The Ves Hall Case, Judge Bourquin, and the Sedition Act of 1918

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During World War I, an extraordinary amount of hysteria prevailed in Montana. Citizens conducted a frenzied campaign to find and punish supposed traitors and spies. One of the men who dared to oppose the "super-patriots" was Federal District Judge George M. Bourquin. His ruling in the case of the United States vs. Ves Hall had a marked effect on subsequent events in Montana and was instrumental in the passage of stringent federal legislation designed to suppress the opponents of war.

Several factors contributed to the absence of reason in Montana. During the war, labor, long-subdued, fought management. In retaliation, the Montana press, which was largely controlled by the mining companies, waged a relentless campaign in favor of the war effort and adamantly opposed to dissent. The companies viewed as treason any attempt to change the status quo. Montana contributed

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2 In 1917, the Anaconda Copper Mining Company owned the Butte *Daily Post* and the Anaconda *Standard*. The *Daily Missoulian*, Helena *Independent*, Miles City *Star*, Billings *Gazette*, and Great Falls *Tribune* maintained an editorial point of view similar to that of the company-owned papers. Eventually, all of them, with the exception of the *Tribune*, became company-owned. Most weekly newspapers in Montana adopted similar policies because their existence depended on county printing contracts. The Anaconda Company utilized its vast political and economic power to pressure these newspapers to follow the company line. For further information, see Richard Ruetten, "Anaconda Journalism: The End of an Era," *Journalism Quarterly*, Winter, 1960. See also John M. Schiltz, "Montana's Captive Press," *Montana Opinion*, June, 1956, pp. 1–11.

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more soldiers per capita to the war than any other state in the Union and was among the leaders in the purchase of Liberty bonds. A major portion of the populace viewed with suspicion the large foreign-born element in Montana. The militant Industrial Workers of the World (IWW), the most vociferous opponent of war, was active in the state and became a convenient target for the leaders of industry.

During this period, United States District Attorney Burton K. Wheeler became the champion of labor and agricultural organizations. The Anaconda Copper Mining Company, the dominant economic and political power in the state, strove to crush him. The company's efforts to discredit Wheeler and thus bar his reappointment concentrated on his record of enforcement of the National Espionage Act of 1917 and the Selective Draft Act. Wheeler refused to be stampeded into mass indictments against those considered "slackers" and "seditious" by the chauvinists of Montana.

Judge Bourquin also refused to be intimidated by the war enthusiasts. Born on June 24, 1863, near Tidionte, Warren County, Pennsylvania, he attended the schools of Warren and Crawford

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8 For example, in pledges to the third Liberty Loan, Montana ranked third among all states by buying 195.9 percent of its quota (Annual Report of the Secretary of the Treasury on the State of the Finances 1918 [Washington, D.C., 1919], 8). By a yet unexplained mistake, the selective service quota for Montana was based on a population figure of 952,478, while Montana's actual population in 1917 was estimated at 496,131. Thus, per capita, more Montanans served and died during World War I than did men from any other state. Also, more Montanans volunteered, per capita, for service in the armed forces than did men from any other state. See Joseph K. Howard, Montana: High, Wide, and Handsome (New Haven, 1959), 203. See also figures in Governor Stewart's address to the Farmer's Union, Great Falls Tribune, Feb. 4, 1918.

9 For the national origin distribution at Butte, see exhibits E and F in B. F. Swisher to the Provost Marshall General, Oct. 10, 1918, National Archives, Department of Justice File 186233-61-30 (hereafter cited as DJ).


7 See Testimony of Hearing Held at the State Capitol, Helena, Montana, May 31, June 1–2, 4–5, 1918, by Montana Council of Defence in connection with the arrest of Von Waldru, alias Charles Stone, by federal authorities and also in connection with an investigation of charges against Oscar Rohn, MSS, State Historical Society of Montana Library, Helena, 1,473 pp. Over 300 pages depict an attempt to smear Wheeler, led by J. Bruce Kremer and L. O. Evans, members of the council and attorneys for the Anaconda Company.

