

Supreme Court of the United States

OCTOBER TERM, 1968

Office-Supreme Court, U.S.
FILED
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JOHN F. DAVIS, CLERK

In the Matter of:

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DICK GREGORY, et al. :
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 Defendants-Appellants, :
 :
 :
 vs. :
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 :
 CITY OF CHICAGO, :
 a Municipal Corporation :
 :
 :
 Plaintiff-Appellee. :
 :
 ----- X

Docket No. 60

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Place Washington, D. C.
Date December-10, 1968

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 OCTOBER TERM, 1968

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4 DICK GREGORY, et al, :
5 Defendants-Appellants, :
6 vs. : No. 60
7 CITY OF CHICAGO, :
8 a Municipal Corporation, :
9 Plaintiff-Appellee. :
10 - - - - - :

11 Washington, D. C.,

12 Tuesday, December 10, 1968.

13 The above-entitled case came on for oral argument.

14 EARL WARREN, Chief Justice

15 HUGO LAFAYETTE BLACK, Associate Justice

16 WILLIAM ORVILLE DOUGLAS, Associate Justice

17 JOHN M. HARLAN, Associate Justice

18 WILLIAM J. BRENNAN, JR., Associate Justice

19 POTTER STEWART, Associate Justice

20 BYRON RAYMOND WHITE, Associate Justice

21 ABE FORTAS, Associate Justice

22 THURGOOD MARSHALL, Associate Justice

23 - - -

C O N T E N T S

ORAL ARGUMENT OF

PAGE

MARSHALL PATNER, ESQ.,
on behalf of Appellants

3

RAYMOND F. SIMON, ESQ.,
on behalf of Respondent

26

1 APPEARANCES:

2 MARSHALL PATNER, ESQ.,
3 American Civil Liberties Union,
4 6 South Clark Street,
Chicago, Illinois,
On behalf of Defendants-Appellants.

5 RAYMOND F. SIMON, ESQ.,
6 Corporation Counsel of the City of Chicago,
7 511 City Hall,
Chicago, Illinois,
On behalf of Plaintiff-Appellee.

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P R O C E E D I N G S

MR. CHIEF JUSTICE WARREN: No. 60, Dick Gregory, et al, Petitioners, versus City of Chicago.

THE CLERK: Counsel are present.

MR. CHIEF JUSTICE WARREN: Mr. Patner.

ORAL ARGUMENT OF MARSHALL PATNER, ESQ.,

ON BEHALF OF APPELLANTS

MR. PATNER: Mr. Chief Justice, may it please the Court, this case, the failure to arrest hecklers, resulted in the suppression of free speech, where demonstrators were peaceful, where the hecklers threatened and attacked them in the near presence of the police.

Now, the defendant and between 65 and 70 or 80 other people, in August 1965, conducted a protest march by beginning in Chicago's Buckingham Fountain, then went to City Hall and paraded there, and then marched to the area in which the Mayor of the City of Chicago lives called Bridgeport, some five or eight miles from the Loop, down in that area.

When they arrived there were approximately 35 people in the neighborhood, on the street. They marched silently in the evening, but when they first arrived they sang some songs, they chanted, made several remarks. They were permitted, from the time they started at Buckingham Fountain, to City Hall, to the Mayor's community, to march and proceed with the same kinds of remarks, the same kinds of singing and chanting, under the

1 eyes of the local police and with the accompaniment of the
2 Corporation Counsel of the City of Fernwood.

3 After they had marched for some time in the Bridgeport
4 community, a request from the police commander on the scene
5 Dick Gregory, who took charge of this march of this group,
6 agreed to the request of the commander that after 8:20 p.m.
7 there would be no singing and no chanting. After that time
8 there was no conversation whatsoever by the marchers directed
9 toward the spectators. The only sound whatsoever made --
10 except for walking -- was communication by Gregory to the
11 people, telling them that he was marching with them, telling
12 them to stay in line, to obey the police instructions on where
13 they should march, and they did so. They stayed on the public
14 sidewalk except when interrupted by local people who put hoses
15 in their way so to remove them. They did so and stopped when
16 one got in their way, a policeman asked them to get out of the
17 way, and they did so.

18 When a counter march started, in order not to join it,
19 they changed directions for a block or so. Now, while their
20 conduct continued to be peaceful, a crowd began to gather and
21 the crescendo grew with that crowd.

22 The hecklers, as we call them, the local people who came
23 out, were not in any wise captives of the peaceful marchers.
24 The marchers never made any noise up to that point. They
25 never sang. The people chose to come out and the group grew

1 from 35 to maybe 1,200 or 1,400.

2 The subject of this demonstration involved criticism of
3 the then Superintendent of Schools of the City of Chicago
4 Miller who often was criticized for his policies on racial
5 problems in city schools, an issue of public interest.

6 Now, what is missing from the opinion below concerning a
7 jury conviction of disorderly conduct on two counts are the
8 following: There was no invective or invitation to violence
9 by the peaceful marchers, sometimes called provocation. There
10 was no effort by the police to arrest any heckler. All the
11 police in this case were awfully good in trying to protect
12 the marchers. They were very good at that. And what is in-
13 teresting about this case, I think a bit unusual in these
14 demonstration cases, is there is very little dispute with the
15 facts as stated by the Illinois Supreme Court, very little
16 -- there was not a bit of difference with the city. They did
17 seem to move up the chanting that occurred earlier as though
18 it occurred after 8:20. It did not occur after 8:20.

19 The only other factual dispute we have with the city,
20 they said there was a task force that was specially trained
21 to go out and deal with these kinds of things. They say so
22 in their brief but page 33 of the appendix -- that is refer-
23 ring to page 33 of the appendix, it is page 103 of the record
24 -- the police testified that they had no special training at
25 all. Except for that -- this is not a case that involves

1 any dispute with the press. And the police did a splendid job
2 in attempting to protect the marchers as they went around the
3 Mayor's house.

4 Q Mr. Patner, was the Mayor at home?

5 A Your Honor, it does not appear in the record. If he
6 was, he did not come out. It does not appear whether the
7 marchers knew whether he was or whether anyone was --

8 Q Does it appear in the record the purpose of visiting
9 that block?

10 A It does not, sir. It may well have been to get to
11 the residents of Bridgeport which was at that time basically
12 a white community. It does not so appear -- I think it is
13 fair to say that it was at least in part to bring the problem
14 to the Mayor, if he was home. So it certainly was to bring
15 the problem to the Mayor and the people of the City of Chicago.

16 Q Well, didn't you bring it to the Mayor down at City
17 Hall?

18 A It may have been brought home to the Mayor down at
19 City Hall also.

20 Q Well, he was at City Hall, was he?

21 A That does not appear in the record. That is usually
22 where he is during business hours. This is later. However,
23 they did not get to Bridgeport until after normal hours at
24 City Hall were closed.

