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"Stark, Staring, Raving Mad": An Analysis of a World War I Impeachment Trial

On 26 January 1991 the Montana state senate, by a vote of 46 to 0, passed Senate Resolution No. 2. The resolution exonerated Charles L. Crum, judge of the Fifteenth Judicial District in Eastern Montana, from his wrongful impeachment on 22 March 1918.¹

The Senate Resolution was a direct result of an article by Dave Walter in the *Montana Magazine*. Walter's article told the story of Crum's impeachment and focused on Crum's background, personality, family life and personal tragedy.² University of Montana historian, Senator Harry Fritz of Missoula, cosponsored the unique resolution to try to undo a historical injustice.³

Crum's impeachment story is an outstanding example of the fear, hatred, and paranoia that swept Montana and the nation during the World War I period. The transcript of the Crum impeachment trial provides a unique opportunity to examine and analyze the ideas and words used by common people who testified during the trial to damn the judge and to demonstrate their own patriotism. The trial provides an unusual opportunity to study the background of the hysteria and to consider the criteria regarded as appropriate for patriotic language and behavior during World War I.

Our interest in the Crum case, then, does not focus on the interesting history of an individual judge. Rather attention to the transcript illuminates some of the cultural and political fabric of a trying time in American history. It was a time when immigrant outsiders or "others" did everything possible to present themselves as American as possible. That Judge Crum was of German descent was an integral though unstated part of the impeachment proceedings against him. The trial provided the "good" German immigrants in America with a showcase to display their undivided loyalty to the United States.

The outbreak of World War I was a great shock to American society. The deep-rooted American belief in human rationality and the idea of

progress came under severe challenge. One reaction was the emergence of rampant patriotism. Thus, anti-espionage and sedition laws, a number of lynchings and murders, public beatings and passionate denunciations of those who did not conform to "100 percent Americanism" became the order of the day. Those who believed in "class wars"—not national ones—were labeled traitors, and arrested, expelled, assaulted or even, on occasion, murdered. Congress enacted laws that were interpreted to mean the suspension of personal rights guaranteed by the constitution. Anarchists, radicals, pacifists and German-Americans who dared dissent found themselves defenseless in the new hysterical atmosphere. Schools were closed, professors fired, books burnt, demonstrators harassed—all in an effort to protect the United States from foreign, alien, "anarchist" dangers.⁴

President Wilson had opposed American participation in World War I. He told a newspaper editor of his fears that once war commenced, Americans would forget the meaning of tolerance.⁵ This was exactly what occurred. Americans began to believe that anything and everything associated with Germany meant treachery. Therefore it was forbidden to study or pray in German or to play German music. Frankfurters became "freedom sausages" and sauerkraut now was "liberty cabbage." Patriotic mobs searched for "spies" and "traitors" and attacked and sometimes murdered them. The courts played an important role in efforts to create a national consensus by prosecuting and persecuting "traitors."⁶ Laws, such as the National Espionage Act of 15 June 1917, sought to squelch sedition. This act defined making "false statements intended to interfere with the operations or success of the armed forces, or to promote insubordination within their ranks" as a crime. It also made it a federal offense to obstruct the recruitment and enlistment of men for military service.⁷ Most judges interpreted this law as broadly as possible, making it an effective tool in suppressing dissent.

The Espionage Act of 1917 also specified a fine of twenty thousand dollars and twenty years in jail for support rendered to the enemies of the United States. The law was used mainly against opponents of war, pacifists and anarchists, in an effort to create a patriotic national consensus through the punishment of those viewed as a threat to the accepted order. The National Sedition Act of 1918 extended the legal crackdown on dissent to the point that people who opposed the sale of government bonds were considered criminals. A film producer who showed the British in a negative fashion in a movie about the American Revolution was sentenced to ten years in jail.⁸

Most of those who were prosecuted and punished were socialists and radicals. Victor Berger, a socialist member of the House of Representatives, was convicted for his editorials opposing the war as a capitalist conspiracy. Eugene V. Debs, leader of the Socialist Party, was

sentenced to twenty years in jail for uttering words interpreted as opposition to the draft. One hundred syndicalist leaders were accused in Chicago of opposition to war—all were convicted. Many people were expelled from the United States without any procedural protection, most of them immigrants with political views contrary to what was considered the national consensus. The nation was conducting an orgy of book burning, witch-hunting, hysteria, and superpatriotism.⁹

Compounding the World War I problems was the fact that the nation was led by Woodrow Wilson, who proved incapable of accepting criticism with indifference. The war, in his mind, quickly turned into a crusade. One of the immediate results was that the World War I period became a period of almost unprecedented government power and control. One of the major agencies established by Wilson to promote American success in the war effort was the War Industries Board. It was created in July 1917, and it had very broad powers.¹⁰ As head of the board, Bernard Baruch in effect, became the overseer of America's industrial war effort. Wilson did not protest or interfere when, in the name of the war effort, the board planted agents and "spies." There is a great deal of evidence that these agents acted as provocateurs who encouraged unions to undertake illegal action so that the unions could be prosecuted and destroyed.¹¹ Much of the hysteria was created and directed by representatives of industry who were as interested in crushing legitimate demand for social and economic reforms as they were in the defeat of Germany. War and patriotism were cruelly and cynically used to silence protest and dissent. Wilson, who came to power on the high wave of Progressivism, became one of the main agents of its destruction—bringing that age of American reform to a crashing halt.