Judge Bourquin and the Sedition Act

Judge Bourquin has been described by his contemporaries as vain, arrogant, irascible, yet merciful, fair, and just. He was an imposing figure, both in stature and personality. His oratorical prowess impressed all who heard him. He was an outstanding jurist who demanded excellent and thorough preparation from all lawyers who practiced before him. “He was what some of us used to call a ‘slave driver,’” wrote Burton K. Wheeler. In spite of his heavy schedule, his decisions and instructions to the jury were “given careful consideration. Litigants knew that his judgments were humane, righteous, and according to law.” He was an austere individual and had no intimate friends. When he dined, he would ask the waitress to turn up the other chairs around his table so that no one could join him. In contrast to this image, he possessed a fine sense of humor. “Once when a defendant charged with a minor liquor violation had been tried before him without a jury, and the time had come for the court to render judgment, he said, ‘The court finds you not guilty, but don’t do it again.’” One of his favorite statements was, “This Court may be wrong, but not in doubt.” The prose in his written decisions was rolling and almost Victorian and revealed individuality, inde-

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10 Wheeler to Patrick Sherlock, April 21, 1967. Letter in possession of author.


12 Ibid.

13 Ibid.


16 Montana counties. After teaching for a year in those schools, he left at the age of eighteen for Aspen, Colorado. He spent three years in Colorado and was employed there as a cowboy, miner, and smelterman. In June, 1884, he came to Butte, Montana. In that rapidly growing town, he worked in the silver mills and later was a hoisting engineer at various Butte mines. In 1888 he ran unsuccessfully for the office of clerk and recorder of Silver Bow County. In 1890 President Harrison appointed him receiver of public money in the United States land office at Helena, Montana, a position he held for four years. Having begun the study of law in 1889, he was admitted to the Montana Bar in 1894. In 1904 he was elected judge of the state district court for Silver Bow County. In 1912 he was appointed United States District Judge for Montana by President William H. Taft. 8
pendence, and strong belief in the rights of the individual vis-à-vis the government.  

Bourquin exasperated the Justice Department and the patriots of Montana by his rulings in "slacker" cases. Highly unusual procedures occurred in his court. In one case, at the conclusion of the testimony and arguments, Bourquin had a talk with the jury. He stated that he would allow the case to go to them, but that his personal opinion was that the evidence was not sufficient to find the defendant guilty. In another case, upon the return of a verdict of guilty, he directed the counsel for the defense to demand a new trial, because he was of the opinion that the evidence presented was not sufficient to justify the verdict. After losing a series of cases, Assistant District Attorney James Baldwin asked for more time in order to prepare; Judge Bourquin granted his request and allowed him an hour and a half.

Bourquin came under heavy attack. James H. Rowe, chairman of the local draft board for the city of Butte, described Bourquin as "the one United States District Judge who apparently regards delinquency under the Selective Service law with the ambiable [sic] unconcern with which a normal citizen might view the eccentricities of a harmless and benignant mental defective." "By some fatal coincidence," Rowe continued, such a man "is presiding... over this very Federal District where relentless and certain punishment of evasion of the duties of citizenship is a paramount necessity." Rowe complained about the judge's rulings and viewed them as nullifying "every attempt of the City and State to enforce the Selective Service Law."  

Representative Jeannette Rankin and United State District Attorney Burton K. Wheeler were also favorite targets of the Montana newspapers. Jeannette Rankin earned the enmity of the business interests by her stand in support of the demands of labor and in opposition to the Anaconda Company. She angered others by her vote against America's entrance into World War I. The press criticized


15 Memorandum to Mr. Bettman, Feb. 13, 1918, DJ 189730-2.  
16 James H. Rowe to John Speed Smith, Chief Naturalization Examiner, Seattle, Wash., Jan. 31, 1918, DJ 189730-1½; also Rowe to Senator Henry L. Myers, Jan. 31, 1918. Myers sent the letter to the Department of Justice on Feb. 9, 1918, DJ 189730-1½.  
17 Ibid.
Wheeler for his "viewpoint and idea of finding certain law to cover minutely every point involved when a person is jailed." 18 The Butte Miner called for the elimination of governmental red tape and the immediate prosecution of the "seditious." 19 The mining companies attributed labor's unrest during the period to the IWW, which they regarded as a major hindrance to the war effort. At this time, the Anaconda Company's press was not as concerned with the punishment of individual slackers as it was with encouraging a move by the federal government to crush the opponents of war, specifically the IWW. 20

