



**Edward C. Eicher
and the Sedition Trial of 1944**
by Melvin Gingerich

Melvin Gingerich was born near Kalona, Iowa in 1902 and received his doctorate in American Social and Cultural History from the University of Iowa in 1938. For many years before his death in 1975, Mr. Gingerich was Archivist of the Mennonite Church and Managing Editor of both *The Mennonite Encyclopedia* and *The Mennonite Quarterly Review*. His publications include a history of the Mennonites in Iowa and numerous articles on both historical and philosophical topics. His first article for *THE PALIMPSEST* appeared in 1941.

During his active career as scholar and teacher, Mr. Gingerich pursued a special interest in the life of Judge Edward C. Eicher, a family friend from Washington, Iowa. The following synopsis of his full-length biography of Eicher was prepared by the staff of *THE PALIMPSEST*. Copies of Mr. Gingerich's original manuscript are on file at the State Historical Society in Iowa City and at the Mennonite Historical Library at Goshen College, Goshen, Indiana. — Ed.

It was the largest courtroom available in Washington, D.C.'s Federal District Court Building, and it was jammed. In addition to those seated, more than 200 persons wedged themselves into spaces in the corridors and around the doorways. The subject of their fascination was the largest sedition trial in American history, with 30 defendants and their 22 lawyers. On the bench sat Edward Clayton Eicher, 65, of Washington County, Iowa. He had been a federal judge, the fulfillment of a lifelong dream, for just over two years.

Facing him, and attempting to face him down, was an assortment of American fascist sympathizers. Most of these people had risen with the tide of American conservatism that peaked just before Pearl Harbor. They had spent the war years, according to the Justice

Department indictment, conspiring "to interfere with, and influence the loyalty, morale, and discipline of the military and naval forces of the United States" by circulating literature and personally urging insubordination, disloyalty, and mutiny. They were rabidly anti-Communist and anti-Semitic. Gerald Winrod, a fundamentalist evangelist, believed that international communism was under the control of "the international Jew," and that President Roosevelt was himself Jewish. Lawrence Dennis had written *The Coming of American Fascism*; another book, *The Red Network*, had been written by defendant Elizabeth Dilling of Chicago. Prosecutor O. John Rogge, Special Assistant to the Attorney General, hoped to prove that the defendants formed a conspiratorial network, whose activities depended upon the exchange of mailing lists and published materials, especially anti-Semitic materials, that had recently come into wide circulation around the country.

By April 17, 1944, the date of the trial, the federal government had devoted at least six years to the case, beginning in 1938 with the infiltration of the German-American Bund by John Carlson, posing as a Columbia University student. Shortly after Pearl Harbor, two men were arrested in Los Angeles for defending Japan's right to Hawaii and declaring that they would rather have America fight on the side of the Axis powers. Attorney General Nicholas Biddle, fearing a repeat of the witch hunts that followed World War I, ordered the men released, but shortly thereafter 28 persons were arrested, a grand jury was convened, and the first indictment was filed on July 24, 1942. Sufficient evidence could not be gathered before the jury's time ran out, but another indictment was filed the following January. When preliminary court proceedings were then held, the judge declared that the government once again had not produced sufficient evidence. A third indictment was served on January 4, 1944.

Public opinion was greatly divided over the issue of these American fascists. Few actually supported such groups as the Silver Shirts, the Bund, and the Knights of the White Camelia, but the Depression, the New Deal, the war, and the international conflicts between communism and fascism had agitated and polarized the American people. Many Americans looked to Judge Eicher's courtroom for a judicial answer to what was in fact a serious social and political question.

Edward Clayton Eicher, born December 16, 1878, came of Mennonite stock, and of a family that for generations had been rural folk. Eicher Anabaptists were among those families of Canton Bern, in Switzerland, who escaped to Alsace and to the Palatinate in the years between 1671 and 1711. Although various Eichers came with the European Mennonites who settled in America as early as 1754, direct ancestors of Edward Eicher did not arrive until 1848 and 1849. Each came alone and unmarried. Benjamin C. Eicher, Edward's father, was the last to come over. Like most immigrants, he lived in a number of places, including Ohio, before finding the spot where he wanted to settle down. It was not until 1853, at the age of 21, that Benjamin settled in Marion Township in Washington County, Iowa. In 1854, he bought 40 acres of unimproved land in Section 26. Not long afterwards, he married Lydia Sommer, of Holmes County, Ohio, and soon their first son, Henry, was born.

