



THE NATIONAL
WWI MUSEUM
AND MEMORIAL

REGISTRATION CERTIFICATE.

To whom it may concern, Greetings:



THESE PRESENTS ATTEST.
That in accordance with the
proclamation of the President of the United States, and in compliance with law,

Andrew Benson Weyer
(Name) East (City or P. O.)
Precinct 48 County of East, State of Illinois
has submitted himself to registration and has by me been duly registered this 5
day of June, 1917.

Elizabeth Howard
Registrar.

8-4227

Draft registration certificate for Andrew Benson Weyer.

Online Collections Database, 1977.16.27, www.theworldwar.org/research/database. National WWI Museum and Memorial.
Online.

The 1st Amendment & World War I: Schenck v. United States, 1919

Recommended Grade Levels: 8-12

Course/Content Area(s): History/Social Studies

Authored by: Christopher Bobal, National WWI Museum and Memorial Teacher Advisor

LESSON OVERVIEW:	Not all Americans welcomed the entry of the United States into World War I in April 1917. Many individuals and groups organized to oppose U.S. participation. To try to silence this opposition Congress passed laws such as the Espionage Act of 1917. Charles Schenck was convicted under the Espionage Act for mailing a pamphlet criticizing the draft. The Supreme Court ultimately ruled the Espionage Act did not violate Schenck's 1st Amendment right to freedom of speech. This lesson asks students to evaluate whether or not they think Schenck's right to free speech was violated. To make this determination students will evaluate the 1st Amendment, the Espionage Act of 1917, and the Supreme Court's decision.
OBJECTIVES:	<i>Students will:</i>
	<ul style="list-style-type: none"> ● analyze primary sources and secondary sources ● explain the concept of freedom of speech ● evaluate whether Schenck's freedom of speech was violated by the Espionage Act of 1917
STANDARDS ALIGNMENT:	<p>National Council for the Social Studies (NCSS) C3 Framework Standards:</p> <p>D2.His.1.9-12. Evaluate how historical events and developments were shaped by unique circumstances of time and place as well as broader historical contexts.</p> <p>D2.His.3.9-12. Use questions generated about individuals and groups to assess how the significance of their actions changes over time and is shaped by the historical context.</p> <p>D2.His.14.9-12. Analyze multiple and complex causes and effects of events in the past.</p> <p>D2.His.16.9-12. Integrate evidence from multiple relevant historical sources and interpretations into a reasoned argument about the past.</p> <p>D2.Civ.12.9-12. Analyze how people use and challenge local, state, national, and international laws to address a variety of public issues.</p> <p>D2.Civ.13.9-12. Evaluate public policies in terms of intended and unintended outcomes, and related consequences.</p> <p>D2.Civ.14.9-12. Analyze historical, contemporary, and emerging means of changing societies, promoting the common good, and protecting rights.</p>
TIME NEEDED:	One or two 45-minute class periods, depending on handout choices

PRIOR KNOWLEDGE:	<ul style="list-style-type: none"> ● Knowledge of unrestricted Submarine Warfare ● Knowledge of the sinking of Lusitania ● Knowledge of Zimmerman Telegram ● Knowledge of President Wilson’s Declaration of War Speech ● Knowledge of the concept that WWI was a war to “Make the world safe for democracy”
MATERIALS NEEDED:	<ul style="list-style-type: none"> ● Schenck v. United States Slides (optional) ● YouTube to show video “How WWI Changed America: Citizenship and World War I” ● Handout A: Freedom of Speech Hypotheticals ● Handout B: Opposition to World War I ● Handout C: Espionage Act of 1917 (includes 2 versions) ● Handout D: World War I Anti-Draft Pamphlet (includes 3 versions) ● Handout E: Schenck v. United States (includes 3 versions) ● Appendix A-E include answer sheets

LESSON

PRE-ASSESSMENT/INTRODUCTION/HOOK:

As a bell-ringer activity on the first day of the lesson, have students complete the Freedom of Speech Hypotheticals (handout A).

DIRECTIONS:

Essential Question: Did Schenck's conviction under the Espionage Act for criticizing the draft violate his First Amendment right to freedom of speech?

