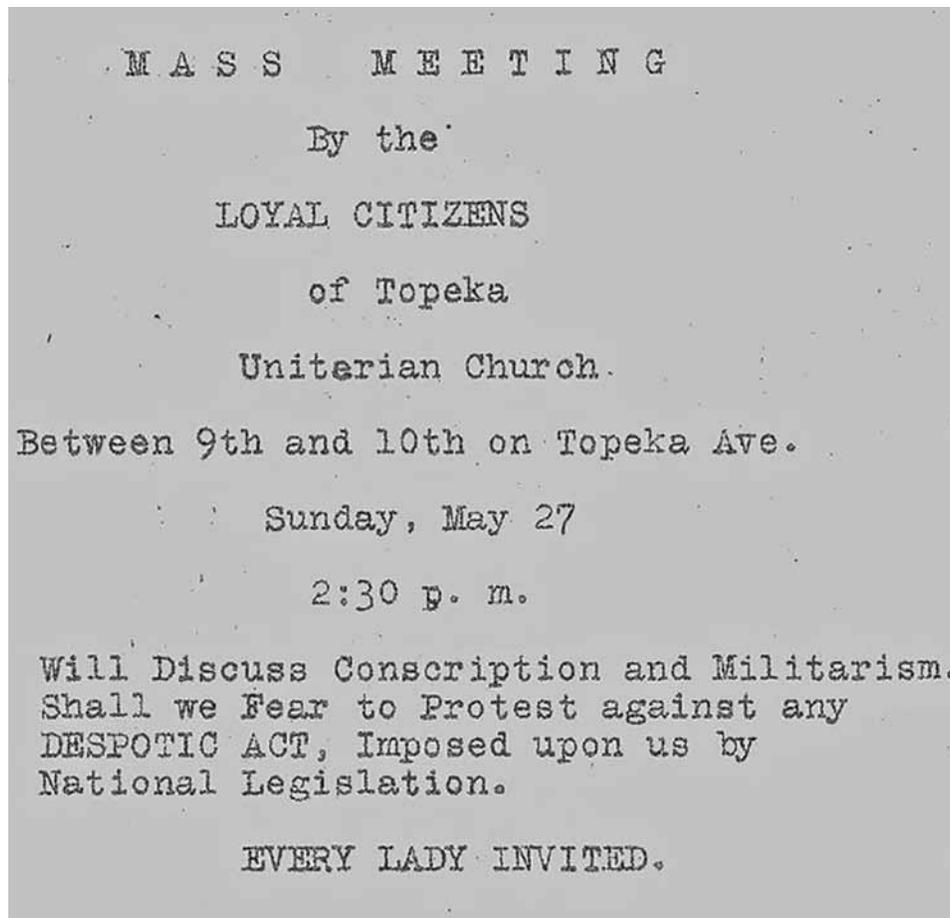
Prior to the U.S. entrance into the war, national unity remained elusive. Wilson had secured his second term in office by campaigning on the peace ticket. Although continuing to advocate a position of neutrality, the president had tempered his promise of peace by calling for a “preparedness” program to place the nation on a military footing equal to that of the European powers. For many in Kansas and elsewhere, Wilson’s campaign slogan—“He Kept Us out of War”—took on a hollow ring as they questioned what they saw as an abrupt policy change from pacifism to militarism.⁷

No Kansan objected to U.S. involvement in the European war with a louder voice than the state’s Republican governor Arthur Capper. Capper described Wilson’s policy of “armed neutrality” as beyond mere folly, being a “monstrous” ruse perpetuated by industrialists “with their heads turned by the prospect of easy profits” and “the wretched pork barrel and log rolling system of congress.” So vitriolic were Capper’s attacks on Wilson’s policies that they earned him a rebuke from the *New York Times* for spreading a “spineless pacifism in the Sunflower State,” while Robertson attempted to instigate the Department of Justice to investigate the governor.⁸

(New York: Cambridge University Press, 1997), 175; Edward J. Bloustein, “The First Amendment ‘Bad Tendency’ of Free Speech Doctrine,” *Rutgers Law Review* 43 (Spring 1991): 507–38; and “95 Per Cent of People in America Are Loyal, Says Attorney General,” *Washington (DC) Times*, November 21, 1917.

7. For information on Wilson’s preparedness program, see Michael Pearlman, *To Make Democracy Safe for America: Patricians and Preparedness in the Progressive Era* (Urbana: University of Illinois Press, 1984), 150–58.

8. “The West and Militarism,” *Topeka Daily Capital*, January 15, 1916; “The Kansas Spirit,” *Wichita Beacon*, February 1, 1916; and William R. Walker, “Only the Heretics Are Burning: Democracy and Repression in



The charges against Ike Gilberg, Eva Harding, and several other defendants stemmed from an alleged anticonscription meeting held on May 27, 1917, at the Topeka Unitarian Church. The meeting was advertised through handbills like the one seen here, introduced as evidence during the trial to prove the intent of the conspirators to obstruct the draft. Speakers at the meeting included members of the Federation for Democratic Control, a Kansas City antiwar organization, and University of Kansas professor George Kleihege, a former secretary of the Lawrence Socialist Local and Kansas State Socialist Party. Courtesy of the National Archives and Records Administration, Kansas City, Missouri.

When Wilson plunged the nation into the cauldron of World War I, however, Capper took on the role of a true patriot. “Kansas has no time in this crisis to waste in listening to disloyal agitators,” Capper announced, and “will show no mercy to slackers or traitors who interfered with the patriotic work of our citizens.” Anything less than full-throated support of the war now became viewed as aiding the dreaded Hun.⁹

9. Arthur Capper, “A Warning to Disloyalists,” *Addresses and Messages by Arthur Capper, Twenty-Second Governor of Kansas* (Topeka: Capper Printing Company, n.d.), 81. For a full discussion of Governor Capper’s

The May 27 meeting at the Unitarian Church in Topeka was a hastily put-together affair. One week earlier, Dr. Harding and a small band of women had convened a meeting at the Topeka YWCA, where they had adopted resolutions that opposed conscription and stated that the army should be deployed only for defense. They quickly called for another meeting at the Topeka High School auditorium. When the board of education refused permission to use the school, the organizers moved the meeting to the Unitarian Church. The roster of speakers was not formalized until just days prior to the meeting, when Harding received a letter from Moore offering assistance. Felten, the secretary of the Topeka Socialist Local, took Moore up on his offer, with the FDC providing three of the four speakers.¹⁰

Initially formed as a branch of the American Union against Militarism, the FDC quickly became a target of a rising public vigilante spirit and the federal government. Following a meeting on April 1, during which the FDC selected Warneson to testify before the U.S. House of Representatives Judiciary Committee considering the bill that would become the Espionage Act, uniformed soldiers ransacked the hall. By early May, the Department of Justice warned law enforcement to be on the lookout for radicals distributing cards exclaiming “Kill Conscription: Don’t Register” around western Missouri and eastern Kansas. All fingers pointed to the FDC, with U.S. District Attorney Wilson promising that prosecution would quickly follow once the dissidents were identified. Undeterred, the FDC began to prepare a legal attack on the draft as violating the Thirteenth Amendment of the U.S. Constitution’s injunction against involuntary servitude.¹¹

Between seventy-five and one hundred people attended the meeting at the Unitarian Church, the majority of whom were women, causing one newspaperman present to quip that the only males of draft age in attendance

appeared to be the meeting organizers and speakers. Moore spoke first. He accused the banking houses and industrialists of pressuring the government to enter the war solely to protect investments and fuel profits. He lashed out at the clergy for “opening recruiting offices in the churches of Jesus Christ, the greatest peacemaker in the world.” Moore urged Kansans to organize and file a lawsuit, similar to that of the FDC, attacking conscription as unconstitutional; he argued that if a sufficient number of draft-age men refused to register, the government would recognize the futility of the law. He announced that upon returning to Kansas City, he intended to write to the mayor about his refusal to register for the draft, after which “he can arrest me or do as he pleases.”¹²

Browder spoke of class differences in America, predicting that the war would bring long-simmering grievances against the ruling class to the surface and spur a revolution, as it had in Russia. Browder also announced his determination to stand by his convictions against war, saying, “My soul is too pure to be stultified by registering.” Just before stepping down, Browder told the audience that upon leaving home, he had advised his wife to hunt for a job, as he fully anticipated being arrested.¹³

The next speaker was the most anticipated of the day, Leonora Warneson. A public school teacher in Missouri, Warneson had garnered widespread notoriety when the board of education had demanded her resignation for writing an antiwar sentiment on a blackboard ending with the pledge “I refuse to kill my brother and hide my fists in the folds of any flag.” Talking of her experience testifying before the congressional committee the previous April, Warneson declared that there was not a single member of Congress who could give a valid reason for the war.¹⁴

The last speaker was Kleihege. A former secretary of the Lawrence Socialist Local and Kansas State Socialist Party, Kleihege had run on the Socialist ticket for the

shift in his opposition to preparedness and the draft, see Blaine Evan Hamilton, “Governor Arthur Capper: A View on Preparedness, Draft Policy, and Agricultural Exemptions during World War I” (master’s thesis, Emporia State University, 2016), 35–64.

