

**NORTHERN ILLINOIS UNIVERSITY**

On First Amendment Rights: Is There Really a Line Between a Protest and a Riot?

**A Capstone Submitted to the**

**University Honors Program**

**In partial Fulfillment of the**

**Requirements of the Baccalaureate Degree**

**With Honors**

**Department of**

Communication

**By**

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**DeKalb, Illinois**

December 2020

University Honors Program  
Capstone Faculty Approval Page

Capstone Title: On First Amendment Rights: Is There Really a Line Between a Protest and a Riot?

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Date of Approval: December 4, 2020

Date and Venue of Presentation: Online via Symposium Program (Submitted November 26, 2020)

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## Abstract

Society has been seen to progress in many ways, which causes some legal standards to become 'out of date.' To address this, laws must change to adapt to the current state of society. There has been a trend showing a significant problem with protests turning into violent riots. This has most recently been seen during the George Floyd protests- as protesters have refused to obey police, destroyed property, and clashed with law enforcement causing injury and death. The Incitement Standard cannot be applied to situations presented today. Therefore, when interpreting First Amendment Rights, courts should abandon the Incitement Standard and return to the older standard of Clear and Present danger. To investigate this issue, an analysis will be conducted examining violent behavior in other protests, the history of speech regulation, the flaws of the Incitement Standard, and the danger the Incitement Standard presents. After evaluation, the Clear and Present Danger Standard will provide law enforcement with more power to eliminate the potential of violence in protests by allowing law enforcement to (1) make justifiable arrests that follow the Clear and Present Danger criteria, (2) closely monitor social media and (3) arrest protesters with weapons. It will be concluded that these changes will create a safer enforcement to protest in, and a defined line as to what is a protest, and what is a riot.

## Introduction

Imagine your last three words being “I can’t breathe.” For George Floyd, this was exactly the case. However, instead of these last words being lost and forgotten, American citizens made them meaningful. Just hours after George Floyd’s death on May 25, 2020, his last words were absorbed by individuals and used in protests to acknowledge the wrongful death Floyd endured. The videos taken of George Floyd’s arrest and death spread faster than wildfire and hundreds of demonstrators took the streets of Minneapolis. According to CBS Minnesota (Wagner, 2020), “thousands flooded the streets at that same intersection [where Floyd was arrested] ...to protest Floyd’s death.” However, the protests were not only to get justice for George Floyd, but to also address the constant police brutality toward minorities and the lack of reform within law enforcement (Stockman, 2020).

For the first hours of the Minneapolis protest, demonstrators marched and used Floyd’s last few words and other chilling statements such as “It could’ve been me” or “Being black in America should not be a death sentence” as their way to be unified. However, by night fall the demonstrations turned violent. The first notable act of violence committed by protesters, was vandalism towards the 3<sup>rd</sup> Precinct (where the four officers involved in George Floyd’s arrest worked). Ugly terms were spray painted on the building such as “Blood on your hands,” “Pigs,” “KKKOPS,” and “Fuck all of you,” as well as smashed windows and fire set to empty squad cars (MPR News Staff, 2020). The next three days in Minneapolis were complete mayhem: dozens of buildings, including a six-story apartment building that was still under construction, a high-tech factory, and the police precinct were set on fire. In addition, hundreds of businesses were being looted (Stockman, 2020). Protesters were also seen blocking highways and populated roads by laying on the ground, mimicking the death position of George Floyd.

As the protests continuously turned violent, police officers showed no mercy while they tried to control the situation; as they were seen to spray tear gas, shoot rubber bullets, and physically restrain protesters- regardless if they were being peaceful or seen committing any crimes. In addition, officers showed up to the protests “in riot gear and started shooting tear gas and flash grenades as protesters hurled rocks, water bottles and anything they could get their hands on to the officers” (Wagner, 2020). Reporters explained that law enforcement looked like they were ready for war. Between the unruly protesters, and the ways law enforcement were trying control the situation, there was a major clash resulting in many injuries- and some death. A protester was quoted “I got on my knees and I put up a peace sign and they tear gassed me,” (Wager, 2020). Like this situation, many protesters walked away with burned eyes and skin, beatings, and large wounds from guns. Eventually, the Minneapolis Mayor decided to implement a stay-at-home curfew, but protesters took that with a grain of salt and continued. Governor Tim Walz “vowed early in the day [Friday] to show a more forceful response by the state,” which was referencing to the infiltration of the National Guard (Benner et al, 2020). It was clear that what started as peaceful protests, were not violent riots- and they were getting worse as time went on.