Day One:

- After students have finished Handout A, lead a full class discussion of their work. As part of discussion, ask students importance of freedom of speech in a democracy as well as limitations on free speech (any besides what is in hypotheticals).
 - Record student answers on the board.
 - For background, teachers might want to consult the reading “The First Amendment: Categories of Speech” from the Further Resources section.
- Next, explain to students that before World War I, free speech was not a strongly debated constitutional issue, but because of opposition to the war, the issue of freedom of speech became hotly contested with several important cases decided by the Supreme Court.
- Give students Opposition to World War I sheet (Handout B) to fill in as they watch the short video, “How WWI Changed America: Citizenship and WWI” (5:03).
 - After the video discuss some of the information students filled in to check for understanding.
- Explain to students that the U.S. government passed a law, the Espionage Act of 1917, in order to suppress opposition to the war.
- Give students the excerpts from the Espionage Act of 1917 (Handout C).
 - *NOTE: This handout includes two different versions, with C1 being the most complex and D2 being the least complex.*
- After students have worked for 5-10 minutes lead a full class discussion especially focusing on question #2.

Day Two:

- Briefly review opposition to WWI and the Espionage Act of 1917. (3-5 minutes)
- Explain to students that the U.S. government instituted a draft to fill its armed forces and that the draft was controversial.
- Give students the excerpts from the “World War I Anti-Draft Pamphlet” (Handout D).
 - *NOTE: This handout includes three different versions, with D1 being the most complex and D3 being the least complex.*
- After 10-15 minutes lead a full class discussion focusing on which parts students think violate the Espionage Act and whether the pamphlet violates the 1st Amendment.

- Explain to students that Schenck was convicted because of the pamphlet and the case went to the Supreme Court.
- Give students excerpts from majority opinion in “Schenck v. United States (1919)” (Handout E).
 - *NOTE: This handout includes three different versions, with E1 being the most complex and E3 being the least complex.*
- After 10 minutes lead a full class discussion. Start by asking who agreed/disagreed with the decision to raise hands. Have some students from both sides explain their position.

POST-ASSESSMENT:

- Complete an exit ticket explaining why agreed or disagreed with the decision of the Supreme Court.
- Write an Op-ed piece explaining why agreed or disagreed with the decision of the Supreme Court.
- Record a podcast explaining why agreed or disagreed with decision of the Supreme Court.
- Create newspaper headlines that demonstrate why agreed or disagreed with the decision of the Supreme Court.

MODIFICATIONS/ACCOMMODATIONS

- Beginning with Handout C there are different versions of the handouts depending on the level/needs of the students.
 - Any Handout labeled with a **1** is designed with advanced-level classes in mind.
 - Any Handout labeled with a **2** is designed with regular-level classes in mind.
 - Any Handout labeled with a **3** is designed for students needing modified materials.
 - Using version 3 of Student Handouts and with shorter discussion it may be possible to complete the lesson in one day.

Appendix A: (Handout A Answer Key)

Freedom of Speech Hypotheticals (Answer Key)

Read each of the hypothetical situations and decide whether or not the government can limit or punish the speech contained in each of the situations. Place an "X" in the box that best matches the amount you think the government can limit the speech.

1 means the government may not limit or punish the speech.	2 means that the government can limit or punish the speech under rare conditions.	3 means you are unsure when and how the government can limit or punish the speech.	4 means that the government can usually limit or punish this type of speech.	5 means that the government can always limit and punish this type of speech.
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Congress shall make no law...abridging the freedom of speech.

Hypothetical Situations	1	2	3	4	5
1. A person burns an American flag in protest of government policies.	X				
2. A person creates a website asking people to support an anti-war agenda.	X				
3. A person criticizes the US President on a blog site about public policy.	X				
4. A student threatens violence against his school on social media in the form of a poem.				X	
5. A person posts online that someone should assassinate Supreme Court Justices.					X
6. A person creates a pro-terrorist website that asks people to join terror groups in overthrowing the US government.					X

- In your own words explain what *freedom of speech* means.

Answers will vary

Appendix B: (Handout B Answer Key)

OPPOSITION TO WORLD WAR I (Answer Key)

While watching the video “[How WWI Changed America: Citizenship and World War I](#)” answer the following questions.