10. “Women to Work for Early Peace in War,” *Topeka Daily Capital*, May 17, 1917; Raymond Moore to Dr. Eva Harding, May 21, 1917, Department of Justice, *Investigative Reports of the Bureau of Investigation, 1908–1922*, Old German Files, Case 23228, National Archives and Records Administration, Washington, DC (hereafter cited as NARA-DC).

11. *Testimony before House Judiciary Committee, Espionage and Interference with Neutrality: Hearings before the Committee on the Judiciary, House of Representatives, Sixty-Fifth Congress, April 9 and 12, 1917*, statement of Lenora Warneson (Washington, DC: Government Printing Office, 1917), 25; and “Anti-Drafters Anger Kansans,” *El Paso (TX) Herald*, May 26, 1917. The lawsuit brought by Moore and Thomas Sullivan came before the Jackson County, Missouri, Circuit Court on May 31, 1917. The judge

denied the petition, advising Moore and Sullivan to voluntarily enlist at the first recruiting station they came upon. For the FDC lawsuit, see “Conscription Is Unconstitutional, Is Proven in Petition for Injunction,” *Appeal to Reason*, June 9, 1917; and “Anti-Drafters Lose Fight in Missouri Court,” *Topeka State Journal*, May 31, 1917.

12. “Anti-Drafters Baring Fangs,” *Arkansas City (KS) Daily Traveler*, May 29, 1917; “Sisters Sob at Conscription,” *Concordia (KS) Blade-Empire*, May 28, 1917.

13. “Anti-Drafters Baring Fangs,” *Arkansas City (KS) Daily Traveler*, May 29, 1917; and “Topekans Did Not Start Draft Plot Testimony Shows,” *Topeka Daily Capital*, June 8, 1917.

14. *Testimony before House Judiciary Committee*, statement of Lenora Warneson, 30–31; Department of Justice, *Reports of the Bureau of Investigation*, Case 32745, NARA-DC; “A Brave Teacher,” *Appeal to Reason*, March 10, 1917; and “Anti-Drafters Baring Fags,” *Arkansas City (KS) Daily Traveler*, May 29, 1917

U.S. Congress in a special election in 1911 and in 1912 for governor of Kansas. He talked of the tragedy of sending young men overseas to fight in a rich man's war and spoke out against class distinctions and the unfair distribution of wealth in the nation. He ended his talk with the plea that the country should only ever take up arms after a nationwide referendum.¹⁵

The day after the meeting, the Topeka dissidents scheduled another at Harding's 10th Avenue address for the purpose of forming an antiwar organization. Although Harding stated that there would be no lawsuit challenging the constitutionality of the draft, she believed that there were young men in Topeka who would refuse to register and who would need assistance in undergoing a legal battle.¹⁶

The day after the meeting, Robertson announced that he had begun an investigation of all involved, promising, "If there is any way I can prosecute them I will." Possibly more worrisome rumors surfaced of plans to use the National Guard to suppress any further meetings preaching violation of the draft law. Not to be intimidated, Harding fired back that she would stand with others who preferred prison to the trenches. Despite Harding's bravado, the announced meeting was quickly canceled, and a secret gathering was held in its place. Although there was discussion of forming an organization, those in attendance summarily dismissed the idea.¹⁷

Robertson clearly perceived the wartime to be perpetually on the verge of a catastrophic threat and believed that any action intended to interfere with the war effort was within his purview. He



A photograph of Dr. Eva Harding, who, along with Ike Gilberg, was singled out as the "ringleaders" behind the May 27 meeting. Born in Ohio, Harding relocated to Atchison, then Topeka, focusing her practice on women and children. Beginning in the 1890s, Harding and a small group of Kansas women transformed local women's clubs from their earlier devotion to charity and religion to a focus on broad-based economic, political, and social reform. In the preliminary court appearance, Harding was charged with circulating the handbills, making antiwar speeches, and advocating the establishment of an organization to aid those refusing to register for the draft.

15. The 1911 Second District election was held following the death of Congressman Alexander C. Mitchell, a Lawrence Republican. Joseph Taggart, a Democrat from Kansas City, won election that year and was reelected in 1912 and 1914. "Many Heard Kleihege," *Ottawa (KS) Daily Republic*, November 4, 1911; "Who Is Geo. W. Kleihege!" *Junction City (KS) Daily Union*, July 25, 1912; "Index to News," *Topeka Daily Capital*, October 29, 1913; Department of Justice, *Reports of the Bureau of Investigation*, Case 32745, NARA-DC; "Anti-Drafters Baring Fangs," *Arkansas City (KS) Daily Traveler*, May 29, 1917; and "Anti-Draft Cases May Reach Jury This Afternoon," *Topeka Daily Capital*, April 12, 1918.

16. Department of Justice, *Reports of the Bureau of Investigation*, Case 32745, NARA-DC; and "Fight Draft Here!," *Topeka State Journal*, May 28, 1917.

17. Department of Justice, *Reports of the Bureau of Investigation*, Case 32745, NARA-DC; Department of Justice, *Reports of the Bureau of*

urged citizens and local vigilance committees to seek out pockets of disloyalty and report them. Within three months of the declaration of war, Robertson reported that his office was receiving hundreds of complaints of disloyalty with as many as two hundred to three hundred coming from certain counties.¹⁸

Investigation, Case 23228, NARA-DC; "Big Anti-Draft Meeting Here Is Postponed," *Topeka State Journal*, May 29, 1917; "Dr. Eva Harding Bold," *Fort Scott (KS) Daily Tribune and Fort Scott Daily Monitor*, May 30, 1917.

18. Fred Robertson to Thomas Watt Gregory, U.S. attorney general, June 28, 1917, *Copies of the Official Letters Sent by the United States Attorney*



Federal authorities arrested Gilberg, Harding, and four other Kansans based on warrants issued by the U.S. attorney for the District of Kansas, Fred Robertson, pictured here. Deeply suspicious of foreigners, Robertson had no intention of losing track of the outrages that disloyal citizens of belligerent nations could, if given the opportunity, inflict on the war effort. Seeking to cleanse Kansas of disloyalty, Robertson responded to hundreds of reports, and acted against not only Gilberg and those at the Topeka meeting, but members of Mennonite communities and the Industrial Workers of the World (IWW).

Robertson sent agents into the field to investigate reports of draft evasion. For the most part, the registration process was efficient, the conscripts willing, and their

for the District of Kansas, 1873–1925, microfilm edition, reel AR 1606, Kansas Historical Society, Topeka, KS (hereafter cited as KSHS).

families supportive, and just under 167,500 young Kansas men fulfilled their duty to report to the local draft exemption board. Derogatorily referred to as “the slackers,” those who failed to appear before the local draft board were not viewed as serious threats to the war effort, as they were not challenging governmental authority or policy except in the specific case of their military service. Although Robertson investigated as many as eleven cases of draft evasion in a day, he brought only 140 cases before the three divisions of the U.S. District Court in Kansas. The majority pled or were pronounced guilty and ordered to register, with the charges being dropped after they had been inducted into the military. Only about twenty were sentenced or fined, with the average incarceration lasting from one to nine days.¹⁹

Robertson, however, exhibited little tolerance for those he believed were “at heart and on the surface” a “consistent enemy of the country.” Enemy aliens, political and labor radicals, pacifists, and “other brands of traitors and outlaws” all came to be painted with the same brush as the “enemy within.” When a judge ended the prosecution of an Espionage Act case on grounds of insanity, even though Robertson’s own investigation had concluded that the accused was “undoubtedly mostly crazy,” the federal prosecutor complained bitterly that “jail is the right place for this man,” as it is for “all who are disloyal to and do not appreciate our institutions and government.”²⁰

Deeply suspicious of foreigners, Robertson had no intention of losing

19. Department of Justice, *Reports of the Bureau of Investigation*, Case 23228, NARA-DC; U.S. Department of Commerce, *Statistical Abstract of the United States, 1918* (Washington, DC: Government Printing Office, 1919), 736; Pankratz, “The Suppression of Alleged Disloyalty in Kansas,” 295; and “‘Boob’ into Court,” *Topeka Daily Capital*, April 8, 1918. For a description of how draft registration proceeded, see Frances H. Early, *A World Without War, How U.S. Feminists and Pacifists Resisted World War I* (Syracuse, NY: Syracuse University Press, 1997), 60-61, 65.