The act which district attorneys throughout the country were using effectively to suppress sedition was the National Espionage Act of June 15, 1917. This act outlawed the making of "false statements" intended to interfere with the operations or success of the armed forces or to promote insubordination within their ranks. It also made it a federal crime to obstruct the recruitment and enlistment of men for the services. 21

In late January, 1918, the first case of alleged violation of the Espionage Act went to trial in Montana. Ves Hall, a rancher from Rosebud County, was arrested for uttering seditious remarks. Hall had said that he would flee the United States to avoid the draft and that he hoped Germany would defeat the United States. He described President Wilson as a "British tool, a servant of Wall Street millionaires, and the richest and crookedest — ever President." Hall also said that the Germans had a right to sink ships and kill Americans without warning. 22

Assistant District Attorney Homer G. Murphy, who prosecuted the case due to Wheeler's absence from the state, charged that Hall had violated section three of the Espionage Act in that he did "make and convey false reports and false statements with intent to interfere with the operation and success of the military and naval forces of the

19 Butte Miner, Aug. 6, 1917.
22 Stenographer's copy of Bourquin's oral decision, attached to Wheeler to Attorney General Thomas Gregory, March 11, 1918, DJ 189730–9; also in U.S. vs. Ves Hall, 248 Federal Reporter, 150–151.
United States and to promote the success of its enemies”; and that he did “cause and attempt to cause insubordination, disloyalty, mutiny, and refusal to duty in the military and naval forces of the United States, and obstruct the recruiting and enlistment service of the United States, to the injury of the service of the United States.”

The Helena Independent reported:

Assistant District Attorney Homer G. Murphy prosecuted the cases and made a hard fight to convict the men. Evidence was produced, as cited by the court in handing down the opinion which was conclusive—that... [Hall]... had been guilty of doing about all the talking, lying, falsifying and villifying with which...[he]...was charged.

Wheeler considered the case weak. Ten days before the trial commenced, on January 14, 1918, he asked the Department of Justice for authorization to obtain a stenographic record of the testimony. “It is desirable to preserve the records in this case by reason of the rulings of the Court heretofore in slacker cases.” Wheeler proved to be clairvoyant. On January 27, Bourquin, granting defense attorney Matt Canning’s motion for a directed verdict, acquitted Ves Hall.

Judge Bourquin explained his ruling, because he believed it necessary to interpret the Espionage Act “to the end that a precedent be established.” He found Hall’s slanderous statements “unspeakable” but could not justify a verdict of guilty. Hall had made his statements at a small Montana town of sixty people, sixty miles from the nearest railroad with “none of the armies or navies within hundreds of miles.” He had made the declarations in a hotel kitchen, at a picnic, in the street, and in a “hot and furious saloon argument.” Bourquin found no proof of intent to interfere with the military. He illustrated his decision with the statement that if A shot at B with a .22 pistol from a distance of three miles, A could not be convicted of attempted murder.

Judge Bourquin felt that Hall had intended to obstruct the recruiting and enlistment services of the United States, but he found that this was not a crime under the Espionage Act. The act was not intended “to suppress criticism or denunciation, truth or slander, ora-

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23 Ibid., 150–154.
24 Helena Independent, Jan. 27, 1918.
25 Burton K. Wheeler with Paul F. Healy, Yankee from the West (Garden City, 1962), 152.
tory or gossip, argument or loose talk.” Loose talk and slander of
the president were not federal crimes, and thus Hall could not be
punished for them. Bourquin added that such slander should be
punishable by law:

But, since the sedition law had its share in the overthrow of the Federalists
and in the elevation of Jefferson to the Presidency and his party to power,
Congress has not ventured to denounce as crimes slanders and libels of
government and its officers. The genius of democracy and the spirit of our
people and times seem yet unable to avoid greater evils than benefits from
laws to that end.28

