Supreme Court of the United States

OCTOBER TERM, 1970

In the Matter of:

Docket No. 4

JOHN S. BOYLE, CHIEF JUDGE OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, et al.	
Appellants	
vs.	
LAWRENCE LANDRY, et al.,	
Appellees	

Place Washington, D. C.

Date November 16, 1970

ALDERSON REPORTING COMPANY, INC.

300 Seventh Street, S. W.

Washington, D. C.

NA 8-2345

C O N T E N T S

IN THE SUPREME COURT OF THE UNITED STATES
NOVEMBER TERM, 1970

JOHN S. BOYLE, CHIEF JUDGE OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, ET AL., Appellants vs. LAWRENCE LANDRY, ET AL., Appellees	No. 4

Washington, D.C.
Monday, November 16, 1970

The above-entitled matter came on for argument at 11:00 o;clock a.m.

BEFORE:

WARREN E. BURGER, Chief Justice
HUGO L. BLACK, Associate Justice
WILLIAM O. DOUGLAS, Associate Justice
JOHN M. HARLAN, Associate Justice
WILLIAM J. BRENNAN, Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HENRY BLACKMUN, Associate Justice

APPEARANCES:

THOMAS E. BRANNIGAN, ESQ.
Assistant States' Attorney
Cook County
Chicago, Illinois
Counsel for Appellants

APPEARANCES (Continued)

ELLIS E. REID, ESQ.
Chicago, Illinois
Counsel for Appellees

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 4, Boyle against Landry.

Mr. Brannigan, you may proceed whenever you're ready.

ARGUMENT OF THOMAS BRANNIGAN, ESQ.

ON BEHALF OF APPELLANTS

MR. BRANNIGAN: Mr. Chief Justice, and may it please the court. My name is Thomas Brannigan and I'm Assistant States Attorney in Cook County Illinois, and I represent the Appellants in this case.

I am the third Assistant States Attorney from Cook County to argue this case in Court, and I want to say that I hope that I can bring new insights into this appeal, but if I can't I want to let you know that we have brought new faces before the court, and I am at least pleased in that.

Q Are you resting on your predecessors' briefs?

A. On the brief, yes. The statute that we're here concerned about is the Illinois Intimidation Statute. And not the entire statute but only a subsection of the statute which was held unconstitutional by a Three Judge Court and an injunction was issued enjoining the States Attorney from prosecuting anybody under this statute.

The statute provides that "a person commits intimidation when, with intent to cause another to perform or to omit the performance of any act, he communicates to another a threat

to perform without lawful authority any of the following acts." Now all the other subsections were held constitutional, but this one subsection "committ any criminal offense" was held unconstitutional. The reasoning of the court was that this language "commit any criminal offense" would include misdemeanors or any substantial offenses and near violations against public order statutes only, and that it was therefore overbroad and unconstitutional.

Now before I turn to the question of the finding of unconstitutionality we have, as we have in all the cases, that were set down with this case, the proceedural question, and that is the problem raised by what is now generally called the Dombrowski-type complaint and this is the type of complaint that was filed in the District Court below but we submit that this is not a Dombrowski-type complaint, it's not a Zwickler, because in those cases there was allegation and showing of some prior activity by the state officials under the statute which the court found unconstitutional.

In this case, nobody, none of the plaintiffs were charged with a violation of this intimidation statute. Not any section of it and not any subsection. The allegation that the District Court felt was sufficient to bring the merits of this statute to its attention was the allegation that there was a threat to enforce this statute, and that the purpose of the threatened enforcement was to harrass and to intimidate the

plaintiffs who were simply exercising First Amendment rights in demonstrating, advocating for racial equality in Chicago. But we submit that there is a big difference in this case and in Dombrowski and in Zwickler because there was this course of conduct that those plaintiffs could point to and say "This is how we're being harrassed. This is what the state officials are doing."

Now for example, one of the subsections which was held constitutional says that one of the threats made to a person which would constitute intimidation would be to take action as a public official against anyone or anything or withold official action or to cause such action or witholding. And yet none of the plaintiffs were public officials, none of them were capable of acting as public officials against anyone or anything, and yet the court felt that under Dombrowski that they could reach all these subsections and decide one after another whether or not they were constitutional .