Wilson, the moralist reformer, saw his opponents as anti-Christ; the leaders of the business community saw the war as a golden opportunity to support the president and at the same time destroy the labor and other reform movements that, in spite of the hostilities, still demanded reforms. Samuel Gompers and the American Federation of Labor suspended many demands for reform and opposed strikes. This proved to be a masterstroke of genius for them in the long run and it was important in the eventual acceptance of unionism by the American political system.¹²

In addition, the industrialists, who had a major voice in the policies formulated by the federal government, attempted to crush the American labor movement by claiming that the latter ostensibly supported the "Huns" by going on strike during the crusade against the German enemy. Most public opinion supported the crusade. But what fueled the panic and loss of sanity? A partial answer is that, for the first time in United States history the federal government had the power, authority, and means to lead such a campaign. World War I was a total conflict which caused all involved to turn to extremism. From this vantage point, events

in the United States during this period were not very different from those in many European nations.

Another important reason was that the war provided a chance to create consensus in a society undergoing fundamental changes that had been going on since the previous gravest of crises, the American Civil War. Since 1865, drastic change affected every phase of life in the United States. This half century witnessed the decline of the importance of traditional-Jeffersonian America, the rise of urban-industrial America, and a vast immigration, most of which was not white-Anglo or Nordic. Many Americans developed a nostalgia for a seemingly simpler, more beautiful "lost" age. The goal—the return to the "lost world of Thomas Jefferson"—was unrealistic and unattainable. But it helped foster the extremism, panic, hysteria, irrationality, and intolerance characteristic of the World War I period.

An outstanding example of the clash of these themes occurred in the state of Montana. There one could find fundamental economic colonialism; Anaconda, a giant mining corporation, high-handedly controlled the state. Social and radical labor organizations opposed Anaconda as did representatives of Progressivism who wished to save American capitalism from its own excesses. Their attempts to change Montana's economic and political reality failed. The Anaconda Copper Mining Company, assisted by the federal government, made effective use of the hysteria and superpatriotism surrounding World War I to destroy all legitimate opposition. Thus, Montana provides an excellent microcosm to examine the major conflicts that characterized that era. Moreover, Montana produced some of the most antidemocratic, anticivil liberties legislation in American history.¹³ In the only nation in the world where nationality is defined by its constitution, law, and legal system, this problem of civil liberties, like virtually every other major problem in American history, reached the courts.

The "patriots" of Montana hoped to eradicate all opposition to the war by use of the Federal Espionage Act of 1917. Indeed, in January 1918 the first men in the nation to be indicted under it were brought to trial in Montana. But the "superpatriots" were rudely surprised. The bench was occupied by a very unusual, courageous federal district judge named George M. Bourquin. Bourquin found that Ves Hall, a rancher from Rosebud County, did make "unspeakable" statements against the president and armed forces of the United States, but Bourquin could not support a verdict of guilty. Hall had made his statements in a small Montana town of sixty people, sixty miles from the nearest railroad, with "none of the armies or navies within hundreds of miles." Furthermore, Hall had made them in a hotel kitchen, at a picnic, in the street, and in a "hot and furious saloon argument." Bourquin found no intent to interfere with the military. He illustrated his decision with the analogy that "if 'A'

shot at 'B' with a .22 pistol from a distance of three miles, 'A' could not be convicted of attempted murder."¹⁴ Until this decision, judges had used the Espionage Act as an open-ended and effective tool against "disloyalty." Bourquin intentionally set about establishing a contrary precedent.¹⁵ But his decision also "brought on a tornado of criticism which swept away free speech safeguards."¹⁶

The governor of Montana, Sam Stewart, could not do anything against a federal judge, so instead he called the Montana legislature into special session. The legislature adopted the Montana Criminal Syndicalism Act and the Montana Sedition Law.¹⁷ Senator Henry L. Myers introduced the Montana Sedition Law to the United States Senate and, almost verbatim, it became the Federal Sedition Act of 1918.¹⁸ Thus it was the Hall case that directly triggered the Federal Sedition Law. That case was also instrumental in the impeachment by the Montana state legislature of a state judge. The judge's crimes were that he was of German parentage and did not demonstrate sufficient zeal for the war. Moreover, he served as a character witness for Ves Hall in the Ves Hall trial. Unlike Bourquin, that judge, Charles Crum, could be brought to account by the representatives of the people of Montana.

