The Espionage Conviction of Kansas City Editor Jacob Frohwerk:
"A Clear and Present Danger" to the United States

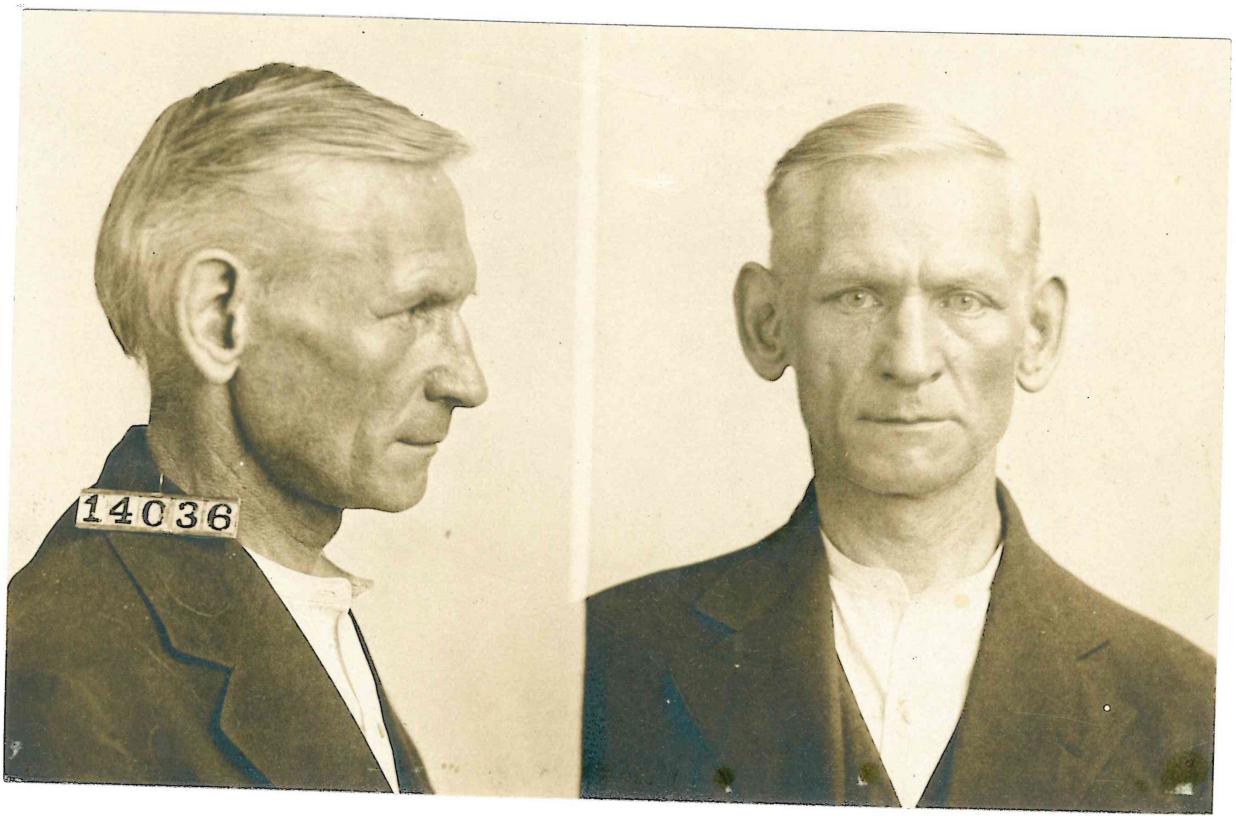

Figure 1. Jacob Frohwerk's mugshot from his prison records.[1]

[1] Photo of Jacob Frohwerk, prisoner record of Jacob Frohwerk, National Archives at Kansas City.

Jacob Frohwerk did not have to go far to get to the US Penitentiary in Leavenworth, Kansas, on May 31, 1919. He had been to the town of Leavenworth countless times before, traveling the thirty miles from his home in Kansas City to speak to Germans there as editor of the *Kansas Staats-Zeitung* and *Missouri Staats-Zeitung* and a leader of the Kansas branch of the German-American Alliance. He had visited the city of seventeen thousand residents, with its substantial German American population, frequently over the past five years, since the start of World War I, to preach neutrality to a receptive population. This time, however, there would be no reception of friends and allies waiting for him. Once ushered inside the penitentiary, Frohwerk made his way through the gauntlet awaiting all new prisoners. He checked in the possessions he had brought along: his watch, chain, and charm, a pair of cufflinks and collar buttons, a collar and tie, his glasses, and $5.49.[2] A brief physical examination turned up nothing out of the ordinary. Frohwerk stood five feet, eight-and-one-half inches tall, weighed 132 pounds, smoked but did not drink, and reported having broken four ribs on his right side earlier in life.[3] This was not the last physical examination he would receive from doctors during his time at Leavenworth, as he would return to the prison hospital only four days later to spend a week undergoing treatment for neurasthenia, or nervosa, likely a response to the shock of his imprisonment.[4] On this day, however, Frohwerk would be taken to his prison cell, B-175, the

[2] Intake form, prisoner #14036, Frohwerk, May 31, 1919, prisoner record of Jacob Frohwerk, National Archives at Kansas City.
[3] Physician's Examination of Prisoners, prisoner #14036, Jacob Frohwerk, May 28, 1919 (date incorrect), prisoner record of Jacob Frohwerk, National Archives at Kansas City.
[4] Hospital record, prisoner #14036, Jacob Frohwerk, June 3, 1919, prisoner record of Jacob Frohwerk, National Archives at Kansas City.

place he would call home as he served out a ten-year prison sentence for violating the Espionage Act of 1917 for anti-war editorials he published in his newspaper.[5]

Frohwerk's US Supreme Court case was momentous in solidifying federal law in locating the boundary between protected and unprotected speech in the context of national security during World War I. It often appears in the legal historical literature on the First Amendment in the same paragraphs as the famous cases of Charles Schenck, Eugene Debs, and Jacob Abrams, all of whom were convicted under the Espionage Act of 1917 for their anti-war rhetoric.[6] The high court upheld all four cases in 1919. Schenck was the first, followed by Debs and Frohwerk on the same day, with Justice Oliver Wendell Holmes writing all three opinions. Abrams was decided later that year. While Schenck, Debs, and Abrams have been widely researched by legal and journalism scholars, Frohwerk has received scant attention, likely because the newspapers he edited, the *Kansas Staats-Zeitung* and the *Missouri Staats-Zeitung*, were published primarily in German and because information on Frohwerk the man has been difficult to collect.[7] As Lucas Powe Jr. writes in *The First Estate and the Constitution: Freedom of the Press in America*, Frohwerk's case was sandwiched between Schenck and Debs, "involving a German-language newspaper in Missouri and a defendant so obscure that even his position with the newspaper is unknown."[8] Indeed, Frohwerk and his case have been relegated to a footnote in virtually all of the legal historical literature on the evolution of the modern interpretation of the First Amendment.

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[5] Ibid. The Espionage Act of 1917, ch. 30, title I §3, 40 Stat. 219, current version codified at 18 U.S.C. §2388.
[6] As amended May 16, 1918, ch. 75, 40 Stat. 553-54.
[7] The *Kansas Staats-Zeitung* was later published as the *Neue Kansas Staats-Zeitung*. Both uses in this study refer to the same newspaper.
[8] Lucas A. Powe Jr., *The First Estate and the Constitution: Freedom of the Press in America* (Berkeley: University of California Press, 1991), 70.

