WHO KNEW ABOUT 'AMENDMENT' TO 1ST AMENDMENT?

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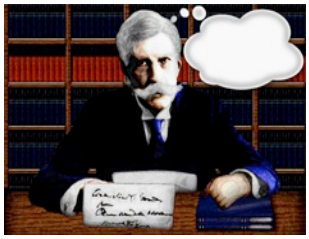

Did you know that 93 years ago the Supreme Court decreed that advertising to your fellow Americans about their constitutional rights to be a federal crime? Astoundingly, this was the unanimous 9-0 decision of the case Schenck v. United States (1919). This case, in an openly fascist manner, violated defendant Schenck's First Amendment rights to distribute flyers alerting his fellow citizens of their First, 10th and 13th Amendment rights not to comply with the draft and fight in World War I. The Court called Schenck's acts direct violations of President Woodrow Wilson's Espionage Act of June 1917 and the Sedition Act of May 1918.

Read Justice Oliver Wendell Holmes' opinion in Schenck, paying particular attention to his imperious, dictatorial tone as he cavalierly rejects the First Amendment rights of Schenck out of hand. Holmes wrote: "They set up the First Amendment to the Constitution forbidding Congress to make any law abridging the freedom of speech, or of the press, and … have argued some other points also of which we must dispose."

Justice Holmes went on to say, "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. 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."

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