1. What were some motivations for many pacifists who opposed the war?

Religious sensibilities, secular reasons, feminism since war seen as masculine undertaking, economic arguments as war not in best interests of working people

2. Why did many people in these groups oppose the war?

Midwest	- <i>many German-speaking Americans</i>
Far West	- <i>large number of Irish-Americans who hated the British</i>
Labor Movement	- <i>war not in interests of ordinary working people</i>
Southerners & Midwesterners	- <i>thought war sponsored by Northeastern industrialists to make more profit</i>

3. Why did the government believe it needed to suppress opposition to the war?

To keep national unity and to keep industrial production going.

4. What is *conscientious objection*? If someone claimed this and refused to fight what else could they do?

- If drafted, men could tell the government that they cannot serve for religious or other reasons.

- they could do their service in non-combat or civilian roles

5. How were conscientious objectors viewed?

As a danger to the war effort.

6. What was the purpose of the American Protective League?

To investigate cases of disloyalty.

Appendix C: (Handout C Answer Keys)

Espionage Act of 1917

In his war message to Congress in April, President Wilson had stated that there were "millions of men and women of German birth and native sympathy who live amongst us." He warned that "if there should be disloyalty, it will be dealt with a firm hand of repression." In response Congress enacted the Espionage Act of 1917 on June 15th. The legislation was aimed at socialists, pacifists, and other anti-war activists.

In addition to the section quoted below, the Wilson administration determined that any written materials violating the act or otherwise "urging treason" were "non-mailable matter," and Postmaster General Albert S. Burleson ordered local postmasters to report any suspicious materials.

Section 3 of Espionage Act of 1917

Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies and whoever when the United States is at war, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny, refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct the recruiting or enlistment service of the United States, to the injury of the service or of the United States, shall be punished by a fine of not more than \$10,000 or imprisonment for not more than twenty years, or both.

1. Based on Section 3, what were some types of actions that could be punished?

- making false reports/statements with intent to interfere with U.S. armed forces

- promote success of enemies of the United States

- attempt to cause members of U.S. armed forces to neglect their duties or refuse orders

- obstruct recruiting for U.S. armed forces

2. Based on Section 3, does the law violate the 1st Amendment? Why or why not?

Answers will vary

Espionage Act of 1917

In his war message to Congress in April, President Wilson had warned that "if there should be disloyalty, it will be dealt with a firm hand of repression." In response Congress passed the Espionage Act of 1917 on June 15th which made it illegal to "make or convey false reports or false statements with intent to interfere" with the U.S. military efforts and to obstruct recruitment for the military. Violators "shall be punished by a fine of not more than \$10,000 or imprisonment for not more than twenty years, or both." The legislation was aimed at socialists, pacifists, and other anti-war activists.

Question:

1. Do you think the law violates the 1st Amendment? Why or why not?

Answers will vary

Appendix D: (Handout D, Version 1, 2, and 3 Answer Keys)

World War I Anti-Draft Pamphlet (edited)

(Handout D1 – Answer Key)

In May 1917 Congress passed the Selective Service Act (Conscription Act) which gave the President the power to draft soldiers. Charles T. Schenck, a leader of the Philadelphia Socialist Party, printed and mailed out 15,000 leaflets to young men who could be drafted. Schenck was charged with conspiracy to violate the Espionage Act of 1917 by attempting to cause insubordination in the military and to obstruct recruitment. Schenck was convicted of violating this law and appealed on the grounds that the statute violated the First Amendment.

LONG LIVE THE CONSTITUTION OF THE UNITED STATES

Wake Up America! Your Liberties Are in Danger!

The Constitution of the United States is one of the greatest bulwarks of political liberty. It was born after a long, stubborn battle between king-rule and democracy.... In this battle the people of the United States established the principle that freedom of the individual and personal liberty are the most sacred things in life. Without them we become slaves.

... The Socialist Party says that this idea is violated by the Conscription Act. When you conscript a man and compel him to go abroad to fight against his will, you violate the most sacred right of personal liberty...

A conscript is little better than a convict. He is deprived of his liberty and of his right to think and act as a free man. A conscripted citizen is forced to surrender his right as a citizen and become a subject. He is forced into involuntary servitude. He is deprived of all freedom of conscience in being forced to kill against his will. . . .