On 20 March 1918 the senate of the state of Montana, sitting as a High Court of Impeachment, convened in the Matter of the Impeachment of Charles L. Crum, who was the judge of the Fifteenth Judicial District in Eastern Montana. This followed a decision on 25 February 1918 by the Montana house of representatives to present articles of impeachment against Judge Crum.¹⁹

During the house debate, it became clear that these representatives had had "enough" of "pro-German traitors" and were willing to spend large amounts of money to guarantee that the disloyal would not "go scot free without trial or attention from the court."²⁰ After the unanimous house vote, to present impeachment articles, the leading newspaper in the state capital—one of the most influential in Montana and the paper representing the views of the state's ruling elite—printed the following melodramatic comments:

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.²¹

The clamor for action against the "disloyal" in Montana had increased until it reached panic proportions. A decade before Lindbergh crossed the Atlantic, for example, there were repeated reports of German planes landing in Montana.²² Many saw the courts as the best instrument for combating dissent. Burton K. Wheeler, at that time United States district attorney, described how hundreds of cases were brought to his office for prosecution, many by local police authorities. "Most of them were inspired by old grudges, malicious gossip, barroom conversations."²³

Wheeler refused to prosecute. It was Judge Bourquin who suggested that Wheeler send him some sedition cases in order to defuse the attacks on Wheeler. Felkner (Fritz) Haynes, a Rosebud County attorney who acted as special prosecutor during one of Wheeler's absences from the district, presented the charges against Ves Hall. After Bourquin acquitted Hall, Wheeler commented that few other judges in the country would write such decisions in the face of the great demand to punish the "disloyal."²⁴ Years later he wrote: "One reason why I was oppose [sic] to F.D.R. packing the Supreme Court in 1937, was because of my experience during that time [World War I]—the local courts were crazy. . . . Judge Bourquin and a few other Federal Courts stood up."²⁵

After Hall's acquittal, a local patriotic group in Rosebud County asked Crum to resign. He categorically refused. Only after charges against Crum were presented to the Montana house of representatives did he decide to resign. But this did not stop the impeachment proceedings. Wheeler summed up Crum's story as a tragedy for a "fine and honorable man."²⁶ In addition, many representatives in the house sought to find some way to attack Bourquin and Wheeler for dereliction of duty, but the Montana legislature simply did not have jurisdiction over federal officials.

An analysis of the Crum impeachment trial demonstrates that Crum actually was tried for crimes of heresy and otherness. His otherness stemmed from his German heritage and his implied socialism and anti-imperialism. His heresy derived from his unwillingness to assign to secular objects, such as the flag, sacramental status. Thus the charges against him were paradoxically both specific and unsaid.

The main offenses said to have been committed by the judge were specified briefly. Crum allegedly said that the United States was duped by England to enter the world war on her behalf unnecessarily. The judge, having contributed to this process, was a traitor to his country.²⁷ Even the people who supported Crum, such as the citizens of Roundup, Montana, were confused as to the nature of the impeachment trial against him. A witness, an attorney named G. J. Jeffries, defended Crum as if he were on trial for treason: "I believe that [it] is necessary to secure a fair and

impartial trial, especially where the public mind is in the condition it now is and where a man is on trial for treason."²⁸

In fact, Crum was not on trial for treason. The only sanctions the senate trial had available was to remove the judge from office and to prevent him from seeking a position of public trust again. In the consciousness of both friends and enemies, however, Crum's loyalty, as a hyphenated American of German ancestry, was what was on trial. Actually, the whole idea of the impeachment trial was moot. Why bother to impeach someone who had already resigned? Clearly the public punishment for otherness was more important to the senate than the removal of a judge who had become a political embarrassment. Crum was also charged with being on the side of Germany in the *Lusitania* affair and with having no sympathy for American civilian casualties. He was also supposed to have accused President Wilson of being a "tool, hireling and puppet of the British Empire and of Wall Street and of the bankers and financial interests of the United States who had made loans to prosecute the war."²⁹ In the subtext of the impeachment trial, the judge was "accused" of being a socialist, if not Marxist, sympathizer who opposed imperialist and antilabor legislation and policies. Crum was also supposed to have claimed that the very act of declaring war and sending the armed forces abroad—to fight beyond the realm of America—was unconstitutional. Therefore, he supposedly did his utmost to convince people to disobey the draft laws.³⁰

Perhaps the only true crime Judge Crum committed, though not necessarily of an impeachable nature, was to threaten the prosecuting attorney of Rosebud, Felkner Haynes, with a loaded revolver: "You have circulated in Montana reports that I am a traitor and I will kill you like a dog."³¹ Certainly this was a great mistake as a political matter, because in his testimony Haynes freely admitted that he was the one who subsequently "got the ball rolling" in the investigation of Judge Crum.

