pected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated."[473]

The Adoption of Clear and Present Danger.—The Court did not invariably affirm convictions during this period in cases like those under consideration. In *Fiske v. Kansas*,[474] it held that a criminal syndicalism law had been invalidly applied to convict one against whom the only evidence was the "class struggle" language of the constitution of the organization to which he belonged. A conviction for violating a "red flag" law was voided because the statute was found unconstitutionally vague.[475] Neither case mentioned clear and present danger. An "incitement" test seemed to underlie the opinion in *DeJonge v. Oregon*,[476] upsetting a conviction under a criminal syndicalism statute for attending a meeting held under the auspices of an organization that was said to advocate violence as a political method, although the meeting was orderly and no violence was advocated during it. In *Herndon v. Lowry*,[477] the Court narrowly rejected the contention that the standard of guilt could be made the "dangerous tendency" of one's words, and indicated that the power of a state to abridge speech "even of utterances of a defined character must find its justification in a reasonable apprehension of danger to organized government."

Finally, in *Thornhill v. Alabama*,[478] a state anti-picketing law was invalidated because "no clear and present danger of destruction of life or property, or invasion of the right of privacy, or breach of the peace can be thought to be inherent in the activities of every person who approaches the premises of an employer and publicizes the facts of a labor dispute involving the latter." During the same term, the Court reversed the breach of the peace conviction of a Jehovah's Witness who had played an inflammatory phonograph record to persons on the street, the Court discerning no clear and present danger of disorder.[479]

The stormiest fact situation the Court faced in applying the clear and present danger test occurred in *Terminiello v. City of Chi-*

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[473] 274 U.S. at 376.

[474] 274 U.S. 380 (1927).

[475] Stromberg v. California, 283 U.S. 359 (1931).

[476] 299 U.S. 353 (1937). *See* id. at 364–65.

[477] 301 U.S. 242, 258 (1937). At another point, clear and present danger was alluded to without any definite indication it was the standard. Id. at 261.

[478] 310 U.S. 88, 105 (1940). The Court admitted that the picketing did result in economic injury to the employer, but found such injury "neither so serious nor so imminent" as to justify restriction. The doctrine of clear and present danger was not to play a future role in the labor picketing cases.

[479] Cantwell v. Connecticut, 310 U.S. 296, 308 (1940).