20. Robertson to Gregory, *Copies of Official Letters*, May 2, 1918, reel AR 1621, KSHS; Department of Justice, *Reports of the Bureau of Investigation*,

track of the outrages that disloyal citizens of belligerent nations could, if given the opportunity, inflict on the war effort. Convinced that German intrigues were constantly afoot, Robertson investigated a poisoned medicinal plaster plot in Kansas City, a hidden enemy airfield in central Kansas, a rumored arms cache at a small German college in Enterprise, and a secret brotherhood of foreign-born socialists and anarchists near Pittsburg. As historian William R. Walker noted, Robertson's failure to uncover any evidence of such plots only confirmed his convictions about the furtiveness of German agents.²¹

Still, Robertson possessed extraordinary power under a presidential proclamation issued immediately after the declaration of war to seize and imprison, without benefit of right to counsel or trial, alien enemies suspected of violating a series of regulations circumscribing their every-day life. His investigations resulted in just over fifty enemy aliens being interned for the duration of the war in one of two military prison camps. The majority of those imprisoned, ranging from a Reading banker to a nineteen-year-old Wichita waitress, were classed as "Non-Violent Hostile in Speech."²²

Seeking to cleanse Kansas of disloyalty, Robertson responded to hundreds of local reports accusing citizens of disloyalty. He brought a Coffeyville man to trial for allegedly uttering the belief that "Germany will whip the whole damned outfit" in front of a person subject to the draft and arrested a Newton public works employee who had been overheard stating, "Germany will win the war for God is on her side." The U.S. attorney indicted a visiting minister who delivered a sermon on the grounds of a Topeka elementary school stating that the German horde was sent by God as retribution for the sins committed against peoples in other lands by the allied countries. In all, Robertson brought about twenty Kansans charged with violating the Espionage Act before

a U.S commissioner for a preliminary hearing, with eight going to trial in the U.S. District Court. All the cases except one were abandoned, dismissed or discharged.²³

Irving T. Boutwell, the brother of Topeka suffragette Effie Boutwell-Main, was arrested at the Union Pacific train depot in North Topeka on the morning of June 16, 1917, accused of distributing anti-war conscription literature through the windows of a passing troop train. The handbill, containing a tract written by Jack London titled "The Good Soldier," condemned soldiers as "blind, heartless, soulless murderers" and characterized the soldier as one who "never thinks; never reasons; he only obeys." Upon his arrest, Boutwell admitted that he hoped the soldiers would lay down their arms and quit the military. On January 15, 1918, a jury found Boutwell guilty of violating the Espionage Act. Believing, however, that Boutwell was unaware of the law, which had been enacted only one day before he was apprehended, the jury recommended clemency, and Judge John C. Pollock sentenced him to only five months in the Shawnee County Jail.²⁴

The drive to homogenize public opinion in support of the war also produced new challenges for religious dissenters in Kansas, particularly the Mennonite community. As a German ethnic group that practiced nonresistance, Mennonites were doubly suspect in the public eye. Although Mennonites enthusiastically offered their services to fulfill home-front wartime obligations that did not conflict with their principles, Kansans caught up in a patriotic fervor denounced them as cowards and slackers and accused them of harboring pro-German sympathies. Mennonites refused to subscribe to the first two issues of Liberty Bonds, one of the government's direct ways of financing the war. They spoke among themselves and worshipped and conducted Bible classes in German while continuing to teach the German language

Case 26427, NARA-DC; and Robertson to B. F. Alford, *Copies of Official Letters*, August 18, 1917, reel AR 1608, KSHS.

21. "Warn against Poison Plasters—U.S. Agents Push Probe of Poison Plaster Case," *Topeka Daily Capital*, July 22, 1917; Robertson to Gregory, April 24, 1917, *Copies of Official Letters*, reel AR 1604, KSHS; and Walker, "Only the Heretics Are Burning," 42.

22. Robertson to C.A.P. Falconer, Rawlins County attorney, August 20, 1917, *Copies of Official Letters*, reel AR 1608, KSHS; and Presidential Proclamation 1364, April 6, 1917, 40 Stat. 1650 (1917) in *Statutes at Large of the United States of America from April 1, 1917 to March 1919*, Vol. 40 (Washington, DC: Government Printing Office, 1919), 5–8. In Kansas, as required by law, 5,928 affidavits were filed by enemy aliens; see Department of Commerce, *Statistical Abstract of the United States, 1918*, 733. The list of those interned was compiled from Department of Justice, *Reports of the Bureau of Investigation*, Case 78249, NARA-DC.

23. Department of Justice, *Reports of the Bureau of Investigation*, Case 11583, NARA-DC; "J.A. Butler to Be Tried," *Fort Scott (KS) Daily Tribune and Fort Scott Daily Monitor*, February 19, 1918; "Newton's Water Pumper Jailed as Pro-German," *Wichita Daily Eagle*, March 23, 1918; Walker, "Only the Heretics Are Burning," 16; "Federal Authorities Investigate Preacher," *Topeka Daily Capital*, August 20, 1918; "Pastor out on Bond," *Arkansas City (KS) Daily Traveler*, August 23, 1918; and Pankratz, "The Suppression of Alleged Disloyalty in Kansas," 292.

24. Department of Justice, *Reports of the Bureau of Investigation*, Case 35496, NARA-DC; Robertson to F. L. Campbell, U.S. commissioner, July 6, 1917, and Robertson to Gregory, July 3, 1917, *Copies of Official Letters*, reel AR 1606, KSHS; and Pankratz, "The Suppression of Alleged Disloyalty in Kansas," 292. Another source gives Boutwell's sentence as six months; see National Civil Liberties Bureau, *War-Time Prosecutions and Mob Violence* (New York: National Civil Liberties Bureau, 1919), 21.

in their schools. To speak German is to remain German; to teach others to speak German, as Robertson complained to Governor Capper, is to instill in the youth of the state “a German spirit and German ideals.” Self-appointed patriotic vigilance committees slathered churches, barns, and homes with yellow paint. Mobs grabbed Mennonites and shaved off their beards or forced them to kiss the American flag. Others were beaten or smeared with carbolic roofing paint and feathers.²⁵

Although they challenged the government’s right to compel their military service, Mennonites of both the General Conference and the conservative churches obeyed the law and registered with the local exemption board because the executive council of the General Conference considered registration as “innocuous as a census.” The majority reported when called up. The Selective Service Act of 1917 did not exempt religious objectors but authorized local draft boards to determine whether an individual had established a qualifying religious affiliation and was eligible for noncombatant service. Three hundred twenty-three Kansas Mennonites were drafted. Of these, only twenty-three served as combatants. Just over one-half of the remaining three hundred accepted noncombatant service in the medical, quartermaster, or engineer corps. One hundred forty-nine absolutists, however, refused to obey the orders of their commanding officers, wear the uniform, or perform any kind of military service. Of these, at least twenty were court-martialed and sentenced to an average of twenty-five years in the U.S. military prison at Fort Leavenworth.²⁶

25. For examples of Mennonite contributions to the war effort, see “Men Knit for Soldiers,” *Topeka State Journal*, July 2, 1917; “Play Other Parts,” *Topeka State Journal*, April 12, 1917; “Mennonites for Plan,” *McPherson (KS) Daily Republican*, April 20, 1917; “Mennonites at Hillsboro Offer Rooms in Hospital to Care for Wounded Men,” *Topeka Daily Capital*, September 20, 1918; and “‘Kaiser School’ Charges Knocked into Cocked Hat,” *Topeka Daily Capital*, September 16, 1917. In 1910, 141 of 155 accredited public high schools in Kansas included German in the curriculum. Although W. D. Ross, state superintendent of public instruction, and Governor Capper refused to remove German from the public schools, by the start of the 1918–1919 school year, local school boards had discontinued German in about one-half of the state’s high schools. “Study of German in High Schools,” *Lawrence Daily World*, March 24, 1909; and “Can Kaiser Tongue,” *Salina Evening Journal*, March 22, 1918. On Robertson’s crusade against the teaching of German in Kansas public schools, see Robertson to Capper, September 6, 1917, *Copies of Official Letters*, reel 1609, KSHS; and Walker, “Only the Heretics Are Burning,” 127. For an overview of the violence directed at Kansas Mennonites, see James C. Juhnke, “Mob Violence and Kansas Mennonites in 1918,” *Kansas Historical Quarterly* 43 (Autumn 1977): 334–50.