The following research seeks not only to make Frohwerk's position with the *Missouri Staats-Zeitung* known, but to properly frame Frohwerk and his case within the context of journalism history as has not been done before. It does so by drawing on a wealth of primary and secondary documents that detail Frohwerk's activities in German American and newspaper circles in the state of Kansas and Kansas City. Using archival and vital records, newspaper articles, and court documents, this research follows his arrival in the United States from his native Germany and establishes him in Kansas City, where he helped found the *Kansas Staats-Zeitung* and came to lead such organizations as the Kansas chapter of the German-American Alliance. Later, it contextualizes his situation in the larger field of German-language newspapers in the United States before detailing the editorials for which he was convicted under the Espionage Act of 1917. It also seeks to better understand what Frohwerk said in the twelve anti-war editorials that so raised the ire of the US government. It concludes by highlighting his experience at the US Penitentiary in Leavenworth using prison records and newspaper articles in which he describes his time there, briefly reviewing what is known about his life following his release. It also explains some lasting ramifications of his case, perhaps a cautionary tale about the restrictions of government speech during wartime, noting that even the federal prosecutor on the Frohwerk case later called it an unjustified conviction.

While information is sparse on the man and his work, this is not completely uncharted territory. Some scholars have taken steps to explore Frohwerk in the context of his Supreme Court case. Thomas Healy, for example, provides the most substantial consideration in the literature available of Frohwerk as an editor, noting the Department of Justice was investigating Frohwerk and Carl Gleeser, publisher the *Missouri Staats-Zeitung*, months before charges were

brought against the two.[9] The focus of Healy's book is Justice Oliver Wendell Holmes Jr. and his consideration of several First Amendment cases heard during his tenure on the Supreme Court, and it does much to situate the case legally. But it stops well short of a comprehensive review of Frohwerk the man, his career or the particulars of his case. Thus, while First Amendment scholars recognize the gravity of *Frohwerk* and have taken steps to understand it in the context of the Espionage Act, a detailed investigation of Frohwerk, the editor and his writings, trial, and post-conviction life, remains to be completed.

German Leader of the West

Jacob Frohwerk was born around 1865 in Germany and immigrated to the United States in 1882.[10] He moved to Kansas, where he would live until his death, within three years of arriving in the United States and was living in Kansas City no later than 1885, when he married Henrietta W. Frohwerk on October 8.[11] Henrietta, whose family name was Frohwerk even before her marriage to Jacob, had immigrated to the United States in 1869 with her parents, Gottfried

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[9] Thomas Healy, *The Great Dissent: How Oliver Wendell Holmes Changed His Mind—and Changed the History of Free Speech in America* (New York: Metropolitan Books, 2013), 84-85.
[10] 1920 US Census, Wyandotte County, Kansas, population schedule, Kansas City, sheet 22A, line 30, digital image, Ancestry.com. The passenger list for the SS Circassia indicate Frohwerk likely arrived in New York City on October 25 having traveled to the United States by way of Scotland. His occupation is listed in the passenger list as "clerk." Passenger list, SS Circassia, arrival October 25, 1882, digital image, Ancestry.com.
[11] 1895 Kansas Census, Wyandotte County, population schedule, Kansas City, family number 594, line 7, digital image, Ancestry.com.; Jackson County, Missouri. Marriage certificate no. 5P-403 (1885), Frohwerk-Frohwerk, digital image, Ancestry.com. Frohwerk lived in Illinois for an unknown amount of time during the time between his arrival in the United States and his appearance in Kansas City.

and Wilhelmina.[12] Jacob became a naturalized US citizen October 3, 1888, at age 24, and he and Henrietta had a daughter, Clara, soon thereafter.[13]

Frohwerk left few clues as to his activities during his first decade in the United States, and it is unclear what jobs he held through the early 1890s. By the 1895 census, however, he was involved in newspapering, and in that year he identified himself as a reporter to the census recorder.[14] His newspaper was the *Kansas Staats-Zeitung*, a German-language weekly published in Kansas City, Kansas. The inaugural issue of the *Staats-Zeitung* appeared November 15, 1894, under Frohwerk's editorship. He was fluent in English as well as German, and some of his editorials in German-language newspapers were published in English, likely to reach a wider audience.

While undoubtedly busy running his newspaper, Frohwerk was active in a number of cultural and political organizations by the mid-1890s, particularly groups promoting German culture. Months before launching his newspaper, he attended the state conference of the Kansas German-American League in Salina, Kansas, about 175 miles west of Kansas City. There, he lobbied the assembly to support two resolutions, one opposing women's suffrage, the other preventing the organization from endorsing the entire Democratic state ticket. Both resolutions were adopted.[15] The latter of the two reflects Frohwerk's support of the Republican Party during the decade, which is reflected in regional newspaper coverage of Republican Party activities.

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[12] 1910 US Census, Wyandotte County, Kansas, population schedule, Kansas City, sheet 8B, lines 85-88, digital image, Ancestry.com; "Mrs. Wilhelmina Frohwerk," *Kansas City Gazette Globe*, April 10, 1916.
[13] Missouri, Western District Naturalization Index, Jacob Frohwerk, October 3, 1888, digital image, Ancestry.com; 1895 Kansas Census, Wyandotte County, population schedule, Kansas City, family number 594, line 9, digital image, Ancestry.com.
[14] 1895 Kansas Census, Wyandotte County, population schedule, Kansas City, family number 594, line 7, digital image, Ancestry.com.
[15] "The German League," *Salina Daily Republican-Journal*, September 5, 1894.

Articles identify him as a prominent member of the local party, list him as an election judge in a Republican primary, and receiving a payment of $150 from the Republican state central committee of Kansas.[16]

His loyalty to the Republican Party diminished late in the decade and vanished altogether by 1902. In August 1899, the *Ottawa Daily Republican* reprinted an editorial from the *Staatz-Zeitung*, "the local German paper and a normal republican organ," that accused the Wyandotte County Republican leadership of bossism and urged readers to vote corrupt politicians out.[17] The next year, in the midst of the 1900 presidential contest between William McKinley and William Jennings Bryan, Frohwerk formally shifted alliances. "We are to decide in the present campaign between English or American predominance in our country," he said in an editorial reprinted in the *Daily Republican*, "between an Ameriban [sic] or an English financial system, between our traditional forms of republican institution and the new fangled notions of foreign conquest, between a large and expensive standing army which is a standing threat to the liberties of the people, and a government of peaceful development established and intended by the fathers of our country."[18] It is tempting to read this shift as a consequence of involvement in the partisan press, which intensified during the McKinley/Bryan contests in some communities west of the Mississippi.[19] In this case, however, Frohwerk's words seem genuine. Seventeen years later, Frohwerk would use similar rhetoric to oppose US involvement in World War I, but with much greater consequences.

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[16] "The Opening Gun," *Kansas City Gazette*, September 29, 1894; "Call ofr [sic] Republican County Primary Election," *Kansas City Gazette,* February 28, 1895; "Statement of Expense," *Leavenworth Weekly Times*, December 3, 1896.
[17] "What the Germans All over the State Say," *Ottawa Daily Republican*, August 28, 1899.
[18] "Germans for Bryan," *Ottawa Daily Republican*, July 25, 1900.
[19] [Citation removed for blind review.]