Bourquin had refused to punish saloon and kitchen gossip. His strict
interpretation of the act and his jealous protection of individual
rights and free speech infuriated the zealous supporters of the war.
Bourquin lent his staunch support to the position held by District
Attorney Wheeler whose reappointment was pending. He condemned
those who unjustly criticized district attorneys for failure to prose-
cute where they could not. He denounced those who attempted to
oust them or defeat their reappointments.29

In another decision, Bourquin revealed his attitude toward “super-
patriotism.” A man had been sentenced to ten to twenty years at hard
labor and fined $500 plus costs for his refusal to kiss the flag. The man
had stated: “What is this thing anyway? Nothing but a piece of cotton
with a little paint on it and some other marks in the corner there.
I will not kiss that thing. It might be covered with microbes.” Bour-
quin stated that the man “was in the hands of one of those too com-
mon mobs, bent upon vindicating its peculiar standard of patrio-
tism.” He reflected that patriotism, just as religion, was seldom
censured for its excesses. But when patriotism descended to fanati-
cism, it was as reprehensible as “the massacre of St. Bartholomew, the
tortures of the Inquisition, the fires of Smithfield, the scaffolds of
Salem.” He labeled the “patriotic” mob as “heresy hunters and witch
burners” and concluded his discussion with the observation that they
had attempted repeatedly in his court to prostitute the Federal Espi-
ionage Act in order “to wreak private vengeance and to work private
ends.”30

The decision in the Hall case created a furor which led to immedi-

28 Ibid., 151.
29 Ibid., 153.
ate action on the local level and to subsequent action on the national level. On February 3, 1918, less than a week after the decision, Governor Sam V. Stewart announced a special session of the Montana Legislature to be convened on February 14.\textsuperscript{31} The governor felt strongly that a law should be enacted to stop the activities of the disloyal element in Montana. He wrote, “Feeling is running high and I really expected some killing as a result of the construction of the law in the Hall case.” \textsuperscript{32}

William J. Campbell, fanatic member of the Montana Council of Defense and editor of the Helena \textit{Independent}, observed that the decision in the Hall case, the last one in a series of similar decisions, made the people of Montana ready to resort to violence. He forecast bloodshed, hangings, and unheard-of physical violence, for he believed that the people of Montana had reached the end of their patience.\textsuperscript{33} He concluded his letter to Senator Henry L. Myers with the statement, “There is going to be trouble, deep, wide, and serious and don’t you forget it.” He asked the senator to look into the possibility of having Bourquin removed from the state for the duration of the war. “Men ... are determined to rid the state of Wobblies, slackers, disloyalists and traitors. ... I am ever expecting ... trouble ... in the state where sedition runs wild.” \textsuperscript{34}

Guy E. LaFollette, managing editor of the Helena \textit{Independent}, in a letter to the attorney general, accused Bourquin of bias in favor of Germany’s cause. He accused him of never having punished any Wobbly or traitor and added, “Relief, it is hoped, may be obtained by a special session of the legislature.” LaFollette explained that Bourquin’s home was in Butte and described that city as being full of German spies and propagandists who influenced the judge. He stated that the judge had become even more belligerent since his son had been drafted. LaFollette speculated as to what could be done about the situation. Impeachment involved too long a process, and death was not likely since he felt Bourquin to be “an exceedingly healthy specimen of whatever he is.” He asked that the Department of Justice transfer Bourquin to another district because “Montana is ‘fed up’ with Bourquin.” LaFollette also forecast lynchings of those whom Bourquin had set free.\textsuperscript{35}

\begin{footnotes}
\item[31] Great Falls \textit{Tribune}, Feb. 4, 1918.
\item[32] Governor Stewart to Senator Myers, Jan. 28, 1918, DJ 189730–2.
\item[33] Campbell to Myers, Jan. 27, 1918, \textit{ibid}.
\item[34] \textit{Ibid}.
\item[35] LaFollette to Attorney General, Feb. 2, 1918, \textit{ibid}.
\end{footnotes}
Bourquin’s decision in the Hall case touched off an editorial barrage in Montana. Newspapers clamored for the passage of acts to halt sedition. The Great Falls Tribune complained that “the ruling makes it practically impossible to punish any man for sedition.” It recommended that Congress change the law. The Anaconda Standard lamented that, as a result of the decision, it was impossible to punish sedition or treason in Montana. William J. Campbell wrote in the Helena Independent: “The Independent can interpret public opinion very well indeed, and to say the decision of Judge Bourquin was a disappointment to the people of Montana is putting it mildly.”