Now we of course realize that if this Court were to decide that the District Court should not have reached this question and there would be a reversal on grounds other than the constitutionality of the statute that the judgement of the court below would stand in fact in Illinois as the only decision interpreting this subsection of the Illinois Intimidation Statute and that decision would be that it was unconstitutional. So we would ask the Court that in this case it is our request that

if it be possible that the Court also reach the question of the constitutionality of the statute.

Q. On which you call the procedural question, that is the threshold question of the propriety of the District Courts action as it did it would follow. I should think perhaps that this Court would vacate the District Court order.That would vacate the opinion, wouldn't it?

A. Yes it would, and --

Q. That opinion would no longer be in the books because you're not going to tear it out of the Federal Supplement but anybody that Shepherdized it would see that it had been vacated.

A. That's true, Your Honor, but --

Q. --your threshold point.

A. That's true, Your Honor, but nevertheless that determination would stand, we would ---

Q. What would stand? My point is that it wouldn't stand. Would it?

A. Well, I mean that it would be a reversal on some other ground, Your Honor,---

Q. The judgement would be vacated, if you're correct on your threshold point.

A. That's true. Now, we feel so strongly about the question of the constitutionality of this statute, Your Honor, and we feel that the District Court was wrong in finding this

statute unconstitutional, and I would like to address myself immediately to that and tell you why we feel so strongly about it. I think that the first point that must be made about this statute is that it is not a public order stttute. It's not designed to maintain public order, it's not designed as a protection of the state, of the sovereignty , but it is designed to protect an individual from threats and the District Court in its opinion said that the term "threat" has a sinister and well defined meaning in common parlance and in the law.

It is the expeession of the intention to inflict evil or injury on another. It is more than a mere expression of such an intent; it is a menace, especially any menace of such a nature and extent as to unsettle the mind of a person on whom it operates and to take away from his acts that free and voluntary action which alone constitutes consent. That's the kind of threat the District Court held is what is prohibited by the statute. Now the Court said that the subsection A and all the other subsections were not vague, they could be understood but they were overbroad.

And they pointed out some examples. They said that this statute would in effect make illegal threats by mothers to block traffic, to cause a stop sign to be placed at an intersection because it is a dangerous intersection, that it would prohibit threats by persons who lived in a dangerous neighbor-

hood to threaten to carry arms because of the dangerous neighborhood they lived in. Now I think that what the court there does in that language is that it turns the focus from the threat to the person to just advocacy of threatening in the abstract and this statute does not prohibit people from standing up in the Civic Center in downtown Chicago and saying "We are going to carry arms in our neighborhood because we live in a bad beighborhood."

In other words, "We're going to commit a crime because we live in a bad neighborhood." This statute has nothing to do with that type of language, that type of advocacy. To the same extent, the mothers who want to block traffic. They can talk about it all they want, they can advocate it and this statute does not prohibit that type of talking and speech. What it does prohibit is threats directed toward somebody to deprive that person of his free will and it's got to be that type of sinister threat that freezes his free will and makes him act in a way that he doesn't want to act.

And I think that the proof that the court misapplied the First Amendment doctrines ennunciated by this Court in striking this statute down is the statement in the brief that a statement in the lower court opinion that what the public officials, that what the State of Illinois can do, is wait until this threatened act, this minor little insignificant violation of a public order statute, is carried out and then go ahead

and prosecute people for violating that law. But the fact of the matter is that if the threat to the individual is successful, that is "You do something or we will carry and bear arms.", then, if the threat is successful and the person making the threat has got his point home and has caused that indidual to act in the way he wants him to act, he will not carry out the threat, and so the situation doesn't arise where the violation, the threatened act is ever carried out.

So we think that this demonstaates clearly that the Disttric Court misapplied the doctrines ennunciated by this Court in the First Amendment and incorrectly came to the conclusion that this statute was unconstitutional. Now we point out in our brief that there are other statutes that are wider drawn, the Federal Hobbs Act, for example, prohibits one from interfering with commerce by extortion and this Court has upheld that statute where there were threats simply to violate or to breach a contract or to cause a strike which certainly are broader than what this statute probibits and that is the commission of a crime.

