

Schenck v. the United States

Issue: Freedom of the Press

The Facts

- The facts of the *Schenck Case* were as follows. Charles Schenck and Elizabeth Baer were members of the Executive Committee of the **Socialist Party** in Philadelphia, of which Schenck was General Secretary. The Socialist Party opposed the war as a war between capitalist industrialists and of no benefit to the worker.
- The executive committee authorized, and Schenck oversaw, printing and mailing more than 15,000 fliers to men slated for conscription during World War I. The fliers urged men not to submit to the draft, saying "Do not submit to intimidation", "Assert your rights", "If you do not assert and support your rights, you are helping to deny or disparage rights which it is the solemn duty of all citizens and residents of the United States to retain," and urged men not to comply with the draft on the grounds that military conscription constituted involuntary servitude, which is prohibited by the Thirteenth Amendment.
- After jury trials Schenck and Baer were convicted of violating Section 3 of the Espionage Act of 1917. Both defendants appealed to the U.S. Supreme Court, arguing that their conviction, and the statute which purported to authorize it, were contrary to the First Amendment.

Decision

Justice Oliver Wendell Holmes, speaking for a unanimous Supreme Court, held that “free speech would not protect a man falsely shouting fire in a theater and causing a panic” and that Schenck’s writings in wartime created a “**clear and present danger**” to the American government and people.

Precedent and Yardstick

Schenck's conviction was upheld.

The "clear and present danger" doctrine became the yardstick for later cases involving the freedoms protected by the First Amendment.