

# Freedom of Speech Historical Background

**1791 *Bill of Rights* ratified**

**1798 *Sedition Act (Alien and Sedition Acts of 1798)*. *sedition*-- urging resistance or rebellion --Sedition Act made it a crime to "write, print, or say 'any false, scandalous and malicious' statements against the govt. and its officials or 'to incite against them the hatred of the good people of the United States.'" --aimed at hindering political opposition coming from the Anti-federalists.**

**--First real battle over First Amendment and it helped bring Thomas Jefferson into office in 1800.**

## Class, war, and the “emergency excuse”

**1880s-1920s--Labor unions new focus of debate over freedom of speech, assembly, and petition.**

**1917 *Espionage Act of 1917* Passed during WWI--suppress criticism of involvement. Made it a crime to "willfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of govt. of the US." Aimed at socialists, anarchists, communists.**



**1918 Eugene Debs, Socialist Party.**

**--convicted of inciting insubordination, disloyalty, mutiny, refusal of duty in the military. Court upheld conviction. Origins of "clear and present danger" at this time period of "Red Scare."**



**1919 *Schenck v. United States*. Upheld conviction of Schenck (Socialist official) who mailed pamphlets to young men urging their resistance to the draft. Saw Schenck's actions as *creating immediate threat of criminal action*.**

**1925 *Gitlow v. New York*. Freedom of speech applies to the states.**

**1940 *Thornhill v. Alabama*. Action of picketing was protected by First Amendment.**

**1942 *Chaplinsky v. New Hampshire*. Court held that "fighting words" spoken face-to-face that "have a direct tendency to cause acts of violence" are not protected. Words are not protected that "inflict injury or tend to incite an immediate breach of the peace." (*Chaplinsky*, a Jehovah's Witness, called a city marshal a "God-damned racketeer" and "a damned fascist" in a public place.)**

# Speech during McCarthy era

1950s McCarthy era--new Red Scare. *Yates v. United States* (1957).

**Smith Act 1940**—passed to limit political activities of radical opponents of the US government such as the Communist Party of the US (CPUSA)

- Made it a crime for anyone knowingly to advocate the forcible overthrow of the US government or to organize or participate in any group committed to the purpose of violent revolution against the US government.
- Oleta O'Connor Yates was one of 14 members of the CPUSA convicted for violating the Smith Act.
- Court was pressed to distinguish between action and belief. *Advocacy of organized, violent action v. advocacy of belief*. Government can control advocacy of organized violent action but not advocacy of belief. Advocacy of belief does not create clear and present enough danger. This is also called *advocacy of abstract doctrine*.
- Conviction of Yates and associations was reversed, but Smith Act *was not ruled unconstitutional*. Smith Act, was, though, rendered unenforceable.

**1969 *Brandenburg v. Ohio*. Govt. can restrict speech *only* when it advocates the use of violence directed toward inciting *imminent and likely danger*. This set the precedent known as the Brandenburg standard. It focuses on the *immediacy of the danger*.**



## Speech that may be limited by Government

- **"fighting words"**
- **words advocating a specific violent act; will cause violent act**
- **lewd, vulgar, suggestive**
- **defamation—libel and slander**



# But what's obscene?



## *Miller v. California, 1973*

- (a) whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest .
- (b) whether the work depicts or describes, in a patently offensive way, sexual conduct.
- (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.



## Speech and Public Schools

**“neither teachers  
nor students  
lose their civil  
rights when  
they enter the  
school house.”  
(Justice  
Fortas)**



# Tinker v. Des Moines (1972)

**Students were suspended for wearing black arm bands to symbolically protest Vietnam War. Students won. Why? Because speech was non-disruptive, symbolic, and clearly understandable, political speech.**



## As a result--What schools have to consider

***Is the speech is sending a message that is understood?***

**This includes either pure speech or symbolic speech.**

- **In the school setting, the need for a non-disruptive learning environment must be balanced with individual civil liberties.**

***Is this something the government (school) can do?***

- **Is there a clear reason to do it?**

***Does the government have substantial government interest in doing so?***

- **Is the reason more than just restricting speech?**
- **--Safety of students or disruption of learning environment must be considered. *Has to be based on more than mere disagreement with speech.***
- **School must show that the behavior is disruptive, and weigh the disruption against the reason for the restriction.**

## But then there's *Morse v. Frederick* (2007)

Court restricted student speech at a school-supervised event when that speech is reasonably viewed as promoting illegal drug use. Even when that speech occurs off school grounds (but is visible on school grounds). Decision was 5/4.



# Westboro Baptist Church Case

- <http://www.washingtonpost.com/wp-dyn/content/video/2011/03/02/VI2011030203268.html?sid=ST2010100406679>

***Snyder v. Phelps*** was a case heard by Supreme Court of the United States on whether the First Amendment protected protests of public protestors at a funeral against tort liability. It involved a claim of intentional infliction of emotional distress made by Albert Snyder, the father of Matthew Snyder, a Marine who died in the Iraq War. The claim was made against the Phelps family, including Fred Phelps, and against Phelps' Westboro Baptist Church (WBC). The Court ruled in favor of Phelps in an 8-1 decision, holding that their speech related to a public issue, and was disseminated on a public sidewalk.