While his political inclinations changed, the extent of his community involvement did not. Frohwerk remained active in German cultural organizations throughout the 1890s and on into the 1910s, eventually stepping into a leadership role in the Kansas German-American Alliance. So substantial were his efforts on behalf of German Americans that some reportedly referred to him as "our leader of the West" and "Carl Schurz the Second" after the Union Army General, German-language newspaperman, and emblem of German-Americanism.[20] At the same time, he participated in community groups such as the Inter-State Commercial Association, which sought to promote trade in Kansas City and encourage low freight rates.[21] He even found time to captain a baseball team comprised of local reporters.[22]

At some point, Frohwerk crossed paths with Carl Henry Gleeser, another German American living in Kansas City, who would play a key role in the government's case against Frohwerk. They may have become acquainted through the German culture organizations in which Frohwerk was so active. Gleeser served from 1909 through 1912 as secretary of the local Turner society, a social club for German Americans.[23] Just as likely, they found each other through mutual activity in local German-language newspapering. After immigrating from Germany to the United States in 1872, Gleeser worked his way across the country, eventually making his way to California.[24] There he worked on both the *San Francisco Living Issues*, which he edited in 1894 and 1895, and the *San Jose New Charter*, which he edited in 1896.[25] His stays

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[20] "Jacob Frohwerk Makes Plea for Fair Neutrality," *Leavenworth Times*, June 29, 1915.
[21] Inter-State Commercial Association," *Kansas City Gazette,* September 6, 1902.
[22] "Victory for the Newspapers," *Kansas City Gazette,* April 29, 1899.
[23] Solon de Leon, ed., *The American Labor Who's Who* (New York: Hanford Press, 1925), 86.
[24] 1930 US Census, Vernon Parish, Louisiana, population schedule, Llano Colony, Police Jury Ward 1, sheet 16A, line 22, digital image, Ancestry.com.
[25] De Leon, *The American Labor Who's Who*, 86.

at both publications were brief, and by 1899 he was living in Kansas City.[26] Census records for 1900 indicate only that Gleeser was working as a typesetter in 1900,[27] but city directories connect him directly to the *Missouri Staats-Zeitung* as a printer from 1901 through 1907 under publisher Fred Gehring.[28] From 1904 through 1907, Gehring published both the *Missouri Staats-Zeitung* and the *Kansas Staats-Zeitung*, suggesting Frohwerk handled only the editing and not the publishing of the paper during those years. Gleeser took over publication and editorship of the *Missouri Staats-Zeitung* in 1908 and, beginning in 1910, published the *Kansas Staats-Zeitung* (sometimes listed as the *Neue Kansas Staats-Zeitung*) as well, a paper that in 1914 was referred to by the reporter of another newspaper as "the most influential German paper in the state.[29] Frohwerk's directory entries list him at times as editor, assistant editor, or even solicitor for the two papers, suggesting Gleeser was ultimately in control of both. Thus, the 1910s brought the two men into common enterprise, providing news to German Americans both east and west of the Missouri River in their native language.

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[26] "German Day at Chelsea," *Kansas City Gazette*, October 9, 1899.
[27] 1910 US Census, Jackson County, Missouri, population schedule, Kansas City, enumeration district 101, sheet 1A, line 31, digital image, Ancestry.com.
[28] See, for example, *Hoye's City Directory of Kansas City, Mo.* (Kansas City, Mo.: Hoye Directory Company, 1901), 412 and 399.
[29] De Leon, *The American Labor Who's Who*, 86; *1910 Kansas City Directory* (Kansas City: Gate City Directory Co., 1910), 604; "Picnic Was a Big Success," *Great Bend Tribune*, July 27, 1914.

Figure 2. A photograph of Jacob Frohwerk appearing in a 1913 news article.[30]

Frohwerk's editorial flair caused a stir on multiple occasions, typically in connection to two causes against which he regularly wrote: corruption and temperance. As already discussed, Frohwerk took the perceived bossism of the Republican party to task, criticizing political patronage and a ring of "a half dozen schemers" who were controlling local Republican politics.[31] More than a decade later, in 1914, he wrote an editorial drawing on a similar theme, accusing the assistant chief of police in Kansas City of appointing city employees who did not have required credentials and receiving money from a saloon in exchange for allowing drunk patrons to find their way home without police interference.[32] In that case, his writings earned him

[30] Photo of Jacob Frohwerk, *Leavenworth Weekly Times*, November 20, 1913.
[31] "Terse Tales of the Town," *Kansas City Gazette*, May 28, 1897; "What the Germans All over the State Say," *Ottawa Daily Republic*, August 28, 1899.
[32] "A Cop after Frohwerk," *Kansas City Gazette Globe*, July 13, 1914. A state prohibition of alcohol was in effect from 1881 until 1937.

a visit from a police officer who was sent to escort him to the assistant chief of police's office to discuss the matter. Frohwerk declined to cooperate and, with no warrant or other legal means of compelling Frohwerk to oblige, the officer left him alone and the matter was dropped.[33]

This was one of several times Frohwerk made news for his editorials and lobbying efforts against alcohol prohibition, which was in effect in Kansas from 1881 until 1937. At times he focused on the crime and corruption brought about by driving alcohol underground, actively taking part in attempts to close illegal booze "joints."[34] At others, he aimed directly at legalization. In 1895, for example, he circulated around the Statehouse in Topeka a petition signed by 3,500 prohibition opponents.[35] Later, Frohwerk would lead a group supporting an independent liberal ticket of anti-prohibition candidates, proclaiming the group was "simply sick and tired of prohibition."[36] The move extended his efforts within the German-American Alliance of Kansas, which elected him president in 1913 and which stood vigorously against prohibition in Kansas.[37] The German-American Alliance was a strong voice against prohibition, proclaiming it in the group's 1912 founding resolutions "a violation of the sacred rights of self-determination and self control" and vowing to fight it as "a sacred duty and obligation."[38] Frohwerk, thus, was far from a fringe editor largely hidden from public view. Instead, he was an active member of the Kansas City community and German American networks throughout Kansas, advocating multiple causes as a central leader. He did not rely solely on his newspaper for voice but was reported on regularly in other newspapers both in Kansas City and to the west.

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[33] "Frohwerk Didn't Go," *Kansas City Gazette Globe*, July 14, 1914.
[34] "A Misconception," *Kansas City Kansas Globe*, July 23, 1906.
[35] "Jacob Frohwerk's Mission," *Kansas City Gazette*, January 23, 1895.
[36] "Have Liberals Organized Here?" *Fort Scott Tribune*, March 28, 1914.
[37] "Two Local Men Are Honored at G.A.R. Meeting," *Leavenworth Times*, September 7, 1913.
[38] "G.A. Alliance of the State is Organized Here," *Leavenworth Times,* June 18, 1912.

Frohwerk's opposition to temperance aligned with the tenor of the German-language press as a whole.[39] After a slow start in the United States, the number of German-language newspapers grew significantly in the second half of the nineteenth century, from forty in 1840 to 613 in 1900.[40] The circulation of those newspapers in 1900 is estimated at around 800,000, with German-language newspapers representing about 80 percent of all foreign-language news in the United States.[41] Much of the content in German-language newspapers in the years leading up to World War I mirrored that in the mainstream American press, with reports on local, state, and national news, notes on local meetings, events, and lectures, sports coverage, and literature. Yet they differed in important ways. Obviously, they were printed in German, although some, such as Frohwerk's, included English-language content perhaps to reach a wider audience. They also generally leaned in the same direction on key issues. As Wittke notes, German-language editors and publishers "expressed strong views on [against] woman's suffrage, prohibition, and 'personal liberty,' and argued for the preservation of the German language, German social and cultural life, and the German press."[42] Those editors and publishers, who required a strong cultural base to maintain demand for German-language news, were frequently key members of German organizations. Thus, Frohwerk can be seen as prototypical of the German-language editor of the day.