25 Q Is there any city ordinance in Chicago that makes a

1 distinction with respect to parades and demonstrations in resi-
2 dential areas as compared with business areas or other types of
3 areas?

4 A Subsequent to this case, Your Honor, the Illinois
5 Legislature saw fit to pass a statute. At the time of this
6 occurrence there was neither an ordinance or a statute.

7 Q What did the statute say?

8 A The statute is referred to in our brief, and it says
9 that under public policy, with respect to the peace and good
10 order of communities, that there shall be no -- I am just para-
11 phrasing it -- no demonstrations in what are known as residen-
12 tial neighborhoods.

13 Q What does -- is it printed?

14 A Yes, sir. It is in our brief, and I will find the
15 page in a moment.

16 Q Oh, I see.

17 A But that occurred after the conventions and this case
18 and --

19 Q Now there was no state law attempting a march arrange-
20 ment of any kind anywhere in the city or the county?

21 A Sir, they show no ordinance or statute prohibiting
22 residential picketing --

23 Q Was there barring any picketing?

24 A No, sir. There was an ordinance of the City of
25 Chicago requiring a parade permit. That is the only --

1 Q How was it granted?

2 A There was no request for a permit. There was no
3 permit in this case.

4 Q How was it to be granted, the permit?

5 A Oh, that appears, Your Honor, in the reply brief --

6 Q In your reply brief?

7 A Yes, sir, in this Court -- at page 6. It is to be
8 granted after some of the same language that appears in many
9 of these, after first giving notice that by investigation by
10 the police department, on the application received, it is
11 true that they have determined something about the organization
12 requested in writing. However, no permit was rejected, and
13 the marchers in this case were never charged with marching
14 without a parade permit.

15 Q Well, what were they charged with doing?

16 A They were charged on two counts of disorderly conduct.
17 One of those accounts appears to be that they caused the
18 hecklers by their presence, they caused the hecklers to threaten
19 them and throw rocks, eggs, bottles and to swear at them and
20 make mean comments. And the second count was their purpose
21 was unlawful and apparently caused those people to congregate.
22 Those are the two counts.

23 The Illinois Supreme Court does not give us any wisdom,
24 however, on which of the accounts -- or whether it is both of
25 the counts -- that they are dealing with. They treat this as a

1 single conviction in their opinion. Now, those two counts
2 come under a separate provision of the Illinois -- I'm sorry --
3 of the Chicago Disorderly Conduct Ordinance 193-1.

4 Now, the Illinois Supreme Court found that when the
5 police commander at the scene, after the crowd had grown to
6 about 1,400, asked the marchers to leave, and he asked them
7 about five times, and he asked them clearly and pleasantly,
8 you know, responsibly and said, "Your presence here will cause
9 a riot." And, speaking through Mr. Gregory, they refused to
10 leave, except for three or four people who decided to accept
11 police protection and were taken through the crowds and left.

12 At that time the conduct of the marchers had remained
13 identical to what had previously been permitted. The only
14 change was as the crowd grew they became more violent. At no
15 time -- and this has not been disputed, I think -- at no time
16 did the marchers ever make any gesture, any remark, any state-
17 ment, anything of incitement whatsoever to those hecklers.
18 They marched peacefully.

19 Q How long were they marching before they were arrested?

20 A They were marching altogether about five and a half
21 hours, but somewhere over an hour in the community.

22 Q They had said they wanted to do it all night long.
23 Would your view be any different as to whether they might have
24 been -- whether they were -- as I remember, they were disbanded
25 around 10:00 o'clock or 10:30 at night?

1 A A little earlier.

2 Q And suppose they had continued until 2:00 o'clock in
3 the morning and said "this is it, we've had enough, there is
4 danger here of riot, you're disturbing people's sleep and if
5 you don't leave we are going to arrest you." And they did in
6 fact arrest some of them; they were convicted for disorderly
7 conduct. To shorten the question, what this case may present
8 -- I don't know -- may present is whether there is any limit
9 to, let us assume for a moment, what is otherwise a constitu-
10 tionally protected right to demonstrate.

11 A Your Honor, Mr. Justice, in this case, because the
12 marchers remained silent, the only danger of riot would have
13 been the election of the residents to come out and attack them.

14 Q Well, they did a certain amount of singing, didn't
15 they?

16 A Yes, sir, but I am assuming that their conduct would
17 remain as it had at 8:20, as being absolutely silent.

18 Q They had some agreement, did they not, with the
19 police as to their conduct and what they would do and what not
20 do?

21 A Yes, sir, they did.

22 Q Was that observed?

23 A Yes, it was observed exactly, except for when, the
24 three instances I mentioned, when hoses were put in their way,
25 they waited until they removed; when one neighbor or heckler

1 stood in their way, police asked him to leave and he did; the
2 third, when the counter-march started and they changed their
3 direction to avoid it and they then resumed their exactly
4 original route as set out by the police.

5 So there was no invective or invitation to violence, as
6 found by the Illinois Supreme Court.

7 Q Did you answer my question?

8 A Oh, I'm sorry, sir, I --

9 Q I'm sorry. It is a tough one.

10 A Well, no, my answer would have been that they would
11 have kept going because they were silent.

12 Q You don't think there is any limit at all provided
13 that they don't make any noise except whatever noise may be
14 necessarily incident to the sound of feet of the marchers at
15 2:00 a.m., in a residential area where women and children are
16 asleep?

17 A Yes, sir, I think that is right. At the start of
18 this case, the argument was made that ringing doorbells in a
19 community where people worked all night should be prohibited
20 to the Jehovah Witnesses, and this Court said that was not a
21 reason to stop the kind of activity that would be related to
22 night work or day work, day or night, depending on how people
23 work in their activities.

24 Now, there was no effort to disperse this crowd and the
25 odd thing here is, as the record shows, and the Illinois Supreme

1 Court declined, when people broke through and the police
2 grabbed them and threw them back into the crowd and did not
3 make arrests, they did not arrest any one of those men. Now,
4 the Taylor case, as cited in our brief, of the Illinois Supreme
5 Court, uses to avoid our argument in this case, says that in
6 the demonstration, when the police asked the hecklers to
7 disperse and they did so, there was no violence. So that is
8 what would have happened here. The police never asserted their
9 authority. All they did was protect our people, but they never
10 arrested the hecklers or never asked the crowd to disperse.