The newspapers welcomed the call for a special session of the legislature. The Great Falls Tribune, one of the few independent newspapers in Montana, stated:

There will be satisfaction to the patriotic people of Montana that... in... the coming session of the legislature there is promise of effective means for the punishment of loud-mouthed traitors. Legislation for that is... made necessary by a recent court decision of Judge Bourquin.

In the opening session of the legislature, Governor Stewart declared that some of the laws of the state of Montana were “inadequate, insufficient and lacking.” He emphasized the necessity of protecting soldiers against losses which resulted from their service in the army. He asked for the legalization of the State Council of Defense and the Home Guard organizations in Montana. He also asked the legislature to act upon the national Prohibition amendment. The major portion of his opening speech dealt with the need to curb sedition in Montana:

Our state statutes do not contain adequate provision for the punishment of those guilty of sedition, treasonable and disloyal acts and utterances within the State of Montana. Some suitable statute should be enacted to cover the same. Otherwise the people of the different communities may be provoked into becoming a law unto themselves and as a result unwarranted and illegal violence may occur. ...there is no law to curb the pernicious activities of individuals and organizations guilty of sabotage, criminal syndicalism and industrial and political anarchy. At this critical
time it is important that the people have protection from such dangerous activities.\textsuperscript{40}

All of the legislation asked for by the governor, with the exception of the Home Guard measure, was passed. On February 23, 1918, the governor signed into law the Montana Criminal Syndicalism Act.\textsuperscript{41} Criminal syndicalism was defined as any philosophy which advocated “crime, violence, force, arson, destruction of property, sabotage and other unlawful acts or methods” as a means to achieve industrial or political revolution.\textsuperscript{42}

Another bill intended to suppress free speech was presented on February 16 and became law on February 23, 1918.\textsuperscript{43} This bill, introduced by Representative William J. Crismas of Carbon County, was actually a bill which had been presented to the United States Senate by Senator Myers of Montana on August 13, 1917. Myers had introduced the bill:

On account of a lynching that had occurred in Montana just a short time before. . . . A man named Little was lynched at Butte, Montana. It was reported that he referred to United States soldiers as “Uncle Sam’s scabs in uniform.” . . . There was no effort by officers of the law to punish him; it was claimed that there was no law to punish him; and, as a result, one morning he was hung by a mob. Having that in mind and fearing a repetition of such occurrences unless we had more and better law to suppress, prevent and punish such utterances, I introduced a bill on the subject. . . . There is going to be more of mob law and lawlessness unless we speedily enact a measure of this kind.\textsuperscript{44}

In the United States Senate, the Myers bill had been referred to the Judiciary Committee and ignored there.\textsuperscript{45} It was not ignored however, by the Extraordinary Session of the House and Senate of Montana. The act stated that any words uttered or printed against the government, army, or constitution of the United States would be punishable. The federal Sedition Law made it a crime to “utter, print, write, or publish any disloyal, profane or scurrilous or abusing

\textsuperscript{40}House Journal of the Extraordinary Session of the Fifteenth Legislative Assembly of the State of Montana, February 14, 1918–February 25, 1918 (Helena, 1918), 1–2 (hereafter cited as House Jour.).

\textsuperscript{41}Laws Passed by the Extraordinary Session of the Fifteenth Legislative Assembly (Helena, 1918), 14.

\textsuperscript{42}House Jour., 50, 72.

\textsuperscript{43}Cong. Record, LV, 6039. See also Senate Jour., 50.

\textsuperscript{44}Cong. Record, LVI, 4714.