He operated in a state with a history of German-language newspapers stretching back to its territorial days. As explained in Germany historian Eleanor Turk's review of the German-language press in Kansas, the first German-language newspaper in the state, the *Kansas Zeitung*,

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[39] Carl Wittke, *The German-Language Press in America* (Lexington: University of Kentucky Press, 1957), 217.
[40] Ibid., 76, 208.
[41] Ibid., 209, 201.
[42] Ibid., 217.

appeared in 1857.[43] More quickly followed, and though many such newspapers folded after short lives, others were founded to take their places. Eight German-language newspapers circulated in the state in the 1860s, twenty were founded in the 1870s and fifty more in the 1880s and 1890s.[44] The earliest of these operated from areas of high concentrations of German immigrants such as Leavenworth, but they soon fanned out into the developing agricultural areas to the west. A major function of such papers was boosterism, and rural German-language newspapers attempted to draw German Americans to fledgling communities.[45] In time, Kansas German-language newspapers came in content to resemble their counterparts to the east, providing an outlet through which German Americans could connect culturally. They also grew strong in the pre-war years. One publisher managed to organize a chain of German-language weeklies anchored by the *Wichita Herold* with five newspapers in Kansas, four in Oklahoma, and one in Missouri.[46] Far from operating in a vacuum, Frohwerk's newspapers were in the years before World War I but two within a vigorous German-language press in the region.

Conflicting Allegiances?

As did German Americans throughout the United States, Frohwerk and others in Kansas faced increasing anti-German sentiment beginning in 1914 and continuing through the end of World War I. In the early years of the war, before the involvement of US troops, many German-language newspapers and editors rallied behind Germany, as did Frohwerk's.[47] Soon after hostilities broke out, he wrote a letter on behalf of the Kansas German-American Alliance to the editor of the *Topeka Daily Capital* that positioned Germany as a victim forced to fight a

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[43] Eleanor L. Turk, "The German Newspapers of Kansas," *Kansas History* 6, no. 1 (1983): 51.
[44] Ibid.
[45] Ibid., 55.
[46] Ibid., 63.
[47] Wittke, *The German-Language Press in America*, 238.

defensive war. "Germany's cause in this war is more than justified, much as one may deplore war," he wrote. "It is battling today for its very existence."[48] It was a theme he would return to repeatedly in opposition to American involvement in the war.

Yet Frohwerk's statements in the press were far from his only efforts. The start of the war coincided with a marked increase in his activities with the Kansas German-American Alliance, in which he organized new chapters throughout the state and gave numerous speeches against American involvement in the war, Britain, and, later, President Wilson. In June of 1915, for example, Frohwerk traveled hundreds of miles from Kansas City to west-central Kansas, where he set to organizing German-American Alliance branches in Olmitz, Liebenthal, and Otis, all small communities.[49] At the same time, he toured the populous portions of the state delivering passionate speeches against the war. In October 1914 he delivered an hour-long speech in German in which he framed the war as one launched by Britain to preserve its commercial interests against Germany to a Leavenworth crowd.[50] He went from there directly to Wichita, where he gave a speech in favor of an anti-prohibition candidate for governor, and then to an afternoon German Day event in Reno County, all three events taking place in a single day.[51] January 1915 found him justifying the German cause in the war in Lawrence, where the local newspaper quoted him pleading for the United States to press for and end to the conflict: "'The outcome of this war is impossible to see,' said Mr. Frohwerk, 'but at any rate we can use our influence to stop the war as soon as possible and stop the slaughter of the very best men of the countries of Europe. We can be with them in heart and help in that way with all our might.'"[52]

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[48] "Defends German Emperor," *Topeka Daily Capital*, August 24, 1914.
[49] Untitled, *Barton County Democrat*, June 7, 1915.
[50] "Teutons Observe German Day with Subdued Spirits," *Leavenworth Times*, October 22, 1914.
[51] "'Billard for Governor' Club Is Getting Busy," *Wichita Beacon*, October 22, 1914.
[52] "Turners Celebrate 49th Anniversary," *Lawrence Daily Journal-World*, January 29, 1915.

As the war dragged on and Americans turned their attention to the presidential election of 1916, Frohwerk's speeches focused sharply on Wilson. A January 1916 speech was particularly pointed, attacking the president for claiming neutrality while American money and munitions bolstered the Allied cause.[53] Frohwerk's election-year speeches took him as far west at Galatia, 260 miles west of Kansas City, and included harsh rhetoric against Wilson.[54] Yet his 1916 speeches also illustrated his fierce commitment to the United States and his elevation of the concerns of his new home over those of Germany. While this sentiment appears in speeches throughout the year, nowhere is it clearer than in his German Day address in Leavenworth. Speaking in both English and German, he began by illustrating the role of German Americans in the development of the United States before moving to the core of the speech, "that the Germans were loyal Americans, that they owed their first allegiance to America above any other country, and that they should be Americans first last and all the time, which they were."[55] Newspaper coverage of the event stated the audience was moved deeply by the speech, particularly when speaking in German about charges of disloyalty against German Americans.

To Frohwerk's chagrin, Wilson won reelection, and five months later US soldiers were ordered to Europe. For most German-language newspapers, this meant an abrupt shift in editorial direction. While they had been ardently against Wilson and involvement in the war, the entry of the United States into the conflict forced a quick about-face; as Wittke notes, the papers "had to perform remarkable feats of mental gymnastics as they shifted editorial policy from pro-Germanism to professions of loyalty to the United States. One position after another was abandoned, and before the end of the summer of 1917, the German-language press, with the

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[53] "Jacob Frohwerk Flays Wilson's Foreign Policy," *Leavenworth Times*, January 11, 1916.
[54] "Noted Speaker Coming," *Great Bend Tribune*, August 22, 1916.
[55] "German Day Is Celebrated in a Happy Manner," *Leavenworth Times*, October 31, 1916.

exception of a few socialist and labor papers, had completed the process of adjustment."[56] Such was the case of the *St. Louis Westliche Post*, on the eastern border of Missouri, which shifted overnight from a firm pro-German position to unhindered support of the US war effort.[57] Yet not all German-language newspapers, even excepting socialist and labor papers, changed course. At the *Missouri Staats-Zeitung*, Frohwerk and Gleeser stayed the course throughout 1917, finding themselves in increasingly choppy waters before eventually finding themselves sunk.