By the time Edward was born, 22 years later, Benjamin Eicher was a prosperous farmer, whose 150 acres and herd of dairy cattle produced, among much else, around 100,000 pounds of butter a year. A public-minded man who taught in Washington County Schools, Eicher ran several times on the Democratic ticket for the Iowa state legislature. He became both a minister and an elder of his church in Marion Township, and during the years of his ministry, the Amish-Mennonite congregation

grew from 50 souls to 120. Eicher's church was located only a mile from the Henry County border, and his farm less than a mile from the church.

Little Edward grew up among friends and relatives from the same Swiss and Alsatian ethnic, cultural, and religious background as his own. The Conrads, Roths, Klopfensteins, Grabers, and Wengers spoke German among themselves and in church. From the age of seven until 14, he attended a rural grade school, and in later life he strongly defended the quality of the education he had received. At 14, he went on to the Washington Academy in Iowa, then at 19 to the Morgan Park Academy in Illinois. His widening circle eventually brought him to the University of Chicago, where he felt both his intellect and his ambition greatly stimulated. In a short story he penned while there—he retained a lifelong interest in amateur literary efforts—the main character, Eli, feels he must choose between the rustic life and the woman he loves, on the one hand, and the “higher and better things,” on the other. Eicher writes, “Eli was dissatisfied with what he looked upon as a humdrum existence, a life of unvaried monotony, without promise of achievement in the future or pride in the glories of the past.” Later, Eicher suggests that Eli's childhood sweetheart Matilda is not sophisticated enough to be the companion Eli will need as he attempts to attain “the heights of distinction and glory.” Perhaps Edward Eicher felt similarly as he surveyed his choices. Oddly, through an accident, Eli and Matilda end up reunited. Eli agrees to take over the farm belonging to Matilda's family, giving up at the same time—and not without palpable regret—his yearnings.

During his college career, Eicher wrote over 60 essays or short stories. Several express his utopian dreams of a perfect society, and many touch on ethics and character traits, such as ego, avarice, habit, and humility. Titles such as “Daniel Webster” and “The Boer War” illus-

trate his interest in history. The Nebraska proposition to amend the constitution, and the political thinking of British economist John Atkinson Hobson captured his attention. Eicher's essays explored the works of Shakespeare, Marlowe, Tennyson, and other authors. His professors often praised his work. One paper carries the note: "Individual and breezy. You *will not* be dull—a good resolve."

While still studying for his Ph.B. at Chicago, Eicher took law courses, and after completing them, in the summer of 1905, he returned to Washington and spent a year as a student in the law office of his older brother, Henry. He was admitted to the Iowa Bar in 1906. On August 19, 1908, aged 29, he married Hazel Mount, of Washington, Iowa, whom he had met while singing in the University of Chicago Glee Club. Miss Mount had asked Eicher to autograph her program, and he thereupon invited her to call him when she came to Chicago for a few weeks of music lessons so that he could arrange to take her to the theater. Over a half-century later, Mrs. Eicher remembered, "He was very kind and very humble. He was also a very talented man but he did not know it."

The young couple originally decided to settle in Mount Pleasant, where Henry advised his brother to open a law office, but at the last moment an offer came from the Burlington Railroad, and Eicher agreed to become the assistant attorney of the Iowa District of the Chicago, Burlington, and Quincy Railroad Company. The Eichers lived in Burlington from 1908 until 1918, when they moved back to Washington and Edward joined his brother's law firm as a junior partner. Less than a year later, on July 28, 1919, Henry died. The law firm was subsequently known as Livingston and Eicher, until 1933 when Eicher was elected to the United States House of Representatives from the First District of Iowa.

In Congress, Eicher introduced a number of bills, one to fund scientific research, one to amend anti-trust laws, one to allow the con-

struction of a bridge across the Des Moines River at Keosauqua, and one to allow the federal government to promote interstate transportation by underwriting truck insurance. He became not only President Franklin D. Roosevelt's supporter but his friend as well, and could be depended upon to help executive plans through the House. Over the years his identification with Roosevelt grew, and no wonder. When named by Roosevelt to head the Securities and Exchange Commission (SEC) in 1941, Eicher was reported to have promised, "I'll do what I'm told." *Business Week* termed him a "a full-fledged New Dealer . . . a rubber stamp on all Administration policies."

Eicher had sought and gained a seat on the SEC three years earlier, when he wisely anticipated the Republican backlash against the New Deal policies that hit the nation in 1938. The First District Democrat knew he could be guaranteed nothing in the Republican Hawkeye State, no matter how good his relationship with President Roosevelt. The SEC provided refuge from such political uncertainties and the former Congressman served it well. Roosevelt rewarded his diligence again in 1942, this time with a promotion to a federal judgeship. For Edward Eicher, it was a dream come true.