In a democratic country each man must have the right to say whether he is willing to join the army. Only in countries where uncontrolled power rules can a despot force his subjects to fight. Such a man or men have no place in a democratic republic. This is tyrannical power in its worst form. It gives control over the life and death of the individual to a few men. There is no man good enough to be given such a power.

... Do you want to see unlimited power handed over to Wall Street's chosen few in America? If you do not, join the Socialist Party in its campaign for the repeal of the Conscription Act. Write to your congressman and tell him you want the law repealed.... Exercise your rights of free speech, peaceful assemblage and petitioning the government for a redress of grievances. Come to the headquarters of the Socialist Party ... and sign a petition to Congress for the repeal of the Conscription Act. Help us wipe out this stain upon the Constitution!

Questions:

1. What sacred idea/right did the people of the United States establish?

Freedom of the individual and personal liberty

2. Why does conscription violate this sacred idea/right?

People have no say in whether they want to join and fight; it is like involuntary servitude not unlike a convict

3. What actions does the pamphlet urge people to take against conscription?

- write their congressman asking to repeal the law

- exercise rights to free speech, peaceful assembly, petition

- sign a petition to Congress asking for repeal

4. Which parts of the pamphlet may be in violation of the Espionage Act of 1917? Does it violate the 1st Amendment?

- speaking out against conscription (equating it with being a slave and/or convict) especially since this was mailed to men who might be drafted

- Answers will vary

ASSERT YOUR RIGHTS!

The Socialist Party says that any individual or officers of the law entrusted with the administration of conscription regulations violate the provisions of the United States Constitution...when they refuse to recognize your right to assert your opposition to the draft.

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.

Will you let cunning politicians and a mercenary capitalist press wrongly and untruthfully mold your thoughts? Do not forget your right to elect officials who are opposed to conscription.

In lending tacit or silent consent to the conscription law, in neglecting to assert your rights, you are...helping to condone and support a most infamous and insidious conspiracy to abridge and destroy the sacred and cherished rights of a free people. You are a citizen, not a subject! You delegate your power to the officers of the law to be used for your good and welfare, not against you.

They are your servants. Not your masters. Their wages come from the expenses of the government which you pay. Will you allow them to unjustly rule you?. . .

No power was delegated to send our citizens away to foreign shores to shoot up the people of other lands, no matter what may be their internal or international disputes.

The people of this country did not vote in favor of war. At the last election they voted against war.

To draw this country into the horrors of the present war in Europe, to force the youth of our land into the shambles and bloody trenches of war crazy nations, would be a crime the magnitude of which defies description. Words could not express the condemnation such cold-blooded ruthlessness deserves. . . .

You are responsible. You must do your share to maintain, support, and uphold the rights of the people of this country.

In this world crisis where do you stand? Are you with the forces of liberty and light or war and darkness?

Questions:

1. What does the pamphlet say is the relationship between the people and their elected representatives?

- *people have right to elect who they want including those opposed to conscription*
- *the people delegate their power to be used for good and not against them*
- *they are the people's servants and they get paid by the people*

2. What actions does the pamphlet urge people to take against conscription?

- *people must assert and support their rights by opposing the draft*

3. Which parts of the pamphlet may be in violation of the Espionage Act of 1917? Does it violate the 1st Amendment?

- *speaking out about how those who enforce conscription violate the U.S. Constitution; stating people have a right to oppose the draft*
- *Answers will vary*

World War I Anti-Draft Pamphlet (edited)

(Handout D2 – Answer Key)

In May 1917 Congress passed the Selective Service Act (Conscription Act) which gave the President the power to draft soldiers. Charles T. Schenck, a leader of the Philadelphia Socialist Party, printed and mailed out 15,000 leaflets to young men who could be drafted. Schenck was charged with conspiracy to violate the Espionage Act of 1917 by attempting to cause insubordination in the military and to obstruct recruitment. Schenck was convicted of violating this law and appealed on the grounds that the statute violated the First Amendment.

LONG LIVE THE CONSTITUTION OF THE UNITED STATES Wake Up America! Your Liberties Are in Danger!

The Constitution of the United States is one of the greatest bulwarks of political liberty. It was born after a long, stubborn battle between king-rule and democracy.... In this battle the people of the United States established the principle that freedom of the individual and personal liberty are the most sacred things in life. Without them we become slaves.

