



Excerpts from Chief Justice Vinson's Majority Opinion *Dennis v. United States* (1951); a 6 – 2 Decision

Directions: Read the opinion below and answer the questions that follow.

Congress did not intend to eradicate the free discussion of political theories, to destroy the traditional rights of Americans to discuss and evaluate ideas without fear of governmental sanction. Rather Congress was concerned with the very kind of activity in which the evidence showed these petitioners engaged...

Overthrow of the Government by force and violence is certainly a substantial enough interest for the Government to limit speech. Indeed, this is the ultimate value of any society, for if a society cannot protect its very structure from armed internal attack, it must follow that no subordinate value can be protected. If, then, this interest may be protected, the literal problem which is presented is what has been meant by the use of the phrase “clear and present danger” of the utterances bringing about the evil within the power of Congress to punish.

Obviously, the words cannot mean that, before the Government may act, it must wait until the putsch is about to be executed, the plans have been laid and the signal is awaited. If Government is aware that a group aiming at its overthrow is attempting to indoctrinate its members and to commit them to a course whereby they will strike when the leaders feel the circumstances permit, action by the Government is required...

Chief Judge Learned Hand, writing for the majority [in *Masses Publishing Co. v. Patten*, New York, 1917] interpreted the phrase as follows:

“In each case, [courts] must ask whether the gravity of the ‘evil,’ discounted by its improbability, justifies

such invasion of free speech as is necessary to avoid the danger.”

We adopt this statement of the rule... The mere fact that, from the period 1945 to 1948, petitioners’ activities did not result in an attempt to overthrow the Government by force and violence is, of course, no answer to the fact that there was a group that was ready to make the attempt. The formation by petitioners of such a highly organized conspiracy, with rigidly disciplined members subject to call when the leaders, these petitioners, felt that the time had come for action, coupled with the inflammable nature of world conditions, similar uprisings in other countries, and the touch-and-go nature of our relations with countries with whom petitioners were in the very least ideologically attuned, convince us that their convictions were justified on this score. And this analysis disposes of the contention that a conspiracy to advocate, as distinguished from the advocacy itself, cannot be constitutionally restrained, because it comprises only the preparation. It is the existence of the conspiracy which creates the danger. If the ingredients of the reaction are present, we cannot bind the Government to wait until the catalyst is added...

We hold that [the sections of the Smith Act] do not inherently, or as construed or applied in the instant case, violate the First Amendment and other provisions of the Bill of Rights, or the First and Fifth Amendments because of indefiniteness. Petitioners intended to overthrow the Government of the United States as speedily as the circumstances would permit. Their conspiracy to organize the

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Communist Party and to teach and advocate the overthrow of the Government of the United States by force and violence created a “clear and present danger” of an attempt to overthrow the Government

by force and violence. They were properly and constitutionally convicted for violation of the Smith Act. The judgments of conviction are *Affirmed*.

Critical Thinking

1. Explain in your own words the following passages:
 - a. “In each case, [courts] must ask whether the gravity of the ‘evil,’ discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger.”
 - b. “And this analysis disposes of the contention that a conspiracy to advocate, as distinguished from the advocacy itself, cannot be constitutionally restrained, because it comprises only the preparation. It is the existence of the conspiracy which creates the danger. If the ingredients of the reaction are present, we cannot bind the Government to wait until the catalyst is added...”
2. To what extent do you agree with the Court’s majority that the Smith Act did not violate the constitutional rights of the Communist Party leaders convicted under the law?