Crum was said to have attempted to disqualify two members of the Overseas Club from serving on the jury in his court because of that organization's support of England against Germany.³² Whatever the truth of the matter, Crum almost surely despised that organization's motto:

We sail'd wherever ship could sail
We founded many a mighty state,
Pray God our greatness may not fail
Through craven fears of being great³³

One might juxtapose Tennyson's verse—a direct continuation of Kipling's "take up the white man's burden"—with Crum's vision of dead American bodies in the trenches of Europe, young men who perished in

a war he believed was none of America's affair. As a matter of ideology, clearly the Overseas Club and Judge Crum were diametrically opposed.

An additional charge against the judge was his responsibility for feeding and clothing three jailed members of the Industrial Workers of the World (I.W.W.) against the explicit orders of the sheriff of Rosebud County.³⁴ The last two charges were so obviously trumped-up that the somewhat courageous Senator Fred Whiteside actually voted for acquittal on these specific charges. He noted that for a German defendant, Joe Holtz, to challenge a member of a jury—at the suggestion of Judge Crum—because the potential juror belonged to the Overseas Club, might be Crum's method of insuring an impartial jury.³⁵ But according to the senator, even more important was the case of feeding the prisoners:

He [Crum] is also charged with having interfered with the Sheriff and County Attorney in an endeavor to keep some prisoners in Rosebud County on bread and water. Now there is no law which authorizes officers of the county to confine prisoners in that way; and if the matter was called to the attention of the Judge, it certainly was his duty to see that the law was observed. It is a strange circumstance indeed, if a man is to be impeached because he has enforced the law. I vote "not guilty."³⁶

But perhaps the whole point of this trial was that in America, a public official could, in a time of great stress, be impeached in Alice-in-Wonderland fashion precisely because he had "enforced the law." In Crum's case, concern for the constitutional rights of the individual, in an atmosphere of warmongering, was too much for many in Montana to bear. This was especially so when the judge had advised Ves Hall to leave Forsyth to avoid prosecution for sedition.³⁷

The judge had dared to criticize the United States in a public speech, which was now deemed criminal because "said speech was delivered with a tone and inflection of the voice that showed clearly the malignity on the part of said Crum against the United States, and its participation in the war. He said . . . that WWI was a rich man's war."³⁸ Criticism of the war in terms of the nature of capitalism was unbearable to the Montana patriots. No one was interested in hearing that a son might die in a war for "Wall Street" or J. P. Morgan. Therefore, it became legitimate to criticize Crum's tone of voice as a reasonable grounds for impeachment. It also seemed fair to accuse Crum of being "disloyal and unpatriotic"³⁹ because he refused to adopt the properly militant "tone" of his neighbors.

Crum was not alone in having to worry seriously about his credibility in Montana. Governor Stewart seemed excessively nervous in explaining why he initially agreed to Crum's resignation in return for

discontinuing the impeachment proceedings. In the middle of the proceedings, the impeachment court read out a letter of explanation by the governor which revealed his deep fear of appearing unpatriotic enough to "spoil" the senate's proceedings: "My only reason for withholding the acceptance of the resignation [Crum's] was that I did not desire to hinder or embarrass the members of the pending proceedings."⁴⁰ The "tone" of the governor's letter made it clear that he was preoccupied with his own political survival, even if it meant that he had to ignore the agreement he had with Crum. Since Crum had resigned, the judge saw no reason to defend himself in the senate, which pleased most of the senators. As one noted, "it seems to me that it is trifling with this august body now sitting as the highest court in this state to, at this time, appoint anyone to go out and defend Judge Crum, either in this body or beyond it."⁴¹ Only Senator Whiteside noticed the perversity of "trying dead issues"⁴²—but he objected to no avail. The impeachment of someone who had already resigned continued.

One of the witnesses, D. J. Muri, clerk of the district court, testified to an ever more serious crime by the judge. That was Crum's continued desecration of the flag. Muri accused the judge of claiming that many Americans would fight on the side of Germany and that "the United States' flag would be a rag."⁴³ Like the senate impeachment court, Muri sacerdotalized a secular object. Calling President Wilson names was also an implied impeachable offence.⁴⁴ Muri, it seemed, just "happened to be" the chairman of the executive committee of the One Hundred Club, a patriotic organization.

Another revealing offence was Crum's alleged denial of the superiority of Western civilization. Elizabeth Snook, deputy clerk of the court—and clearly a "good" German—accused Crum of being an inverted Huck Finn, claiming that the judge had said he planned to "sell out what he had and take his family to the Fiji Islands, where they were civilized."⁴⁵ To discredit Crum, Snook's origins were carefully established. The revelation that she, too, was of German descent showed that there were "good" Germans. Judge Crum was simply not one of them. Otherwise, he certainly would never have been seen in conference with a number of people later accused of violating the Espionage Act, as Snook said he was.⁴⁶

The examination of another "good" German, a Presbyterian minister by the name of A. T. Klemme, reveals that Judge Crum suffered from his inflexibility. Klemme had supported Germany until he saw the light.⁴⁷ He thus stood in contrast to the judge, who would not abandon his heretical beliefs. That the impeachment trial presented the struggle between these two men of German origin in terms of heresy was clear in Montana house of representatives member Ronald Higgins's question to Klemme: "Did Judge Crum ever attempt to reconvert you to your former views

concerning the war?"⁴⁸ Conversion takes place, after all, in the realm of religious activity.

