

### **MILLER V. CA 1973**

Miller mass mails a lot of people with some adult content, which was not well received by locals, who reported him and got him charged under CA's obscenity laws. Eventually, the court ruled that such expression was not protected under free speech, but he did create a nice set of criteria to determine whether something is obscene. The test is as follows:

1. The average person applying modern community standards finds it appeals to the prurient interest. The definition of that word is: "...a morbid, degrading, or excessive interest in sexual matters. Material is judged to be obscene only if it is held to appeal predominantly to a prurient rather than a nonprurient interest in sex."
2. The media depicts or describes, in a patently offensive way, sexual conduct specifically defined by state law.
3. It lacks any serious literary, artistic, political, or scientific.

This basically means:

1. The average person would find it repulsing.
2. It depicts something sexual in a way defined by law.
3. It lacks any legitimate value (i.e. scientific).

### **SCHENCK VS. US 1919**

In WWI it was made illegal to promote illegal activity in the military, to criticize the government and to advocate for treason or some other action against the U.S.

Nonetheless, Charles Schenck passed out anti-draft pamphlets, and convicted. He appealed, saying that it constituted involuntary servitude and thus violated AM13, and that furthermore he was protected under FOEX.

At the time, the government and public were fairly fearful of people who would oppose the war effort and German Americans specifically.

The question then became: "DOES THIS LAW AND THUS CHARLES' CONVICTION VIOLATE HIS AM1 RIGHTS?" amongst another set of questions. The court answered with a unanimous NO, as it was an "appropriate exercise of Congress' wartime powers". In making that decision, they considered that:

1. The context of an AOE (act of expression) matters. Yelling "FIRE" one day might result in nothing happening, doing that again tomorrow might get you arrested for manslaughter.
2. There was some form of immediate and clear danger that would arise should that AOE be allowed to stand. (this is known specifically as "clear and present danger"). And thus,
3. Charles was not within his rights to publish that pamphlet, as doing so would pose a danger that outweighed Charles' AM1 rights.

### **KEY TERMS FROM THIS CHAPTER THUS FAR**

clear and present danger - defined above

Miller V. CA - defined above

obscene speech - speech deemed so offensive to the ordinary person that it is justifiable to outlaw it. determined by the Miller test in many court cases.

Miller test - set of rules to determine whether something qualifies as obscenity.

Schenck v. US - defined above, established clear and present danger

symbolic speech - things that are not explicitly in AM1 but still agreed upon to be protected forms of expression.

Tinker v. Des Moines ... - arm bands court case that established that the school was not within their power to stop the students from using the arm band to protest involvement in Vietnam (or some other war, can't remember)