The George Floyd Protests (or as described by some people, the “George Floyd Riots”) are not the first time that peaceful protests have turned violent. However, as these situations go on, evidence shows that there is a significant problem with protests turning into violent riots. By just examining the George Floyd incidents, protesters have refused to obey police, they have destroyed substantial amounts of property and there were ongoing clashes between protesters and law enforcement that resulted in injuries and death. On one side, it can be argued that citizens are just trying to assert their First Amendment rights. However, the line between what is a protest, and what is a riot has become too confusing. Therefore, when interpreting the First Amendment,

courts should abandon the Incitement Standard and return to the old standard of Clear and Present Danger. To prove this, there will be an analysis to examine violent behavior in other protests, the history of speech regulation, the flaws of the current Incitement Standard, and the danger the Incitement Standard presents. In the end, there is hope that this change will create a more definitive line between a protest and a riot.

## **The problem of violence**

It was not soon after the George Floyd protests broke out in Minneapolis, that the same thing started happening in other major cities- as there were notable protests in all fifty states. Even though there was so much support seen around the country, within just two weeks, there were over 17,000 documented arrests (Stockman, 2020). Despite the arrests, there was still an evident increase of violent actions taking place. A *New York Times* article (2020), supplied a summary of the violence seen in other major cities:

- Washington D.C.: Demonstrators knocked down barricades and spray-painted other buildings; the White House was on lock-down
- San Jose, California: Protesters threw objects at police officers, blocked freeways, and set fires downtown
- Detroit, Michigan: A civilian opened fire into a crowd and a 19-year-old was killed; demonstrators blocked major freeways
- Portland, Oregon: Demonstrators set fire to the Multnomah County Justice Center
- Dallas, Texas: Protesters blocked the path of a police car and started banging on it; police responded with tear gas and flash-bangs
- Chicago, Illinois: Police cars were set on fire; many businesses were looted in downtown

As the violence persisted, similar policing efforts from Minneapolis were seen. Officers were using weapons, dressed in riot gear, and trying to control the people. Despite this, demonstrators still resisted and continued with what they considered was lawful protesting behavior.

Another protest turning into a riot example was seen in 2017, during the “Unite the Right” rally. On August 11<sup>th</sup> and 12<sup>th</sup> 2017, Charlottesville, Virginia. civilians were subject to a rally, organized by Jason Kessler and his companions. This rally had the goal to promote white

supremacy, as well as protest an order removing confederate monuments from public spaces (Spencer at el, 2017). Among the participants of this rally, were white supremacy groups (i.e., the Ku Klux Klan, neo-Nazis and the alt-right), and counter protesters. The rally was supposed to be peaceful, however, things became violent almost immediately. During the rally, a man named James Field rammed his car into a crowd, police were seen tear gassing and beating individuals with batons, all while white supremacists and counter protesters were being violent towards each other and the surrounding property (Hayden & Nestle, 2017). In the end, there were three recorded deaths, thirty-eight reported injuries and eleven arrests (Sheth and Mark, 2017).

A final example was seen during the 2020 presidential election period when Donald Trump officially lost the election. Dozens of Trump supporters and anti-Trump demonstrators clashed in Washington D.C while marching outside the White House. It started off peaceful as citizens used signs expressing their opinions. However, within just a few hours, there were multiple incidents of civilians punching each other, fireworks being shot into crowds, civilians threatening to shoot the opposite side and a reported stabbing (AP News, 2020). Again, law enforcement tried to control the situation with different control mechanisms which aggravated civilians.

