
**Letter to President Woodrow Wilson
from Postmaster General Albert S. Burleson,
with Enclosure by Post Office Solicitor William
Lamar Regarding Postal Censorship,
September 3, 1920**

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Washington, DC,
September 3, 1920.

My dear Mr. President:

I endeavor at all times to spare you the troubles and worries of the Postal establishment, and it is with sincere regret that I feel it necessary to impose on your time and attention by bringing before you a matter that has for months been the source of much worry to me and about which I am in doubt as to the action that should be taken. During the war, as you know, the Congress passed the Espionage Act, a copy of which I attach. Under this act, as Postmaster General chargeable under the law with its enforcement, a number of magazines and newspapers were excluded from the mails, and second class mail privilege of some of them withdrawn. The action of the Postmaster General in every instance without exception where it was challenged has been upheld by the courts. After the Armistice certain newspapers and magazines, of the same character against which action had been taken, made application for a renewal or the granting of the second class mailing privilege. An examination of a number of the issues of these publications discloses that the general tenor of the matter published therein has undergone no change, but on the contrary has in some instances become more extreme. In nearly every case there is an insidious attempt to keep within the letter of the law, but in effect to inculcate in the minds of their readers a belief that this Government should be overthrown by force, to encourage a belief in modern communism, to hold up as an ideal government the Soviet system in vogue in Russia, to consolidate a class which, encouraged to

accept as true that Capitalism is dominant in our country, may be induced by direct action (as this term was used by the Third International of Moscow) to aid in wresting the control of government from the so-called capitalistic class. The ultimate effect of all this propaganda is an encouragement to violence and those crimes described in Section 211 of the Penal Code, which declares matter tending to incite arson, murder, or assassination to be nonmailable.

The question troubling me is what action shall I take in cases of such publications where application is made on their behalf for the second class mailing privilege, and also what action shall I take in renewing this privilege to papers and magazines which during the war had this privilege withdrawn. If the Treaty of Peace had been ratified, it had been my purpose, as I informed you, to take up all applications of publications which were held in abeyance on account of violations of the wartime provisions of the Espionage Act and promptly dispose of them, but we are still technically at war and there is doubt in my mind whether any action should be taken on these cases until peace is accomplished.

I encourage a memorandum of the Solicitor for the Post Office Department with reference to cases arising under both the wartime legislation and our permanent laws, also a number of issues of *The Liberator*, and the answer filed in my behalf in the *New York Call* case. These show typical matter in question....

Being desirous to conform to your wishes would appreciate it if you would examine these papers and drop me a line or advise me at the next Cabinet meeting what course you think I should take with reference to giving such publications the second class mailing privilege.

Faithfully,

A.S. Burleson.

[Enclosure]

Memorandum for the Postmaster General.

Washington,
September 3, 1920.

During the period of active hostilities the second class mailing privilege was withdrawn from a number of radical papers for habitually carrying matter nonmailable under the Espionage Act. The second class mailing privilege was also denied to a number of new publications carrying similar matter.

Since the armistice these publications have been clamoring for the second class mailing privilege while continuing to carry this revolutionary matter. Acting under your general instructions, no action has been taken on these applications for the second class mailing privilege, the Espionage Act being still in force.

Recently a mandamus proceeding was instituted by the *New York Call* in the Supreme Court of the District of Columbia to compel the Postmaster General to grant the second class mailing privilege to that publication. The answer of the Postmaster General sets out numerous violations of the Espionage act by the *Call* as his reason for revoking the second class mailing privilege and declining to grant its application for a renewal of the second class mailing privilege.

Paragraph 44 of the answer avers that Section 211 of the Criminal Code makes nonmailable "matter of a character tending to incite arson, murder, or assassination," and that Section 2 of Title 12 of the Espionage Act provides that "every letter, writing, circular, postal card, picture, print, engraving, photograph, newspaper, pamphlet, book, or other publication, matter or thing of any kind containing matter advocating or urging treason, insurrection, or forcible resistance to any law of the United States is hereby declared to be nonmailable," and that under these sections of the law the second class mailing privilege should not be given to the *Call* in view of the matter quoted from its columns in the answer.