Now it also may be argued that this subsection is really surplusage because there are other acts, other types of acts, that are enumerated in the other subsections and that we don't really need this subsection. We think that it was a legitimate exercise of the legislatures' judgement to include this subsection so that types of threats that the legislature could not

forsee which an injunctive person may devise to use to intimidate a person are also prohibited and that is, we think, sufficient reason to defer to the legislative judgement here and to approve this statute on constitutional grounds.

Now getting back to the procedural question, I must restress that our point there is that if this Court is presently considering a restatement of the Dombrowski case, or the doctrines that have eminated from it in the course of the cases that have followed the Dombrowski case, we think that this case, without getting into a whole restatement of that whole question can simply be distinguished from Dombrowski and Zwickler on the grounds that no one was charged with intimidation, there was just a bare allegation in the complaint, that the threat was made to use this statute, and there was no course of conduct to which the plaintiffs could point that was anywhere near like what was present in Dombrowski and Zwickler, and which this Court dwelled on extensively in both of those opinions. By way of reaching the conclusion that the Federal District Court had an obligation to make a determination of the constitutionality of the statute---

Q. You don't have any 2283 argument in your case, do you?

A. No we don't, because we don't have any prosecution.

Q. What were the terms of the injunction? It just enjoined any enforcement of this section of the statute in the

future, is that it? By the defendants.

A. Yes, Your Honor, it's on the last page of the appendix, page 104.

Q. Last page?

A. Yes, Your Honor.

Q. Page 104?

A. Page 104, it's the last page in the appendix. "Hereby ordered and adjudged and decreed that the defendants, their employees, their servants and agents be hereby perpetually enjoined and restrained from the enforcement of and the prosecution under..." These other statutes, Your Honor, that are mentioned there, are other statutes which were held unconstitutional.

Q. They dropped out of the case.

A. We have not appealed from them. The only section that we appealed from is the Illinois Intimidation Statute which is Chapter 38 section (12-6) (a) (3).

Q. Yes, and that appears on page 3 of your opening brief.

A. That's right, Your Honor, and it's only that little subsection---

Q. I understand.

A. That we're talking about.

Q. Thank you, Mr. Brannigan. Proceed---

ARGUMENT OF ELLIS E. REID. ESQ.

ON BEHALF OF APPELLEES

MR. REID: Mr. Chief Justice, and may it please the court. I'd like to begin my answering argument by some observations in light of the fact that the matter has been argued twice before and in light of the fact that there are four cases here, which it is apparent that we're dealing with the cases that began with Dombrowski and Pfister, and the issue here is whether or not in the case before Court we have standing to sue. I'd like to point out that in Dombrowski, the Court said in its opinion, and I'm quoting from its language because I think it's important to the background of my argument, the assumption that "The defense of a criminal prosecution will generally assure ample vindication of constitutional rights is unfounded in such cases..." and it cites Baggett vs. Bullitt, "...for the threat of sanctions may deter almost as potentially as the actual application of sanctions, because of the sensitive nature of constitutionally protected expressions, we have not required that all of those subject to overbroad regulations risk prosecution to test their rights."

For free expression of transcendant value to all society and not merely to those exercising their rights might be the loser. We have fashioned this exception to the usual rules governing standards, and it says see United States vs. Rands, because of the danger of tolerating in the area of First Amend-

ment freedoms the existence of a penal statute susceptible to a sweeping and improper application..." cited NAACP vs Putmam, "...if the rule were otherwise, the contours of regulation would have to be hammered out case by case and tested only by those hardy enough to risk criminal prosecution to determine the proper scope of regulation."

Now it is with that in mind, Your Honors, that I further point out to the Court the language in Golden vs Zwickler as follows: "The difference between an abstract question and a controversy contemplated by the Declaratory Judgement Act is necessarily one of degree and it would be difficult, if it would be possible, to fashion a precise test for determining every case whether there is such a controversy." Basically the question in each case is whether the facts alleged under all the circumstances show that there is a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgement, citing Maryland Casualty Company vs. Pacific Oil.