Besides the three examples shown above, there are a number protests seen every single year. Citizens are utilizing their First Amendment rights, but that does not come without a cost. The amount of money that must be invested to police protests is astronomical. There are many examples showing how expensive it is to just include police presence at a protest. In 2017, the Women's 'March on Washington' took place with an estimated attendance of 200,000 people. The Park Police requested over \$85,000 to cover just park ground (Lang, 2019). In addition, there was an anti-gun violence rally, 'March for Our Lives'- which cost \$153,000 to secure the

area safety (Lang, 2019). Taking this into consideration, groups seem to be concerned that violence is a possibility in any protest setting.

Another major cost is the danger the police might personally encounter. According to the U.S Bureau of Labor Statistics (2020), in 2018, there were 18,005 observed injuries from violence by civilians. Law enforcement is meant to keep the community safe, but civilians do not always view it that way. As police brutality continues to grow, regulation of speech and action is seen as direct suppression causing people to become violent. This can be seen during many protests, as law enforcement try to regulate civilian actions, they lash back. In addition, there are also harms associated with the destruction property and medical expenses. The riots always have some recordable number of injuries or death, and a high amount of property damage. When civilians are trying to assert their First Amendment rights, there continuously seems to be an increase of harms presented.

### **The standard contributing to the problem**

The government has made a few attempts to regulate certain speech. One of the first attempts was through “Bad Tendency.” This derived from William Blackstone’s interpretation of British common law. through his book *Commentaries on the Laws of England* (1765-1796), he established the Bad Tendency rule (Stone, 2002). This standard is where the government could restrict speech if the form of speech created the potential for danger over time that might disturb the public peace (Parker, 2009). This standard caused a lot of issues, as it did not account for situational issues and seemed to suppress freedom of speech.

Eventually, the case *Schenck v. United States* (1919), came to the table. This case involved Charles Schenck distributing leaflets explaining how the draft violated the Third Amendment protecting involuntary service. Schenck was charged with conspiracy to violate the

Espionage Act of 1719- which made it illegal to distribute information that might interfere with United States armed forces (TIME, 2009). The Supreme Court held that the Free Speech Clause of the First Amendment does not protect advocacy urging conduct seen as unlawful. In this opinion, the Clear and Present Danger Standard was first introduced. However, it was not applied until the case *Abrams v. United States* (1919), where the court analyzed the Espionage Act against the Clear and Present Danger criteria- and they concluded it satisfied the test (Oyez, 2020). The Clear and Present Danger test has three conditions, (1) the speech must impose a probable and consequence that danger might occur, (2) the probable danger is immediate and, (3) the probable danger is illegal (Parker, 2009). This test was used to evaluate speech for a few decades. However, despite its longevity, “the test [seemed to] ignore the morally salient distinction between speech and actions, between saying and doing” (Dow, 1998; pp.734). Therefore, there was a need for a new test- which came along in the case *Brandenburg v. Ohio* (1969).

In 1969, the United States adopted what is now the current standard to regulate speech- the Incitement Standard, also known as the Imminent and Lawless Action or Brandenburg test. This all started when KKK leader Clarence Brandenburg, made a speech at a rally causing him to be convicted under an Ohio criminal syndicalism law- which “criminalized individuals or groups to advocate radical political and economic changes by criminal or violent means” (Mineshima-Loew, 2009). The Supreme Court held that the Ohio criminal syndicalism law was in violation of the First Amendment as it suppressed speech. In addition, the Court held that speech advocating illegal conduct is protected, unless the speech is likely to incite imminent lawless action (Walkerman, 2009). The Court presented a four-pronged test that is used to evaluate if certain

speech is inciteful or not: (1) intent to cause (2) imminent (3) illegal action that is (4) highly likely to occur.

Specifically, in the case of Clarence Brandenburg, he did speak at a rally and was speaking on the fate of the “white race.” He explained his opinions by using demeaning language toward minorities and explained there might be a re-vengeance if there is continued suppression of the white race (Walkerman, 2009). However, even though his speech was resisting, he did have the freedom to express his opinion, and predict what might happen based on his observations. To address the latter half of the four- pronged test, while Brandenburg was expressing his opinions, he was not specifically urging KKK members, or others to commit any type of violence.

