

## The 'Brandenburg test' for incitement to violence

In 1969, the U.S. Supreme Court made history by ruling that, to merit conviction, the violence advocated must be intended, likely and imminent. By Jeff Howard.



Clarence Brandenburg, a 48 year-old television repair shop owner and leader of the Ku Klux Klan's Ohio branch, held a rally in the summer of 1964 to articulate and celebrate his white supremacist ideology. Brandenburg [proclaimed](#) in front of local TV cameras: "if our president, our Congress, our Supreme Court, continues to suppress the white, Caucasian race, it's possible that there might have to be some revengeance [sic] taken." Indicating an impending Independence Day march on Washington, DC, the speech included such statements as, "the nigger should be returned to Africa, the Jew returned to Israel." While Brandenburg was not evidently armed, other Klansmen at the rally were.

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Brandenburg was found guilty of violating Ohio state law, which [prohibited](#) “advocat[ing] . . . the duty, necessity, or propriety of crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform,” as well as “voluntarily assembl[ing] with any society, group or assemblage of persons formed to teach or advocate the doctrines of criminal syndicalism.” His penalties included a \$1,000 fine and a 1-10 year prison sentence.

In a landmark judgment, the U.S. Supreme Court overturned the conviction, contending that the Ohio law affronted Brandenburg’s freedom of speech, protected by the First Amendment of the U.S. Constitution. Instead, the Court held: “Freedoms of speech and press do not permit a State to forbid advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” Because the rally was not obviously intended to incite specific acts of violence, and because it was not likely to do so, government restriction of Brandenburg’s speech was unconstitutional.

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