

Sedition Outline

Sedition is advocating overthrow of the government.

Schenck (1919)

Replaced bad tendency test with clear and present danger (cpd) test: whether the words in question create a cpd of bringing about an evil Congress has the right to prevent. If that is the case, the words are not protected by the First Amendment, and the speaker can be punished.

Abrams (1919)

In order to meet the cpd test, words must create a cpd of immediate evil with intent to bring it about.

In his dissent, Justice Oliver Wendell Holmes talks about insuring “free trade in ideas” in the marketplace. Abrams was “a puny anonymity” whose ideas would be rejected.

Gitlow (1925)

This decision is significant because it made freedom of speech a federal right subject to protection by federal courts.

The case was decided against the speaker, with Holmes in dissent saying: “Every idea is an incitement.”

Dennis (1951)

The cpd test was undermined by this decision, which said the gravity of the evil in question (for example, overthrow of the government) discounts the immediacy and probability of the evil occurring.

In his dissent, Justice William O. Douglas talks about Communists as “miserable merchants of unwanted ideas; their wares remain unsold.”

Yates (1957)

Cpd test was rescued by this decision, which says cpd requires advocacy to action: a speaker must urge people to **do** something, not just to **believe** something.

****Brandenburg (1969)****

Today’s cpd test requires advocacy to imminent lawless action with motive and likelihood.

Watts (1969)

This decision protects political hyperbole or exaggeration.

Wooley (1977) / Hurley (1995)

Both cases recognize a right to remain silent.