Most controversial was a series of editorials written by Frohwerk and published in the *Missouri Staats-Zeitung* by Gleeser between June 22 and December 14, 1917, that assailed US involvement in the war on multiple points. Some of the ideas espoused therein were topics Frohwerk had drawn upon in previous *Staats-Zeitung* editorials and his speeches. He argued Germany was fighting a defensive war, Britain's commerce was the war's root cause, and the United States was involved chiefly to protect its financial connections with Britain. The instatement of the draft, however, gave Frohwerk new editorial ammunition, and he used it repeatedly. In an August 10 editorial responding to draft riots in Oklahoma, he chided but empathized with the rioters:

> Here he is, called upon to leave his wife and children or his aged parents, or to give up the boy upon which he expected to bestow the fruits of his life work and lean upon in the days to come.
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> Here he is, with the look of anguish and of pleading for help and relief in the eyes of his wife, staring him in the face day after day. She is sorrowing and pleading for her husband, the father of her children or their son. The courts are perhaps far away and if not, he has not the means to ask protection from them. Is not this enough to drive any man to distraction?
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> And he perhaps further contemplates, that his country is really not in danger, and that he or his boy are to be sent into a foreign land to fight in a cause of which neither he

[56] Wittke, *The German-Language Press in America,* 262.
[57] Harvey Saalberg, "The 'Westliche Post' of St. Louis: A Daily Newspaper for German-Americans, 1857-1938" (doctoral dissertation, University of Missouri, 1967), 338.

> nor any one else knows anything of. And perhaps the suspicion works itself into a conviction, that it is but a war to protect some rich men's money.[58]

By November, Frohwerk was attracting ire from other newspapers. After protesting a police order forbidding the German-American Alliance to hold a meeting in Kansas City, Frohwerk was condemned by the *Fort Scott Tribune*, which labeled him plainly as an enemy: "There are a lot of disloyal people in this state and in every state—a lot of men and women of influence whose sympathies are with Germany and against the United States. . . . It will result in the downfall of the United States if these people are licensed to live and do business unrestrained in the United States." The final sentence of the article was as prophetic as it was threatening. "The last one of them, in this tremendous crisis," it stated, "should be locked up and made to keep his mouth shut or should be shot."[59]

Two months later, on January 26, 1918, Frohwerk and Gleeser were arrested and charged with violation of the Espionage Act of 1917, purportedly at the request of other German Americans.[60] Thirteen charges were leveled against them, all in connection with editorials published in the *Missouri Staats-Zeitung* from June through December 1917, for "wilfully causing and attempting to cause insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces of the United States."[61]

Frohwerk and Gleeser were not the only ones snared by the new law. German immigrants to the United States and others had become vocal in their aversion to fighting their homelands. Many saw World War I as a conflict started by the wealthy that would have to be won on the backs of the penniless foot soldier. Among native-born Americans, hysteria and paranoia

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[58] Editorial, *Missouri Staats-Zeitung*, August 10, 1917.
[59] "Treason in Kansas," *Fort Scott Tribune*, November 9, 1917.
[60] "German Born Readers Cause Editors' Arrest," *Wichita Beacon*, January 28, 1918.
[61] Bill of Indictment, *U.S. v Gleeser and Frohwerk,* April 23, 1918, 3. Filed in the District Court of the United States for the Western Division of the Western District of Missouri.

pervaded as Congress approved the Espionage Act of 1917. The law criminalized speaking or writing with the intent to hinder the United States' war efforts, making it illegal to cause or try to cause insubordination or disloyalty in the military or obstruct recruiting. It was also illegal to mail any material that violated the act. Those convicted faced up to a $10,000 fine and twenty years in jail. Roughly two thousand people were tried under these laws, resulting in the conviction of about nine hundred people, most of whom were aliens, radicals, or publishers of foreign-language magazines and newspapers, among the most noted being socialists and German immigrants. As previously mentioned, among the most famous cases arising from the acts are *Schenck v. United States* and *Debs v. United States*, incitement cases where the court unanimously agreed in 1919 that seditious utterances were not protected speech.[62] *Abrams v. United States*, decided later that fall, is widely noted because of Holmes' famous dissent, and the case is detailed in a lengthy study by Polenberg.[63]

These cases marked the court's most active struggle to date to find the line between unpopular speech and genuine threats to national security. The question in *Schenck*: was the country's ability to raise a fighting force for World War I threatened by war protestors' expression? Socialist Charles T. Schenck sent leaflets to men of draft age, encouraging draftees to "assert their rights" by refusing to serve. Justice Holmes first articulated his famous clear-and-present-danger test in *Schenck*, writing that expression is not protected when words "are used in such circumstances and are of such a nature as to create a clear and present danger that they will

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[62] *Schenck v. United States*, 249 U.S. 47 (1919); *Debs v. United States*, 249 U.S. 211 (1919).
[63] *Abrams v. United States*, 250 U.S. 616, 630 (1919); Richard Polenberg, *Fighting Faiths, the Abrams Case, the Supreme Court, and Free Speech* (New York: Penguin Books, 1987).

bring about the substantive evils that Congress has a right to prevent."[64] So, if the speech is evil, Congress could stop it. The Supreme Court upheld Schenk's conviction on March 3, 1919, agreeing unanimously that the possibility draftees would refuse induction amounted to a clear and present danger to the country. Most famously, Holmes wrote: "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing panic…"[65] Eugene V. Debs's case, decided with Frohwerk's case a week later, was also part of this line of incitement cases where government critics and anti-war protesters were targeted. Debs, the Socialist Party leader and perennial presidential candidate, was convicted under the Espionage Act for an anti-war speech in Canton, Ohio, where he said "men were fit for something better than slavery and cannon fodder."[66] Debs, a major public figure who received more than one million votes (or 6 percent) in the presidential election of 1912 while sitting in jail, was found guilty of attempting to incite insubordination in the armed forces, as well as obstructing military recruitment and encouraging support of the enemy.[67] On each of three counts, he was sentenced to ten years in prison.[68] Yet again, government officials had succeeded in legally silencing the opposition, in this case, the anti-war socialists' leading spokesman.[69] The court ruled on Frohwerk's case the same day.

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[64] 249 U.S. 47, 52 (1919). This replaced the vague "bad tendency test," which the US Supreme Court had said in 1907 permitted free speech restrictions by the government if it is believed that the expression has a sole tendency to incite illegal activity, such as resisting the draft.
[65] Ibid.
[66] 249 U.S. 211.
[67] For further discussion on this case and its context, see Margaret A. Blanchard, *Revolutionary Sparks, Freedom of Expression in Modern America* (New York: Oxford University Press, 1992).
[68] While serving his prison term, Debs received more than 900,000 votes in the presidential election of 1920.
[69] For detail on the trial of this largely forgotten activist, see Nick Salvatore's biography, *Eugene V. Debs: Citizen and Socialist* (Champaign, Ill.: University of Illinois Press, 2007).

Frohwerk: 'Cease firing.'[70]

From July 6 to December 7, 1917, the *Missouri Staats Zeitung* published a series of twelve articles written by Frohwerk and denouncing the United States involvement in World War I. So what exactly did he say – and how did he say it? In his first editorial, "Come Let Us Reason Together," published July 6, 1917, Frohwerk argued that the United States must cease "the sending of American boys to the blood-soaked trenches of France," calling America's involvement in the war "a monumental and inexcusable mistake."[71] The editorial ran in English and German on the front page of the *Missouri Staats-Zeitung*. "These are strong words, we admit, but we would not be true to our allegiance and our love to this country, if we did not utter these words of warning to the American people," the editorial continued. Frohwerk reminded readers that he was born in Germany and knew of its "unconquerable spirit and undiminished strength." But he assured readers that Americans were his neighbors and friends, so he felt a moral obligation to speak. "Not to utter it would be treason to this – now our country." In a July 20, 1917 editorial, Frohwerk argued for neutrality and isolationism on the part of the United States. He also worried about "the rivers of human blood" the war would cause.[72] The following week, a Missouri *Staats-Zeitung* editorial lamented: "We have gone to war to cover up this awful blunder of our administration and to protect the loans of Wall Street to the Allies with the blood of our American boys and the sacrifices and sufferings of the American people."[73] As noted above, the newspaper argued in an August 10 editorial that the American conscription law, the draft, was a violation of the Constitution. But he argued that draft riots in Oklahoma and elsewhere "were deplorable," that all resistance to the draft should be carried out by legal means.