Judge [William] Hitz has just rendered a decision in favor of the *Call*, in which he does not consider the merits of the case, but disposes of it upon the technical proposition that while the acts mentioned do make individual issues of a publication nonmailable they do not authorize the withdrawal of the second class mailing privilege

or the refusal to grant the second class mailing privilege in case of a violation of those laws by a publication. This decision is in direct conflict with the decision of Justice Augustus Hand in the Federal Court at New York in the *Masses* case [Sept. 14, 1917], and in my opinion cannot be sustained. Directions have already been given to have an appeal taken from Judge Hitz's decision.

The effect of Judge Hitz's opinion, however, has been to renew the efforts of other publications which have had the second class mailing privilege denied, and we may at an early date expect great activity in the class of publications affected. Already *The Liberator*, successor to *The Masses*, and published by Max Eastman, one of the most extreme radical publishers, is now pressing an application for the second class mailing privilege.....

Under the conditions now presented, I think we should determine upon some definite policy in handling this class of cases....

* * *

Prior to the passage of the Espionage Act, [the anti-Anarchist Act of May 27, 1908] was the only general legislation affecting anarchists or anarchistic publications except the immigration law which excluded alien anarchists from this country. The present immigration act of February 5, 1917, provides for the exclusion of "anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States, or of all forms of law, or who believe in [the overthrow] or are opposed to organized government, or who advocate the assassination of public officials, or who advocate or teach the unlawful destruction of property; persons who are members of or affiliated with any organization entertaining or teaching disbelief in or opposition to organized government, or who advocate or teach the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either by specific individuals or officers generally, of the Government of the United States or any other organized government, because of his or their official character, or who advocate or teach the unlawful destruction of property."

The Espionage Act contains some legislation which is in force only in time of war and also contains much permanent legislation effective in time of peace as well as in time of war. Among its permanent provisions is Section 2 of Title 12 (Act of June 15, 1917) which is as follows:

“Every letter, writing, circular, postal card, picture, printing, engraving, photograph, newspaper, pamphlet, book, or other publication, matter or thing, of any kind, containing any matter advocating or urging treason, insurrection, or forcible resistance to any law of the United States is hereby declared to be nonmailable.”

Since the signing of the armistice, the anarchists, IWWs, radical socialists, and kindred organizations all espouse the Bolsheviki cause of Russia, and advocate a similar form of government for this country as a part of a world socialistic system, to be accomplished through revolutionary methods, including force and bloodshed.

It seems clear that the provisions of the Espionage Act, making nonmailable matter which tends to cause interference with enlistment in the army, the operation of the draft law, and the sale of bonds to raise money for the prosecution of the war, do not apply to the revolutionary matter referred to and now being published. But it would seem that the duty rests upon the Post Office Department to exclude such matter under the permanent legislation quoted unless and until the courts determine that this permanent legislation does not warrant the exclusion from the mails of this class of matter. If I am correct in this position, it would seem that the only course left open for the Post Office Department is to reject all applications for second class mailing privileges presented by publications which habitually publish the class of matter indicated, and to declare nonmailable every individual issue of such publication in which such unlawful matter appears.

It will then be for the courts to pass upon the facts in every particular case presented to them.

The Post Office Department is being criticized by some newspapers for its course in handling seditious publications as though it was acting arbitrarily and had no duty to perform under the law; on the other hand, the public is often criticizing the Post Office Department for permitting revolutionary matter to pass through the mails.

In my judgment, prompt action should be taken in every case and we should facilitate in every way a judicial determination of the questions presented by each publication as rapidly as possible.

W.H. Lamar,
Solicitor.

Edited by Tim Davenport

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