Eicher's reaction to the appointment was typically candid. In his first memo to Roosevelt after donning the "black nightshirt," he admitted that "these judicial robes do make an Andy Jackson 'Dimmycrat' feel sort of silly, at first. But very likely they help some in maintaining essential respect — by the Public for the courts and by the Judges for themselves. You will not begrudge, I am sure, just a minute of reading time to be assured of my satisfaction in this new work and of my earnest endeavor to make the District Bench click harmoniously and efficiently."

Judge Eicher had scheduled the sedition trial to begin in January 1944, but motions

by defense attorneys delayed jury selection for more than a month. A succession of lawyers attacked the indictment in a variety of ways. Some claimed that the defendants had been arrested for engaging in activities that were not illegal at the time of their arrest in 1942. Other attorneys argued that the indictment failed to specify the time and place of each of the alleged conspiracies. Judge Eicher listened to the defense motions carefully and with a great deal of patience. A five-page memorandum from the bench on February 28 answered the attacks on the indictment. On March 7, prosecutor O. John Rogge submitted a bill of particulars that included dates, places, and events.

Still the delays continued. Defendant Joseph McWilliams filed for a change of venue, charging that Judge Eicher was "socialistic, communistic, and New Dealish." A barrage of similar requests and motions ensued, but a preliminary meeting in Eicher's chambers on Friday, April 14 cleared away further impediments, and arrangements for the trial were made.

On Monday, April 17, 22 defendants pleaded not guilty. Seven others refused to plead either way, and one failed to appear. Eicher ordered the pleas of the seven entered as not guilty and revoked the \$1,000 bond of the absent party. On the following day, defendant Gerald Winrod filed a challenge against all 142 prospective jurors, which was signed by all of the defense lawyers. Eventually, 12 persons were seated in the jury box, but then James Laughlin, attorney for Bund leader Edward James Smythe, stopped the proceedings with a motion signed by 16 defense lawyers, demanding that Judge Eicher disqualify himself. In Laughlin's words, "the records in this case clearly show that the conduct of Chief Justice Eicher has specifically shown bias and prejudice against the defense and in favor of the prosecution." This and subsequent attacks accusing Eicher and President Roosevelt of bias and "conspiracy" to railroad the defendants re-

sulted in a contempt trial for attorney Laughlin. On May 10 Laughlin was found guilty and fined \$150. The sedition trial resumed.

On May 17, 1944, a month after the trial had begun, prosecutor Rogge (whose name the defendants insisted on pronouncing "rogue") was permitted to present the government's case to the jury. "Defendants leaped up and down; defense lawyers jumped to their feet in loud protest," reads one account of the incident. "Judge Eicher was forced to call in United States marshals guarding the hallway to restore order." The defense agreed to interrupt no further, but as soon as Rogge began again, disorder broke out, and Rogge had to shout his speech to its conclusion.

The following day, the defense combined the attacks on Rogge's case with personal charges against him. Each defendant was allowed 30 minutes for an opening statement, but when the lawyer for defendant Eugene Nelson Sanctuary went overtime and Eicher asked him to be silent, the lawyer objected. In the ensuing exchange, the lawyer was fined \$50, and as he continued his objection, the fine was raised twice to a total of \$200.

On May 23, Eicher received a note from Harold L. Ickes, Secretary of the Interior and Roosevelt's intimate adviser. It read, "My dear Ed, Of course I would not comment upon the merits of a case that is on trial in any court, but I hope that I am not exceeding the proprieties as a member of the bar in commending your vigorous action in putting in their place men who are apparently determined to make a farce of American justice." Eicher wrote back, "My 'head may be bloodied, but it's still unbowed.'"

After eight weeks, the U.S. case seemed weak. Although plenty of evidence had been presented that showed the belief of the defendants in a Hitlerite regime, American propagandists had in no way been linked to foreign fascists, or even to one another. Rogge could

prove only similarity of thought, and the lawyers for the defense were eager to show that their clients had acted out of their personal beliefs as guaranteed by the Constitution.

On June 13, in the midst of the trial, the United States Supreme Court reversed the conviction of another American fascist charged with fomenting insubordination in the armed forces. Judge Eicher agreed to listen to new defense arguments that contended the cases were similar. Prosecutor Rogge, however, offered additional evidence intended to show that at least three defendants had conspired to take over the government of the United States. This evidence made it impossible to drop the charges, Eicher declared. "When the court will know what the whole picture is, then it will know for the first time whether the government has made out a case." He instructed the prosecution to continue, but defense attorneys interrupted Rogge with another series of outbursts and objections. When Eicher gavelled for order, lawyer Laughlin shouted, "I also want an objection to Your Honor's gavel." He was fined \$200.