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[70] Editorial, *Missouri Staats-Zeitung*, August 10, 1917.
[71] "Come Let Us Reason Together," *Missouri Staats-Zeitung*, July 6, 1917.
[72] Editorial, *Missouri Staats-Zeitung*, July 20, 1917.
[73] "Lansing on War Issues," *Missouri Staats-Zeitung*, August 3, 1917.

"In the draft law, as well as in all others, if we feel aggrieved, we have the courts to which we may go for protection. Should these fail us, we have then the right to petition Congress to repeal the law and should we again fail here, then we can ourselves right the wrong at the next election."[74] Frohwerk continued to complain that the poor man is being sent to protect "some rich men's money," arguing that the United States is in no danger of invasion.[75] He also exhibited significant anti-British sentiment, arguing that American boys were dying to help secure England's world domination. He listed the names of two of the first American men of German descent to be killed in the war. "God knows the Staats Zeitung has done everything within its power to spare these two mothers their terrible bereavement."[76]

The newspaper was small, with a circulation of just a few thousand, and one of its subscribers was the Department of Justice.[77] The government was keeping an eye on German newspapers for evidence of espionage. The draft went into effect in the summer and fall of 1917 and the first casualties were coming back from Europe. Government officials visited the newspaper office to interview Frohwerk and the newspaper's owner and publisher, Gleeser. They did not take Frohwerk's editorial stance lightly, seeking to muzzle him and his newspaper with a very effective legal weapon. He and Gleeser were indicted for violation of the Espionage Act on April 23, 1918, in US District Court in Kansas City. The act calls for fines and imprisonment of anyone who "shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies." It also outlaws the cause or attempt to cause insubordination or disloyalty during wartime. In response to the charges, Frohwerk and his attorney argued that

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[74] Editorial, *Missouri Staats-Zeitung*, August 10, 1917.
[75] Ibid.
[76] Editorial, *Missouri Staats-Zeitung*, September 21, 1917.
[77] Healy, *The Great Dissent,* 84.

nothing he published in the *Staats Zeitung* was false, that the Espionage Act was unconstitutional and that he had a First Amendment right to editorialize against the war.[78] His motion to dismiss, however, was unsuccessful, and the next day the trial court empanelled and swore in a jury of twelve men. The sequestered jury was to be given quarters and meals for the duration of the trial. Frohwerk, for his part, fought hard to stop – or at least slow down – the process. His motion to quash the panel of jurors was overruled. He also argued that he did not have time to gather witnesses to appear on his behalf. He refused to enter a plea, so the court ordered that a not guilty plea be entered for each of the thirteen counts of the indictment. Frohwerk then sought a continuance, seeking more time to prepare for the inevitable trial. The court rejected this and ordered the jury to appear the next morning, July 26, 1918.

Gleeser's case had been adjudicated even more quickly. Government attorneys said Gleeser and Frohwerk had engaged in conspiracy to obstruct military recruitment. Identified by the court as the owner, proprietor, editor, printer and distributer of the paper, Gleeser had agreed to testify against Frohwerk in exchange for a lesser sentence. By the time Frohwerk's case made it to trial, Gleeser was already sitting in prison at Leavenworth, Kansas. He had pled guilty and testified against his former employee, receiving a sentence of five years in prison.[79]

Meanwhile, far from patiently awaiting trial, Frohwerk was taking steps to improve his image with the public. Immediately following their arrest, Gleeser had already proclaimed the *Missouri Staats-Zeitung* would shift editorially and begin supporting Wilson, but Frohwerk went further.[80] In March, he appeared on his own accord before a hearing of a US Senate subcommittee investigating the actions of the National German-American Alliance. In the

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[78] Demurrer to Indictment, *U.S. v. Frohwerk*, J.D. Shewalter, attorney for the defendant.
[79] Healy, *The Great Dissent*, 85.
[80] "German Born Readers Cause Editors' Arrest*, Wichita Beacon*, January 28, 1918.

hearing, Frohwerk clarified the actions of the Kansas branch of the organization as in no way beholden to the German government. "We feel ourselves true, loyal American citizens who believe in the Constitution of the United States and who hold it more sacred than probably any other writing of man except the Bible," he told the subcommittee.[81] The following month, Frohwerk threw himself into the Liberty Bond sales efforts in Kansas City, captaining a team of ten others and claiming he would be more effective in soliciting purchases from German Americans than English-speakers.[82] Ultimately, however, his efforts earned him little but notoriety in the press. In some cases, in fact, he was a liability to allies. A letter to the editor of the *Fort Scott Daily Tribune-Monitor* used Frohwerk's support of a local politician to discredit that man, writing the *Staats-Zeitung* "kept on praising Little (the politician) and his votes until the paper was suppressed and the publisher jailed. Even a dog is known by the company he keeps."[83]

It is also possible that Frohwerk's attorney, a socialist named Joseph D. Shewalter, may not have done his client any favors, that his briefs read more like socialist manifestos than coherent legal arguments.[84] During his trial, which lasted three and a half days, Frohwerk's attorney made the case that the government was out to get him from the start, and that officials in the court system had already decided he was guilty. When Frohwerk filed his motion to dismiss, for example, the judge should have taken time to consider all of the legal points in his attorney's motion. But within five minutes of Frohwerk's oral argument for dismissal, the court produced

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[81] *Hearings before the Subcommittee of the Committee on the Judiciary, United States Senate, Sixty-Fifth Concress, Second Session, on S. 3529* (Washington: Government Printing Office, 1918), 199. Page 636 indicates the subcommittee was not aware of the charges against Frohwerk until after hearing his testimony.
[82] "Changes His Tune," *Chanute Daily Tribune*, April 24, 1918; "Jacob Frohwerk Paroled, *Topeka Daily Capital*, January 8, 1920.
[83] Letter to the editor, *Fort Scott Daily Tribune-Monitor*, July 19, 1918.
[84] Healy, *The Great Dissent*, 92.

and read a written opinion that clearly had been prepared in advance. As such, Frohwerk argued that he was deprived of his Constitutional right to be heard in court. He complained to the court that the judge's opinion denying his motion was at least twenty-five pages long, and this proved that the judge did not listen to Frohwerk's argument before ruling against him after a five-minute recess.[85]

After only three minutes of deliberation, the jury returned a verdict of guilty on all counts, and the following day the court sentenced him to ten years in prison, along with a $500 fine plus court costs.[86] Out on a $7,500 bond, Frohwerk appealed to the US Supreme Court, arguing that his First Amendment rights had been violated and that he had uttered no false statements nor did he have any criminal intent. He also urged the high court to overturn the guilty verdict because of multiple errors made at the trial level. He pointed out that he had no time to secure witnesses and prepare for trial. He also argued that the sentence was "excessive and cruel."[87]

The US Supreme Court heard Frohwerk's arguments January 27, 1919 and released its decision March 10. It upheld the verdict in a unanimous opinion authored by Justice Holmes, reasserting its conclusion in *Schenck* that the Constitution does not "give immunity for every possible use of language."[88] Holmes acknowledged that unlike Schenck, who mailed anti-conscription letters to draftees, Frohwerk had not made "any special effort to reach men who were subject to the draft."[89] But Holmes wrote that Congress had the power to punish anyone writing and publishing content that urged the obstruction of the draft. The court agreed that

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[85] Transcript of Record, *U.S. v. Frohwerk*, October term, 1918, No. 685.
[86] "Frohwerk Guilty," *Leavenworth Weekly Times*, July 4, 1918.
[87] Appeal and petition for Writ of Error, Transcript of Record, *Frohwerk v. U.S*, October term, 1918, No. 685.
[88] 249 U.S. 204, 206.
[89] Ibid., 208.

