trine that permits constitutionally protected rights to be 'balanced' away whenever a majority of this Court thinks that a State might have an interest sufficient to justify abridgment of those freedoms . . . I believe that the First Amendment's unequivocal command that there shall be no abridgment of the rights of free speech and assembly shows that the men who drafted our Bill of Rights did all the 'balancing' that was to be done in this field."[536] As he wrote elsewhere: "First Amendment rights are beyond abridgment either by legislation that directly restrains their exercise or by suppression or impairment through harassment, humiliation, or exposure by government."[537] But the "First and Fourteenth Amendments . . . take away from government, state and federal, all power to restrict freedom of speech, press, and assembly *where people have a right to be for such purposes*. This does not mean, however, that these amendments also grant a constitutional right to engage in the conduct of picketing or patrolling, whether on publicly owned streets or on privately owned property."[538] Thus, in his last years on the Court, Justice Black, while maintaining an "absolutist" position, increasingly drew a line between "speech" and "conduct which involved communication."[539]

Modern Tests and Standards: Vagueness, Overbreadth, Strict Scrutiny, Intermediate Scrutiny, and Effectiveness of Speech Restrictions.—Vagueness is a due process vice that can be brought into play with regard to any criminal and many civil statutes,[540] but it has a special signficance when applied to governmental restrictions of speech: fear that a vague restriction may apply to one's speech may deter constitutionally protected speech as well as constitutionally unprotected speech. Vagueness has been the basis for

713, 714 (1971) (concurring). For Justice Douglas' position, *see* New York Times Co. v. United States, 403 U.S. at 720 (concurring); Roth v. United States, 354 U.S. 476, 508 (1957) (dissenting); Brandenburg v. Ohio, 395 U.S. 444, 450 (1969) (concurring).

[536] Konigsberg v. State Bar of California, 366 U.S. 36, 60–61 (1961).

[537] Bates v. City of Little Rock, 361 U.S. 516, 528 (1960) (concurring).

[538] Cox v. Louisiana, 379 U.S. 559, 578 (1965) (dissenting) (emphasis in original).

[539] These cases involving important First Amendment issues are dealt with *infra*, under "Speech Plus." *See* Brown v. Louisiana, 383 U.S. 131 (1966); Adderley v. Florida, 385 U.S. 39 (1966).

[540] The vagueness doctrine generally requires that a statute be precise enough to give fair warning to actors that contemplated conduct is criminal, and to provide adequate standards to enforcement agencies, factfinders, and reviewing courts. *See*, *e.g.*, Connally v. General Const. Co., 269 U.S. 385 (1926); Lanzetta v. New Jersey, 306 U.S. 451 (1939); Colautti v. Franklin, 439 U.S. 379 (1979); Village of Hoffman Estates v. The Flipside, 455 U.S. 489 (1982).