11 Q How close is this case to Feiner?

12 A Beg pardon?

13 Q How close is this case to Feiner?

14 A Your Honor, it is very close to it in that it is
15 dramatic. This requires asking the people in the crowd -- as
16 the facts were found, he invited some kind of violence. He
17 asked the people, the Negro members of this audience and
18 others to take up arms and fight for their rights, to take up
19 arms and so that Finland was inviting physical action against
20 himself or against the other members of that crowd. This case
21 doesn't make that. Now, it would be my position that --

22 Q Well, could it be argued that their presence --

23 A Their presence there, Your Honor, their presence --
24 if their presence invited violence, we may as well abolish the
25 First Amendment. That would mean that any dissenter, any

1 minority man invader in the community would be provoking.

2 Q But it is your position that we don't have to over-
3 rule violence to rule with you?

4 A I think you do not, although I prefer that you do.
5 I could argue also that in the Feiner case we have learned now
6 the kind of language that is used is not sufficient to be pro-
7 voking. However, here there is no language like that in this
8 case, just folks that were in the crowd. And in Feiner there
9 is that provocation and it is mentioned in the Illinois Supreme
10 Court opinion, and it is never argued by our position here
11 except by our presence.

12 No effort by the police to disperse were -- Mr. Justice
13 Black put it I think very eloquently in that case -- I'm sorry,
14 in Feiner. The man in Feiner says to the police officer, "If
15 you don't get that s.o.b. off the soap box, I am going to do
16 it." Now, what did the policeman do? He got Feiner off instead
17 of getting rid of that man who made the threat. Mr. Justice
18 Black pointed out --

19 Q What do you mean "getting rid of the man who made the
20 threat"?

21 A Well, he was the one who was threatening. He had no
22 right to --

23 Q That is a violation against the First Amendments
24 rights or --

25 A No, that --

1 Q That is sufficiently close to violence?

2 A Yes, he was going to grab him and remove him from
3 that platform.

4 Q Well, he didn't do it. He just said it, so far as
5 the --

6 A Yes, sir. I think that kind of activity --

7 Q That kind of statement.

8 A That kind of statement, yes. I mean the activity
9 that he is talking about, that kind of statement is distinguished
10 here in the next context that the police to do anything, he is
11 the one to remove. But I --

12 Q Suppose Mr. Gregory or somebody had said to the
13 police, "If you don't remove those people who are obstructing
14 our way, we are going to remove them ourselves"?

15 A And I think then --

16 Q I guess that is all you have got.

17 A I would think that would not be enough. I think the
18 record in Feiner, as I remember it, how many people heard it?

19 Q No, the police -- he said that, the policemen heard
20 it and a lot of other people.

21 A And a lot of other people -- I think then the police
22 would have to arrest him with the hostility that we now have
23 around.

24 Q Well, will you remember that?

25 A In the next case? If it comes up.

1 (Laughter.)

2 What I mean, though, there are a number of variables that
3 would have to -- the hostility of the crowd, the reality of
4 what he is saying, whether he is surly or how he addresses the
5 -- something like that, because there are a number of variable
6 factors.

7 But if the police in this case -- it is easier, because
8 here they didn't have anybody that kept saying something. They
9 had people breaking police lines, being grabbed and thrown
10 back. So that is the difference here. Initially, when this
11 began, the first man who stepped in front of that line and
12 blocked it, was asked by the police to leave and when he was
13 asked he did so. We can assume that the people of Bridgeport,
14 if asked by the police, would have left, or if the city did
15 the next thing, if they had arrested those violent people --
16 now, they said they couldn't find a stone thrower. No, sir,
17 they couldn't find them, but if the people who broke the line
18 were taken into custody as an example, because they them-
19 selves had done something, the rest probably would have dis-
20 persed.

21 So we have no invective or invitation, no effort by the
22 police to protect -- and the court below the line in this case
23 almost totally -- and Justice Black dissented in *Feiner* -- but
24 in the context it says it is the Illinois Supreme Court that
25 says, if there is an obligation to protect the speaker, but the

1 point they miss that comes both before and after that is where
2 the obligation is to protect the right to speak, and the way
3 to protect the right to speak is to arrest the hecklers. Now,
4 that is the part of this case that I think is important and
5 can easily determine the issue that has grown up as we come
6 to this Court, which is of great national significance, because
7 the Secretary of State has been shouted down, the Senator from
8 Massachusetts, with the Vice President, was shouted down, the
9 Secretary of Agriculture was shouted down, and --

10 Q Are you really saying -- I would like to pursue this
11 for a moment. Are you really saying that people who shout down
12 public officials are, as despicable as that conduct may be,
13 are subject to arrest without any protection from the First
14 Amendment? Is that what you are telling me?

15 A No, sir. I am saying the context of the shouting
16 down means that the hecklers -- in this case, those people are
17 not only shouting but they are making physical acts to inter-
18 fere.

19 The next question is really a hard one, I am sure. I
20 don't think we reach it in this case. If the speaker is shouted
21 at without allowing him his First Amendment right to speak --
22 we don't have that here. What we have here is the physical
23 side. But what is prominent in those other cases and what
24 happened here is the police decide that because the speech, by
25 its nature, which is provoking, using provoking on the others,

1 that is, annoying and causing them to act, as soon as that
2 happens the people don't like it and they get violent, the more
3 violent they get the more right they have to suppress the right
4 of the speaker. That is why we use the term that we think was
5 appropos by Professor Calvin of the University of Chicago in
6 his book, "The Hecklers Veto." And we think that is what
7 happened here.

8 Now, we think what is lacking is the invective, what is
9 lacking is the effort to arrest and disperse, and what is
10 lacking is the application of the right to speak.

11 Now, the idea simply to tear down something and to say
12 again this is a case in which an arrest is not adequate, a
13 conviction is not adequate -- I think that that some of the
14 suggestions some of them gave were positive, and I think that
15 in drawing narrow ordinances, as the court has asked for many
16 times, it is impossible to do so.

17 Now, the city argues that the construction below is such
18 a narrow construction, and they say you are bound, says the
19 Illinois Supreme Court who read the ordinance, to take it as
20 though that is how it were written. But in writing it that
21 way -- that is the last page of our certiorari decision of
22 the appendix of the opinion, page 16A, 15 and 16A -- what is
23 missing there is anything involved by the speakers is all
24 computed to by the violence of other people.

25 Now, I would like to give -- I don't pretend to be a

1 draftsman by this, I just put down some thoughts that go some-
2 thing like this: Disorderly conduct is the doing of an act
3 by the use of speech or conduct which includes invectives,
4 inciting words and trying to use some of the kinds of things
5 that you would take judicial meaning for, which includes
6 invectives and inciting words or gestures that are menacing or
7 otherwise invite violence, with the intent to cause a public
8 disorder, then he can be guilty. But none of those elements
9 are here. We have only, instead, the thing when the policemen
10 attempted to protect those responsible to quietly and politely
11 leave because there is going to be violence. If you don't
12 listen to him, under the Illinois Supreme Court's reading of
13 the ordinance, then you suddenly become guilty. He becomes
14 the outlaw, the judge, and the whole thing. Even if he is
15 acting in good faith, it says here, in not trying to stop the
16 violence against the demonstrators.