Now, Your Honors, with those two cases in mind, I address your attention to what has been characterized as a Dombrowski-type complaint and I want to say, Your Honors, as it has come out here, the particular injunction involved here, as can be seen from page 104 of the appendix, did not only deal with Chapter 38 section (12-6) of the Illinois penal code, it dealt

with Chapter 38 section (25-1)(a)(2), Chapter 38 section (12-6)(a)(3), and also, Your Honors, which this injunction did not deal with but another one issued by a single judge, Judge Wilk, dealt with two ordinances of the City of Chicago. Now the background of this case is a --. In 1967, there were a series of arrests and we'd like to point out to Your Honors the facts involved in this particular case.

We have alleged, Your Honors, in the record, I'll give you the page number for each particular circumstance, but starting with page 12 and paragraph 27 of our complaint, we deal there with a mass arrest situation that occured on the first day of August, 1967. And certain plaintiffs were arrested and charged as the complaint states with four violations of law, under Illinois law, two statutes, and two ordinances. They were charged with the mob-action statute, the resisting arrest statute, the disorderly conduct ordinance, and the resisting arrest ordinance. Now on the fourteenth day of September, 1967, there was another incident where there was a mass arrest situation. I might back up and say that the first incident was colloquially called the "Big Jim" incident, because there, a Negro had been shot by a white man, and people had gathered to peacably, and I emphasize peacably, protest againsttthis unlawful shooting of Julius Woods, a Negro citizen.

Now in the incident which occured on September 14, 1967, it occured at Forty-third Street in Chicago, Forty-third and

Langley and there was a gathering there for the peaceful and lawful demonstration to protest against the unlawful attack and brutal beating of an eighteen-year-old Negro woman who resided in the community by police officers.

The other incident is the incident of May 21, 1967, and there was a gathering ar Fifty-first Street and South Park Avenye, in the City of Chicage, to peacably protest for a redress of grievances in that they wanted to rename Washington Park to a name that they felt would be more relevant in location and character to a predominant number of Negro residents who resided in the vicinity of that park. There was another mass arrest in that situation.

On August 23rd, 1967, there was a gathering at One Hundred Eleventh Street in the City of Chicago to protest and to inquire with respect to the unlawful shooting of another Negro youth and resident of that community.

On August 4, 1967, there was a gathering, peacefully, at a playground to protest that there are not sufficient playgrounds located in certain sections of the City of Chicago. Particularly, this one was at 3501 South Wallace Street in Chicago, and the protest was against the lack and absence of adequate playground facilities in the black community.

Now I'd like to point out that in each and every one of these particular arrests that took place in the summer of 1967, all of the people who were arrested en masse the follwoing

things happened. They were all charged with four identical charges, mob-action, state resisting arrest, city ordinance resisting arrest, and the city ordinance of disorderly conduct. In each and every instance, the people had bonds placed against them ranging from $10,000 to $50,000 as is alleged in the complaint.

Now, with this background, we then go into our allegations which bring us to the intimidation statute. We have alleged that there was, and I will point out the parts of the complaint Paragraph 21 of the complaint, we allege the following: we allege that the defendants -- these being the Mayor of Chicago, the Chief Judge of the Circuit Court of Chicago, the Sherriff the ordinance enforcement placed in the Corporation Counsels office and certain magistrates which are named as defendants in the original complaint -- we allege that them, or some of them, have met together on more than one occasion, they have discussed , formulated, outlined and agreed to a detailed plan or scheme of harassment, arrest, and detention, setting of exhorbitant and excessive bail, prosecutions, trials, convictions, fines, and imprisonment which detailed plan and program they have agreed to direct against plaintiffs herein and other citizens of the United States, members of the same class as these plaintiffs, similiarly situated, solely for the purpose of deterring, hindering, preventing and depriving these plaintiffs of their rights, priviledges and immunities secured to them

by the Constitution and laws of the United States, and more particularly, the First Amendment privileges of speech and assembly.