... The Socialist Party says that this idea is violated by the Conscription Act. When you conscript a man and compel him to go abroad to fight against his will, you violate the most sacred right of personal liberty...

A conscript is little better than a convict. He is deprived of his liberty and of his right to think and act as a free man. A conscripted citizen is forced to surrender his right as a citizen and become a subject. He is forced into involuntary servitude. He is deprived of all freedom of conscience in being forced to kill against his will. . . .

In a democratic country each man must have the right to say whether he is willing to join the army. Only in countries where uncontrolled power rules can a despot force his subjects to fight. Such a man or men have no place in a democratic republic. This is tyrannical power in its worst form. It gives control over the life and death of the individual to a few men. There is no man good enough to be given such a power.

... Do you want to see unlimited power handed over to Wall Street's chosen few in America? If you do not, join the Socialist Party in its campaign for the repeal of the Conscription Act. Write to your congressman and tell him you want the law repealed.... Exercise your rights of free speech, peaceful assemblage and petitioning the government for a redress of grievances. Come to the headquarters of the Socialist Party ... and sign a petition to Congress for the repeal of the Conscription Act. Help us wipe out this stain upon the Constitution!

Questions:

1. What sacred idea/right did the people of the United States establish?

Freedom of the individual and personal liberty

2. Why does conscription violate this sacred idea/right?

People have no say in whether they want to join and fight; it is like involuntary servitude not unlike a convict

3. What actions does the pamphlet urge people to take against conscription?

- write their congressman asking to repeal the law***
- exercise rights to free speech, peaceful assembly, petition***
- sign a petition to Congress asking for repeal***

4. Which parts of the pamphlet may be in violation of the Espionage Act of 1917? Does it violate the 1st Amendment?

- speaking out against conscription (equating it with being a slave and/or convict) especially since this was mailed to men who might be drafted***
- Answers will vary***

World War I Anti-Draft Pamphlet (excerpt)

(Handout D3 – Answer Key)

In May 1917 Congress passed the Selective Service Act (Conscription Act) which gave the President the power to draft soldiers. Charles T. Schenck, a leader of the Philadelphia Socialist Party, printed and mailed out 15,000 leaflets to young men who could be drafted.

LONG LIVE THE CONSTITUTION OF THE UNITED STATES Wake Up America! Your Liberties Are in Danger!

... The Socialist Party says that this idea (freedom of the individual and personal liberty) is violated by the Conscription Act. When you conscript a man and compel him to go abroad to fight against his will, you violate the most sacred right of personal liberty...

... Do you want to see unlimited power handed over to Wall Street's chosen few in America? If you do not, join the Socialist Party in its campaign for the repeal of the Conscription Act. Write to your congressman and tell him you want the law repealed.... Exercise your rights of free speech, peaceful assemblage and petitioning the government for a redress of grievances. Come to the headquarters of the Socialist Party ... and sign a petition to Congress for the repeal of the Conscription Act.

Questions:

1. What sacred idea/right did the people of the United States establish?

Freedom of the individual and personal liberty

2. What actions does the pamphlet urge people to take against conscription?

- write their congressman asking to repeal the law

- exercise rights to free speech, peaceful assembly, petition

- sign a petition to Congress asking for repeal

3. Why might this pamphlet be in violation of the Espionage Act of 1917? Does it violate the 1st Amendment?

- speaking out against conscription especially since this was mailed to men who might be drafted; Answers will vary

Appendix E: (Handout E, Version 1, 2, and 3 Answer Keys)

Schenck v. United States (1919)

Excerpts from Unanimous Majority Opinion (Justice Oliver Wendell Holmes)
(Handout E1 – Answer Key)

This is an indictment in three counts. The first charges a conspiracy to violate the Espionage Act of June 15, 1917 ... by causing and attempting to cause insubordination in the military and naval forces of the United States, and to obstruct the recruiting and enlistment service of the United States, when the United States was at war with the German Empire. [The] defendant 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 count alleges overt acts in pursuance of the conspiracy, ending in the distribution of the document. The second count alleges a conspiracy to commit an offense against the United States, to use the mails for the transmission of matter declared to be non-mailable by title with an assertion of the same overt acts. The third count charges an unlawful use of the mails for the transmission of the same matter. The defendants were found guilty on all the counts.