17 So I think an ordinance can be drafted, and I am not sug-
18 gesting that we are looking for some solution for chaos at all.
19 The ordinance can be drafted for this purpose.

20 Q Which purpose?

21 A To control, Your Honor, the speaker who invites
22 violence directly by his own action, not by his use of free
23 speech, not by his own unpopularity. But if he would threaten
24 in some way, if he would invite someone to take up arms, take
25 an attack upon the majority temper, that is what should be

1 prohibited and that can be done by an ordinance.

2 Q May I ask you your objection to this conviction here;
3 is it based on the fact that there was no law in the City of
4 Chicago which they charged him with violating or that there was
5 a law but it somehow is unconstitutional?

6 A Your Honor, the latter. The disorderly conduct
7 ordinance is unconstitutional?

8 Q Why?

9 A Because it is vague, because it doesn't tell the
10 person in advance whether or not he can march. That is con-
11 strued by the Illinois Supreme Court, where it gives the powers
12 to the police to determine whether or not he may march when all
13 the time his conduct is peaceful, his speech is protected and
14 he has never use invective for the invitation of violence.

15 Q And what has that to do with the constitutional point
16 that his speech was not -- was what you call peaceful, that is
17 he wasn't shaking his fist at anybody or hitting them?

18 A That's right, it was protected and as such he could
19 not have been -- he or his followers --

20 Q Are you taking the position that the law is uncon-
21 stitutional?

22 A Yes, because --

23 Q Because the state has no power to stop people from
24 marching by the thousands or hundreds in any section of the
25 city it wants to, on its streets? Are you taking the position

1 that the law is unconstitutional because it is too vague and
2 uncertain?

3 A The latter.

4 Q It makes a difference to me.

5 Q Yes, sir, the latter. Now, on the former I think
6 that we have seen that marches of any size can be orderly.
7 The Washington March was of the greatest magnitude and was not
8 disorderly. I don't think the size -- now, we asked the Court
9 to look at the argument which we filed which contained a speech
10 by Professor Kamin, which talks about that specifically. It
11 is an erudite and excellent rendition of the conflicting in-
12 terests here, and he says the mere size of the crowd -- and I
13 think he documents it well -- the mere size of the crowd
14 doesn't change in any way --

15 Q Is it relevant, sir?

16 A Yes, sir. If they are silent, if they are --

17 Q Silent?

18 A -- and if they are orderly.

19 Q Do you mean that the size of a crowd which is march-
20 ing around in the city, we will say at night, has nothing to
21 do with it?

22 A Well --

23 Q Or where they are marching?

24 A Each of those things would be relevant. If one is
25 marching, he is under free speech, and if their conduct is the

1 kind that is protected and is not invective, is not an invita-
2 tion to violence, it may not be popular, but if it is not
3 invective and --

4 Q Suppose they are marching around and around the
5 mayor's home and silent, perfectly silent, but they are march-
6 ing around and around his home all night, what would you say
7 about that? Does the state have the power to stop that?

8 A I think not.

9 Q You think not?

10 A I do.

11 Q Suppose they were to march around the home of a
12 Justice of this Court because of a decision --

13 A Well, they --

14 Q -- around and around all night, five-hundred of them,
15 do you say the Constitution forbids the state from stopping
16 that?

17 A May I say, Your Honor, that there is a good case in
18 New York that points that out, the Levner case, which we
19 cited -- L-e-v-n-e-r.

20 Q How did it work it out? Do you think -- what I want
21 to know is are you taking the position here that the state is
22 without power to stop that if it wishes?

23 A No, I think the state could stop it if it wishes, as
24 they did in Cox, where they said that you couldn't march at
25 the court house door.

1 Q Then I understand that you are saying it is a narrow
2 statute, narrowly drawn, precisely hitting it. You do not
3 claim that the state is without power to stop these marches of
4 hundreds of people?

5 A Yes, under those narrow circumstances in certain
6 areas within public policy.

7 Q Why would it have to be certain areas? That is get-
8 ting down to the question of policy.

9 A Well, I --

10 Q Why would it have to be certain areas?

11 A I think, Your Honor, if the legislature of Illinois
12 would include, for example, the area along the parks, then it
13 would clearly be valid.

14 Q Why would it clearly be valid?

15 A Because --

16 Q Who owns the parks?

17 A The public?

18 Q Well, who is the public?

19 A The government.

20 Q The government represents them?

21 A That's right.

22 Q Do you take the position that the state is without
23 power to dedicate that park to the purposes it wishes to dedi-
24 cate it to?

25 A As long as they don't conflict with the First

1 Amendment right.

2 Q But would you say the First Amendment permits them to
3 utilize the park for purposes other than speaking and marching
4 around, if they wish to?

5 A Sir, if I understood you correctly, the park is
6 basically for the use of general park area, but it also has
7 become a forum for speaking, a forum for demonstrators, but it
8 must be without violence.

9 Q It has become a forum, but do you -- the state
10 creates the park and do you claim that the state is without
11 power to say what it should be used for?

12 A It is without power to be used in excess arbitrarily
13 for --

14 Q Well, that arbitrarily is beyond my comprehension.
15 Arbitrary means nothing to me, except to the people who are
16 passing on the law, what it means. I would rather you discuss
17 it without using the word "arbitrary."

18 A All right, sir. In this way, we begin, for example,
19 with the part where the prohibition was to march to the court
20 while the court had its business. Now, that the state cer-
21 tainly has the right to do because there is an interference
22 with that kind of business. But we work away from that and
23 when we get to the point where the only reason they are regu-
24 lated is to stop the demonstrators, then, sir, I would use the
25 term arbitrary where I say that it is in excess of the power

1 of the government --

2 Q You mean it was aimed at certain demonstrators and
3 not aimed at all?

4 A No, it wouldn't be a problem of equal protection.

5 Q It is not a problem of equal protection?

6 A No, not in that --

7 Q What you are saying, then, is that the state is with-
8 out power to regulate its streets so as to permit them to be
9 used only for the purpose of legitimate traveling?