The attorneys who had been fined by the judge for contempt, now numbering seven, formed an Eicher Contempt Club, and began wearing white ribbons under their neckties or coat lapels. The ribbons carried one or more stars, depending on the number of times each had been fined by the court. Eicher commented, "The court is not disposed to make an issue of the matter, which after all is in substance inconsequential," and so ignored the club.

Nearly a month had passed since his last citation for contempt when, on July 5, defense attorney James Laughlin filed with the House of Representatives an impeachment petition against the judge. The next morning, Laughlin addressed the court to explain his action. At the end of the lawyer's statement, Eicher asked Laughlin if he had said all that he wanted to say. The lawyer nodded. Eicher thereupon dismis-

sed him from the case and ordered him out of the courtroom. Laughlin filed a protest with the Circuit Court of Appeals, but was refused a hearing. Returning to the Eicher courtroom the following day, he was again denied entry. His client Robert Noble then created such commotion in protest against the court's attempt to appoint a new lawyer to his case that he, too, was removed. Eicher had Noble severed from the case and returned him to a California prison to complete a five-year sentence for sedition. Noble's last-minute efforts to convince the judge that he had merely tried to protect his constitutional rights drew from Eicher the calm observation that "your whole effort has been to flaunt the reasonable and orderly process of this court."

Near the end of July, after 14 weeks of chaos interspersed with the prosecutor's presentation of documents purporting to show fascist tendencies among the accused, the trial shifted to Rogge's attempt to describe how some of the defendants had conspired to undermine the morale of the American armed forces. As the summer wore on, a semblance of order came to the proceedings in the Eicher court, at least in part the result of the fines—amounting to \$1,350—levied by the judge against seven defense attorneys for contempt of court. Laughlin's dismissal seemed to have had some effect in this regard. The defendants themselves had settled down, too, though laughter and shouts were still frequent in the court.

But there were troublesome stirrings outside the courtroom. September brought notice of the trial to the floor of the United States Senate, where Republican Senator William Langer declared that "the government by nature of its fantastic prosecution theory has made the cause of these defendants the cause of free speech and political freedom." Democrat Burton Wheeler of Montana called it "the most disgraceful proceedings that have ever been

brought in the United States of America." On October 5, even Franklin D. Roosevelt was brought into the fray, attacking the defendants' arguments that "the Roosevelt Administration is part of a gigantic plot to sell our government to the Communists." Over a nationwide radio hook-up, he declared that the "sound and democratic instincts of the American people" protest the use of propaganda against the government. The defendants reacted to these statements immediately, presenting Judge Eicher with two motions for a mistrial and one for a postponement. The trial proceeded in spite of these new defense tactics.

At the end of November, the court's attention focused on the case of evangelist Gerald Winrod. Winrod's lawyer cross-examined government witness Henry D. Allen, once a friend of Winrod, in order to show that Winrod and Allen had only discussed religious matters at their meetings. Prosecutor Rogge counteracted with contradictory testimony from Allen himself, who had earlier described the same meetings as "purely anti-communist and anti-Jewish talk." Several days later the prosecution called Nicholas J. Roccoforte, who had been head of Winrod's Defender's Tract Club and also Winrod's assistant in the evangelist's bid for Republican nomination to the United States Senate from Kansas in 1938. Roccoforte testified that on hearing of an attempted assassination of Roosevelt in Miami, Winrod had declared, "It's too bad that somebody else couldn't come along and complete the job." The witness could not recall any of Winrod's exact statements about the United States government or about totalitarian governments. After a brief cross-examination, Eicher thanked Roccoforte and adjourned the trial until 1 PM the following afternoon.

During the day's proceedings, a few in the courtroom noticed that Judge Eicher was not feeling well. Occasionally he turned his back to the court and sometimes gasped for breath. To his law clerk, Mrs. L.M. Hood, he mentioned

indigestion, and a remedy was provided. He did not adjourn the court until the usual time, however, in spite of Mrs. Hood's pleas that he call a recess and take a rest. "He would not do it," she remembered. "And he presided until 6 PM as usual. The trial had been an awful strain." Eicher left the courthouse around 6:30 PM and joined his wife for the journey to their home in nearby Alexandria, Virginia. Eicher was tired; after supper and the evening news, he retired for the night. Mrs. Eicher was awakened at 2 AM by wind and blowing curtains and so quietly closed the window. She did not learn of her husband's death until she awoke at about six that morning.