Now the alleged in subparagraph A under 21, that the defendants, James Conliss, who is the superintendamt of Police and Richard J. Elrod, who is in charge of ordinance enforcement of the Corporation Counsel's Office as a result of the above described meetings, and this is found in pages nine and tem of the record among defendants and formulation of the above described plan and scheme have been designated by their superiors namely defendants Richard J. Daley and Raymond F. Simon, respectively, to be principle persons to implement and carry out the aforesaid plan of deterrance, hinderance and prevention of exercise the plaintiffs First Amendment rights of speech and assembly. By designating the occasions, places, manner, and method of arrest, as well as the number of plaintiffs to be arrested, and by actual designation of particular places of detention, of particular plaintiffs, as distinguished from other persons arrested in the City of Chicago.

When in subparagraph C of that same paragraph 21 found on page 11, defendants Richard J. Elrod, and the defendant John J. Stenos, acting through his subordinates as States Attorney of Cook County, have threatened, and actually attempted to set im motion, unlawful prosecutions of the defendants, of some of them, through application to these plaintiffs of

teem, through application to these plaintiffs of the aforesaid statutes of the State of Illinois, and ordinances of the City of Chicago.

Now, then, we go ahead and say, paragraph 25, found on page 12, to resort to this plan or scheme the defendants have attempted to threaten and continue to attempt to prosecute the plaintiffs and all persons associated with them are working in cooperation therewith under color and authority of certain statutes, namely as set forth, Chapter 38, section (25)(a)(1) and (2), Chapter 38 section (31-1), Chapter 38 section (12-2), (12-4), and (12-6) which is the one that we're before Your Honors on. And certain ordinances of the City of Chicago, to wit, Chapter 193-1, and Chapter 11-33, said statutes and ordinances are set forth in an appendix marked exhibit and et cetera.

Now, then, Your Honors,---

Q. Mr. Reid, except for you conclusory statement on the top of page 11 and perhaps elsewhere in your complaint that these statutes are unconstitutional, the graviment of what you've been saying to us is a conspiracy on the part of these people to harrass your clients in Chicago and others similiarly situated by abusing criminal statutes. And that could have been just as true if these had been shoplifting statutes or grand larceny statutes or anything else. If they're going to make false charges against you and conspire to misuse statutes it

doesn't follow at all that the statutes are unconstitutional, does it?

A. Well, Your Honor, we later allege in this complaint that the statutes on their face were overbroad---

Q. You don't allege that---

A. We do---

Q. But all these wrongs that you've been talking about could equally have taken place with respect to abusing perfectly valid, concededly valid statutes such as grand larceny.

A. That is true---

Q. Is that correct?

A. That is correct, Your Honor---

Q. These wrongs don't have anything to do necessarily with the constutionality of the statutes that you allege in this complaint that these defendants were intending to abuse, in order to harrass your clients.

A. I beg to differ with Your Honor, but I think it does, because I think that as said by this Court in Golden, you have to take all of the facts and circumstances into account. This is a unique case. This case may never happen again in a hundred years, but what I'm saying is that you have to go back in time, and I'm asking Your Honors to do this in your own minds' eye, to 1967 in the summer in Chicago and ask yourself what was happening to those people then. Why does this issue standing apparently overlooked by the District Court. Why were there no

requirements of proof by the court?

And the answer is obvious -- the court well knew what was happening in Chicago, and court well knew, and perhaps the States' Attorney then conceeded the point, that he didn't want us to bring in our evidence of what the threat was and now they get up here and get a clean shot at us by saying that the threat is now a conclusion instead of a statement of fact. Your Honor, I say that when we say we were threatened, I say that is an allegation, a fact in our complaint. It is not a conclusion of law. I am saying that you look at the totality of the circumstances to back up the total four corners of the complaint, you say does this complaint state a cause of action upon which relief can be granted?

And in the federal system, I understand we're not obligated to plead evidence, but to plead in simple language the fact that there is a case or controversy upon which the Court is asked to render a ruling, and I'm saying that when we stood before that Three Judge Court there was in fact a sincere and obvious case and controversy involving the mob-action statute, involving the resisting arrest statute, involving ordinances of the City of Chicago.