26. Christopher Capozzola, *Uncle Sam Wants You: World War I and the Making of the Modern American Citizen* (New York: Oxford University

U.S. Attorney Robertson remained deeply suspicious of the Mennonites and once characterized the Mennonite community in Hillsboro as “a German settlement that has a reputation of being intensely pro-German.” His office kept a wary eye on church leaders and publishers of German-language newspapers. “These people have caused considerable trouble here,” one of Robertson’s agents reported, recommending that the Department of Justice should “see if we can do something to stop their hinder[ing] the draft by encouraging boys to desert.” Although no Mennonite in Kansas was prosecuted under the Espionage Act, Robertson remained so convinced of their disloyalty that he had Wichita physician Herman Philipp interned as a dangerous enemy alien partly because of his weekly visits to Hillsboro, where he maintained an office. That alone, in the federal prosecutor’s opinion, was “sufficient to justify putting him away until the war is over.”²⁷

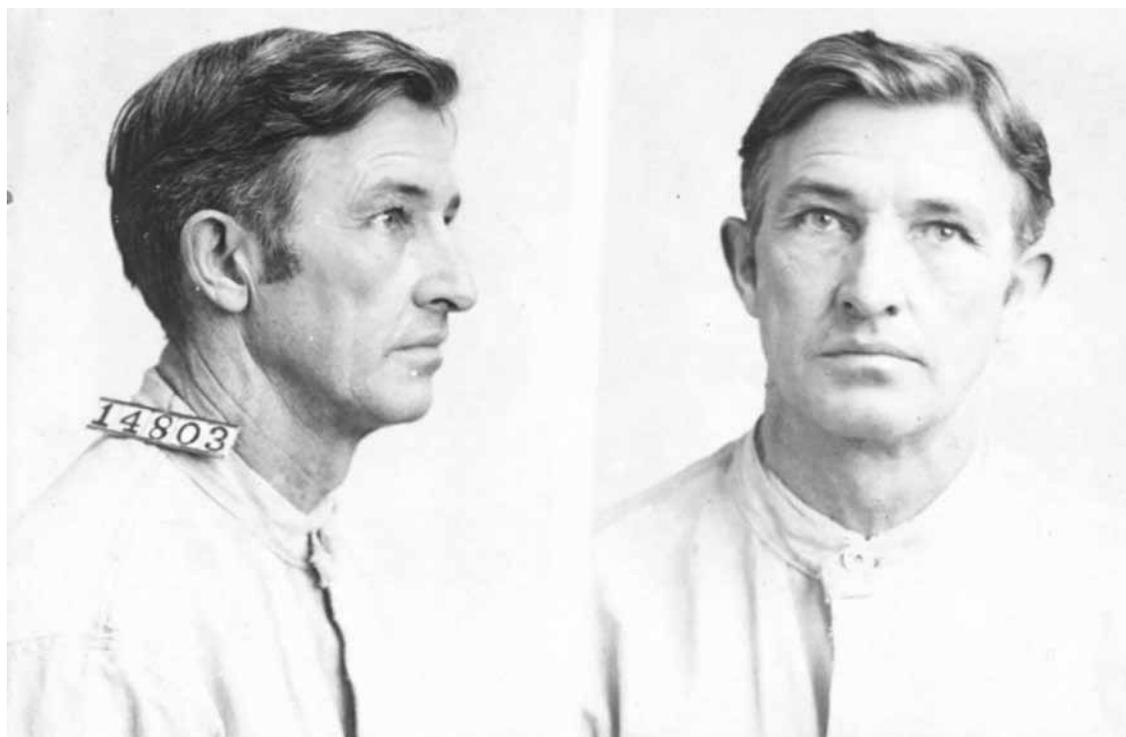
In total war, the economy of the nation is mobilized to produce and transport the munitions, armaments, foodstuffs, and other supplies required to provide for an army of millions of soldiers, both American and those serving under the flags of allies. Founded in 1905, the Industrial Workers of the World (IWW) quickly gained notoriety for its revolutionary industrial unionism and fiery anticlass rhetoric. With the declaration of war, the IWW’s advocacy of direct action and sabotage as tactics in its war with the employing class quickly made it a target of the Department of Justice.²⁸

The IWW began organizing in the Kansas wheat fields in 1915 and in the oil fields in 1917. From the start, Robertson saw the IWW as “an organization wearing the cloak of labor but the heart and purpose of revolution.” He gave credence to every rumor of makeshift phosphorous bombs planted in wheat fields,

Press, 2008), 69; “World War One Conscientious Objectors Database,” Swarthmore College Peace Collection, www.swarthmore.edu/Library.html. A total of 2,000 Mennonites were drafted, and 138 were court-martialed for refusing to accept noncombatant service; see Donald Eberle, “The Plain Mennonite Face of the World War One Conscientious Objector,” *Journal of Amish and Plain Anabaptist Studies* 3 (Autumn 2015): 175–78, 183.

27. Department of Justice, *Reports of the Bureau of Investigation*, Case 106287, Case 29159, and Case 314514, NARA-DC; Walker, “Only the Heretics Are Burning,” 229; and T. R. Schellenberg, “Editor Abraham L. Schellenberg,” *Mennonite Life* 9 (January 1954): 26.

28. Earl Bruce White, “*The United States v. C. W. Anderson, et al.: The Wichita Case, 1917–1919*,” in *At the Point of Production: The Local History of the I.W.W.*, ed. Joseph R. Conlin (Westport, CT: Greenwood Press, 1981): 143–64.



Phineas Eastman, pictured here, was sent by IWW president William “Big Bill” Haywood to assist in organizing the Kansas oilfield workers. Believed by the government to be the most dangerous of the “Wobblies” (a nickname used to describe members of the IWW) standing trial in Kansas City, Eastman was sentenced to seven and a half years in Leavenworth Federal Penitentiary. Courtesy of the National Archives and Records Administration, Kansas City, Missouri.

poisoned stock ponds, and emery dust used to cripple machinery. Believing that the IWW was planning a strike to tie up the oil industry in the southeastern region of the state, Robertson moved against it. On November 20, 1917, Robertson ordered raids on union strongholds in Augusta and Eldorado in Butler County, seizing three mailbags of literature and some one hundred Wobblies, as they became known, on John Doe vagrancy charges.²⁹

Although Robertson admitted that his case against the IWW was weak, failing to tie any of the just over fifty still held in jails to any criminal activity obstructing the war effort in Kansas, the federal prosecutor remained convinced that the union posed a menace to the nation on a par with that posed by imperial Germany. Skirting the

traditional boundaries assigned a federal prosecutor, Robertson confided to Kansas Attorney General Sardius M. Brewster that he planned to keep the men locked away simply because they were “a lot of bad characters in sympathy with a dangerous movement and are really not entitled to their liberty.”³⁰

With two indictments quashed, Robertson’s case against the IWW was salvaged when Judge Pollock, in a breach of judicial ethics, advised the federal prosecutor on how to frame an indictment that would hold up in his court. Coming to trial at the end of 1919, by which time the defendants had been held in jails for two years, Robertson charged twenty-eight Wobblies with four counts each of violating the Espionage Act and the Lever Food and Control Act of 1917. Basing his case strategy on

29. Clayton R. Koppes, “The Kansas Trial of the IWW, 1917–1919,” *Labor History* 17 (Summer 1975): 340; Robertson to Robert T. McCluggage, Butler County attorney, August 17, 1917, *Copies of Official Letters*, reel AR 1608, KSHS; E. B. Chapman, “This Man Sticks to It Until He Wins,” *Dearborn (MI) Independent*, February 14, 1920; and Walker, “Only the Heretics Are Burning,” 168. Under a revamped 1917 Kansas vagrancy law aimed directly at the IWW, authorities could hold any who refused to work for a fair wage or who interfered with the hiring or work of

others for sixty days. For more information, see, “Peace Officers and Sheriffs in Session Today,” *Topeka State Journal*, January 12, 1917.