The announcement of Eicher's death stunned the entire courtroom. Defendant Edward James Smythe, one of the most vocal of the original 30 defendants, jumped to his feet at once. "Your Honor," he inquired of Associate Justice James M. Proctor, now presiding, "may I ask that this court stand in silence for one minute in respect of Judge Eicher?"

"I thank you for this suggestion," Proctor replied, "but I do not think that this is the occasion for any formal ceremonies." As the defendants, their lawyers, and the spectators filed out of the courtroom, Smythe turned to one reporter and remarked, "It's a hell of a thing. The poor old —."

The funeral of Justice Edward Clayton Eicher was held at 10 AM, Saturday, December 2, 1944, at the St. John Episcopal Church. Among the honorary pallbearers were Supreme Court Justices William O. Douglas and Wiley Rutledge, Chief Justice D. Lawrence Grover of the United States Court of Appeals, four Appellate Court associate justices, Acting Chief Justice Jennings Bailey of the District Court, and the nine District Court associate justices. The *Washington Star* of December 3 reported that most of those in daily contact with Justice Eicher during the seven and one-half months he presided at the sedition trial came to

the funeral and "sat before his bier . . . in bowed respect to his memory with many faces familiar to the trial looking from crowded pews toward the flower banked altar. It was as if the courtroom had been reconstructed amid the hushed dignity of a church at its most solemn rite." In the church were a number of defendants, the jurors, the prosecutors, and nearly all of the defense attorneys. Forgotten for the moment were the bitter clashes between the prosecutors and the defendants as they felt regret at his passing and "respect for the honor and dignity of a conscientious man." The casket was borne out of the church by the marshals who had been in daily attendance at the trial. Curate John G. Magee's text from Paul's letter to Timothy was, "I have fought the good fight . . . and now my work is done." The body was then taken to Washington, Iowa for burial on the following Tuesday.

Richard Wilson of *The Des Moines Register* wrote that Judge Eicher "had distinguished himself by his studied fairness and his ability to restrain his temper in extremely trying circumstances. If anything, it is agreed, Eicher has leaned over backwards in his determination that the defendants shall receive the full measure of the legal right that they be considered innocent until proven guilty." Most reporters who covered the trial agreed with Wilson. And Senator Langer of North Dakota, a critic of the trial, declared that "Solomon himself could scarcely have survived such an ordeal." Transcripts of testimony and other business of the court had run to nearly 18,000 pages, including the 500 defense motions for mistrial. Material prepared for the trial by the Justice Department filled 16 cubic feet. Perhaps the most cogent tribute to the judge came from defendant Smythe: "I consider Justice Eicher a great American. He was doing his duty, and in my many conversations with him, when I held conferences with him in his chambers at his suggestion, he felt deeply grieved at times that some of the defendants' attorneys believed that

he considered this a personal matter instead of a matter of public interest in which he was trying to do his duty and administer justice in a very trying case."

When the court reconvened on December 7, Judge Proctor asked whether the trial should proceed under a new judge, or whether a new mass trial should start at the beginning, or, finally, whether the cases should be presented individually to new juries. The defense attorneys quickly objected to the trial's continuation under a new judge. After a brief deliberation, Judge Proctor announced, "In view of the death of Chief Justice Eicher in the midst of the trial of this case, and the circumstances which have developed here this morning, the court feels compelled to discontinue the trial and to formally declare a mistrial of the case. An order to that effect will be made." Thanking the jurors and the attorneys, Proctor then adjourned the court.

The Justice Department's charges that led to the sedition trial were still in effect, of course, although defense lawyers moved quickly to strike the indictment and bring the case to an end. Two years of legal wrangling ensued, until in November 1946 Chief Justice Bolitha Laws, Edward Eicher's successor on the federal bench, threw the prosecutor's case out of court. A Federal Court of Appeals upheld Laws' decision and dismissed all charges against the defendants on June 30, 1947. After six fruitless years, the sedition trial had finally come to an end. □

Note on Sources

Mr. Gingerich's biography of Edward C. Eicher draws from a variety of sources. Of special importance were the Edward C. Eicher Papers at the Special Collections Department of the University of Iowa Library in Iowa City; transcripts and other documents pertaining to the sedition trial of 1944 housed at the National Archives in Washington, D.C.; and an unpublished essay by John D. Waltner, "Gerald B. Winrod and the Washington, D.C. Mass Sedition Trial of 1944," written in 1968 while Mr. Waltner was a member of the History Department at Bethel College in North Newton, Kansas. A variety of newspapers and magazines published during the period of the trial supplied additional information.