

IN THE UNITED STATES SUPREME COURT

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL DEGOLYER

Respondent.

CASE NO. 11

WRITTEN BRIEF

The respondent, Michael DeGolyer, does not dispute that he has worked to overthrow the United States government. He does, however, contend that he has acted within his rights as an American citizen and that his activities are protected by the United States Constitution. Therefore, Mr. DeGolyer should never have been arrested and should be allowed to continue his lawful protests. Although Mr. DeGolyer does represent a threat to the U.S. government he has the right to express his views, recruit others, and form an organization even if the aim of that organization is the overthrow of the U.S. government. The first amendment supports Mr. DeGolyer's activities. *Congress shall make no laws . . . abridging the freedom of speech, . . . or the right of the people peaceably to assemble, and to petition the government for redress of grievances.* Mr. DeGolyer was speaking freely, his organization was peacefully assembling and they were petitioning the government for redress of their grievances.

At trial, the United States responded by arguing that DeGolyer presented a "clear and present danger". This argument rested primarily on the test laid down in *Schenk v. U.S.* (1919) when the court determined when personal freedom of speech must give way to the greater needs of a society as a whole. The test holds that "the most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing panic" Justice Oliver Wendell Holmes, the architect of the test, added "The question in every case is whether the words 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 protect." Clearly Michael DeGolyer is not putting lives in danger. His weapons are ideas and words. The government argues correctly that those words and ideas can be the most dangerous of weapons. However, we argue that the danger of DeGolyer's words lies in the lawful overthrow of the government and that danger is only one potentially in existence. It can only be realized if enough people are moved by the merits of DeGolyer's words. The most democratic of principles.

In many ways Michael DeGolyer was acting in the same manner as the Colonists did in 1776 when they argued against British rule in America. Obviously the founding fathers saw the wisdom of allowing citizens to freely express their opinions by writing the first amendment. If citizens were only allowed to speak their minds and not act upon it, not work to implement their views, the first amendment is a very hollow amendment. It is not the job of the government to search out and destroy organizations that are not supportive. If the government is a good one, than it has nothing to fear from an organization that operates according to the law.

Michael DeGolyer and his organization were operating in a peaceful, lawful manner. The only threat they presented to the U.S. government was recruiting enough people to support their views. If they were able to do that than the government would be required to respect the will of the people. The Constitution is not intended to protect just those in power, but all the people of the United States. As long as Mr. DeGolyer operates within the rights guaranteed by the Constitution, and does so peacefully, he should be allowed to speak his mind and let the people of the United States decide for themselves. To do anything less would be an attack on one of the foundations on which this country stands. For this reason and the others set forth above, we believe the previous court's interpretation of the first amendment is correct and that Michael DeGolyer has committed no crime.

By _____
Kelly Rudd (Attorney for Michael DeGolyer)

