

## Primary Source Reading 16-1 ★ ★ ★ ★ ★ ★

**Holmes on the Espionage Act****✦ About the Selection**

In 1918 five Russian immigrants were sentenced to 20 years in prison under the Espionage Act. They had distributed leaflets opposing the sending of American troops to Russia and calling for workers to strike rather than to make weapons that could be used against the Russian people. The five also argued that sending troops to Russia would not aid the war against Germany but would threaten the revolutionary struggle within Russia. The Supreme Court upheld their conviction by

**Reader's Dictionary****surreptitious:** secret

a vote of seven to two—Oliver Wendell Holmes and Louis Brandeis dissenting. This excerpt presents part of Holmes's dissent.

**GUIDED READING**

As you read, note under what conditions Justice Holmes says that free speech may be restricted by law. Then answer the questions that follow.

**T**he United States constitutionally may punish speech that produces or is intended to produce a clear and imminent danger that it will bring about forthwith certain substantive evils that the United States may seek to prevent. The power undoubtedly is greater in time of war than in time of peace because war opens dangers that do not exist at other times.

But as against dangers peculiar to war, as against others, the principle of the right to free speech is always the same. It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are not concerned. Congress certainly cannot forbid all effort to change the mind of the country. . . . Now nobody can suppose that the surreptitious publishing of a silly leaflet by an unknown man, without more, would present any immediate danger that its opinions would hinder the causes of the government arms. . . .

I do not know how anyone can find the intent required by the statute in any of the defendants' words. . . . It is evident from the beginning to the end that the only object of the paper is to help Russia and stop American intervention there against the popular government—not to impede the United States in the war that it is carrying on.

I return for the moment to the third count. That count charges an intent to provoke resistance to the United States in its war with Germany. . . . I think that resistance to the United States means some forcible act of opposition. . . .

Source: *An American Primer*. Chicago: The University of Chicago Press, 1966.

(continued)

Primary Source Reading **16-1** (continued) ★ ★ ★ ★ ★

**READER RESPONSE**

**Directions:** Answer the following questions on the lines below.

1. According to Holmes, under what conditions may the United States constitutionally restrict speech?

---

---

---

---

---

2. Why does Holmes say that the power to restrict speech is greater during wartime?

---

---

---

---

---

3. Does Holmes believe that the Congress legitimately has the power to restrict speech under wartime danger more than any other danger? Explain.

---

---

---

---

---

4. **Critical Thinking** Why does Holmes believe that there was not sufficient intent to find the defendants guilty?

---

---

---

---

---

---

---