\textsuperscript{45}Ibid., 4695.
language” about the government, constitution, or armies of the United States. Also, anyone who showed “contempt, scorn, contumely or disrepute” toward the army, navy, flag, or government was to be punished by a fine not to exceed $10,000 and a prison sentence of not more than twenty years. The same punishment was to be handed out to any person who “shall willfully utter, print, write or publish any language intended to incite, provoke, or encourage resistance” to the United States government. Any encouragement to curtail production in any industry essential to the war effort was to be punished in the same manner.46

Joint resolutions by the state legislature, which called for the resignations of Bourquin and Wheeler, were introduced at the session.47 The first resolution was tabled and the second defeated by one vote.48 The judge and the district attorney fared better than did Charles L. Crum, Judge of the Fifteenth Judicial District of Montana. Crum had acted as a character witness for Ves Hall. The Montana Senate felt he was guilty of aiding and abetting draft dodgers and of criticizing American participation in the war. He was impeached. Wheeler considered this action a tragedy, for he thought Crum to be a “fine and honorable man.” 49

An incident which illustrates the tension and emotionalism which prevailed in Montana during this period took place when Judge Crum saw attorney Haynes at the state attorney's office. Haynes charged Crum with being pro-German, upon which Judge Crum drew a pistol from his coat and shouted, “G—— d—— you, I'll kill you like a dog, you have published me in Eastern Montana as a traitor and I'll kill you like a dog.” 50 Crum's crime was his German parentage and his lack of enthusiasm for the war.51

Montanans could not remove federal office-holders suspected of being unpatriotic, but they realized their opportunity to make an example of a state official. It was a glorious moment for the nationalist crusaders of Montana when the House decided to present charges to the Senate against Judge Crum. The Helena Independent stated:

47 Anaconda Standard, Feb. 23, 26, 1918.
48 Ibid., Feb. 24, 26, 1918.
49 Wheeler, Yankee, 155.
50 Helena Independent, Jan. 27, 1918.
Solemn, earnest, grim and determined—standing up to their stern obligation and duty with courage and high spirit—the men and women of the house of representatives, in movements that will be historic in Montana, yesterday morning voted that Charles L. Crum, incumbent of high office, wearer of the ermine of the judiciary, arbiter of the fortunes of his district... should be brought to the bar of the senate of Montana, there to be tried upon charges of disloyalty to his state and to his country, of high crimes and misdemeanors, of malfeasance in office, of seditious utterances and acts approaching in gravity that most heinous of all crimes in the penal category—treason to the United States.\(^{52}\)

Crum wrote a moving letter to the governor in which he submitted his resignation. “My action simply means that there is a limit to human endurance and that I have reached that limit.”\(^{53}\) The State Senate continued with its proceedings and, on March 22, 1918, found Crum guilty by a unanimous vote.\(^{54}\)

While the legislature of Montana debated the passage of the Sedition and Anti-Syndicalism acts, the Department of Justice in Washington, D.C., began to act in response to the Bourquin decision. The department had received a large number of communications from Montana citizens and the Montana congressional delegation which criticized Bourquin and inquired whether his decision could be appealed. John Lord O’Brien, special assistant to the Attorney General, wrote to Attorney General Thomas W. Gregory:

In the annexed memoranda you suggested that Mr. Warren [Special Assistant to the Attorney General] and I consider amending the Espionage Act in some way adequate to get around Judge Bourquin’s ruling in Montana.... We are both of the opinion that the only type of amendment which could dispose of Judge Bourquin’s interpretation would be an amendment declaratory of the purpose of the Section and in substance providing that questions of individual intent should be questions of fact for the jury. The question of intent always has been a question of fact and both Mr. Warren and I are strongly opposed to suggesting any amendment of this sort declaratory of law. I am of the further opinion that even if such an amendment could be prepared and passed it would not dispose of the attitude of Judge Bourquin. In enforcing the draft law, for example, he has been far more unreasonable and stubborn than in the case of the Espionage law. The record of his rulings in our files show unmistakably

\(^{52}\) Helena Independent, Feb. 24, 1918.

\(^{53}\) Crum to Stewart, March 9, 1918, in Senate Journal of the Extraordinary Session of the Fifteenth Legislative Assembly of the State of Montana, February 14, 1918–February 25, 1918 (Helena, 1918), 71.

