Schenck v. United States: A clear and present revisit

Rather than rehash the difference in democratic principles between the founding fathers and those of the democratic party today, I would like to begin this article by referring you to my previous article on the subject. It is a long-winded way of saying that when I refer to Marxist democrats, I am referring to the democrats today rather than the Locke democrats of our history. This seems, to my mind, the best way to preface this article. Certainly I do not mean to imply that all democrats are Marxists. The article, however, explains itself.

I preface it in this fashion because I find Schenck v. United States 249 U.S. 47 (1919) an interesting First Amendment case in light of what is happening today. It is important for more than just the fact that it coined two phrases.

In this case, Oliver Wendell Holmes wrote,

> *"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."*

In paragraph 5 he writes further,

> *"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 evils that Congress has a right to prevent."*

This is the coining of the phrases, "You can't yell fire in a crowded theater" and "clear and present danger."

That begs the question of what is a “clear and present danger?” John McCain and 92 of his cohorts seem to feel that they have answered that question with the passage of S. 1867 and the infamous Section 1301 of the National Defense Authorization Act. Diane Feinstein even wrote an amendment to ensure that there was a provision in this section that it did not apply to American citizens. She voted on it even though her amendment failed. The gist of this, as you may have read, is that the military now has the authority to round up “dissidents” and place them in Gitmo and other foreign prisons to silence them.

Apparently our own gulags are too full of those damn pot smokers!

So what constitutes a “clear and present danger?” Is it the gal with the peace sticker on her car? Certainly a person with a pocket Constitution and a Ron Paul sticker is suspect. Are you “supporting terror” and “not supporting our troops” or aiding the enemy if you speak out against the war? I suppose that you can add me to that list because I speak out against the war precisely because I support the troops. I object to dumping a trillion dollars into a war which killed and dismembered thousands of our dedicated young people with no clear objective to achieve. It is the same process we used on our Vietnam veterans who served their country and returned to be spat upon and to be told that they are really not sick.

Even Discover Magazine used space—best served to teach us the grandeur of evolutionary science—to comment on the horrors of S. 1867. Salon is one of the few that are using the Marxists clarion call of, “It’s not that bad.” You may find the opposing view there.

What is interesting is that the case concerns ***Comrade*** Schenck—the general secretary of the Socialist Party—who was convicted on three counts of conspiracy. He was distributing pamphlets to drafted men to avoid the draft and stay out of

World War I. I suppose, now, we know where the Marxist of the sixties got the idea to “burn their draft cards.”

Now those Marxists form the core of the usurped “Democratic Party” and the Southern Poverty Law Center. They are now using this “clear and present danger” theory to attack anyone who mentions the Constitution and that they have rights under the Bill of Rights. They attack anyone who speak out against the intrusion on our rights. Especially anyone who knows the truth about the Second Amendment. They have attacked the “TEA party” movement as terrorists and the Oathkeepers who do not advocate violence or that people stay out of the military or police—only that they remember their oath to the Constitution.

It seems strange that this decision seems to have come full circle. From applying these principles to those who were advocating violations of the Constitution to those who are defending it.

As these Marxist often do, they do not use quotes except those that serve their needs. They do not quote Abraham Lincoln who said, “To sin by silence when they should protest makes cowards of men.” There probably is no text book in school that quotes Thomas Jefferson who said, “No experiment can be more interesting than that we are trying, and which we trust will end in establishing the fact, that man may be governed by reason and truth. Our first objective should therefore be, to leave open to him all the avenues of truth. The most effectual hitherto found, is the freedom of the press. It is, therefore, the first shut up by those who fear the investigation of their actions.”

As the Anti-Federalist *Brutus* observed, “But remember, when the people once part with power, they can seldom or never resume it again but by force. Many instances can be produced in which the people have voluntarily increased the powers of their rulers; but few, if any, in which rulers have willingly abridged their authority. This is a sufficient reason to

induce you to be careful, in the first instance, how you deposit the powers of government.”

Schenck v. United States 249 U.S. 47 (1919)