G. Flege, a bookkeeper for the Bank of Commerce, was another example of a good immigrant and naturalized citizen, though he was from Norway. Flege merely repeated previous charges by others of disloyalty on the part of Crum. The judge was once again accused of supporting Germany, justifying the *Lusitania* incident and hating England. The war was being fought, as Flege quoted the judge, to support the robber barons and was as unjust as America's imperialistic policies in the Spanish-American War. What was new about Flege's testimony was its aftermath. When he had completed his testimony and was about to step down, Senator Gwen F. Burla began to interrogate the witness as to his process of obtaining citizenship, specifically as to how many years had passed before he received his final citizenship papers.⁴⁹ These interruptions suggested that those who did not comply with the majority might well have a completely different experience in procuring American citizenship. The threat of sanction against difference was left hanging in the air of the legislative hearing.

R. A. Martin was also called to testify against Crum. His profession was the "sheep business," ironically suited to the impeachment hearing. As the father of a boy serving in France, Martin had little patience with the judge's hatred of battle and his claim that American children were being sent abroad to be slaughtered in Europe for a cause that had nothing to do with the average American. The judge, it seemed, was a foreigner, a Marxist sympathizer, and a peace-activist, all completely unacceptable for a judge or anyone else.

The legitimacy of being a judge, part of the American legal system, had to be denied Crum; otherwise the entire American legal system would be tainted by tacit acceptance of the judge's views and values. To further discredit Judge Crum, George Farr, an attorney from Miles City, was called to testify. His examination by State Representative Ronald Higgins, who acted as a manager on behalf of the Montana house of representatives in the impeachment proceedings, was meant to suggest that Crum was a spy for Germany, possessing privileged information. Higgins's questions of Farr implied that Crum was able to discuss with authority the amount of German submarine tonnage "as facts within his own knowledge" rather than "prophecy."⁵⁰ Higgins's strategy was clever. He realized that it was not necessary to directly accuse the judge of being a spy. Innuendo would suffice to ensure the judge's impeachment. All that Higgins had to do was prove Crum's otherness. When Elizabeth Snook was recalled to add that she had heard the judge conversing in German, Crum's otherness was bolstered. Fortunately, for both Snook and her audience, she was sufficiently removed from her origins to be

unable to understand German. Lack of expertise thus actually enhanced her testimony.

Crum was also accused of admiring the American progressive movement, especially its most noted representatives, Senators La Follette and Stone. By standing up for their patriotism, Crum was implicitly accused of the opposite. Progressives also played the role of outsiders.⁵¹

Before the impeachment proceedings, One Hundred Club members took it upon themselves to conduct an investigation of Judge Crum. Despite all the defamatory coverage in the newspapers—District Judge A. C. Spencer accused Crum of judicial malpractice, paying back an attorney in a civil suit who had done him an "awful good turn"⁵²—members of the club had to be coerced into voting against the judge. The large majority had initially refused to vote, but as Bussert, the chairman of that organization, testified:

When the question was put for vote three or four would vote on one side and four or five on another side, and I finally had to threaten that if they did not vote, I would count them as one side or another, and worked with them to get a full, free expression from everybody on the different questions that had been answered by Judge Crum.⁵³

It seemed that even within a most patriotic association, there was an initial reluctance to condemn the judge, albeit soon overcome by coercion. The vote to ask Crum to resign eventually became unanimous. The club's oath of membership once again confused the sacred and the profane. The oath of the "One Hundred" ended as follows: "In token of my sincerity in these declarations I do now kiss the flag of the Republic spread upon the open pages of the Holy Bible."⁵⁴ One of the "real" crimes of Judge Crum was his inability or unwillingness to confuse the secular notion of the flag with the religious foundations of the Bible.

There was one community, however, representing the lone voice of sanity in these impeachment proceedings. That was the town of Roundup, which actually published a number of resolutions in defense of Judge Crum. What the townspeople objected to most was the fact that the charges against Crum had been published in the newspapers before the impeachment proceedings began.⁵⁵ Therefore, the case was decided beforehand.⁵⁶ By forcing the witness Jarrett, an attorney from Roundup, to read the resolutions out loud, Higgins manipulated matters so that Jarrett, Roundup, and the resolutions were on trial. The senate's obsession with the resolutions suggests that the senators hardly felt secure that they were giving Judge Crum a fair and balanced hearing. But their overwhelming concern, Crum's basic otherness, was never far away. The most revealing question put to Jarrett in connection with the Roundup

resolutions was that asked by Senator N. T. Merghon: "Mr. President I would just like to ask what proportion of Roundup citizens are foreign born citizens or naturalized citizens?"⁵⁷ The fact that there were only two hundred such citizens, and the majority of them Austrian rather than German, did little to mitigate the impact of the question. Roundup could only pass such resolutions, it was implied, through manipulation by its "foreign" citizens, those unaccustomed to the true American ideal. That Roundup was struggling precisely for the American ideal in its pristine version made no difference. There could be no adequate response to the charge of otherness.