\(^{54}\) Ibid., 76.
that the real trouble with him is that he is distinctly against the proper enforcement of any of the war statutes and is out of sympathy with their purpose.\textsuperscript{55}

The department realized that Bourquin set a precedent dangerous for its purposes and felt that some corrective action had to be taken. The Justice Department conducted a thorough investigation of events in Montana and concluded that Bourquin's attitude and his decisions handicapped the enforcement of the Selective Service Law.\textsuperscript{64} An investigation of Bourquin's rulings revealed his hostilities toward the draft law, for, in some instances, he had sentenced offenders to one day in jail.\textsuperscript{57} The department also concluded that the complaints against the judge were "well founded, and his occupancy of the bench at this time is a most unfortunate thing for the people of Montana." \textsuperscript{58}

Military intelligence was also interested in the situation in Montana. On May 22, 1918, Colonel F. G. Knabenshue, an intelligence officer in the western department, recommended to his superiors that Wheeler's reappointment be delayed. The War Department forwarded the letter to the Justice Department, which replied that there was a factional fight in Montana and asked the War Department to disregard the intelligence report. The officer had recommended that "Judge Bourquim [sic] should be transferred and [a] man 500% American be sent to Butte... also [that the] reappointment [of] Mr. Wheeler [be] killed." \textsuperscript{59} This report was sent to A. Bruce Bielaski, Chief of the Bureau of Investigation in the Justice Department. The department conducted a special investigation of Wheeler and concluded that he did his job well: "It is the view of this Department that responsibility for the unfortunate conditions in Montana rests not upon him [Wheeler] but upon the United States District Judge [Bourquin]." \textsuperscript{60}

Senator Thomas J. Walsh of Montana inquired repeatedly whether the decision in the Hall case could be appealed. The attorney general answered that in such a case a directed verdict of acquittal could

\textsuperscript{55} O'Brian to Gregory, Feb. 27, 1918, DJ 189730-2.
\textsuperscript{56} Memorandum to O'Brian, Feb. 18, 1918, \textit{ibid}.
\textsuperscript{57} Memorandum to Bettman, Feb. 13, 1918, \textit{ibid}.
\textsuperscript{58} O'Brian to Gregory, Feb. 27, 1918, \textit{ibid}.
\textsuperscript{59} Attached to Captain J. T. Jones to Justice Department and Reply, May 22, 1918, in National Archives, Department of Justice Record Group 60, Glasser File.
\textsuperscript{60} O'Brian to Lt. Colonel Churchill, Military Intelligence Section, June 19, 1918, in \textit{ibid}.
not be appealed. Assistant Attorney General O'Brian explained to Walsh that the directed verdict had placed the defendant in jeopardy, and thus Hall could not be tried again on the same charge. The course of action the Department of Justice decided to follow was an amendment to the Federal Espionage Act of 1917. Senators Walsh and Myers of Montana, with the aid of Governor Stewart, persuaded the national legislators of the need to suppress all forms of dissent and to curtail mob violence.

On January 16, 1918, Representative Edwin Y. Webb of North Carolina, chairman of the House Judiciary Committee, presented a bill designated as H.R. 8753. The purpose of this bill was to amend the Federal Espionage Act of June 15, 1917. Webb's intention was to prevent any obstruction of the sale of Liberty bonds. Between March 14 and April 2, the House bill was before the Senate Judiciary Committee. Senator Walsh fought successfully to incorporate the Montana Sedition Act into H.R. 8753. The Senate Judiciary Committee concurred with Walsh's suggestion. The amended bill was an effective instrument for the suppression of dissent and the limiting of the freedom of speech. A heated debate ensued in the Senate. Senator Walsh referred the Senate to the decision of Judge Bourquin in the Ves Hall case in order to illustrate the need for the bill which, in his opinion, was essential for allied victory.