30. W. A. Blake, assistant U.S. attorney, to T. K. Campbell, Bureau of Investigation, December 1, 1917, reel AR 1612, KSHS; and Robertson to S. M. Brewster, Kansas attorney general, January 10, 1918, *Copies of Official Letters*, reel AR 1614, KSHS.

the theory advanced by Pollock, Robertson argued that the IWW was itself an unlawful organization constituting a conspiracy to violate wartime laws and overthrow the economic system and government of the United States. Membership in the IWW alone was enough to convict the defendants of bringing a criminal conspiracy into the state of Kansas. The jury brought in a guilty verdict, and Judge Pollock sentenced twenty-seven of the men to between three and nine years in Leavenworth Federal Penitentiary.³¹

Robertson harbored no such doubts about his case against the Topeka antidraft radicals. Despite an investigation of the meeting, which unearthed no evidence that the Topekans or Kleihege had advised any young man to refuse to register for the draft, Robertson confidently announced that he had a perfect case against the conspirators. The federal prosecutor possessed evidence that the accused had publicly spoken out against the conscription law, and he had the handbills that had been passed out on Topeka streets announcing the intent of the dissidents to protest militarism, conscription, and "any Despotic Act, imposed upon us by National Legislation." Should the radicals not come to their senses outside prison, Robertson predicted, "they may get a chance to think it over on the inside." He quickly singled out Harding and Gilberg as the ringleaders.³²

Beginning in the early 1890s, Harding and a small group of Kansas women had begun applying their sense of duty to society and transformed local women's clubs from their earlier devotion to charity and religion to a focus on broad-based economic, political, and social

reform. Harding's contemporaries viewed her not as a political ideologue but rather as one who sought "only an avenue by which she can reach those in need of aid and sympathy."³³

Harding was born in Ohio in 1857, and her family claimed the distinction of being the only one in America in which all three female siblings became physicians. In 1882, she established a practice in Atchison, Kansas. Ten years later Harding relocated to Topeka and focused her practice on women and children.³⁴

If there was an underpinning to Harding's activism, it was the belief that women should act as a moral force to remedy the ills of society. In 1893, she organized the Topeka chapter of the Women's Progressive Political League, which railed against the notion that a woman's place was in the home, exclaiming, "When we get our rights we won't care whether the men are pleased or not." A cofounder of the local branch of the National Peace Society the same year, Harding believed that the only way to avert the inevitable struggle between labor and capital, "in which blood will flow all over the country," was to educate working-class women. Once mobilized, they would reject violence and force arbitration, making demands that "those in power, whether in the government or the labor organizations, will not dare to disregard."³⁵

Embraced along with Topekans Mrs. L. O. Case and Mrs. N. W. Lyon by national women's rights advocate Susan B. Anthony as one of her "Kansas Trinity," Harding served as the president of the Topeka Equal Suffrage Association and marched with Carrie Nation in her crusade against the evils of alcohol. She rose in a Topeka courtroom to take on the "Book Trust" when school boards forced parents to purchase often outdated supplementary textbooks for their children, causing hardship for the poor. A believer in women's dress reform, Harding organized squads of "Bloomer Girls" to walk Topeka streets to accustom the public to the new more practical and comfortable fashions. A fierce advocate for Topeka's children, Harding rallied support for child labor laws and donated land to the city for use as the first municipal playground. What she saw while tending to the children

31. One defendant jumped bail, was recaptured, and was tried and sentenced separately in March 1920. American Civil Liberties Union, *The Truth about the I.W.W. Prisoners* (New York: American Civil Liberties Union, 1922), 47; Robertson to Gregory, July 5, 1919, *Copies of Official Letters*, reel AR 1642, KSHS; Walker, "Only the Heretics Are Burning," 328-34; and Koppes, "The Kansas Trial of the IWW," 342-44. For a survey of the brutal conditions of the Kansas jails in which the IWW defendants were incarcerated, see Winthrop D. Lane, "Uncle Sam: Jailer," *Survey* 42 (September 6, 1919): 806-12; and Clayton R. Koppes, "The Industrial Workers of the World and County-Jail Reform in Kansas, 1915-1920," *Kansas Historical Quarterly* 41 (Spring 1975): 63-86.

32. "Perfect Cases, Says Robertson," *Wichita Daily Eagle*, June 1, 1917; "Made 3 Arrests in Topeka Today," *Lawrence Daily Journal-World*, May 31, 1917. A copy of the handbill appears in *The U.S. v. Moore et al.*, Case 4371, NARA-KC. Fred Robertson to Attorney General Thomas Watt Gregory, June 28, 1917, and July 3, 1917, *Copies of Official Letters*, reel AR 1606, KSHS; "Anti-Draft Plot Here Results in the Arrest of 5," *Topeka Daily Capital*, June 1, 1917; "As Bad as Goldman, Says Mr. Robertson," *Wichita Beacon*, April 11, 1918; Department of Justice, *Reports of the Bureau of Investigation*, Case 23228, NARA-DC; and Department of Justice, *Reports of the Bureau of Investigation*, Case 32745, NARA-DC.

33. In 1882, Harding's first name appears in various records as Evilela. Upon establishing herself in Kansas, however, she went exclusively by the name of Eva. For the last appearance of the name Evilela in print in Kansas and the first appearance of Eva, see "New Firm—Lady Physicians" and "Personal," *Topeka Daily Capital*, March 18, 1882. "Arbitration Their Watchword," *New York Times*, May 9, 1893.

34. "Kansas Matters," *Osawatomie (KS) Graphic*, January 28, 1893.

35. "They Want Work," *Wichita Beacon*, June 22, 1893; and "Arbitration Their Watchword," *New York Times*, May 9, 1893.

at the State Reform School twice led her to level charges of cruelty and abuse.³⁶

In 1916, seeking the nomination for a seat in the U.S. Congress first as a Democrat and, after losing the nomination, as an Independent, Harding ran on a platform calling for national prohibition and suffrage, aid for small farmers, old-age pensions, and mothers' pensions for needy women with minor children. Although she felt that she had little chance of winning the nomination, Harding believed that her entry into the race would "blaze the way" for other women to run for national office.³⁷

With the U.S. entrance into the war, Harding's progressive spirit turned to new domestic issues and international concerns. "Now after our children are grown we are advised to be brave, to smile when they are sent to war," Harding reflected. As children, "we are taught 'safety first,' to stop, to look and listen." With war now raging, "that is just what we are doing" when "some fellows get up and tell us to smile when we say good-bye to our children."³⁸

By 1917, Ike Gilberg had long since earned a reputation as the "leader of Topeka radicalism." Born in 1873 in Bialystok, Russia, Gilberg made his way to Belgium, where in 1889 he boarded a Red Star liner bound for New York. Seemingly intent on obfuscating his reasons for fleeing his homeland, Gilberg offered varying accounts of what he described as "my feeble efforts to bring on the revolution." In one telling, he had protested an unjust tax. In another account, he had freed political prisoners while working as a city clerk. In yet another version, he had organized strikes among textile workers. Whatever the reason, Gilberg traveled first to Missouri, where he became a naturalized citizen in 1896. In 1903, he made his way to Topeka, where he established a tailor shop in the basement of the Copeland Hotel.³⁹

Devoted to the emancipation of laboring men and women, Gilberg painted capitalism as an unnatural situation in which the owning class viewed the workers as little more than fodder for their factories and ripe for plunder. Gilberg advocated bolstering wages and shortening the workday and week. He fought for the establishment of municipal warehouses where food and fuel could be purchased and stored when prices were low and then resold for reasonable prices as costs climbed to the point where working-class families could not afford to heat their homes or put milk and bread on their tables. He campaigned for night schools to teach English to the recently arrived immigrants who were filling the labor needs of the industry bosses with little hope of bettering their situation. Seeing organized labor as the most potent weapon available to chasten capitalism, Gilberg served as a national organizer for the Journeymen Tailors' Union.⁴⁰

Although declaring the Russian Revolution of 1917 the "biggest progress stride since the French Revolution," Gilberg advocated change through the ballot rather than the bullet. "The only thing left for the workers," he noted, "is to capture the machinery of government by an intelligent use of the ballot, and to establish a social order under which each worker shall receive the full product of his labor." Twice he unsuccessfully sought public office on the Socialist ticket, filing a petition of nomination as a representative for Nemaha County in 1910 and then entering the race for the Topeka commissioner of parks and public property in 1917.⁴¹

With the onset of the war in Europe, Gilberg began circulating petitions and organizing peace meetings to condemn Wilson's preparedness program and the overseas conflict. Believing that wars were the result of commercial competition between nations with the greed

36. Robert Smith Bader, "Mrs. Nation," *Kansas History: A Journal of the Central Plains* 7 (Winter 1984-1985): 254-55; "A Kansas Trinity," *Leavenworth Times*, November 9, 1895; "Mrs. Nation Again," *Kansas City (KS) Gazette*, February 18, 1901; "Want to Wear Pants," *Wichita Beacon*, September 25, 1894; "Compel Adoption of Standard Books," *Topeka Daily Capital*, May 4, 1912; "Against Charles," *Salina Evening Journal*, August 15, 1905; "Begin Beloit Probe Next Week," *Topeka Daily Capital*, June 18, 1916; and "Deeper Probe in Boys' School," *Dighton (KS) Herald*, April 21, 1916.

