Daniel Levin POLS 5212

Civil Rights/Civil Liberties Spring 2010

**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.; Abrams v. U.S.; Gitlow v. New York; Dennis v. US; Brandenburg v. OH; Thomas v. Collins; Holder v. Humanitarian Law Project*

**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?

In *Holder v. Humanitarian Law Project*, does sanctioning “training,” “expert advice or assistance,” “personnel,” and “service” rendered to a group labeled as terrorist by the State Dept. punish advocacy or is it a proper law that will lessen danger to the United States and our allies? Are terrorist groups only, and always, terrorist in their purposes – and should our treatment of speech depend on the purpose of the speech, or the parties to whom it is directed?

**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.