

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

**Oliver Wendell
Holmes, Jr., 1841-
1935**

**Louis D. Brandeis,
1856-1941**

Schenck v. U.S. (1919)

“The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.”

“Clear and present danger”

Abrams v. U.S. (1919)

“we should be eternally vigilant against attempts to check the expression of opinions that we loathe ...”

“... the best test of truth is the power of the thought to get itself accepted in the competition of the market ...”

Whitney v. California (1927)

“If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.”

“In order to support a finding of clear and present danger, it must be shown either that *immediate serious violence* was to be expected or was advocated ...”

Brandenburg v. Ohio (1969)

... constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought--not free thought for those who agree with us but freedom for the thought that we hate.

-- Oliver Wendell Holmes, Jr.
in U.S. v. Schwimmer (1929)

Miller v. California (1973)

- Obscenity not protected by the 1st Amendment
- Three-part test for obscenity:
 1. whether “the average person, applying *contemporary community standards*,” would find that the work, taken as a whole, appeals to the prurient interest
 2. whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law
 3. whether the work, taken as a whole, lacks serious scientific, literary, artistic, or political value. (SLAP test)