Since 1969, there are been a few cases that have helped refine the Incitement Standard even further- one being *Hess v. Indiana* (1973). In this case, Hess was convicted of violating Indiana’s disorderly conduct statutes for yelling, “We’ll take the fucking street again [or later]” (Davis, 2009). This case was brought to the Supreme Court, where they overturned his conviction and used the Incitement Standard to prove that his speech was protected; the court held that “Hess’s speech was not intended to incite imminent, further lawless action on the part of the crowd, or likely to produce such action- therefore there was no ground to punish the speech” (Davis, 2009). In 1982, the case *National Association for the Advancement of Colored People (NAACP) v. Claiborne Hardware Company* (1982) came along, The NAACP created a boycott of white merchants, which also include nonviolent picketing and some threats of violence. This case was brought to the Supreme Court to decide if nonviolent elements and threats that were seen are protected under the First Amendment. The court was again able to use the Incitement Standard and conclude that because their actions “did not incite violence, or

specifically authorize the use of violence,” this type of speech is also protected (458 U. S. 926-932).

Despite the long use of the Incitement Standard, there are three specific flaws making it difficult for law enforcement and the courts to enforce any regulation of speech. First, *it is hard to prove intent of a speaker*. People might say things, but not always mean them. As a human, it is natural to exaggerate feelings or overreact. However, no matter what they say, there is no intention of committing any violence. The same can be seen in any type of political speech, whether it be speech plus, or just the spoken word. Second, *the Incitement Standard does not supply police sufficient time to distinguish between legal speech and illegal actions*. Later, a case will be discussed that has been ongoing for three years and is trying to prove incitement of an individual’s online speech. This can be seen when law enforcement is dealing with a protest that might turn violent; it is impossible for them to have enough time to assess. Within seconds, speech might become harmful before time law enforcement can make a justifiable arrest under the Incitement Standard criteria. Finally, *the Incitement Standard does not account for the powers of media a social media to escalate the influence of messages*. There will also be situations discussed that involved online speech via social media or instant messaging.

### **Dangers the Incitement Standard carries**

To begin, speech versus action has provided its own set of problems contributing to speech regulation for years. The right to free speech means that “individuals have the right to express themselves without government interference or regulations” (Egemenoglu, 2020). In other words, it allows any person to present their opinion without being suppressed. This allows for others to come together, share opinions, and recognize some needed change. However, some speech might be considered as an action- therefore there are some discrepancies to if the law

recognizes a difference. This all goes to proving that there is lack of ability to distinguish between speech and action causing police error.

An article from the *Amory Law Journal* (2015) reports a study that attempted to distinguish speech and action and it was concluded that the, “distinction between communication and action arises out of a fundamental and natural distinction between thinking and doing. There is an important distinction between thinking or contemplating or reflecting on something, on the one hand, and actually taking an action, on the other...” (Schauer, 2015; pp. 429). In this explanation one can think, reflect, debate pros and cons- silently or aloud. However, if anything other than verbal speech is done- it is now action.

Most people would identify speech as verbal talk and action as the physical doing of something. However, symbolic speech, or speech plus, is the combination of both. The historical precedent set by cases addressing this issue defines speech plus as “a form of expression in which behavior is used by itself or in coordination with written or spoken words to convey an idea or message” (Magid, 2020). One example is the case of *Texas v. Johnson*, 1989 when flag burning was considered as such. In this situation, this type of speech, or expression an action. Physically burning a flag is an acceptable form of protesting to show hatred towards America. Similarly, seen in the George Floyd protests, police cars were set on fire to express hatred towards law enforcement. In both scenarios no individuals are being injured and it was a way to express an opinion.

