**"Clear and Present Danger" (Pro Group)**

Another major attempt to regulate freedom of speech occurred during World War I. In 1917, Congress passed the Federal Espionage Act. This law prohibited all false statements intending to interfere with the military forces of the country or to promote the success of its enemies. In addition, penalties of up to $10,000 and/or 20 years in prison were established for anyone attempting to obstruct the recruitment of men into the military. In 1918, another law was passed by Congress forbidding any statements expressing disrespect for the U.S. government, the Constitution, the flag, or army and navy uniforms.

Almost immediately, Charles Schenck, general secretary of the American Socialist Party, violated these laws. He was arrested and convicted for sending 15,000 anti-draft circulars through the mail to men scheduled to enter the military service. The circular called the draft law a violation of the 13th Amendment's prohibition of slavery. It went on to urge draftees not to "submit to intimidation," but to "petition for repeal" of the draft law.

The government accused Schenck of illegally interfering with military recruitment under the espionage act. Schenck admitted that he had sent the circulars, but argued that he had a right to do so under the First Amendment and was merely exercising his freedom of speech.

The issue found its way to the U.S. Supreme Court in the case of *Schenck* *v. United States*, 249 U.S. 47 (1919). It was the court's first important decision in the area of free speech. Justice Oliver Wendell Holmes wrote the opinion of the unanimous Court, which sided with the government. Justice Holmes held that Mr. Schenck was not covered by the First Amendment since freedom of speech was not an absolute right. There were times, Holmes wrote, when the government could legally restrict speech.

According to Justice Holmes, that test is "whether the words...are used in such circumstances as to create a *clear and present danger.*" Holmes said that in Charles Schenck's case the government was justified in arresting him because, "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."

In the *Schenck* case, the highest court in the nation ruled that freedom of speech could be limited by the government. But Justice Holmes was careful to say that the government could only do this when there was a "clear and present danger" such as during wartime. While settling one legal issue, however, the Supreme Court created others. For example, what does a "clear and present danger" specifically mean, and when should it justify stopping people from speaking?

**The Angry Crowd (Con Group)**

Another important free-speech case took place after World War II. It was only a few years after thousands of American soldiers had given their lives to defeat Adolf Hitler and the German Nazis. Arthur Terminiello was speaking before an audience in Chicago. His message was hate. He said that Hitler was right in what he did. He claimed that Democrats, Jews, and communists were all trying to destroy America.

An angry crowd gathered outside the hall where Terminiello was speaking. Bricks and bottles soon rained through the windows as his oratory continued.

Arthur Terminiello was later arrested, tried, and convicted for disturbing the peace with his provocative harangue. Like Charles Schenck 30 years earlier, Terminiello appealed his case to the U.S. Supreme Court (*Terminiello v. Chicago*, 337 U.S. 1). He claimed that he should not have been arrested since his speech was protected by the First Amendment. The city of Chicago, however, argued that the things Terminiello raved about in his speech so angered people that a "clear and present danger" to the safety of the community had occurred.

In 1949 the Supreme Court reversed Terminiello's conviction. (Four of the nine justices dissented.) In the majority opinion, Justice William O. Douglas wrote that "it is only through debate and free exchange of ideas that government remains responsive to the will of the people...." Justice Douglas stated that in a democracy free speech must occur even if it causes disputes, unrest, or "stirs people to anger."

Thus, according to Justice Douglas, "freedom of speech, though not absolute, is protected against censorship or punishment unless shown likely to produce a clear and present danger of serious substantive evil that rises far above public inconvenience, annoyance or unrest."

**CASE A:** *Debs v. United States,* (1919) Eugene V. Debs, a leader of the American Socialist Party, addressed an anti-war rally in 1918. At this rally, Debs praised other Socialist leaders who had previously been arrested for opposing the draft law. Debs told his audience (which included draft-age men): "You have your lives to lose.... You need to know that you are fit for something better than slavery and cannon fodder." Debs was arrested, tried, and convicted for violating the 1918 Amendment to the Espionage Act. This law prohibited any speech that interfered with the drafting of men into the armed forces.

**CASE B:** *Frohwerk v. United States,* (1919) Jacob Frohwerk was the publisher of a pro-German newspaper in Missouri. Shortly after the United States entered World War I, Frohwerk printed a series of 12 articles opposing this action. He was then arrested, tried, and convicted for violating the Espionage Act of 1917.

**CASE C:** *Gitlow v. New York,* (1925) Benjamin Gitlow was a leader of the American Communist Party. After World War I, Gitlow published and distributed 16,000 copies of a Communist Party document called the "Left Wing Manifesto." This document argued for a communist revolution in the United States and urged labor strikes and "class action...having as its objective the conquest of the power of the state." Gitlow was arrested by New York authorities for violating that state's "criminal anarchy" law. This law made it a felony to advocate overthrowing the established government by force or violence.

**CASE D:** *Abrams v.* *United States,* (1919) An immigrant from Russia, Jacob Abrams was accused of printing and distributing leaflets that insulted the United States and interfered with the nation's war effort against Germany. The defendants were charged under provisions of the Espionage Acts of 1917 and 1918. The leaflets had been thrown out of a window on August 22, 1918 protesting the U.S. invasion into Russia during World War I. The Russian Communist Revolution of 1917 had ended Russia's participation in the war against Germany. The United States had opposed Russia's withdrawal and sent troops into parts of Russia. One article in the leaflet denounced President Wilson as a hypocrite and a coward for sending American troops into Russia. The article went on to appeal to American workers to unite and revolt against the government. Another article called for a general strike in the United States "to create so great a disturbance...America shall be compelled to keep their armies at home, and not be able to spare any for Russia."

**Rulings**

**A: DEBATE RESOLUTION:** Eugene V. Debs' speech at the anti-war rally was a "clear and present danger" to the laws of the United States.

**B: DEBATE RESOLUTION:** Jacob Frohwerk's 12 articles were a "clear and present danger" to the laws of the United States.

**C: DEBATE RESOLUTION:** Benjamin Gitlow's "Left Wing Manifesto" was a "clear and present danger" to the laws of the United States.

**D: DEBATE RESOLUTION:** Jacob Abrams' leaflets were a "clear and present danger" to the laws of the United States.