Perhaps the ultimate perversion of American justice in the entire story of this hearing was the testimony of a Mrs. Tillman. She was called in connection with her signing of the Roundup resolutions. Since she had no intention of incriminating Judge Crum for disloyal or unpatriotic behavior, anything positive she had to say about the judge was quickly dismissed as hearsay. Higgins ingeniously insisted that Mrs. Tillman prove that Crum did *not* make various incriminating statements: "But further than your belief that he did not say or do these things, Mrs. Tillman, you cannot enlighten this senate, can you, upon these matters?"⁵⁸ Since when must a witness prove what was not said by the accused? Where was the burden of proof? The unsaid may have an important place in textual analysis, in the very transcript of this trial itself. In theory, however, it should have had no place in the American legal system.

Higgins continued his unorthodox prosecution of the case by requesting that "the ladies retire from the senate chamber" because the testimony to follow would surely "shock the sensibilities of the ladies present."⁵⁹ Higgins was doing more than exhibiting his sexism; this gesture was also an *a priori* condemnation of the judge since it was clear that crimes even more heinous were about to be discussed. What followed, however, was the usual body of charges; the *Lusitania* episode, draft laws, Crum's warning of a new revolution, slander of Wilson, sympathy for Russia.⁶⁰ Despite his earlier resignation, Judge Crum was impeached.

This brief review of the charges and testimony against Judge Crum should suffice to show that his actual "crimes" had little to do with the official charges brought against him. The events in Montana provide an important lesson as to the excesses that have been committed in a democracy that feels itself in jeopardy. The volume of testimony in the Crum trial affords the historian a unique opportunity to examine attitudes and views of people who were not the elite of society, but were most definitely swayed by the ideology of America's dominant institutions.

Refusing to be swayed by the patriotic mobs, that other courageous Montana federal judge, George M. Bourquin, aptly summed up the position of the courts during World War I. Quoting George Bernard Shaw,

Bourquin noted: "During the war the courts in France, bleeding under German guns were very severe; the courts in England, hearing but the echoes of those guns, were grossly unjust; but the courts in the United States, knowing naught save censured news of those guns, were stark, staring, raving mad."⁶¹

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Notes

¹ *Laws and Resolutions of the State of Montana*, Montana Legislative Council, Denver, 1991.

² Dave Walter, "The Tragedy of Judge C. L. Crum," *Montana Magazine* 104 (Nov.-Dec. 1990): 56-63. For a study on German Americans during the period, see Frederick C. Luebke, *Bonds of Loyalty: German-Americans and World War I* (DeKalb, IL, 1974).

³ Walter, *Montana Magazine* 106 (Mar.-Apr. 1991): 29.

⁴ See H. C. Peterson and Gilbert C. Fite, *Opponents of War 1917-1918*. (Madison, 1957); William Preston, *Aliens and Dissenters: Federal Suppression of the Radicals 1903-1933* (Cambridge, 1963); Richard Polenberg, *Fighting Faiths: The Abrams Case, the Supreme Court, and Free Speech* (New York, 1987); Zechariah Chafee, Jr., *Free Speech in the United States* (Cambridge, 1941); Melvin Dubofsky, *We Shall Be All: A History of the Industrial Workers of the World* (Chicago, 1969); Donald Johnson, *The Challenge to American Freedoms* (Lexington, KY, 1963); Paul L. Murphy, *World War I and the Origins of Civil Liberties in the United States* (New York, 1979); Robert K. Murray, *Red Scare* (Minneapolis, 1955).

To describe the United States as infected by an atmosphere of hysteria is not an exaggeration. The *Detroit Free Press* of 4 March 1918 quoted a preacher saying: "The person who claims to be neutral ought to be exported, jailed, interned, labeled, or . . . rendered powerless" (Peterson and Fite, 194). During that same time thirty-five people were subpoenaed by the "Council of Defense" in South Dakota in order to find out if they were loyally supporting the war effort (195). Theodore Roosevelt backed the attempts to abolish the teaching of German in the country's schools. Professor Knight Dunlap of Johns Hopkins declared the German language to be a "barbarous tongue," lacking in cultural worth and without commercial importance. Lewiston, Montana, experienced the burning of German books at a local high school. People less than enthusiastic about the war might find themselves painted yellow by superpatriots. American mobs beat people and even resorted to the use of tar and feathers, like the seventeen I.W.W.'s at Tulsa. Joe Polaras, a Mexican living in Seattle, was tarred and feathered because he was supposedly unpatriotic (198). A Pennsylvania mob, composed of women munitions workers, attempted to lynch a man who was supposed to have made seditious remarks (199). On 24 March 1918, in the small town of Hickory, Oklahoma, a Bulgarian was shot and killed by a policeman for having said something "seditious." On the same day in Tulsa, Joe Spring, a waiter, was killed by an operative of the County Council of Defense for making pro-German remarks. The most infamous case of American excess was the mob lynching of Robert Prager, a man of German descent who was supposed to have talked about the virtues of "Socialism" to a miners' union in Collinsville, Illinois, a small town near St. Louis (202).