Another example of speech plus is seen in the case *Cohen v. California* (1971), where it a man walked around a courthouse wearing a jacket that said “Fuck the draft” on it. After the Supreme Court looked at the case, they decided that the use of offensive words and phrases to convey a political message is protected. This holding was consistent and helped refine the

“fighting words” doctrine that was developing at the time; allowing the government to limit speech when it is likely to incite immediate violence or retaliation by the recipients of the words (Bitzer, 2009). *Cohen v. California* was special in the fact that it was held right after *Brandenburg v. Ohio* (1969) and helped refine the overall incitement standard in a way. However, in the George Floyd protests, speech plus was seen a lot, and can be held by the same standard; protesters were using offensive language about the government by either the use of the spoken word, or on signs. However, police were seen to still arrest protesters. The arrests are not consistent with the precedents set in these past cases that present similar actions of speech plus.

Moving on to another issue, is the fact that protesters are making an increasing use of social media to communicate with one another and plan violence. Earlier, the ‘Unite the Right’ rally in Charlottesville, Virginia, was an example of a protest turning violent. Well, this case has a lot more to it, as there has been an ongoing case, *Sines v. Kessler* (2017), that has been stuck because the court is using the Incitement Standard. On October 11, 2017, Elizabeth Sines, a counter-protester, filed a complaint against rally organizer, Jason Kessler. She claimed that through the Unite the Right rally, Kessler incited violence through different forms of social media to advance his ulterior motives rather than aiming for a peaceful protest. Kessler was seen to be using social media platforms such as Facebook and Twitter, as well as instant messaging platforms, such as Discord to advertise his rally. He also engaged with discussions back and forth between other protest organizers, and civilians.

This case is relying on the 1969 Incitement Test to prove whether Jason Kessler incited violence. However, to the advancement of technology, the accessibility and ability to be behind a screen presents a problem. For Jason Kessler’s speech to be considered “inciting” it must be directed at urging future crimes. The original “Unite the Right” rally posters he had created had

no encouraging language on it- only date, time, and location. Kessler argues that he created a poster in hopes to organize a march (which is a protected right). However, other sources, such as Discord Chats, say otherwise. In these chats, Kessler and others were seen engaging in inciting violent behavior at the rally; Kessler is quoted messaging, “If we are forced into a street brawl fight them with honor, stay within reasonable bounds of law and whoop that commie anti-white ass all over God's green earth” (Brewster, 2020). The next part of the Test would need to prove that the urged violence would realistically happen. In this case- there was violence, which was described up above. Kessler’s interactions with people via internet platforms can be traced back to the several types of violence seen. Based on all this information, it could be argued that Kessler did indeed incite violence. However, the biggest problem is that the encouraging of violent actions came from behind a screen. There is no proof of intent, no proof that Kessler was the one spewing this information, and he could have been recklessly saying things as most people have done.

Another example of social media being used to facilitate violence at protests was seen during the George Floyd protests. First, the FBI followed certain people and their posts “looking for potential flashpoints for violence,” referencing to future riots (Farivar & Solon, 2020). Many posts were able to be tied to violence seen in the protests. Examples of postings that the FBI followed up with was (1) the arrest of a college student who posted a joke saying he was the antifa leader, (2) the arrest of Marcus Hunt for posting a ‘crud version for napalm” (which is already available online) and (3) the arrest of Mike Avery who posted ‘he will do not do anything to get arrested at the protest’ he drives 523 miles to attend, (Farivar & Solon, 2020). In the end, all these charges were dropped within a few days since these arrests were never justified under the current Incitement Standard. In addition, as it stands, the social media monitoring

regarding the George Floyd protests was questioned, as there are no legal frameworks in place around how this can be done lawfully (Farivar & Solon, 2020).

These are just two examples of how social media has played a key role in the organization of violence at protests. Regarding the *Sines v. Kessler* (2017) case, the court is struggling trying to apply the Incitement Test, as there are some new variables coming into play that were not an issue in 1969. It is important to know that *Sines v. Kessler* has been going on for three years, trying to decide if Kessler's social media posts incited violence. Knowing this, how can cops analyze speech and know whether it will incite violence? Scholars have said that "law enforcement must necessarily engage in risk analysis based upon the context of the incitement. Prevention is simply impossible without predictive forecasting of likely consequences." (Wilson & Kiper, 2020). The Incitement Standard is creating a barrier for police officers to try and do their job of keeping civilians safe by preventing violence.