10 A Yes, sir, I think so. In the case of the Selma march
11 where as long as there can be --

12 Q They didn't have a law against it, did they?

13 A Whether they --

14 Q The state hadn't attempted to pass a law against it,
15 had they?

16 A If there was a law passed that prohibited under all
17 circumstances, I think it would be bad because it has been
18 proven by the Selma march that --

19 Q Do you mean --

20 A -- they can't limit the way it is done.

21 Q Do you mean that a state is without power to take a
22 public highway, which is necessary for the public good, an
23 interstate highway, if the state is without power to prevent
24 that from being marched up and down for a hundred miles by
25 people?

1 A Well, except if they marched in the road where the
2 high-speed traffic, I think it is then within the police power
3 and it would be perfectly fair for the government to prohibit
4 it. But we get --

5 Q You would have to have a whole army to protect them,
6 wouldn't they?

7 A Yes, sir, but we have learned that we can do less
8 than that and have such a march for a long distance by march-
9 ing on the shoulders for -- or one lane, according to --

10 Q I am not talking about what the states should do or
11 what the government should do. I am talking about what it is
12 powerless to do.

13 Would you say that on this circumferential highway here
14 that this government is without power to keep people from
15 marching and demonstrating on that highway by the thousands?

16 A No, not on that kind of highway because there you
17 even have the prohibition of bicycles, individuals walking,
18 and marching is not exceeding that type of thing which is a
19 safety kind of regulation.

20 Q But here, as I understand it, you are complaining
21 that the state has no law against it which can cover it, unless
22 you apply a vague and uncertain statute which cannot be
23 narrowly limited to the things they want to protect.

24 A As now written, that is true. That is exactly my
25 position, sir.

1 Thank you, very much.

2 MR. CHIEF JUSTICE WARREN: Mr. Simon.

3 ORAL ARGUMENT OF RAYMOND F. SIMON,

4 ON BEHALF OF RESPONDENT

5 MR. SIMON: Mr. Chief Justice and Members of the
6 Court, three-hundred years ago, in Times vs. Berger, Sir John
7 Powell said let us consider the reason of the case where
8 nothing is law that is not reason. There is a single thread
9 that is woven into every decision of this Court that says
10 there is a norm of reasonableness that causes the weight of
11 opinion to shift from side to side as this Court attempts to
12 balance individual rights and society's need for peace.

13 In the instant case there are twelve very cogent reasons
14 to support the city's position, yet the expression of speech
15 is in the form of a march. The march is in a residential com-
16 munity. The picketing by the marchers is of a home of a public
17 official. The public official in this case is the Mayor of
18 the City of Chicago, has an office which is well known and
19 is easily accessible. The picketers demand the Mayor to fire
20 the Superintendent of Schools, an act clearly removed from the
21 jurisdiction of the Mayor.

22 The Petitioners, in speech and placard, called the Mayor
23 a "snake," and Petitioner Gregory threatened to march at the
24 Mayor's home every day until he fired the Superintendent of
25 Schools.

1 A hundred police protected 60 to 85 marchers and the march
2 covered between five and five and a half hours, through the
3 evening rush hour and after darkness had fallen. A seasoned
4 commander of the police, in the face of a sudden increase in
5 the number of threatening hostile spectators, fearing that a
6 riot would occur, because the spectators had gathered at 35th
7 and Union, at 35th and Lowe and 36th and Union, each group
8 numbering well over a thousand angry, jeering, threatening
9 spectators, throwing rocks and eggs, shouting "Get out of
10 here," "Let's us get at them," in the face of a situation
11 which a seasoned commander of the police said he was afraid
12 would lead to a riot.

13 He apprised petitioners of his apprehensions and asked for
14 their cooperation by terminating the march. They refused,
15 though he asked them several times, after warning --

16 Q Well, you are not depending on the policemen's
17 order, are you?

18 A I beg your pardon?

19 Q You are not depending only on the policemen's order
20 to the people --

21 A No, certainly --

22 Q One of the best reasons would be a law.

23 A Yes. There is a law, Mr. Justice, and we depend on
24 it and we depend principally on it in this case upon the fact
25 that the police commander acted in the face of the insipient

1 riot to preserve order.

2 Q Was there any violation of law before the police gave
3 that order?

4 A In our opinion, Your Honor, these facts have to be
5 considered in the totality of --

6 Q I didn't ask you that, sir. I asked you if there was
7 any violation of law before the police gave that order you just
8 told us about.

9 A We have to contend, Your Honor, that the answer is
10 no. A violation of the law occurred when the commander of the
11 police requested the marchers to desist in the face of an in-
12 sipient riot situation, and they refused.

13 Q At least that is what they were convicted for?

14 A That is correct, Mr. Justice.

15 Q And you don't intend that in this case the city or
16 the state is relying on any flat ban of marches in residential
17 districts?

18 A No.

19 Q Some marches in residential districts are all right?

20 A We are not contending that. We seriously question
21 the wisdom of --

22 Q There is no ordinance, I gather, in Chicago?

23 A There is a state statute in Illinois existing, Mr.
24 Justice. It was not in existent at the time of this march
25 here.

1 Q Nor was any other statute or ordinance which banned
2 marches in residential districts?

3 A That is correct, Mr. Justice.

4 Q You must rely on --

5 A On the Illinois Supreme Court.

6 Q Can you point to me in the record any action at any
7 time that the police officials took against these thousands of
8 people?

9 A Yes, Mr. Justice Black, the record is replete with
10 instances of that nature.

11 Q Like what?

12 A The police closed all the taverns in the immediate
13 vicinity. The police made the spectators stand on the opposite
14 side of the street. The police would not permit young children
15 with signs supporting the Mayor from joining the march. The
16 police told the neighborhood person who stood in front of the
17 marchers to stop them, to remove that person. The record shows
18 that --

19 Q Wait a minute. They removed one, is that all?

20 A That's all that was in front of the marchers at
21 that point, Mr. Justice White.

22 Q Did they remove any others?

23 A Mr. Justice Marshall, I apologize.

24 Q Did they remove any others?

25 A Mr. Justice Black, the record shows that persons

1 were standing in the doorway and the police had --

2 Q Did they remove any others of the people who were
3 chanting and yelling and committing acts of disorderly conduct?

4 A They didn't arrest any persons --

5 Q Who were disorderly and violating the ordinance
6 against disorderly conduct, were any -- was one single man
7 arrested for disorderly conduct on the other side?

8 A No, Mr. Justice Marshall, no person was arrested, nor
9 was there any showing that there was a violation of disorderly
10 conduct.

11 Q Well, is the throwing of rocks disorderly conduct in
12 Illinois?

13 A Certainly the record shows the police did everything
14 they could to --

15 Q Did they arrest anybody?

16 A No, but the record points out --

17 Q They didn't --

18 A -- that they made every effort to identify them and
19 the commander of police ordered that they be arrested.

20 Q They didn't arrest one man that deliberately violated
21 the rule by marching across in front of the others?

22 A When he was asked to remove himself, he cooperated
23 with the police.

24 Q I thought you said they pushed him back?

25 A No, not in the instance where he was standing in

1 front of the marchers.