In Montana, Frank Little, of the General Executive Board of the I.W.W., was lynched on 1 August 1917 in Butte. See Arnon Gutfeld, "The Murder of Frank Little: Radical Labor Agitation in Butte, Montana, 1917," *Labor History* 10 (1969): 177-92.

LaVern J. Rippley, *The Immigration Experience in Wisconsin* (Boston, 1985), especially the chapter on WWI and his articles "Conflict in the Classroom: Anti-Germanism in Minnesota Schools, 1917-1919," *Minnesota History* 47 (1981): 170-83, and "F. W. Sallat and the North Dakota Freie Presse," *North Dakota History* 59 (1992): 2-21, provide excellent materials for comparative analysis.

See also Franziska Ott, "The Lynching of a German-American as Reported in the Local English-Language Press," a paper presented at the 19th Annual Symposium of the Society for German-American Studies, Louisville, Kentucky, April 1995. Also see her "The Anti-German Hysteria: The Case of Robert Paul Prager: Selected Documents," in: Don Heinrich Tolzmann ed., *German-Americans in the World Wars: A Documentary History*, Volume 1: *The Anti-German Hysteria of World War One* (München, 1995).

⁵ See M. J. Heale, *American AntiCommunism: Combatting the Enemy Within 1830-1970* (Baltimore, and London, 1970), 51.

⁶ See Allen Churchill, *Over Here! Informal Re-Creation of Home Front in World War I* (New York, 1968) and David Kennedy, *Over Here, the First World War and American Society* (New York, 1980).

⁷ 40 Stat. 219 (1917).

⁸ *United States v. Motion Picture Films "The Spirit of '76,"* 252 *Fed. Rep.* 946.

⁹ Peterson and Fite. Even President Wilson was unable to ignore the patriotic excess. On 11 June 1918 he issued a statement condemning the violence, largely because of the international embarrassment caused by the Prager incident: "There have been many lynchings, and every one of them has been a blow at the heart of ordered law and humane justice. No man who loves America, no man who really cares for her fame and honor and character, or who is truly loyal to her institutions, can justify mob action while the courts of justice are open. . . ."

¹⁰ Bernard M. Baruch, *American Industry in War* (New York, 1941); Robert R. Himmelberg, "The War Industries Board," *Journal of American History* 52 (1965): 43; R. B. Kesten, "War Industries Board," *American Political Science Review* 34 (1940): 655; Melvin I. Urofsky, *Big Steel and the Wilson Administration* (Columbus, Ohio, 1969).

¹¹ See, for example, U.S. Department of Justice, Record Group 60, Records of the Department of Justice, Glasser File. Washington D.C., National Archives, 1964.

¹² Frank L. Grubb, Jr. *Struggle for Labor's Loyalty: Gompers, A. F. of L., and Pacifists, 1917-1920* (New York, 1968).

¹³ See Arnon Gutfeld, *Montana's Agony: Years of War and Hysteria 1917-1921* (Gainesville, FL, 1979). Hereinafter cited as Gutfeld, *Hysteria*.

¹⁴ 248 *Fed. Rep.*, 153. (D. Mont. 1918).

¹⁵ *Idem.* at 151.

¹⁶ Richard Polenberg, *supra* note 3. Hereinafter cited as *Faiths*.

¹⁷ Montana, *Laws Passed by the Extraordinary Session of the Fifteenth Legislative Assembly* (Helena, MT, n.d.), 14.

¹⁸ For a complete account, see Arnon Gutfeld, "The Ves Hall Case, Judge Bourquin and the Sedition Act of 1918," *Pacific Historical Review* 38 (1968): 163-78. Also Gutfeld, *Hysteria*. chapter 4, 103-78; "George Bourquin: A Montana Judge's Stand Against Government Despotism" *Western Legal History* 6 (1993): 51-68. Polenberg, *Faiths*, 27-36.

¹⁹ *Helena Independent*, 20 Feb. 1918. The impeachment process consists of bringing charges, similar to a grand jury indictment, against a public official by the lower house of a legislature. The U.S. Constitution, according to Article One, Section Two, prescribes that the decision to bring charges against a public official is reserved to the lower house. Once articles of impeachment are presented, the upper house, according to Article One, Section Three, prosecutes the offender and must reach a two-thirds majority to convict.