37. "Dr. Eva Harding Back in Race to Please Enemies," *Topeka Daily Capital*, August 16, 1916; "A Lady Congressman?" *Harrisburg (PA) Telegraph*, February 21, 1916; and "She Has the Fight," *Salina Evening Journal*, August 26, 1916.

38. "Big Anti-Draft Meeting Here Postponed," *Topeka State Journal*, May 29, 1917.

39. "Organized Labor," *Topeka Daily Capital*, July 27, 1913; "On Second Thought," *Topeka Daily Capital*, January 6, 1915; "Anti-Draft Plot

Here Results in the Arrest of 5," *Topeka Daily Capital*, June 1, 1917; and "Topekans Charged with Draft Plot," *Topeka Daily Capital*, June 2, 1917.

40. "Stores Come In," *Topeka State Journal*, April 27, 1910; "Advocates Two Days for Rest," *Topeka Daily Capital*, April 20, 1910; Ike Gilberg to Editor, January 1913, *The Tailor: Official Organ of the Journeymen Tailors' Union of America* 23 (February 1913): 6-7; "Gilberg Is Success as Union Organizer," *Topeka Daily Capital*, December 14, 1913; and "Appeals to Commission for Municipal Storage," *Topeka Daily Capital*, December 29, 1916.

41. Gilberg and at least four others filing petitions of nominations were apparently unaware that the state legislature had recently renumbered the legislative districts. As the law required that candidates be a resident of the district they sought to represent, Gilberg could not lawfully file a petition for nomination. "Made a Blunder," *Topeka State Journal*, June 23, 1910; "Resolution No. 3 by Local Union No. 120," *The Tailor* 15 (January 1905): 5-6; "Gilberg Would Be Deported," *Topeka Daily Capital*, June 3, 1917; and "Gilberg Out after Porter's Goat," *Topeka Daily Capital*, February 9, 1917.



Raymond Moore, shown here, was a member of the FDC who helped organize and participated in the May 27 anticonscription meeting. Speaking first, Moore urged Kansans to organize and file a lawsuit attacking conscription as unconstitutional, arguing that if enough draft-age men refused to register, the government would recognize the futility of the law. Courtesy of the National Archives and Records Administration, Kansas City, Missouri.

of capitalists steering their country toward war or peace as best suited them, Gilberg argued that it did not matter which side emerged victorious when the guns fell silent. "The ones who will suffer," he said, "will be the common people who are in the battle array of both sides."⁴²

Upon their arrests, Harding and Gilberg struck a defiant stance. Harding refused to post bond or secure counsel. "What is the use of retaining counsel if we can be arrested for talking about peace?" she stated. Gilberg, reflecting back to the persecution he had experienced in czarist Russia, stated that being sought on an unjust charge was an old story for him. Making light of the accusation of disloyalty, Gilberg noted, "That's all right, I haven't kept the bread out of the mouths of any children." Acknowledging the possibility that if he were convicted,

the government could strip him of his citizenship and deport him, Gilberg stated that if such were his punishment, his only request was that his wife and children be cared for. His comment earned a satirical retort from Robertson that he did not wish to talk about deporting Gilberg, as he had nothing against Russia, which was still an ally.⁴³

Gilberg, who in the words of one observer had run his tailor shop "as a sort of a side line" while "devoting most of his time to the cause of people," was unable to raise the \$2,000 bond and remained in the county jail until he was bailed by sympathizers. Harding, however, relented after only several hours. She quickly voiced a protest by lowering the American flag flying at her home, proclaiming that it had been so torn by the actions

42. "Protest against War and High Cost Living," *Topeka Daily Capital*, August 20, 1914.

43. "Anti-Draft Plot Here Results in Arrest of 5," *Topeka Daily Capital*, June 1, 1917; and "Arrests Made in Topeka," *Topeka State Journal*, May 31, 1917.

of its agents “who seek to suppress the things that it stands for” that she would not fly it again until things changed. Under threat of rearrest for violating a 1915 state statute outlawing public contempt for the flag, Harding quickly again raised the banner, stating that it had been her intention to protest those who were only too eager to misconstrue her words and actions as anything other than patriotic. Responding to a letter sent by one of Harding’s defenders, Robertson commented that despite the doctor’s explanation, he was unable to attribute this latest move “to her altogether patriotic motives.”⁴⁴

On June 7, 1917, the five Kansans made their preliminary court appearance before a U.S. commissioner. Felten stood accused of serving as the secretary of the meeting and Newman of chairing it. The government charged Gilberg with authoring and arranging for the printing of the “seditious” handbills. Harding, the government alleged, had circulated the handbills while making anti-war speeches and advocating the establishment of an organization to aid those refusing to register for the draft. Kleihege was charged not with an overt act but with being in accordance with and acquiescing to the views of the conspirators by seconding their motions.⁴⁵

The tone of the hearing was set when a crowd of women arrived to show their support for Harding. Although the Missouri defendants were not present, witnesses testified that the meeting had generally served as a forum for the FDC. “Did you hear Doctor Harding and Kleihege talking against registering or conscription?” one of the defense lawyers asked Robert T. Reed of the *Kansas City Star*. “I do not remember them doing so,” Reed replied. “What about Gilberg?” the lawyer asked, to which Reed responded, “Gilberg’s activities seemed confined to taking up a collection.”⁴⁶

The moment awaited by the women in the courtroom came when Harding took the stand. Although she had steadfastly refused to retain counsel, Jacob “Jake”

Sheppard, a socialist attorney from Fort Scott, Kansas, who served as the chief of staff for the lawyers assembled for the defense, took on the role of Harding’s advocate. Dismissing the accusation of disloyalty, Sheppard demanded that Harding be set free. The only crime evident in the courtroom that day, Shepard pronounced, was that “instead of one, there should be forty Doctor Hardings in every town of Kansas,” at which the women in the courtroom burst into applause. The commissioner bound all the defendants over to the grand jury.⁴⁷

Local newspapers, which earlier had denounced the opposition to the draft law as not only “unpatriotic but akin to treason,” now trumpeted the innocence of the Kansans and the culpability of the FDC. On October 13, a grand jury, however, returned indictments against Harding, Gilberg, Newman, Kleihege, Moore, Warneson, and the absent Browder, who, as good as his word, was serving a one-year sentence for refusing to register for the draft. Neither Felten nor Kleinschmidt was indicted, as both had agreed to testify for the government.⁴⁸

On December 6, 1917, the government opened its case against Moore, Warneson, Browder, and six others, including Browder’s brothers William and Ralph, who were charged with conspiring to obstruct the draft in Missouri. Presiding judge A. S. Van Valkenburgh focused the case on the issue of patriotism. The constitutional right to free speech, he admonished the jury, “cannot be made a cloak for deliberate or intentional lawbreaking.” With the scrutiny of First Amendment rights removed, Van Valkenburgh branded the defendants with an image of secrecy and evil plotting and cautioned that it was rare that a conspiracy could be proven directly, as those who band together to do wrong seldom act openly in such a manner as to furnish direct evidence of their purposes.

44. R. E. McIntosh, ed., *General Statutes of Kansas, 1915*, Article 12, § 3706 (Topeka: Kansas State Printing Plant, 1922), 308; “On Second Thought,” *Topeka Daily Capital*, August 9, 1912; “Topekans Charged with Draft Plot Are out on Bonds,” *Topeka Daily Capital*, June 2, 1917; “Eight Persons May be Caught in Topeka’s Net,” *Topeka State Journal*, June 1, 1917; and Robertson to Miss Ann B. Ingham, June 4, 1917, *Copies of Official Letters*, reel AR 1605, KSHS.