2 Q Well, wasn't one pushed back?

3 A You're alluding to --

4 Q Wasn't one pushed back?

5 A Several were thrown back when they came through the
6 police lines.

7 Q Had they violated the disorderly conduct law by com-
8 ing through the police lines?

9 A Well, this is not the issue --

10 Q Weren't they?

11 A Well, they --

12 Q They were, weren't they?

13 A I think the judgment of the police was that was dis-
14 orderly conduct, whether they were trying to cross the street
15 because they lived in the community, these were residents of
16 the community, whether they wanted to get closer to shout
17 their opinions at the marchers, the police thought it was the
18 best way of maintaining order and they made the people stand
19 up on the sidewalk, and they did this consistently.

20 Q So it is up to the police --

21 A No, the thing is --

22 Q -- when two people are guilty of what you call dis-
23 orderly conduct, it is up to the police as to which side he
24 shall arrest?

25 A In an effort to maintain order, Mr. Justice Marshall,

1 the police have to make these determinations.

2 Q Well, I would assume that it would be much easier to
3 arrest the smaller group than the larger group, wouldn't it,
4 sir?

5 A Mr. Justice Marshall, the record shows that this was
6 no ordinary situation. This was an insipient riot. The
7 dangerous condition was acknowledged by counsel for the
8 Petitioners. We don't contend that the police could not have
9 arrested some or all of the spectators and it would have been
10 a legitimate arrest. What we contend is that in the face of
11 an insipient riot situation, the decision of the commander of
12 the police, where everything in the record points to, was
13 high professional qualifications, where there was not one
14 shred of evidence indicating antagonism toward the marchers,
15 yet this decision has to be given great weight.

16 Q Well, does the court have to convict -- assuming that
17 the police made a judgment that it is better to arrest these
18 people who are not shouting or throwing rocks or anything,
19 rather than to arrest those who are shouting and throwing rocks,
20 and you say the police have a right to decide which ones to
21 arrest. Well, even on that assumption the court doesn't have
22 to convict them.

23 A Only if they believe that the reasonable -- only if
24 they believe the order of the commander of the police shouldn't
25 have been obeyed by them. The way it was --

1 Q So they are arrested now for disobeying the orders
2 of the police?

3 A No, Mr. Justice Marshall, that is not what I am con-
4 tending at all. I am contending that under the circumstances
5 when a riot is imminent, after the march had gone on for five
6 and a half hours, when the marchers were calling the Mayor a
7 "snake" and screaming that he should fire the Superintendent
8 of Schools, we are contending that in essence the Petitioners
9 were the hecklers and that the police did everything they could
10 possibly do to protect them, and in order to avoid a riot they
11 had a right to --

12 Q Did they say anything -- were they yelling "snake"
13 when they were arrested?

14 A No.

15 Q Or anything like that?

16 A No. They were yelling "snake" approximately forty-
17 five minutes earlier.

18 Q And they weren't arrested?

19 A That is correct.

20 Q And the police were there and the Assistant Corpora-
21 tion Counsel was there, all the law and order was there, and
22 they said nothing about it at that stage?

23 A That is correct, Mr. Justice Marshall, and the reason
24 for that lies precisely in this: between 9:00 and 9:30 the
25 record shows a sudden increase in the number of hostile

1 threatening spectators. The police sergeant said they seemed
2 "to be coming from everywhere." The number at 35th and Lowe
3 was well over a thousand. At 36th and Lowe it well over a
4 thousand. The commander of the police was apprehensive that a
5 riot would occur, so with those circumstances he would never
6 have asked the petitioners to desist their march. The city
7 was determined to resolve all doubts in favor of freedom of
8 expression.

9 In the Feiner case you alluded to, Your Honor, there was
10 a far less compelling chance in the instant case where we have
11 an insipient riot, this court said the police do not have to
12 proceed against a crowd, no matter what its size or temper, in
13 order to satisfy constitutional means.

14 Q Mr. Simon, apart from what may be a very reasonable
15 response to the circumstances on a human basis, the problem
16 we have, of course, is a problem of law. And the Municipal
17 Code of Chicago, Section 193-1, is that the one that is under
18 which these petitioners were convicted?

19 A Yes, Mr. Justice.

20 Q And would you turn to that and tell us the specific
21 clause that is applicable here?

22 A I point to the first two sections -- all persons who
23 shall make, aid, counsel or assist in making any improper noise
24 by a disturbance, breach of the peace, or diversion intending
25 to breach the peace --

1 Q All right. Now, let me ask you, is it the city's
2 contention that the convictions here are based upon any pro-
3 vision in that part of the code?

4 A Yes.

5 Q Which one?

6 A The first -- the entire first and second sections.

7 Q Well, you don't say that they made improper noise?

8 A Well, Mr. Justice Fortas, I have to answer the ques-
9 tion in this manner: The Supreme Court of Illinois, the
10 highest tribunal court of the state, says that disorderly
11 conduct occurs when there are five conditions present, when
12 there is an imminent threat of violence, when the police have
13 done everything they could reasonably do to protect the
14 demonstrations, when they request the demonstrations to stop,
15 and when they explain the reasons for making the request, and
16 when the demonstrators refuse. Now, we contend that --

17 Q That is the way they construe this section?

18 A Yes, and we --

19 Q And you don't have any --

20 A -- contend that the reason we come to this court is
21 not this section but it is the decision of the Supreme Court
22 of Illinois which interprets this section to mean those five
23 things.

24 Q Well, I look at this through, as I must, through the
25 window of the First Amendment. I have a little problem, because

1 of the -- I can understand that the Supreme Court of Illinois
2 might conceivably -- I don't know whether that would be proper
3 or not -- might conceivably advance that as a common law
4 definition of a breach of the peace, if there is such a thing.
5 But, looking at this statute, it seems to me that on the basis
6 of this record it is arguable that the applicable provision is
7 the following, and the only applicable provision, that it is
8 a misdemeanor, that those persons commit a misdemeanor who
9 shall collect in bodies or crowds for any purpose to make
10 noise or disturbance of other persons. It is arguable that
11 that is the applicable provision there, isn't it?

12 A It is, indeed, the gist of the --

13 Q Now, forget for the moment about the construction of
14 the Supreme Court of Illinois, is there -- did these people
15 make an improper noise, riots or disturbances, breach of the
16 peace, or a diversion pertaining to a breach of the peace?
17 Did they?