The opponents of the bill maintained that the Walsh amendment was repugnant to the constitutional guarantee of freedom of speech. The amendment provided for the punishment of anyone who supported or favored the cause of any enemy of the United States. Senator Thomas W. Hardwick of Georgia warned that the proposed legislation was twice as drastic as the "abominated and execrated" Alien and Sedition Act of 1798 which had destroyed the Federalist party and changed the course of American history. He was afraid that the Sedition Act could do the same to the Republican and Democratic parties. Senators Joseph K. Vardaman of Mississippi and

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61 Gregory to Walsh, March 13, 1918, DJ 189730-8, answer to letter of March 9, 1918.
62 O'Brian to Walsh, March 6, 1918, DJ 189730-7, answer to letter of March 5, 1918.
63 For a detailed discussion of the passage of the act in Congress, see Robert E. Evans, Montana's Role in the Enactment of Legislation Designed to Suppress the Industrial Workers of the World, unpublished master's thesis, Univ. of Montana, 1964, Chap. IV.
64 Cong. Record, LVI, 900.
65 Ibid., 4559-4572.
66 Ibid., 4623-4637.
Joseph I. France of Maryland claimed that the act was unnecessary. Senator Hardwick summed up the arguments of the opposition with a direct challenge of the motivations behind the Walsh amendment:

I understand that the real—in fact, practically the only—object of this section is to get some men called I.W.W.'s who are operating in a few of the Northwestern States, and you Senators from those states have been exceedingly solicitous to have legislation of this kind enacted....

I dislike to be confronted by a situation in which in the name of patriotism we are asked to jeopardize the fundamental rights and liberties of 100,000,000 American people in order to meet a situation in a few Northwestern States.

During the debate, the senators discussed the murder of Robert Prager in Collinsville, Illinois, on April 4, 1918, by a mob of coal miners. Prager supposedly had voiced his opposition to war with seditious remarks about the administration’s war policy. Senator Myers argued that the bill was essential to stop mob rule. He reminded the senators of the murder of Frank Little, chairman of the general executive board of the IWW, in Butte. Little allegedly was lynched because of his seditious utterances.

The senators wished to stop lawlessness and murder and, prompted by patriotic zeal to do all possible to enhance the successful prosecution of the war, passed H.R. 8753. The bill returned to the House and a conference committee was established. After a short debate, the House approved the bill on May 7, by a vote of 293 to 1. On May 9, the federal sedition and anti-sabotage bill was signed in both houses of Congress. On May 16, 1918, President Wilson signed it.

The events of 1917–1918 left an undying impression on some of the personalities involved. Burton K. Wheeler wrote: “One reason why I was oppose [sic] to FDR packing the Supreme Court in 1937 was because of my experience during that time [World War I]—the local courts were crazy; only... Judge Bourquin and a few other local Federal Courts stood up.”

The Federal Espionage Act was designed to stop dissent. The
Anaconda Standard correctly interpreted its significance: "There is no freedom of speech any longer for the disloyal or pro-German. A man can talk all he pleases if he talks right." 73 Thus, an alleged violation of a federal law in a small village in Montana, a courageous decision by a judge who could not be intimidated by a patriotic mob, and the extraordinary hysteria that engulfed a state and a nation contributed in large measure to the passage of one of the most stringent anti-free speech acts in American history. Courage, stupidity, and unreasonable fear had combined during the period to endanger basic American convictions.

The enforcement of the Sedition Act of 1918 marked a low point in the annals of free speech in the United States. Brutal suppression of individual rights guaranteed by the Constitution followed.74 The Sedition Act resulted from local and national fears of radicals compounded with an astute manipulation of patriotic feelings by business interests in a nation at war. President Wilson's Mediation Commission concluded that the unrest in the mining and lumber industries had not been the result of treasonable plots by the IWW, but of the attitudes of employers "in unremedied and remediable industrial disorders." 75 The Justice Department, recognizing the wide scope of the act and the danger to individual liberties inherent in it, urged district attorneys to enforce it with discretion. The department did not want wholesale suppression of legitimate criticism of the government.76 On March 3, 1921, the so-called Sedition Act was repealed by Congress. The nation, in the process of returning to "normalcy," could well afford to do without it.

73 Anaconda Standard, May 28, 1918.
74 See Peterson and Fite, Opponents, Chap. XIX, and Donald Johnson, The Challenge to American Freedoms (Lexington, Kentucky, 1963), Chap. III.