45. *United States v. Raymond I. Moore et al.*, Case No. 4371 (W. D. Mo., December 17, 1917), NARA-KC; Robertson to Gregory, June 28, 1917, *Copies of Official Letters*, reel AR 1606, KSHS; and “The Grand Jury Indicts Many Resisters,” *Arkansas City (KS) Daily Traveler*, October 12, 1917.

46. “Topekans Did Not Start Draft Plot Testimony Shows,” *Topeka Daily Capital*, June 8, 1917.

47. “Court Filled with Women,” *Topeka State Journal*, June 8, 1917; and “Sheppard Defends Her,” *Fort Scott (KS) Daily Tribune and Fort Scott Daily Monitor*, June 8, 1917.

48. “The Co-ops Condemn Anti-Draft Meeting,” *Topeka Daily Capital*, May 30, 1917; “Topekans Did Not Start Draft Plot,” *Topeka Daily Capital*, June 8, 1917; and “Lawrence Man’s Acquittal Likely,” *Lawrence Daily Journal-World*, June 8, 1917. At the entreaties of his sister, Moore registered for the draft. Suffering partial paralysis of the hand, he would have received a Class V deferment. “Tears of Sister Won the Slacker,” *Wichita Beacon*, June 5, 1917. During the U.S. attorney’s investigation, it was reported that Felten was a “confidential operative” with a private Kansas City, Kansas detective agency and was “roping in” with the socialist community for the Santa Fe Railway. Department of Justice, *Reports of the Bureau of Investigation*, Case 23228, NARA-DC.



Just after urging clemency for socialist leader Eugene V. Debs, this May 15, 1920, photograph shows attorneys George E. Roewer and Seymour Stedman leaving the White House. Two years prior, Stedman had headed the defense for Isaac Gilberg, Eva Harding, Ernest Newman, and George Kleihege. Stedman denied that his clients had conspired to obstruct the draft, arguing that they were loyal Americans concerned only with economic questions arising from the mobilization of drafted and enlisted men. On April 12, 1918, after a one-hour deliberation, the jury issued a verdict of not guilty on all counts. Courtesy of the Library of Congress, Prints and Photographs Division, Washington, D.C.

The prosecution needed only to show that a conspiracy was not improbable. Likening the soldiers the defendants had attempted to dissuade from fulfilling their duty to the “instrumentality of the Almighty,” the judge declared in apocryphal language that should the nation fail to raise an army to protect women and children on foreign shores, it would inevitably have to do so at home.⁴⁹

It took the jury only fifteen minutes to declare all the defendants guilty. Judge Van Valkenburgh handed down a sentence of two years and a \$1,000 fine against Moore, Browder, and the six others. The judge imposed only a fine on Warneson, who had arrived in court each day cradling

her four-month-old child in her arms. Van Valkenburgh declared that although he considered Warneson the guiltiest of all the conspirators, “the court does not desire to set the precedent of sending infants to jail.” The improper treatment of children, Van Valkenburgh moralized, should be left to “the enemies of our country in this war.”⁵⁰

Although the Kansas case was set for January 1918, presiding judge John C. Pollock postponed the proceedings to consider the double-jeopardy petition of the Missouri defendants, which the court granted. The trial of the remaining defendants finally began in federal court in

49. Judge Van Valkenburgh’s instructions to the jury appear in U.S. Department of Justice, “Charge to the Jury of the U.S. District Court, Western District of Missouri,” *Interpretation of War Statutes*, Bulletin No. 38 (Washington, DC: Government Printing Office, 1918), 1–20.

50. “Resisters Go to Prison,” *Wichita Beacon*, December 7, 1917; “9 Convicted of Draft Conspiracy,” *Butler (MO) Weekly Times*, December 13, 1917.

Topeka on April 11. Robertson handled the prosecution, and Seymour Stedman, a socialist attorney from Chicago, headed the defense. Robertson attempted to paint a broad picture of the Topeka meeting as being in direct violation of the conscription law and “of an anarchistic nature.” Stedman emphatically denied that there was a conspiracy to obstruct the draft, arguing that the defendants’ sole concern was to discuss economic questions arising from the mobilization of drafted and enlisted men.⁵¹

Stedman admitted the defendants’ roles in the meeting but argued that they were loyal Americans. Kleihege continued to deny that he had advised any man to refuse to register for the draft and testified that he had centered his address on the need to elevate children of the working class to equality with those more fortunately born. Gilberg maintained that his wording of the handbills was nothing more than a “clever dodge” intended to attract a crowd rather than to incite antagonism toward the draft. Denying that she was opposed to conscription or had any intention of causing excitement over the law, Harding asserted that she had attended the meeting believing that its purpose was to discuss the hardships faced by families left to cope with the loss of the major, and often the sole, breadwinner once the men had been transported to army camps.⁵²

Felten’s testimony that Moore had encouraged Kansans to mount a legal action to test the constitutionality of the draft law was countered by Newman, who asserted that Harding had openly opposed any such action. *Topeka State Journal* reporter P. C. Powell testified that although Gilberg had taken up a collection, he could not say whether the monies were intended to promote antidraft propaganda, as he had “left very quickly.” Another witness, responding to the question of how many draft-age men had been present, answered that he could not form an estimate, but most in attendance had been women. Kleinschmidt, while acknowledging that the FDC had distributed anticonscription literature, under cross-examination admitted that while he was familiar with the material, “it was foreign stuff to the people of Topeka.”⁵³

With both sides resting their cases, Pollock issued his instructions to the jury. Unlike Judge Van Valkenburgh in the Missouri trial, Pollock showed no tendency to appeal to the patriotism and bias of the jury. He began by acknowledging that war inflamed passions and prejudices that could sway men to fix the boundary line of punishable speech at a point that made all opposition to the war a crime. Pollock appealed to the jury to decide the case solely on the “cold, clammy facts.” If the court could try the accused wholly removed from any thought of the war, “the nearer justice will be done in this case.” The defendants stood charged with entering a conspiracy to induce men to refuse to register for the draft. Conspiracy literally meant to breathe together. So far as the case was concerned, Pollock cautioned, the defendants as individuals and not acting in concert with one another had the right to say anything whatsoever regarding the engagement of the country in the war. On April 12, after deliberating for one hour, the jury returned a verdict: not guilty on all counts.⁵⁴

With his acquittal, Kleihege made one last unsuccessful run as the Socialist candidate for Kansas governor in 1918. In October of that year, he accepted the position of superintendent of the Hoisington, Kansas, public schools. Felten continued as an organizer for the machinists’ union. Newman seemingly vanished from the historical record.⁵⁵

With the conclusion of the trial, Gilberg, although not abandoning radical politics, seemingly became more introverted and kept his views to himself. In 1919, for example, he remained silent when Kansas coal miners called a wildcat strike. He emerged only after a local newspaper reported that Gilberg had denounced the strike as treason and the most “damnable act” ever committed against the government and the public. Firing off an open letter to the editor, Gilberg lashed out at the local daily. “My private opinion” in the controversy, Gilberg noted, “is for the benefit of humanity and not for the profit mongers.” Gilberg closed the letter with the statement “I shall never turn my face from the sun,” as “I’m the same Ike as always for the underdog.”⁵⁶

51. As there are no extant transcripts of the trial, the press coverage provides the only detailed accounts. “Anti-Draft Cases May Reach Jury This Afternoon,” *Topeka Daily Capital*, April 12, 1918.

52. “Jury Clears All Defendants in Anti-Draft Cases,” *Topeka Daily Capital*, April 13, 1918; and “Topeka Club Worker Denies Disloyal Act,” *Salina (KS) Evening Journal*, April 12, 1918.

53. “Anti-Draft Cases May Reach Jury This Afternoon,” *Topeka Daily Capital*, April 12, 1918; and “Dr. Eva Harding and Others Being Tried in Topeka,” *Leavenworth Times*, April 12, 1918.

54. Judge Pollock’s instructions to the jury appear in Walter Nelles, ed., *Espionage Act Cases with Certain Others on Related Points* (New York: National Civil Liberties Bureau, 1918), 18–19.

55. “Fact and Comment,” *Topeka Daily Capital*, June 16, 1918; “He May Not Run,” *Kansas City Kansan*, June 27, 1918; and “Goes to Hoisington,” *Daily Gazette* (Lawrence), October 17, 1918.

56. “Strike Is Treason,” *Topeka State Journal*, November 8, 1919; and “He’s the ‘Same Ike,’” *Topeka State Journal*, November 10, 1919.