18 A Well, Your Honor --

19 Q Are they specifically so charged?

20 A Your Honor, yes, indeed, we charged both of these
21 sections.

22 Q Well, would you tell me what there is in the record
23 that supports any of these specifically provisions in the
24 code?

25 A Well, to repeat the recitation of calling the Mayor

1 a "snake" in front of his home, in front of his neighbors --

2 Q I see. Now, what is that, an improper noise?

3 A I think all of this would be action intending to a
4 diversion -- to constitute a diversion tending to a breach of
5 the peace.

6 Q Well, I see your approach to this, then.

7 A No --

8 Q You can understand the problem that I am raising, I
9 am sure.

10 A I certainly can, Mr. Justice Fortas.

11 Q Because on this record it is certainly at least
12 arguable that you look at the specific provision of the language,
13 the only provision that is applicable is when that makes it a
14 crime for persons to collect in a body or a crowd to make an
15 annoyance or a disturbance of other persons, and that --

16 A Well --

17 Q -- if that were the case here, and I suppose you would
18 agree that that would present a very substantial constitutional
19 problem on the decisions of this court.

20 A Only were the court not to adhere to Winters vs. New
21 York, where the Court said that the construction given the
22 statute or ordinance by the highest tribunal court of the
23 state is as much a part as if it were specifically written in
24 and when the court said that the defendant is chargeable with
25 the subsequent judicial decision as he is by knowledge of law.

1 Q I am as entirely familiar with that as you but you
2 are aware that there is a problem here because of the way
3 this statute is --

4 A Well, that is the issue, Mr. Justice Fortas.

5 Q Mr. Simon, these five elements that you catalogued
6 in answering Justice Fortas' question are those that appear on
7 page 33 of your brief, I guess, are they not, and are taken
8 from the opinion of the Supreme Court of Illinois in this
9 very case?

10 A Yes.

11 Q It appears on page 28 and 29 of your brief.

12 A Yes.

13 Q Is that right?

14 A That's correct, Mr. Justice.

15 Q Now, was there any foreshadowing of this construction
16 of the ordinance in any previous Supreme Court of Illinois
17 cases?

18 A Not in the narrow construction which is applied here,
19 no, nor in the specific language. However, the Illinois Supreme
20 Court has pointed out, as is noted underneath, that the courts
21 leave to the pleader the specific facts which would bring the
22 ordinance within operation and it should be construed in the
23 light of the facts which are charged as a violation of disorder-
24 ly conduct and not by a speculation of facts which might be
25 made by the prosecution.

1 Q How about this case of Chicago vs. Joyce in 1967?

2 There was no foreshadowing of this judicial construction of the
3 ordinance in that case, was there?

4 A By foreshadowing, Mr. Justice, no. The sepcific
5 language in this Gregory vs. City of Chicago, in the Illinois
6 Supreme Court, is not foreshadowed in any of the preceding
7 cases. This is an excellently written narrow content deter-
8 mination of what disorderly conduct constitutes in this con-
9 text, but it is not a decision based upon a number of previous
10 precedents, Mr. Justice. You are correct in that.

11 Q You of course are on sound grounds as far as the de-
12 cisions of this court go in such cases as Winters, and in Cox
13 vs. New Hampshire, that a construction of the very case in
14 which the conviction is confirmed by the Supreme Court of
15 Illinois, is sufficient to remove the vice of vagueness from
16 the statute because of the decisions of all of these others.
17 And I wondered whether there was any foreshadowing, and you
18 tell us there was not.

19 A In a very scholarly article that was written by
20 Professor Kamin, this court has furnished the background of
21 the events which led to this march. Professor Kamin points
22 out that for almost every day for four months there were
23 marches from Buckingham Fountain and Grant Park to City Hall,
24 where the Mayor's office is. He points out further that on
25 several days preceding August 2, and ten days subsequent to

1 August 2, the day on which the petitioners were arrested for
2 disorderly conduct, Mr. Gregory led similar marches around
3 the Mayor's home without significant event.

4 The decisions of this Court also recognize that the ex-
5 istence of an organized society in maintaining public order
6 is a necessary condition for the exercise of constitutional
7 freedoms. Without that organized society maintaining public
8 order, no freedom can be exercised. If the police commander
9 had made a miscalculation in these circumstances, the results
10 could have been disastrous. We have seen --

11 Q Well, absent the narrow construction by the Supreme
12 Court of Illinois, would you still urge affirmance here?

13 A Well, I am fully aware of the previous decisions of
14 this Court construing disorderly conduct ordinances, and I
15 would be hard-pressed to argue the nature of the language of
16 the --

17 Q Would you argue that no matter how vague your broad
18 statute might be, the disorderly statute might be, that the
19 conduct of Mr. Gregory, that he was purely within the statute,
20 that anybody would have recognized that this kind of conduct
21 would have been covered by the statute, even though there might
22 have been some other conduct that might be on the fringe of
23 unrecognizable --

24 A Well, Mr. Justice, certainly we wouldn't content you
25 could convict a man for an unconstitutional ordinance.

1 Q No, but I am asking, you say that this conduct was
2 so clearly of this general language as to be in the core of
3 the statute.

4 A Yes.

5 Q So you would urge, I suppose, to avoid a riot --

6 A In the danger of the situation it was really agreed
7 to by both parties, to avoid a riot the decision of a commander
8 of the police must be given great weight, especially where
9 there is no hostility shown in the record, nor of course does
10 any exist as far as the commander's attitude toward the demon-
11 strators or -- all of the evidence shows this man was on the
12 police department for thirty-three years. He was a rank above
13 captain. When he was apprehensive, when he was afraid a riot
14 might occur, the petitioners ought to have cooperated with
15 his reasonable request.

16 Q Mr. Simon, what protection does a small minority group
17 have in a community where the majority are opposed to it inso-
18 far as recognizing the freedom of speech is concerned, under
19 the rule you have just mentioned?

20 A Their protection, Mr. Justice Marshall, is that
21 the police must make every reasonable effort to restrain the
22 spectators.

23 Q Like what?

24 A Well, as I recited, making them stand on the opposite
25 side of the street, keeping them up on the sidewalk, not

1 permitting them to join the march, get them into their house,
2 start moving them from the sidewalk.

3 Q As of today the same people that were convicted here
4 will never be able to march in that area?

5 A No, certainly not, Mr. Justice, that is absolutely
6 not true and it is not the contention here. Several days pre-
7 ceding and ten days subsequent, Mr. Gregory marched in the
8 same area without incident.

9 Q Well, if tomorrow they march out there in the same
10 silent manner and the same group shows up, they will have to
11 stop marching?