In the case of a federal process of impeachment, the Chief Justice of the U.S. Supreme Court presides. In a state process of impeachment, the Chief Justice of the State Supreme Court presides. In state impeachments, the legal process is based on the state constitutions patterned according to the model of the U.S. Constitution. The U.S. Constitution, in Article Two, Section Four, defines impeachable acts as "Treason, bribery, or other high Crimes and Misdemeanors." A precise definition of "high Crimes and Misdemeanors" has yet to be reached. Historically, it is clear that this ambiguous phrase has been very loosely interpreted by political enemies of the various impeached officials.

Throughout American history there have been only twelve federal impeachments and eleven went to trial. Seven of the officials, most of them judges, were acquitted. State impeachment trials have also been infrequent and have usually been politically inspired.

For a thorough discussion of the impeachment process see: Lawrence M. Friedman, *A History of American Law* (New York, 1973), 113-15, 325; Alfred H. Kelly and Winifred A. Harbison, *The American Constitution*, 5th ed. (New York, 1976), 22, 444-46; Raoul Berger, *Impeachment: The Constitutional Problems* (Cambridge, 1973.)

²⁰ Ibid.

²¹ Ibid., 24 Feb. 1918.

²² Burton K. Wheeler with Paul F. Healy, *Yankee From the West* (Garden City, NY, 1962), 152-62. Hereinafter cited as Wheeler, *Yankee*.

²³ Burton K. Wheeler to author, 12 July 1967.

²⁴ Wheeler, *Yankee*, 154-55.

²⁵ Burton K. Wheeler to author, 12 July 1967.

²⁶ Wheeler, *Yankee*. 155. Though not the focus of this inquiry, Crum, indeed, was an "honorable man." And his personal history during this trying period should be categorized as tragic.

Crum was born on 9 January 1874, in Underwood, Indiana, to James W. and Sarah Houghland Crum. After two years of college, Crum secured a job as court reporter in El Reno, Oklahoma Territory. He began to study law in his free time and eventually passed the bar and opened his own law office.

In 1896 he married Jessie Helen Mitts of El Reno. Because of his wife's poor health, Crum moved his family to Montana in 1906. He combined work on his homestead along with a small legal practice. In 1909 he undertook the practice of law on a full-time basis in the county of Rosebud. He was known as an efficient, diligent and conscientious attorney. Crum was elected County Attorney as a Republican in 1910. In 1912 he won a four-year judgeship in Montana's Thirteenth Judicial District. Despite his personal misfortunes — his wife Jessie had died at the age of 31, leaving Crum five children to raise — Crum had an excellent reputation in his first term as a judge. He ran unopposed for his second term in 1916.

But as the war hysteria spread in Montana in 1917, Crum began to come under heavy criticism for his so-called anti-American or pro-German sympathies. And from there his life became one long series of disappointments. Although he was to live on until 1948, he was never the same man after his impeachment. From the time of the events leading to the impeachment until the end of his life, Crum suffered from alcoholism and depression. For a more detailed biographical sketch, see Walter, n. 2.

²⁷ State of Montana, *Proceedings of the Court for the Trial of Impeachments: The People of the State of Montana by the House of Representatives thereof Against Charles L. Crum, Judge of the District Court of the Fifteenth Judicial District of the State of Montana* (Helena, 1918), 10.

²⁸ Ibid., 142 (italics mine).

²⁹ Ibid., 11.

³⁰ Ibid., 12.

³¹ Ibid., 160.

³² Ibid., 15.

³³ Ibid., 54.

- ³⁴ Ibid., 16.
- ³⁵ Ibid., 180.
- ³⁶ Ibid.
- ³⁷ Ibid., 171.
- ³⁸ Ibid., 17.
- ³⁹ Ibid., 18.
- ⁴⁰ Ibid., 50.
- ⁴¹ Ibid., 25.
- ⁴² Ibid., 26.
- ⁴³ Ibid., 29.
- ⁴⁴ Ibid., 33.
- ⁴⁵ Ibid., 36.
- ⁴⁶ Ibid., 38.
- ⁴⁷ Ibid., 117.
- ⁴⁸ Ibid., 120.
- ⁴⁹ Ibid., 43.
- ⁵⁰ Ibid., 54.
- ⁵¹ Ibid., 70.
- ⁵² Ibid., 76.
- ⁵³ Ibid., 83.
- ⁵⁴ Ibid., 85.
- ⁵⁵ Ibid., 133.
- ⁵⁶ Ibid., 142.
- ⁵⁷ Ibid., 139.
- ⁵⁸ Ibid., 144.
- ⁵⁹ Ibid., 147.
- ⁶⁰ Ibid., 147, 151.
- ⁶¹ Ex parte Starr, 263 *Fed. Rep.* 145. (D. Mont. 1920).