

Free Speech and its Dangers

Terms:

Seditious Libel

Sedition

Libel

Criminal syndicalism

Smith Act

clear and present danger

Bad tendency

Assigned Cases:

Schenck v. U.S.; *Gitlow v. New York*; *Dennis v. US*; *Brandenburg v. Ohio*.

Questions for Reading Assigned Cases:

Schenck v. U.S. is most famous for Justice Holmes' example of how it is properly illegal to falsely shout fire in a crowded theatre. Why is this example useful? When does it apply? What are the proper limits when applying it to political speech?

In *Gitlow v. NY*, the majority of the Court seemingly disdains the clear and present danger standard elaborated by Holmes in *Schenck*. What is the new standard for when speech is unprotected? Is it an improvement or step away from freedom of speech?

Does the Court's decision in *Dennis v. U.S.* follow the clear and present danger test? How does it interpret the test? Does the majority demonstrate a clear and present danger? What of the concurrences?

How is *Brandenburg v. Ohio* different from previous cases? How would it have been decided under previous standards?

Additional Cases:

Yates v. U.S. (1957). The Court overturned the conviction of California Communist Party leaders by distinguishing between advocacy of abstract doctrine and advocacy of unlawful action, and requiring the latter for a criminal conviction.

Scales v. U.S. (1961). The Court sustained the conviction of a North Carolina Communist Party leader who had taught classes in the martial arts as part of his Party duties, finding a connection between his teaching and the advocacy of violent revolution.