Frohwerk engaged in conspiracy with his editor and publisher Gleeser to obstruct recruitment, noting that would be "criminal even if no means were agreed upon specifically by which to accomplish the intent."[90]

The pivotal point in which the court began to change its thinking about freedom of expression within the context of incitement revealed itself in Justice Holmes' remarkable dissent in *Abrams v. United States*, decided in November of the same year. This discussion of incitement as a violation of the First Amendment marked the beginning of modern debate on the meaning of free speech.[91] In this case, Jacob Abrams and three other young Jewish-Russian immigrants were convicted of attempting to interfere with the war against Germany after they dropped leaflets written in English and Yiddish from a Lower East Side factory window urging New York City workers to strike in protest of the war that was being carried out by an unjust government.[92] Justice Louis D. Brandeis joined Justice Holmes' dissent, agreeing that the four were essentially convicted for their socialist and anarchist views – and their criticism of the government. Holmes wrote: "I wholly disagree with the argument . . . that the First Amendment left the common law as to seditious libel in force."[93] In *Abrams*, Holmes famously referenced the marketplace of ideas philosophy, implying the principle, but never actually using the term. He wrote of the importance of "a free trade in ideas" and "that the best test of truth is the power of the thought to get itself accepted in the competition of the market."[94]

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[90] Ibid., 209.
[91] Blanchard, *Revolutionary Sparks*, 83.
[92] For a more thorough study of the case, see Polenberg, *Fighting Faiths: The Abrams Case, the Supreme Court, and Free Speech*.
[93] *Abrams v. United States*, 250 U.S. 616, 630 (1919).
[94] Ibid. Much has been written about Holmes' change of heart, tracing his evolution to a summer of written correspondence with Judge Learned Hand, as well as several prominent libertarians and legal scholars. See for example, Polenberg, *Fighting Faiths*, 218-28.

Despite the Supreme Court decision against him, Frohwerk held out hope his sentence might yet be overturned. One month after the decision in his own case, in April, he requested a rehearing but was denied a week later.[95] Two weeks later he received notice from the district court's office he was to report to the Federal Penitentiary at Leavenworth to begin his ten-year sentence within thirty days.[96] Still he held out for a reprieve. "While there is life," he told a reporter, "there is hope."[97] There was reason to remain positive. Gleeser, who had pleaded guilty and began serving his sentence on April 30, 1918, received notice on May 8, 1919, that his sentence had been commuted to one year and one day.[98] He was released immediately.[99] Meanwhile, Frohwerk's attorney was working to secure a sentence reduction in Washington.[100] Yet as the days crept closer to his deadline, Frohwerk received no such letter. He did manage to arrange one extra day of freedom, allowing him to visit the grave of his only daughter, who had died in 1917, on Decoration Day.[101] But on May 31, he reported to Leavenworth, proceeded through prisoner intake, and began serving his sentence.

Frohwerk's prison records suggest that while his stay began poorly, he was as active and productive a prisoner as he could possibly have been. He was admitted to the prison hospital June 3, just three days after arriving, for neurasthenia, and released one week later.[102] The next

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[95] "Frohwerk Wants a Rehearing," *Coffeyville Daily Journal*, April 8, 1919; "No Rehearing for Frohwerk," *Chanute Daily Tribune*, April 14, 1919.
[96] "The Frohwerk Mandate," *Great Bend Tribune*, May 1, 1919.
[97] "Frohwerk Plans for Prison," *Kansas City Kansan*, May 6, 1919.
[98] Letter from Department of Justice to Warden of US Penitentiary at Leavenworth, May 8, 1919, prisoner record of Carl Gleeser, National Archives at Kansas City.
[99] Individual Daily Labor Record, Prisoner #12644, Carl Gleeser, prisoner record of Carl Gleeser, National Archives at Kansas City.
[100] Telegram, Franz Lindquist to Jacob Frohwerk, May 31, 1919, prisoner record of Jacob Frohwerk, National Archives at Kansas City.
[101] "Frohwerk Comes to Prison Alone," *Leavenworth Times*, June 1, 1919.
[102] Hospital record, prisoner #14036, Jacob Frohwerk, June 3, 1919, prisoner record of Jacob Frohwerk, National Archives at Kansas City.

day he reported to his job assignment in the prison's printing office, where he worked almost every day but Sundays and holidays for the duration of his imprisonment.[103] There, he edited the prison newspaper, the *New Era*, and encouraged others to write for the newspaper, raising it, in the eyes of his colleagues, to "a higher literary standard than that appearing in any other prison organ in the land."[104] In his downtime, Frohwerk kept steady correspondence with a number of family members and friends, including his wife, Henrietta, two whom he wrote every few days.[105] He also received a steady stream of cigars, which arrived at a rate of about fifty a month, and periodic packages of fruit and candy.[106]

By far the most valuable delivery he received during his stay, however, was the letter from Woodrow Wilson commuting his sentence to one year and one day, the same reprieve granted to Gleeser. It was signed by Wilson only nineteen days after Frohwerk arrived at Leavenworth, and it shortened the editor's sentence by nine years. It also adjusted the date he would be eligible for parole; whereas earlier he would not have become eligible until September 29, 1922, he was now eligible September 29, 1919.[107] The parole board approved his release

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[103] Individual Daily Labor Record, prisoner #14036, Jacob Frohwerk, prisoner record of Jacob Frohwerk, National Archives at Kansas City.
[104] "Frohwerk Has Been Released from Prison," *Leavenworth Times*, January 11, 1920.
[105] Correspondence log, prisoner #14036, Jacob Frohwerk, prisoner record of Jacob Frohwerk, National Archives at Kansas City.
[106] Record of Articles Received by Prisoners, prisoner #14036, Jacob Frohwerk, prisoner record of Jacob Frohwerk, National Archives at Kansas City.
[107] Untitled record, prisoner #14036, Jacob Frohwerk, prisoner record of Jacob Frohwerk, National Archives at Kansas City; letter from the Office of Record Clerk, prisoner record of Jacob Frohwerk, National Archives at Kansas City.