12 A Absolutely no, only if there is an insipient riot
13 and there is no advance notice and the police have not had an
14 opportunity to marshall adequate police --

15 Q If the same size group, with the same rocks and eggs
16 show up, the march is over, freedom of speech is gone?

17 A That is not so, Mr. Justice Marshall, only if --

18 Q Only if we uphold this decision?

19 (Laughter.)

20 A Only if there is a riot. Only if there is a riot
21 which is so insipient that the commander of police feels that
22 public order has to be maintained. Mr. Justice Marshall, if
23 the commander of police made an error and a riot occurred,
24 more rights than the freedom of speech would have been in-
25 volved in this case, the lives of demonstrators, marchers and

1 police would have been in jeopardy. It is because of a riot
2 situation, not because of the ease of ushering out 65 rather
3 than taking out what is estimated in the record by one party
4 to be approximately 4,000 people. Clearly, groups of 1,200
5 at two separate locations --

6 Q It depends on who is the more disorderly and the more
7 violent. When two groups confront each other, it depends on
8 which one is the more disorderly, the more lawless, and the
9 more violent, they win.

10 A I don't think that --

11 Q But if one --

12 A -- is the meaning of the city's position, Mr.
13 Justice Marshall. We have seen how ill-advised arrests in a
14 tavern in Detroit, or for a traffic offense in Watts have had
15 disastrous consequences for Detroit and for Los Angeles. The
16 community --

17 Q The Constitution, Mr. Simon, permits one group to
18 march down this street advocating its view, does the Constitu-
19 tion permit another group advocating the opposite view to
20 march down the same street?

21 A In an effort to preserve order --

22 Q I am not talking -- I say does the Constitution permit
23 one to march to advocate his view and not permit the other?

24 A Yes. No, I beg your pardon, I was answering your
25 first question. The Constitution permits --

1 Q But isn't the answer to that --

2 A -- both sides to march and advocate their views.

3 Q -- isn't the answer to that that when you permit
4 large groups to march down the street, others who are emotion-
5 ally concerned on the other side allowed to march down the
6 street, and don't you create situations at all times that are
7 likely to cause a riot?

8 A Well, Mr. Justice Black, I don't know that they are
9 likely to cause riots, but they certainly --

10 Q Well, why not? The two are opposite one another and
11 jeering, and stating opposite emotional concerns.

12 A We have taken the position, in Chicago, that we have
13 a right to make one march on one street and another group march
14 on another --

15 Q How can you regulate them like that, if you can't
16 regulate them? Are you going to let one have a better place
17 than the other?

18 A No, we usually let the one that is there first --

19 Q At Chicago -- has Chicago or the state yet passed
20 any law --

21 A Yes.

22 Q I mean the kind of law that this Court has been
23 admonishing must be passed in this field for years, in narrowly
24 drawn non-discriminatory action, acting on the assumption
25 that the state does have a right to control marchers on its

1 streets and demonstrations. Has it drawn one like that yet,
2 sir?

3 A The state legislature has adopted a statute prohibit-
4 ing residential marches.

5 Q Is that for all, non-discriminatory?

6 A Yes, sir.

7 Q It has done that?

8 A Yes, sir.

9 Q Well, that to that extent meets the -- it seems that
10 they are taking note of the fact that this Court in case after
11 case has said statutes must be narrowly drawn in this field to
12 meet the particular situation aimed at.

13 A Well, Mr. Justice --

14 Q I am glad to hear that.

15 A -- we have amended our disorderly conduct ordinance
16 to reflect this narrow construction of the State Supreme Court
17 also.

18 Abraham Lincoln said 150 years ago that the world has
19 never had a good definition of the word "liberty" and that the
20 American people just now are very much in lack of one. He
21 said that we all declare for liberty, but when we use the
22 same word we do not all mean the same thing.

23 And Professor Paul Frein, writing specifically on the
24 topic of civil liberties, said not only do civil liberties
25 vary in their quality, but in many cases it is far from clear

1 with which side the interests of civil liberties are to be
2 identified.

3 Your Honors, for five and a half hours, on a hot August
4 day, the petitioners exercised their right of free speech.
5 They called the Mayor a "snake." They demanded that he fire
6 the Supreintendent of Schools. They came across loud and
7 clear; as the record indicates, they could be heard over a
8 block away. They had been in the immediate residential areas
9 for an hour and a half. Many of the angry threatening spec-
10 tators were life-long friends of the Daley family and residents
11 of the community. As the police commander ordered them to
12 disperse, they could have at least asserted an equal right to
13 be at 35th and Lowe.

14 When the commander explained his apprehensions about a
15 riot to Mr. Gregory and asked for his cooperation in terminat-
16 ing the march, he refused. He said he would march for an in-
17 definite period of time. He seemed determined that he would
18 march until he was removed by the police or by the crowd.

19 Q Were they saying these things at the time they were
20 arrested?

21 A No, Mr. Justice, they were not.

22 Q How long before that did they quit?

23 A They quit at 8:30; they were arrested at 9:30.

24 Q I understood you to say a little while ago then there
25 was no violation of law prior to the order of the commander to

1 disperse?

2 A That is our contention in this case, Mr. Justice.

3 Q All right. Well, now, what led to disorderly conduct
4 that they were engaged in at the time this thing happened, not
5 an hour before but on or about the time this thing happened?
6 What were they doing that was --

7 A Precisely in the language of the Illinois Supreme
8 Court, a breach of the peace was imminent. The police had
9 protected them for as long as they could. They asked them to
10 desist. They explained why they wanted them to desist, and
11 they refused. They realized the city's contention of the
12 disorderly conduct.

13 Q Did these marchers have in mind what the Supreme
14 Court might say in this case?

15 A In the Winters case this Court pointed out that --

16 Q No, I am asking about the interpretation of your
17 statute.

18 A Indeed, Your Honor, the legal answer is yes, that
19 they were charged with subsequent judicial determinations as
20 they are with the knowledge of the law itself.

21 Q I thought you said to Mr. Justice Stewart that there
22 was no pre-warning, that this would be the interpretation of
23 the statute by the Supreme Court.

24 A No, I was answering Mr. Justice Stewart that no pre-
25 vious decisions --

1 Q That is what I --

2 A -- before the Supreme Court decision in the Gregory
3 case held at that time.

4 Q That is right. That is all I am asking.

5 A Yes.

6 Q That's right.

7 A That is correct. Mr. Justice, the record shows that
8 after legal consultation the commander of police reluctantly
9 placed them under arrest, after all advance and circumstances
10 which had been pointed out in argument. We contend that the
11 action of the police was professional and competent and
12 reasonable and lawful, and we urge this Court to affirm the
13 unanimous decision of the Illinois Supreme Court.

14 Thank you.

15 (Whereupon, the oral-argument in the above-entitled
16 case was concluded.)

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