



Published Essays and Pamphlets

Trial and Speeches of Alexander Berkman and Emma Goldman

The Court's Charge



GENTLEMEN OF THE JURY: It is with real sincerity that I express to you my appreciation of the patience that you have displayed throughout this trial, and of the very close and intelligent attention that you have given to the testimony as it was adduced, and to the summing-up of the defendants and of the counsel for the prosecution. It is extremely important to concentrate your minds upon the particular question here involved, arising out of the indictment of these two defendants. They are charged by the grand jury with an offense which I shall more technically define later, which in effect is this: that they have knowingly and willfully counseled, abetted and aided persons of the so-called "draft age" to violate a statute of the United States, against the peace and dignity of the United States.

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This is not a trial of political principles. This cannot be turned into a political or State trial in the political sense. You are not to be misled by any effort to digress your minds from the real issue, which simply is whether these defendants are guilty or not guilty of the crime charged in the indictment. This is not a question of free speech. Free speech is guaranteed to us under the Constitution. No American worthy of the name believes in else than free speech. But free speech means not license, not counseling disobedience of law. Free speech means that frank, fair, full and orderly expression which every man or woman in the land, citizen or alien, may engage in, in lawful and orderly fashion. And that free speech is guaranteed to us, and no court could deny it to anyone.

Prior to the enactment of the so-called selective service law, aptly designated such by the President, on the 18th day of May, 1917, any person could discuss in the fullest manner possible the provisions of the pending legislation. And any person in discussing that legislation could use even the most vehement language and present any and all arguments that seemed to him or to her best. But when that discussion becomes embodied into law, then it becomes the duty of every person living under this government to obey that law. Individual opinion might still be fully expressed. Proper agitation for repeal might still continue. But the law itself thenceforth must be obeyed. This is a republic founded upon principles of democracy. It can remain a republic only as the law is obeyed. The obedience to law is the fundamental basis of American life. Once that basis disappears or is destroyed, the whole fabric is destroyed and the foundation upon which a government of free men rests, disappears. * * *

I may only say one thing more, concerning which there can be little difference of opinion. Whatever may have been the fate of persons of historical note, whether the acts that they committed were within or without the law, is quite immaterial in this case. This is a country of law and order. The law must be obeyed. We are not dealing with a discussion of abstract principles. We are not concerned with the views of the defendants, whether they are right or wrong, on matters foreign to this case. We are only concerned with the evidence in the case. If you believe them guilty beyond a reasonable doubt, it is a matter of no concern to you nor to the court what their views may be. If you believe them not guilty, then equally are we not concerned with their political views.

I repeat in conclusion and lay it upon you most earnestly that this is not a trial of free speech. This is an indictment for crime. And the duty which rests upon you is to determine on the evidence whether or not the defendants are guilty or innocent of the crime charged in the indictment. Much has been said by the defendants and by the counsel for the Government as to what the country may think of your verdict. Gentlemen, we are within the solemn confines of a court. All the country wants from you is a just verdict on the evidence, a verdict that I know you will render, because you have given such close attention. And confining yourselves to that, it is your duty by deliberate consideration to arrive at a conclusion on the evidence and not to permit yourselves, as I am sure you will not, to be diverted into any attack--to make it seem as if any person were here on trial for the expression of opinion. The sole question is, has the Government proved the guilt of the defendants beyond a reasonable doubt? If so, your verdict is guilty. If not, your verdict is not guilty.