

Sedition, Seditious Libel, Treason

Sedition: advocacy or action with the goal of subverting or overthrowing the government, but falling short of treason;

Seditious Libel: publishing or broadcasting any statement that brings the government or its officials into disrepute.

Treason: Levying war against one's country, or giving aid or comfort to its enemies during war.

Seditious Libel

"De Scandalis Magnatum" prohibited distribution of "any false News or Tales, whereby discord, or occasion of discord or slander may grow between the King and his People, or the Great Men of the Realm." [3 Edw. 1, ch. 34 (1275)]

Sedition Act of 1798 (1)

“if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States,

Sedition Act of 1798 (2)

with intent to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein

Schenck v. US (1919)

Clear and present danger test:

“whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.”

Speech or Act?

"The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic."

Holmes' dissent in *Abrams*

A classic of Pragmatist thought

“the best test of truth is the power of the thought to get itself accepted in the competition of the market ... That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment.”

Bad Tendency Test

Even a tendency to obstruct
government justifies prosecution

Government can extinguish spark
before it becomes a flame

- *Abrams v. US* (1919)
- *Gitlow v. US* (1925)

Jackson in *Dennis*

“The statute before us repeats a pattern, originally devised to combat the wave of anarchistic terrorism that plagued this country about the turn of the century, which lags at least two generations behind Communist Party techniques ... Anarchism's sporadic and uncoordinated acts of terror were not integrated with an effective revolutionary machine”

Jackson in *Dennis*

“the Communist stratagem outwits the anti-anarchist pattern of statute aimed against “overthrow by force and violence” if qualified by the doctrine that only “clear and present danger” of accomplishing that result will sustain the prosecution.”

Action, not Advocacy

Constitution protects advocacy and teaching of revolution, but prohibits advocacy of specific illegal actions

Yates v. U.S. (1957)

Scales v. U.S. (1961)

Brandenburg v. Ohio (1969)

Imminent lawless action test:

“free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”