

NOTES

1. Much of this essay is drawn from Geoffrey R. Stone, *Perilous Times: Free Speech in Wartime from the Sedition Act of 1798 to the War on Terrorism* (New York: W. W. Norton, 2004).
2. Letter from John Adams to the Inhabitants of Arlington and Bandgate, Vermont, June 25, 1798, in Charles Francis Adams, ed., *The Works of John Adams*, vol. 9 (Boston: Little, Brown, 1854), 202.
3. An Act Concerning Aliens, 5th Cong., 2d Sess., in *The Public Statutes at Large of the United States of America*, vol. 1 (Boston: Little, Brown, 1845), 570–72; An Act for the Punishment of Certain Crimes against the United States, 5th Cong., 2d Sess., in *Ibid.*, 596–97.
4. Francis Wharton, *State Trials of the United States During the Administrations of Washington and Adams* (Philadelphia: Carey and Hart, 1849), 333.
5. *New York Times v. Sullivan*, 376 US 254, 276 (1964).
6. Mark E. Neely, *The Fate of Liberty: Abraham Lincoln and Civil Liberties* (New York: Oxford University Press, 1992), 5–7.
7. Roy P. Basler, ed., *The Collected Works of Abraham Lincoln*, vol. 5 (New Brunswick, NJ: Rutgers University Press, 1956), 436–37.
8. See Michael Kent Curtis, *Free Speech, "The People's Darling Privilege": Struggles for Freedom of Expression in American History* (Durham, NC: Duke University Press, 2000), 310.
9. 4 Wall. (71 US) 2 (1866).
10. Woodrow Wilson, "Third Annual Message to Congress," quoted in David M. Kennedy, *Over Here: The First World War and American Society* (New York: Oxford University Press, 1980), 24.
11. Quoted in Paul L. Murphy, *World War I and the Origin of Civil Liberties in the United States* (New York: W. W. Norton, 1979), 53.
12. Act of June 15, 1917, ch. 30, tit. I, § 3, 40 Stat. 219.
13. *New York Times*, November 21, 1917, 3.
14. Quoted in Murphy, *World War I*, 94–95.
15. Zechariah Chafee, *Freedom of Speech* (Cambridge, MA: Harvard University Press, 1941), 52.
16. Act of May 16, 1918, ch. 75, § 1, 40 Stat. 553.
17. Quoted in Robert K. Murray, *Red Scare: A Study in National*

- Hysteria, 1919–1920* (New York: McGraw-Hill, 1955), 9; *New York Times*, March 11, 1919.
18. *Washington Post*, January 4, 1920, 4.
 19. *Schenck v. United States*, 249 US 47 (1919); *Frohwerk v. United States*, 249 U.S. 204 (1919); *Debs v. United States*, 249 US 211 (1919); *Abrams v. United States*, 250 US 616 (1919); *Schaefer v. United States*, 251 US 466 (1920); *Pierce v. United States*, 252 US 239 (1920); *Gilbert v. Minnesota*, 254 US 325 (1920).
 20. Harry Kalven Jr., *A Worthy Tradition: Freedom of Speech in America* (New York: Harper & Row, 1988), 147.
 21. Quoted in Max Lowenthal, *The Federal Bureau of Investigation* (New York: Sloane, 1950), 298.
 22. See *Brandenburg v. Ohio*, 395 US 444 (1969).
 23. Executive Order No. 9066, 7 Fed. Reg. 1407 (1942).
 24. 323 US 214 (1944). See also *Hirabayashi v. United States*, 320 US 81 (1943) (upholding the constitutionality of the curfew order); *Yasui v. United States*, 320 US 114 (1943) (same).
 25. *Id.*, 219–20, 223–24.
 26. Quoted in David Cauter, *The Great Fear: The Anti-Communist Purge under Truman and Eisenhower* (New York: Simon & Schuster, 1978), 33.
 27. *New York Times*, September 21, 1950.
 28. 68 Stat. 775, 50 USC § 841.
 29. 341 US 494 (1951).
 30. *Id.*, 581 (Black, J., dissenting).
 31. See, e.g., *Communist Party v. Subversive Activities Control Board*, 367 US 1 (1961) (upholding the Subversive Activities Control Act's requirement that Communist and Communist-front organizations register with the government); *Adler v. Board of Education*, 342 US 485 (1952) (upholding a New York law providing that no person who knowingly becomes a member of any organization that advocates the violent overthrow of government may be appointed to any position in a public school); *Barenblatt v. United States*, 360 US 109 (1949) (upholding the power of the House Committee on Un-American Activities to require an instructor at Vassar College to answer questions about his past and present membership in the Communist Party).
 32. *San Francisco Chronicle*, April 8, 1970, 1.

33. Henry Kissinger, *White House Years* (New York: Little, Brown, 1979), 513.
34. 395 US 444 (1969).
35. See Frank Strong, *Fifty Years of "Clear and Present Danger": From Schenck to Brandenburg—And Beyond*, 1969 Sup. Ct. Rev. 41.
36. *Whitney v. California*, 274 US 357, 375 (1927) (Brandeis, J., concurring).