January 6, 1920.[108] Four days later, on January 10, Frohwerk walked out of Leavenworth after serving thirty-two weeks of a ten-year sentence.[109]

By all surviving accounts, Frohwerk closely followed prison rules and was a leader to other prisoners. In a letter written to him from the warden at Leavenworth after his release, the warden praised his conduct while imprisoned, writing, "If every prisoner would live up to the rules and regulations pertaining to the governing of this prison and would be as loyal to the officials connected therewith as you was [sic], this would be a model institution in every way."[110] He told the press as much, declaring Frohwerk a model prisoner straight out.[111] No stronger an endorsement could have been written, however, than that printed in the *New Era*, the prison newspaper, and reprinted by the *Leavenworth Times* following Frohwerk's release:

> Frohwerk meant something to this place, and to us who are in it. He meant sincerity, for one thing; and that is the finest thing in journalism. He took the editorship of this paper because he thought he could do something toward the enlightening and enlivening of the prisoner's day. He sought to bring out a paper which would be of real interest to the inmates, which would express freely and flatter none. And he succeeded. . . .
>
> Goodbye, Frohwerk! May you always retain that which is of far greater work than prosperity or tinselled [sic] fame; your fine idealism, your genial sense of comradeship and your sterling humanity.[112]

First Amendment scholars have long criticized the World War I-era incitement cases, but it is notable that even the government attorney, Alfred Bettman, who prevailed in *Frohwerk*, knew an injustice had been perpetrated. In private correspondence he wrote that Frohwerk's

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[108] Letter from Charles Glasson to A. Anderson, January 6, 1920, prisoner record of Jacob Frohwerk, National Archives at Kansas City.

[109] After learning of his parole, Frohwerk had initially expected to be released January 9, but a paperwork delay kept him in prison until January 10. Telegram from Jacob Frohwerk to Henrietta Frohwerk, January 7, 1920, prisoner record of Jacob Frohwerk, National Archives at Kansas City; Telegram from Jacob Frohwerk to Henrietta Frohwerk, January 9, 1920, prisoner record of Jacob Frohwerk, National Archives at Kansas City.

[110] Letter from warden to Jacob Frohwerk, January 19, 1920, prisoner record of Jacob Frohwerk, National Archives at Kansas City.

[111] "Jacob Frohwerk Gets Parole at Federal Prison," *Leavenworth Times,* January 8, 1920.

[112] "Frohwerk Has Been Released from Prison," *Leavenworth Times*, January 11, 1920.

editorials advocated change in existing government policy "as distinguished from advocacy of obstruction of existing policy, and seemed to me therefore to fall within the protection of the constitutional guarantee of free speech and press."[113] The attorney said Frohwerk was "one of the clearest examples of the political prisoner."[114]

Conclusion

In the days leading to his release, Frohwerk told reporters that he would go home to Kansas City and likely return to journalism once freed but said he did not know for which newspaper.[115] While he largely falls from the record after January 1920, news accounts and archival records show he did indeed return to newspapering. Frohwerk returned to the US Penitentiary at Leavenworth in September to give a tour of the prison to a group of socialites from Kansas City, and news coverage of the visit states he was "again in newspaper work in Kansas City," perhaps for a German-language newspaper.[116] Similarly, city directories and census records extend his press involvement for decades after his release. He identified himself as an editor in both the 1930 and 1940 US Censuses, still in Kansas City and still living in the same home.[117] Additional information about Frohwerk's employment comes from city directory listings. In 1924 he is listed as an advertising agent with the *Kansas City Press* and in 1925 as a

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[113] As quoted in David M. Rabban, "The Emergence of Modern First Amendment Doctrine," *University of Chicago Law Review* (Autumn, 1983): 1296. Alfred Bettman was in charge of the federal government's prosecutions under the Espionage Act. He made this shocking revelation in private correspondence with noted First Amendment scholar and Harvard Law School professor Zechariah Chafee Jr. That correspondence is included in Chafee's papers that are housed at Harvard.
[114] Ibid.
[115] "Frohwerk Order of Release Will Arrive Tomorrow," *Leavenworth Post*, January 8, 1920.
[116] "Frohwerk Shows His Former Home," *Leavenworth Post*, September 16, 1920.
[117] 1930 US Census, Wyandotte County, Kansas, population schedule, Kansas City, sheet 15A, house 243, line 19, digital image, Ancestry.com; 1940 US Census, Wyandotte County, Kansas, population schedule, Kansas City, sheet 5A, house 111, line 21, digital image, Ancestry.com.

journalist with the same newspaper.[118] From the late 1920s into the early 1930s he published the *Kansas City News*, a weekly newspaper, in which his editorials "always took a determined stand."[119] He died at age 84 on November 19, 1949, at his home in Kansas City, almost thirty years after his release from prison.[120]

One wonders, in light of his significance to the German American community, the gravity of his editorials, and the impact of his Supreme Court case, why Jacob Frohwerk has been overlooked by history. Perhaps the notoriety of Eugene Debs, a candidate for president who was sitting in jail when he received one million votes as the Socialist Party candidate, overshadowed the Kansas City editor of German-language newspapers who tirelessly advocated for the interests of German Americans in his region. As such, this paper might challenge our academic tendency to write about history as a parade of Great Moments or Great Men, thus helping us to further recognize that in addition to the famous Debs, newspaper editors faced the wrath of the US government and withstood the almost routine trampling of their First Amendment rights during this era. This research, then, offers further context, expanding the analysis of such incitement cases within the context of journalism history, illustrating how they affected everyday people and especially journalists. Schenck was an activist, as was Abrams. Debs was a politician. Frohwerk represents that area of history of interest to media scholars, the editor of a local newspaper in America's heartland, and thus adds another layer of complexity and nuance relating to the history these early incitement cases.

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[118] *Classified Buyer's Guide of the City of Kansas City, Kans. and Catalog Section, 1924* (Kansas City, Mo.: Gate City Directory Co., 1924), 474; *Polk's Kansas City Kansas Directory, 1925* (Kansas City, Mo.: Gate City Directory Co., 1925), 345; *Polk's Kansas City (Wyandotte County, Kansas) City Directory, 1938* (Kansas City, Mo.: R. L. Polk & Co., 1938) 160.
[119] "Jacob Frohwerk," *Kansas City Star*, November 20, 1949.
[120] Ibid.

By way of epilogue, Schenck was released after serving six months in federal prison. The "clear and present danger test" established in his case effectively remained intact, however, until 1969, when the Supreme Court narrowed its test for incitement in *Brandenburg v. Ohio*.[121] Here the liberal Warren court held that the government cannot punish inflammatory speech or incitement unless that speech is likely to incite "imminent lawless action," a much more stringent test based on a more modern reading of the First Amendment. For his part, Debs went to prison in April 1919, also serving a much lighter sentence than originally expected. President Warren G. Harding commuted his sentence to time served, effective Christmas day 1921. Returning to Gleeser, his credibility would be questioned again later, thanks to the conviction.

After his release from prison in May 1919, he moved to New Llano Colony near Leesville, Louisiana, where he edited the *New Llano Democrat* for several years beginning in 1921.[122] The space Gleeser put between himself and Leavenworth, however, was not enough for him to escape his past. His conviction under the Espionage Act continued to haunt him, and when he was called as a witness in a 1927 trial in Louisiana, the questioning attorney used Gleeser's run-in with the federal government against him.[123] It is unclear when or where Gleeser's story ends. He was alive as late at 1940, when he was 84 years old, but a date of death has not yet been found.[124]

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[121] 395 U.S. 444 (1969).

[122] The newspaper changed names from the *Democrat* to the *Colonist*. "Colony Stages Big Picnic Where No Money Changed Hands During Whole Day," *Kansas City Kansan*, October 2, 1921.

[123] "Admits Has Done Time in U.S. Prison," *Monroe News-Star*, January 28, 1927.

[124] 1940 US Census, Vernon Parish, Louisiana, population schedule, Police Jury Ward, sheet 20A, house 243, line 38, digital image, Ancestry.com. Newspapers, death records in Louisiana and other states, social security indexes, and other sources were consulted to try to pin down the date of Gleeser's death, but none yielded a date.