To conclude, as Wilson and Kiper (2020) put it, "the lacunae in *Brandenburg*, particularly with respect to imminence and likelihood, hinder its application to political speech that incites violence." It has been seen that the Incitement Standard has a history of protecting political speech unless it advocates criminal action. However, as social media progresses and free speech boundaries are pushed, many people are saying "inciteful" things every day but are not prosecuted because it is not consistent with the Incitement Standard. This is creating a risk for violence, and a confusing line as to what speech officers can arrest for.

Finally, it is important to address the Second Amendment and how it can be applied to this situation. The Second Amendment grants citizens the right to bear arms; creating the argument that anyone should be able to have a weapon to protect and defend themselves. However, the right to bear arms and the ability for protesters to assert their First Amendment

right conflicts, resulting in an increase of potential violence. However, before this issue can be addressed, it is important to address some important topics. First, the open and public forum (i.e., a “public street, park, sidewalk...[or] piece of physical property owned or controlled by the government that ...has been devoted to assembly and debate”) that is known as the place civilians can assert their First Amendment rights (Lidsky 2011; pp.1981-82). Along with the ability to use the open public forum, it is also important to understand the regulations the government impose

“a state may not lose the forum or enforce content-based restrictions on speech there unless the restriction is necessary to achieve a compelling state interest and... narrowly formed to achieve that end. Content-neutral time, place, and matter restrictions are permissible, but only if they are narrowly tailored to serve a significant government interest and leave open ample alternative channels of communication” (Lidsky 2011; pp.1982).

Due to the First Amendment protecting freedom of speech, the government cannot impose general content regulations- as that would be unconstitutional. However, if there is a temporary need to do so and it is in respects to a specific situation, then the government can propose it. Governmental regulations must also be consistent with time, place, and manner restrictions. These regulations are content-neutral, and just have the best interest in what would be going on around an organized protest; example could be restricting the size of placement of signs on governmental property (O’Neill, 2009)

Back to the original argument, is known that law enforcement carries different weapons to protect themselves in whatever situation they face. However, during first peaceful protests, they seem to bring out more guns, rubber bullets, tear gas, and explosives. A quote taken from Edward Maguire (a professor of criminal justice at Arizona State University) said, “When it comes to civil disorder, officers are trained to handle riots...they’re not trained to handle peaceful demonstrations... They often show up to crowd control events that are not yet riots and

handle them as if they were.’ (Stockman, 2020). First, law enforcement should have no part with peaceful demonstrations because they are in fact- peaceful. In addition, taking into consideration the current Incitement Standard, when officers enter a calm situation with military- like appearances and weapons, they are inciting violence.

Weapons in any fashion increase the possibility of violence. This is because weapons can be used to hurt someone, as well as control and threaten. Let us apply this to a protest environment: if there is threat of harm by a weapon towards an individual, do they really have the right of free speech and assembly? In a short answer- yes, they can say whatever they want. However, if there is a gun at your head, or tear gas about to be sprayed at you- there might be some reconsideration of what the next course of action is. Therefore, not only are weapons not consistent with the ability to use the Incitement Standard, but they also suppress the ability to assert certain rights.

Not only was this issue seen in the George Floyd protests, but in many others. On August 25, 2020, there was a large protest seen in Kenosha, Wisconsin that was in response of a police officer killing Jacob Blake. Protests started peaceful, then escalated quickly- as police officers started to implement familiar control mechanisms such as tear gas and crowd control. During this, 17-year- old Kyle Rittenhouse used an assault rifle to kill two people, claiming his actions were for self-defense (CBC, 2020). Civilians noticed and tried to chase Rittenhouse down, causing more shots to be fired by Rittenhouse, police and civilians and more injuries to occur (Willis et al, 2020). Now this situation started off a normal protest to bring light to police brutality and injustice. However, when weapons, especially guns were involved- things took a turn.

