

THE CONGRESS PROJECT

Assignment Prompt Sheet

The Sedition Act of 1918

Overview

Act Title: The Sedition Act

Congress: 65th Congress (March 4, 1917 to March 4, 1919)

Session/Sessions: 2

Statute No: 40 Stat. 553-54

Public Law No: 65 PL 150

Eid: 650150

Gid: 241-002

Bill: HR 8753

Sponsor: [Rep. Edwin Webb \(D-NC\)](#)

House Committees: Judiciary

Senate Committees: Judiciary

Companion Bill:

Related Bills:

House Rules:

Past Bills: 64 S 8148

Introduced Date- Law Date: January 16, 1918-May 16, 1918

House Floor Days: 2

Senate Floor Days: 8

Roll Call Votes: 5 (4 in the Senate, 1 in the House)

Issues: journalism; free speech; criminal justice; sop

Procedures: uc; conference; voice; point of order

Last Updated: 10/27/23



(Above) Rep. Meyer London (Socialist-NY). One of only two Socialist Party members ever elected to the U.S. Congress, London was an aggressive opponent of both the Sedition and Espionage Acts.

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Legislative History Comments

The Espionage Act (65 PL 24) was passed in response to World War I and it is the law Julian Assange was recently arrested under. It bars gathering and transmitting information related to national defense, though it does not formally define it. [Mulligan and Elsea \(2017, 3\)](#) describe it as “one of the U.S. government’s primary statutory vehicles for addressing the disclosure of classified information.” The lack of a definition for national defense often brings it into conflict with the First Amendment.

One year after passing the Espionage Act, Court rulings and mob violence led members of the Wilson Administration to conclude they needed more authority under the law to punish citizens under a broader range of offenses. This included speech and written statements that were critical of the U.S. war effort. *The Sedition Act (65 PL 150)*, passed in May of 1918, amended the Espionage Act to accomplish this.

From a process standpoint, this bill shouldn’t be too bad. It’s considered in the House under unanimous consent. Senate consideration appears to be much more contentious (as it was with the Espionage Act), as it sounds like a number of senators (as well as former President Roosevelt) opposed it on freedom of speech grounds. The bill eventually passed the Senate by voice vote. The [Senate adopted the conference report 51-27](#). Both chambers adopted a conference report, with the House [voting 292-1](#), the lone no vote coming from socialist member Meyer London (S-NY). I’ve linked some Voteview votes above.

The first thing I’d recommend doing is making sure you have a good description of what the act (and the Espionage Act) do. I think [this CRS report is worth a look on that point](#). As is [this lawfare blog article](#).

Assignments

For the sections below, you’re going to want to answer the questions and write-up the process sections that correspond to your assigned number. Here they are:

#1. Brooks

#2. Gallardo

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Background Questions

1. What motivated the passage of the Espionage Act? Was it purely a panicked reaction to the war? What specifically about WWI led to the perceived need for this law? After the Espionage Act was adopted, what was so inadequate about it that it necessitated amending? Was the Sedition Act a proposal made by the Wilson administration or was it pushed by outside forces? Both the Espionage and Sedition Act are frequently credited to the Attorney General, A. Mitchell Palmer. Is that fair?
2. Discuss the political context this bill was considered in. Who controlled the House? The Senate? By how many? Who was President? Was this part of the President's agenda? What other pieces of legislation were being considered/passed in this Congress?

There are a number of bills that overlap with this one passed by the 65th Congress, including the Espionage and Trading with the Enemy Acts.¹ Discuss these.

The Stathis (2014) piece might worth a citation here.

Process Sections

Please write-up the sections that correspond to your number. I think the last two sections here are likely going to be pretty short.

#1. House Consideration of HR 8753 (March 4, 1918)

Bill comes to the floor off the UC calendar.

Really muted, short debate. Almost nobody speaking in opposition here on the floor. Pages 3002-3004. Passes via voice.

#2. Senate Consideration of HR 8753 (April 2-10, 1918)

Brought to the Senate floor by UC on page 4426. Passes via voice.

¹ The [Trading with the Enemy Act \(65 PL 150\)](#) was a really broad delegation of authority to the executive branch by Congress. Its timeliness is largely due to the fact that it set the stage for many later executive branch delegations. Here's a CRS Report on it and a couple of news articles that reference it recently:

- <https://fas.org/sgp/crs/misc/R44707.pdf>
- <https://www.lawfareblog.com/cyberlaw-podcast-trump-derangement-and-trading-enemy-act>

<https://www.cnn.com/2019/08/24/trump-can-use-these-powers-to-pressure-us-companies-to-quit-china.html>

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#1. Senate Consideration of the Conference Report on HR 8753 (April 24-May 4, 1918)

Brought to the Senate floor by uc.

Senator Hiram Johnson (R-CA): “Oh, Mr. President, what a travesty, it seems today is presented when the Congress of time United States refuses to permit the people of the Union to speak what is true.” 5542

Passes by roll call on 6057.

#2. House Consideration of the Conference Report on HR 8753 (May 7, 1918)

Brought to the floor under regular order. London immediately raises a point of order against the conference report.

Rep. William Gordon (D-OH) supports his position despite London warning that “he may injure himself by agreeing with me (*Congressional Record*, 65th Congress, May 7, 1918, 6173).”

The chair overrules London’s point. London would later dub it “one of the most mischievous pieces of legislation ever imposed upon a free people (*Congressional Record*, 65th Congress, May 7, 1918, 6179).”