Of course the document would not have been sent unless it had been intended to have some effect, and we do not see what effect it could be expected to have upon persons subject to the draft except to influence them to obstruct the carrying of it out.

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 protection 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 (significant) 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.

Questions:

1. What are the three counts that Schenck was found guilty of at his original trial?

- conspiracy to violate Espionage Act by attempting to cause insubordination in armed forces & obstruct recruitment

- conspiracy to commit offense against U.S. by mailing materials deemed non-mailable because violates Espionage Act as outlined in first charge

- unlawful use of mail for transmission of materials in violation of Espionage Act

2. What is the Court's reasoning for its ruling that what was said in the pamphlet is not protected free speech at this time?

- because when a nation is at war things said, such as in the pamphlet, might hinder the efforts of the government & armed forces

- the words may create a clear and present danger that Congress has the right to prevent

3. What do you think Holmes meant by "create a clear and present danger"?

Answers will vary

4. Do you think Schenck's pamphlet presented a "clear and present danger" to the United States? Why or why not?

Answers will vary

5. Overall, do you agree with the ruling in the Schenck case? Why or why not?

Answers will vary

Schenck v. United States (1919)

Excerpts from Unanimous Majority Opinion (Justice Oliver Wendell Holmes)
(Handout E2 – Answer Key)

The Supreme Court had to decide four basic questions:

- 1- Should Schenck's conviction be overturned? Answer was NO.*
- 2- Does the 1st Amendment protect his speech? Answer was NO (under current circumstances).*
- 3- Are there different standards for freedom of speech during peacetime and war? Answer was YES.*
- 4- Is the Espionage Act of 1917 constitutional? Answer was YES.*

Of course the document would not have been sent unless it had been intended to have some effect, and we do not see what effect it could be expected to have upon persons subject to the draft except to influence them to obstruct the carrying of it out.

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 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 (significant) 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....

Questions:

1. What is the Court's reasoning for its ruling that what was said in the pamphlet is not protected free speech at this time?

- because when a nation is at war things said, such as in the pamphlet, might hinder the efforts of the government & armed forces

- the words may create a clear and present danger that Congress has the right to prevent

2. What do you think Holmes meant by “create a clear and present danger”?

Answers will vary

3. Do you think Schenck’s pamphlet presented a “clear and present danger” to the United States? Why or why not?

Answers will vary

4. Overall, do you agree with the ruling in the Schenck case? Why or why not?

Answers will vary

Supreme Court Decision
Schenck v. United States (1919)
(Handout E3 – Answer Key)

Schenck was charged with conspiracy to violate the Espionage Act of 1917 by attempting to cause insubordination in the military and to obstruct recruitment. Schenck was convicted of violating this law and appealed on the grounds that the statute violated the First Amendment.

The Court held that the Espionage Act did not violate the First Amendment and was an appropriate use of Congress' wartime authority. Writing for a unanimous Court, Justice Oliver Wendell Holmes said that courts owed greater leeway to the government during wartime. Holmes concluded that the First Amendment does not protect speech that approaches **creating a clear and present danger** of a significant evil that Congress has the power to prevent. Holmes reasoned that the widespread mailing of the leaflets was sufficiently likely to disrupt the conscription (drafting) process. He compared the leaflets to falsely shouting "Fire!" in a crowded theatre, which is not permitted under the First Amendment.

Questions:

1. What do you think Holmes meant by "create a clear and present danger"?

Answers will vary

2. Do you think Schenck's pamphlet violated the 1st Amendment? Did it create a "clear and present danger" to the United States? Why or why not?

Answers will vary

Further Resources:

- Schenck Case
 - [Landmark Cases of the U.S. Supreme Court: Schenck v. United States \(1919\)](#)
 - [Bill of Rights Institute: Schenck v. United States \(1919\)](#)
 - [Digital Inquiry Group: Sedition in World War I](#)
 - [Oyez: Schenck v. United States \(1919\)](#)
 - [FindLaw: Schenck v. United States Case Summary](#)
- Espionage Act of 1917
 - [Free Speech Center: Espionage Act of 1917](#)
 - [National Archives: Pieces of History](#)
- [The First Amendment: Categories of Speech](#)

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