A comparable situation was seen in Michigan when lawmakers debated the Democratic governors request to extend her emergence powers in response to the Coronavirus pandemic. A reporter documented the “tightly packed crowd of protesters, some carrying rifles, attempted to enter the floor of the legislative chamber...held back by state police” (Beckett, 2020). Now, in this case, there were no deaths of civilians due to weapons. However, the environment completely changes when weapons are present; there is an introduced element of fear, risk, and tension- something can change with the pull of a trigger.

It could be argued that the problems that have been addressed are not due to the Incitement Standard, but by militarized police that are poorly trained. This is true, as there have been many actions taken by law enforcement that have been less than ideal. To preface, the goal is to not discount the fact that there are problems with police brutality and abuse. However, the Incitement Standard brings these issues because it is not applicable to the current issues we are seeing in this century. The interpretation of the Second Amendment through the Incitement Standard has yet to be addressed- and as we see it now, there is an issue. In the end, there are bad apples in every profession contributing to ‘wrong’ ways of policing. However, the Incitement Standard is not allowing the good officers who have the best interest of the people, to do their job correctly.

### **The proposed cure**

To solve the issues showed above, the Clear and Present Danger would be the best solution. This change would allow police the ability to eliminate the potential of violence quicker, by giving them a broader and more flexible sense of power. First, the state and federal government would be eligible to pass and enforce laws allowing police to arrest protesters who pose a “clear and present” danger. This would assist in the distinction between a protest and a

riot. If civilians present any behavior that coincides with the Clear and Present danger, they would be an instigator of a potential riot. Therefore, if they do not present a clear and present danger, they are lawfully protesting.

The Clear and Present Danger standard was originally introduced in 1919 and is a lower standard than the current Incitement Standard- against giving police more power. Following the criteria provided by the Clear and Present Danger Standard, police can arrest a protester if they believe that there is a “likelihood” that the protester will provoke danger; instead of a high likelihood and high probability of danger (what the Incitement Standard evaluated). Next, instead of possible imminent danger, if there is potential danger that is nearby, the police can arrest the protesters that are causing such danger. Third, police can arrest a protester if they believe there is a danger presented, instead of having to note a specific illegal action. Surrounding all of this, police will not have to prove intent- which was the biggest issue in causing a delay to arrest.

Finally, if police believe that the danger presented is serious, instead of having to identify a specific illegal action- police can make a justifiable arrest. In addition to the different justifiable arrests- this change in speech regulation would also address the concerning dangers that the Incitement Standard presented. Police will be able to monitor social media closer without a warrant, and they can also arrest protesters who are carrying guns in a protest setting. Overall, the Clear and Present Danger standard allows the police the ability to stop protests before they turn into riots- making a clearer line as to what is a protest, and what is a riot.

### **Practicality of the cure**

Implementing the Clear and Present Danger Standard does come with a few costs, but the benefits would solve the major problems society has been facing for a while. It was mentioned that the Clear and Present Danger Standard would be increasing the power of the police and

government allowing them more flexibility. This might reduce First Amendment rights (i.e., lesser ability to express discriminatory issues, or less 'impressible' actions can take place). However, safety is non-negotiable; providing a safer environment for citizens to assert their rights is more important. Regarding the Second Amendment, there might be a loss in recent claims about the usability of weapons. However, again the safety of the environment where civilians might protest is more important as we might be talking about life or death. The Clear and Present Danger Standard will be able to provide the safer environment that the people need.

To sum it up, returning to the Clear and Present Danger Standard will allow a safer environment for all who are involved in the realm of protesting. Society has been changing, and as we can see, sometimes there needs to be a change regarding the standards we use to evaluate. In the end, being supplied a safe place to assert First Amendment rights and the ability to distinguish between what is a riot and what is a protest, will be a positive impact on society. This proposed change might come with hiccups, and irritation. However, eventually society will be able to see this change as more beneficial to them being able to assert their First Amendment rights.

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