A devout follower of spiritualism prior to the war, Gilberg had frequented séances and meetings of the Psychic Research Society while claiming the ability to capture images of spirits on film. He now returned to the Topeka stage to demonstrate his psychic abilities.⁵⁷

Gilberg also threw himself into supporting Topeka's Jewish community. He lectured on the "Jewish situation" and served as the city's ad hoc rabbi. He chaired the building and publicity committees formed to erect a new synagogue and served as president of the Zionist District of Topeka. In between his activities, Gilberg played Santa Claus for the children of the Pottawatomie Nation. Shortly after the war, former Topeka mayor Jay E. House, reflecting on Gilberg's commitment to helping others, recognized the discernible sense of sincerity and passionate belief that drove the radical. Admitting that he had never lost an opportunity to take the tailor to task for his viewpoints and methods and that he neither understood nor approved of them, House noted that he nevertheless found Gilberg "an altruist with a heart of gold," plagued only by "a head that never held a practical idea."⁵⁸

After her acquittal, Harding continued the fight to win political office. Running for the U.S. Senate on the Socialist ticket in 1918, she lost in the Republican landslide that swept Arthur Capper into the U.S. Senate and Henry J. Allen into the governor's office. Harding again entered the Senate race in 1920, and her name appeared on the primary election ballot. By this time, however, her health was failing because of overwork during the influenza epidemic, when she had devoted herself to treating the city's poor. Retreating to her cottage on the city's west side, Dr. Eva Harding died on July 27, 1920. Never giving "a rap whether the whole country was against her," noted one eulogist, "if she believed she was right she started to fight and fight hard."⁵⁹

57. "Photographs 'Spirit World,'" *Topeka Daily Capital*, August 26, 1917; "Tailor Is Clairvoyant," *Fort Scott (KS) Daily Tribune and Fort Scott Daily Monitor*, December 18, 1922.

58. Lee Shai Weissenbach, *Jewish Life in Small-Town America* (New Haven, CT: Yale University Press, 2005), 287; "Gilberg to Speak," *Topeka Daily Capital*, January 5, 1919; "Topeka Jews to Build New \$25,000 Synagogue," *Topeka Daily Capital*, February 4, 1920; "Shapiro Heads Zionists," *Topeka Daily Capital*, September 26, 1921; and "On Second Thought," *Topeka Daily Capital*, March 23, 1919.

59. "Dr. Harding in Race," *Topeka Daily Capital*, June 27, 1918; "Dr. Harding is Ill," *Topeka Daily Capital*, May 6, 1919; "Socialists File Ticket," *Topeka Daily Capital*, June 22, 1920; "Fact and Comment," *Topeka Daily Capital*, July 4, 1920; and "Dr. Harding Dies," *Abilene Daily Chronicle*, July 28, 1920. See also Kansas Election Statistics, General Election, November 5, 1918, <https://drive.google.com/file/>

The Kansas and Missouri trials illustrate how much room for judicial bias the bad-tendency standard allowed. Coupled with the assumption that the speaker intended to cause harm to the government, it allowed judges and juries wide latitude to punish spoken and written words with which they disagreed without being deflected by legal niceties requiring evidence of any actual danger or effect of those words.

In light of Judge Pollock's break with judicial ethics in the case against the IWW, it is difficult to view his instructions to the jury in the antidraft conspiracy case as evidence of anything akin to a progressive attitude. It is more likely that Pollock and the jury were influenced by popular perceptions. Although the mechanical patriotism of the local mainstream press never wavered, editors had argued the innocence of the Kansans with equal conviction, even noting that prior to the indictment, it was believed by many that the Topeka people would be turned loose. Dr. Harding in particular had attempted to cast off any suspicion of disloyalty. She had even arrived for her preliminary hearing with Elizabeth Barr, a well-known Topeka poet who made headlines in 1913 when she became one of the first two women appointed a city police officer. With the declaration of war, Barr displayed an unwavering patriotism, serving briefly as a police officer at Camp Funston and then taking on an active role in the sale of liberty bonds while delivering speeches supporting conscription. Harding mounted a defense that celebrated rather than sacrificed her womanhood, centering upon her concern for the struggle of women and children attempting to survive under difficult conditions thrust upon them by their willing support of the draft.⁶⁰

The emotions of war unleashed an unprecedented number of attacks on unpopular speakers nationwide. Between 1917 and 1919, some 2,000 dissidents were prosecuted under the Selective Draft and Espionage Acts for disloyal speech, resulting in 1,055 convictions. There

[d/0B0hc6bdmIWJbEtp-OVBsb2duTG8/view](https://drive.google.com/file/d/0B0hc6bdmIWJbEtp-OVBsb2duTG8/view); and <https://drive.google.com/file/d/0B0h-c6bdmIWJeWExcThhYmlmcTg/view>. Harding received only 11,429 votes of some 443,000 cast. As the lone Socialist contender on the 1920 primary election ballot, Harding tallied 746 votes, even though she had died the week before. Dan Beedy was the Socialist Party's nominee on the November 1920 general election ballot.

60. "Harding, Gilberg and Newman Are Indicted by Jury," *Topeka State Journal*, October 12, 1917; "Sheppard Defends Her," *Fort Scott Daily Tribune and Fort Scott Daily Monitor*, June 8, 1917; "Women Police," *Topeka State Journal*, May 15, 1913; "Social and Personal," *Topeka Daily Capital*, October 24, 1917.

were certainly those who worried that handing down harsh sentences for distributing a leaflet or making a speech advocating an end to war could result in the creation of martyrs. Far more, however, believed in the use of fear as a weapon to enforce loyalty. U.S. District Attorney Robertson reported his own belief to Attorney General Gregory that I. T. Boutwell was “more or less vicious” and of “that type that he would like to become a martyr.” In an attempt to thwart any attempt by Boutwell to use his arrest as a soapbox, Robertson wrote to the arresting officer to ask him to be sure “the Topeka newspaper boys” knew of the matter and to keep Robertson informed so that he could publicize the arrest with the Kansas City newspapers. “I believe if the public finds out that they do not dare to distribute this kind of literature,” Robertson predicted, “it would be a very wholesome thing.”⁶¹

The rule of double jeopardy, which holds that a defendant cannot be retried for the same offense following an acquittal, shut the door on an appeal from Robertson in his case against the Kansas antidraft conspirators, no matter how mistaken the prosecutor believed the decision to have been. Although the Kansans, even if they had been so inclined, had no further opportunity to use the courtroom as a platform, by taking a stand against the Wilson administration’s abuse of executive power, they ultimately forced the courts and the nation to grapple with the meaning of free-speech rights.

The First Amendment was a virtual nonissue for local and state courts at the beginning of the twentieth century. Not until World War I unleashed a flood of prosecutions did

the U.S. Supreme Court begin to explore the implication of the constitutional guarantee of freedom of speech. In rapid succession, four cases appealing convictions for violating the Espionage Act appeared on the court’s docket in 1918. All were decided the following year, with the justices rejecting the defendants’ First Amendment rights on the grounds that “as long as men fight,” Congress had the right to legislate against speech that presented “a clear and present danger” to the nation.⁶²

In the last of the four cases to come before the Court, *Abrams v. U.S.*, Justice Oliver Wendell Holmes, joined by Justice Louis Brandeis, offered a powerful dissent. Holmes now stated his belief that free speech should be limited only when it clearly posed an imminent danger to the nation and that it should not be curtailed on the grounds that it might indirectly lead to any possible future harm. “The ultimate good desired is better reached by free trade of ideas,” Holmes wrote. He attempted to urge his brethren to support the primacy of First Amendment protection, arguing “that the best test of truth is the power of the thought to get itself accepted in the competition of the market.”⁶³

In the years following *Abrams*, the U.S. Supreme Court struggled to define the proper level of protection for dangerous speech. For the next half century, the clear and present danger test remained the standard by which First Amendment cases would be adjudicated. Yet after *Abrams*, no judge would be able again to make a determination without a concern for free speech. [KH]

61. W. G. Ross, *World War I and the American Constitution* (New York: Cambridge University Press, 2017), 294; and Robertson to Gregory, July 3, 1917, and Robertson to C. C. Jackson, U.S. deputy marshal, July 6, 1917, *Copies of Official Letters*, reel AR 1606, KSHS.

62. *Schenck v. U.S.*, 249 U.S., 52 (1919).

63. *Abrams v. U.S.*, 250 U.S., 630 (1919).