Passes by roll call on 6186.

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Member Spotlight

Choose one of the following for your member spotlight:

#1. Rep. Edwin Webb (D-NC); Sen. Albert Cummins (R-IA); Rep. John McKenzie (R-IL); Rep. Frank Mondell (R-WY); Sen. Hiram Johnson (R-CA); [Rep. Meyer London \(Socialist-NY\)](#)

#2. [Sen. Lee Overman \(D-NC\)](#); Rep. Martin Madden (R-IL); Rep. George Graham (R-PA); Rep. Horace Towner (R-IA), Sen. Thomas Hardwick (D-GA); Rep. William Gordon (D-OH)

Some assorted points on these members: First, the bill sponsor, Webb, might make sense. [Sen. Lee Overman \(D-NC\)](#) was an advocate for the measure in the previous Congress (he sponsored the Senate bill). So he might also be a good choice. It sounds like the measure's most active opponents were, oddly, Senators Hiram Johnson (R-CA) and Henry Cabot Lodge (R-MA). Lodge is very much an established Republican leader and Johnson is a progressive Republican bomb-thrower, so some strange bed-fellows there.

[Senator Thomas Hardwick \(D-GA\)](#) also played a role in this debate and was a pretty interesting figure. He only served one six-year Senate term and a two-year gubernatorial term. During that period, he sponsored the Immigration Act of 1918, was subjected to an unsuccessful assassination attempt that killed a House servant. He participated in the filibuster of the Armed Ship Act in order to delay U.S. entry into WWI. This led Woodrow Wilson to successfully target him in the Democratic primary. As governor, he appointed the first woman to the U.S. Senate (for one day) and then was defeated because of his opposition to the Klan.

Finally, [Rep. Meyer London \(Socialist-NY\)](#) was one of only two socialist party members to serve in the U.S. House in American history and was an ally of Eugene Debs.

Aftermath Questions

1. Contrast the attitudes of the White House and members of Congress on this bill. Did they have difference concerns? Why? Did members of Congress anticipate how this bill would be used moving forward? How is it viewed by scholars?
2. What happened with this law moving forward? The Sedition Act was repealed by Congress after the War, but not before the Supreme Court upheld it as Constitutional. Discuss that ruling.

How did the Espionage Act evolve afterwards? What happened with Victor Berger? Why is the measure still relevant today? On the latter point, I would probably bring in WikiLeaks and Julian Assange. I've provided a number of potentially useful links in the "Newspaper Pieces" section below.

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Suggested Sources

Scholarly Articles

Stone, Geoffrey R. "WikiLeaks, the proposed SHIELD Act, and the First Amendment." *J. Nat'l Sec. L. & Pol'y* 5 (2011): 105.

Boyd, Christina L. 2009. "Sedition Act of 1918." *Free Speech Center at Middle Tennessee State University*, <https://www.mtsu.edu/first-amendment/article/1239/sedition-act-of-1918>.

Ackerman, John M., and Irma E. Sandoval-Ballesteros. "The global explosion of freedom of information laws." *Admin. L. Rev.* 58 (2006): 85.

Stone, Geoffrey R. "Judge Learned Hand and the Espionage Act of 1917: A mystery unraveled." *U. Chi. L. Rev.* 70 (2003): 335.

Vladeck, Stephen I. "The espionage act and national security whistleblowing after Garcetti." *Am. UL Rev.* 57 (2007): 1531.

Markham, Christopher J. "Punishing the publishing of classified materials: The Espionage Act and Wikileaks." *BU Pub. Int. LJ* 23 (2014): 1.

Rudanko, Juhani. *Discourses of Freedom of Speech: From the Enactment of the Bill of Rights to the Sedition Act of 1918*. Palgrave Macmillan, 2012.

Croner, Andrew. "A Snake in the Grass: Section 798 of the Espionage Act and the Constitutionality as Applied to the Press." *Geo. Wash. L. Rev.* 77 (2008): 766.

Strauss, Lon Jeffrey. *A Paranoid State: The American Public, Military Surveillance and the Espionage Act of 1917*. Diss. University of Kansas, 2012.

Sterling, David L. "In Defense of Debs: The Lawyers and the Espionage Act Case." *The Indiana Magazine of History* (1987): 17-42.

Hilton, O. A. "Freedom of the Press in Wartime 1917-1919." *The Southwestern Social Science Quarterly* (1948): 346-361.

Rabban, David M. "The Emergence of Modern First Amendment Doctrine." *The University of Chicago Law Review* 50.4 (1983): 1205-1355.

Johnson, Donald. "Wilson, burlson, and censorship in the first world war." *The Journal of Southern History* 28.1 (1962): 46-58.

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Newspaper Pieces

- <https://www.nytimes.com/2019/05/23/us/politics/assange-indictment.html>
- <https://www.theatlantic.com/ideas/archive/2019/05/julian-assange-espionage-act/590200/>
- <https://www.vox.com/policy-and-politics/2019/4/12/18308186/assange-arrest-freedom-of-press>
- <https://www.theatlantic.com/ideas/archive/2019/04/julian-assange-got-what-he-deserved/587008/>
- <https://psmag.com/social-justice/what-julian-assanges-indictment-means-for-journalism>
- <https://www.lawfareblog.com/explainer-espionage-act-and-third-party-leak-prosecutions>
- <https://www.history.com/this-day-in-history/u-s-congress-passes-sedition-act>