

## Panel IV: Free Speech, Incitement, and Ideas

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My remarks will focus on the complexities surrounding incitement, intent, and speech through the lens of Holmes's assertion in *Gitlow v. New York* that "every idea is an incitement." I emphasize that the meaning and consequences of speech depend heavily on context, particularly in group settings like protests. I argue that Holmes's focus on the speaker's enthusiasm must also account for the unpredictable dynamics of assemblies, where listeners' responses shape outcomes. I'll apply these ideas to two contemporary examples. The first is the Fifth Circuit's misguided attempt to construct a notion of "negligent protest" in its recent decision, *Mckesson v. Doe*. The second involves the words of then-President Donald Trump and the subsequent actions of his supporters rioting at the United States Capitol on January 6, 2021.