***Schenck v. United States*, 1919**

**Mr. Justice Holmes delivered the opinion of the Court.**

This is an indictment in three counts. The first charges a conspiracy to violate the Espionage Act of June 15, 1917, …that the defendants willfully conspired to have printed and circulated to men who had been called and accepted for military service under the Act of May 18, 1917, a document set forth and alleged to be calculated to cause such insubordination and obstruction. …The defendants were found guilty on all the counts. They set up the First Amendment to the Constitution forbidding Congress to make any law abridging the freedom of speech, or of the press, and bringing the case here on that ground…

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 upon the circumstances in which it is done. …The most stringent protections of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. …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 evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right. It seems to be admitted that if an actual obstruction of the recruiting service were proved, liability for words that produced that effect might be enforced.

***Abrams v. United States*, 1919**

**Definitions**

**Mr. Justice Clarke delivered the opinion of the Court.**

\*Persuasive advertising of political views

\*Letters for large groups of people

\*criminal charge

\*walk-out

\*weapons

\*discrimination/bad treatment

\*principles/views

\*powerless

\*bet

\*being saved for Heaven

\*hate

\*permits

\*criminal charge

The plain purpose of their propaganda was to excite, at the supreme crises of the war, disaffection, sedition, riots, and, as they hoped, revolution, in this country for the purpose of embarrassing and if possible defeating the military plans of the Government in Europe…

…for the language of these circulars was obviously intended to provoke and to encourage resistance to the United States in the war, as the third count runs, and, the defendants, in terms, plainly urged and advocated a resort to a general strike of workers in ammunition factories for the purpose of curtailing the production of ordnance and munitions necessary and essential to the prosecution of the war as is charged in the fourth count. Thus it is clear not only that some evidence but that much persuasive evidence was before the jury tending to prove that the defendants were guilty as charged…

**Mr. Justice Holmes dissenting.**

I do not doubt for a moment that by the same reasoning that would justify punishing persuasion to murder, the United States constitutionally may punish speech that produces or is intended to produce a clear and imminent danger that it will bring about forthwith certain substantive evils that the United States constitutionally may seek to prevent. The power undoubtedly is greater in time of war than in time of peace because wars open dangers that do not exist at other times.

Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart your naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care wholeheartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country. … Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time, warrants making any exception to the sweeping command, “Congress shall make no law…abridging the freedom of speech.” Of course I am speaking only of expressions of opinion and exhortations, which were all that were uttered here, but I regret that I cannot put into more impressive words my belief that in their conviction upon this indictment the defendants were deprived of their rights under the Constitution of the United States.

***Gitlow v. New York*, 1925**

**Definitions**

**Mr. Justice Sanford delivered the opinion of the Court.**

\*limitation

\*weakening

\*freedom from punishment

\*curse

\*hostile/rude

\*disrupt or overthrow

\*punish

\*encouragement of action

\*powerful speech

\*great fire

\*working-class/common

For present purposes we may and do assume that freedom of speech and of the press—which are protected by the First Amendment from abridgment by Congress—are among the fundamental personal rights and “liberties” protected by the due process clause of the Fourteenth Amendment from impairment by the States. …

It is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution, does not confer an absolute right to speak or publish without responsibility, whatever one may choose, or an unrestricted and unbridled license that give immunity for every possible use of language and prevents the punishment of those who abuse this freedom. …Reasonably limited. …this freedom is an inestimable privilege in a free government; without such limitation, it might become the scourge of the republic.

That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime, or disturb the public peace, is not open to question. …

And, for yet more imperative reasons, a State may punish utterances endangering the foundations of organized government and threatening its overthrow by unlawful means. These imperil its own existence as a constitutional State. Freedom of speech and press…does not protect disturbances to the public peace or the attempt to subvert the government. It does not protect publications or teachings which tend to subvert or imperil the government or to impede or hinder it in the performance of its governmental duties. …It does not protect publications prompting the overthrow of government by force; the punishment of those who publish articles which tend to destroy organized society being essential to the security of freedom and the stability of the State. …And a State may penalize utterances which openly advocate the overthrow of the representative and constitutional form of government of the United States and the several States, by violence or other unlawful means. …In short this freedom does not deprive a State of the primary and essential right of self-preservation; which, so long as human governments endure, they cannot be denied. …

**Mr. Justice Holmes, dissenting.**

Every idea is an incitement. It offers itself for belief and if believed it is acted on unless some other belief outweights it or some failure of energy stifles the movement at its birth. The only difference between the expression of an opinion and an incitement in the narrower sense is the speaker’s enthusiasm for the result. Eloquence may set fire to reason. But whatever may be thought of the redundant discourse before us it had no chance of starting a present conflagration. If in the long run the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way.

***Near v. Minnesota,* 1931**

**Mr. Justice Hughes delivered the opinion of the Court.**

While reckless assaults upon public men, and efforts to bring obloquy upon those who are endeavoring faithfully to discharge official duties, exert a baleful influence and deserve the severest condemnation in public opinion, it cannot be said that this abuse is greater, and it is believed to be less, than that which characterized the period in which our institutions took shape. Meanwhile, the administration of government has become more complex, the opportunities for malfeasance and corruption have multiplied, crime has grown to most serious proportions, and the danger of its protection by unfaithful officials and of the impairment of the fundamental security of life and property by criminal alliances and official neglect, emphasizes the primary need of a vigilant and courageous press, especially in great cities. The fact that the liberty of the press may be abused by miscreant purveyors of scandal does not make any the less necessary the immunity of the press from previous restraint in dealing with official misconduct. Subsequent punishment for such abuses as may exist is the appropriate remedy, consistent with constitutional privilege.