Schenck v. United States (1919)

Vocabulary

abridging Lessening, interfering with.
neutral Not allied with or supporting either side in a war or dispute.
draft To select people for required military service.
insubordination Unwillingness to accept orders from someone in authority.
affirm To agree or support, as when a higher court agrees with the earlier decision of a lower court.

Reviewing the Case

The First Amendment guarantee of free speech and expression reads: "Congress shall make no law . . . **abridging** the freedom of speech. . . ." But, at several different periods in the history of the United States, Congress has passed laws limiting how much citizens can criticize or resist government actions. Is this an abridgment of free speech? In the case of *Schenck v. United States*, the Supreme Court established a guideline that is still followed.

In 1917 the United States was still officially **neutral**, but its entry into World War I was imminent. To build up the army, Congress passed an act on May 18, 1917, that established a military **draft.** To encourage national unity in the war effort, Congress also passed several laws that limited criticism of the government and opposition to its policies. On June 15, 1917, Congress passed the Espionage Act. Sections of the Espionage Act prohibited any attempt to cause **insubordination** among military personnel or to interfere with the draft or with military recruitment.

Three days later Charles Schenck was arrested for violating the Espionage Act. He was accused of printing and mailing antiwar pamphlets to some 15,000 to 16,000 men who had been accepted for induction into the military under the Selective Service Act. Schenck was the general secretary of the American Socialist Party and, like most other members of the party, he strongly opposed the war. He claimed it was being fought for the benefit of Wall Street investors who would profit from the sale of merchandise to the military.

The U.S. District Court for Pennsylvania ruled that the pamphlets were designed to cause men to resist the draft. Therefore, the court decided, Schenck had violated the Espionage Act. Schenck claimed there was not enough evidence to convict him of the charges that had been brought against him. He said that his actions were a form of free speech and claimed that the Espionage Act abridged the rights of free speech. Thus, according to him, the act was unconstitutional. Convicted in the district court, Schenck appealed to the U.S. Supreme Court.

The issue before the Court: Does the Espionage Act violate the First Amendment in respect to Schenck's freedom of speech?

The Supreme Court ruled unanimously to **affirm** the decision of the district court against Schenck. Writing for the Court, Justice Oliver Wendell Holmes laid down a standard that would become famous:

> We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends on the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre, and causing a panic. . . . The question in every case is 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 [actual] evils that Congress has a right to prevent."

In the Schenck decision, the Supreme Court established clear limitations on freedom of speech. The guideline is the existence of a "clear and present danger," a situation in which free speech could bring harm to the general welfare. In such cases, Congress has the power to pass laws to protect its citizens

and the national security of the United States even if those laws abridge free speech. The "clear and present danger" test is a way to balance the rights of the individual with those of society.

According to Justice Holmes, it made no difference that Schenck and the others had failed to interfere with military recruitment. ". . . We perceive no ground for saying that success alone warrants making the act a crime," he concluded.