Now to give up on your appeal on those matters on the merits and then to appeal on one issue and one issue alone and to say " Ah Ha" nobody was ever charged with intimidation, the therefore they had no standing, well, I'm saying that it would

be really an abuse of the courts to go back and then say "Well now, arrest somebody and we'll now go back through this arduous process to get at the intimidation statute which is obviously on its face bad."

It would be just like a surgeon going into a man's abdominal cavity and seeing a bad appendix when he's in there for something else and closing up the man and then going back next week and opening up the abdominal cavity to take out the bad appendix. And they may even amount to medical malpractice, but I'm saying is's a similar situation here. It's a question of pendant jurisdiction. The court had before it an issue, it had the jurisdiction of not only the parties but the subject matter involving clearly the mob-action statute and clearly the other matters that were before the court.

Now, what makes this case unique is that the court then in the fact of pendant jurisdiction dealt with an obvious issue and took care of all our ills at one time which I suggest to the court is a better way to do it, then they come up and say we walked in out of the street and we only attached section 12-6 and nobody ever threatened us, nobody was ever arrested, there was no bond held, there was none of this background and ask you to try this case in a vacuum. And I say that it cannot be tried in a vacuum, it cannot be carried in a vicuum, but you must understand that what the court did in my humble opinion, was the only thing they could have done other than to have put

us to additional expense and to put the court to additional time with additional burdens upon the court and upon this Court.

Now that is really the graviment of my argument that this case is unique and that our standing to sue stands on the issue of pendant jurisdiction. We were properly in court, and the court took care of all our ills and the court in fact saved itself some time because now I come to the argument which even the States Attorney wants me to reach and that is that on the face of this particular statute there is the question of whether or not it is in fact overbroad and vague. And I submit to Your Honors that it was both, and the court in its opinion, written by three judges, came to the conclusion that it was both overbroad and vague.

Now here is the problem with that intimidation statute. The problem is this. Whenever you take an intimidation statute or an extortion statute or what have you and you put it in the political arena as they have done here and the victim of that alleged crime becomes a politician, either on the state or local level, or the national level, then you have really set the collision in motion of the right of our society to deal with freedom of speech on an ordered liberty and the right of the people to be free from threats so Your Honors, as you have said in cases involving liable and slander, dealing with people who are public figures.

Once you enter the public arena, you're not to be coddled and protected because you are a public institution. And so I say that you cannot say that these politicians are so --- that we can't tell them directly or indirectly that unless you redress our grievances we will do this and so.

Now this brings us to the area in the statute --- that section which the court found to be overbroad says that we will commit any crime, and this sends us back not only to the criminal code, it sends us back to all regulatory legislation which has a sanction of criminal punishment therein, it sends us back to all the ordinances of the City of Chicago, which may or may not be coddled, which have sanctions, and I submit to you there is no way with regard to vagrance that you can then determin when you've committed a crime and the sanction in this particular section is five years in prison.

Now the crime that you may threaten to commit if it goes to fruition may only be a fine of $25 or maybe up to a year in jail. Then to convert speech into a felony -- I mean this is what we're really talking about here--- you're dealing with politicains who say that now if I threaten a politician I'm going to commit a crime that has a $25 penalty, and now I can get five years, well, obviously we were cheered by this and it was a chilling effect of the threat of this that we had to beat them to the courthouse. Now whether or not we were too fast in getting to the courthouse first, I don't think Your

Honors have to reach that because we were properly in court on the mob-action statute, and on all the other statutes that the court dealt with, and I felt that, and I feel now, that the court had a right and a duty, not only a right, but a duty, to deal on the basis of pendant jurisdiction with this other matter and there was an actual case and controversy based on our allegations of meetings, threats and plans and also these facts are somewhat important, the uniform charges on all these people in all these incidents.

You see there were four charges on all these incidents that went before, and it just doesn't happen that way generally unless there is some concerted action. Everybody who was involved in this type of matter violates four charges each and every time, and everybody although he may be a college student with no prior record had a bond of $10,000 set against him and he stays in jail for ten days before he can make bond or get ignored on a petition and therefore lose this time in school.

So I'm saying that there was an actual case or controversy, there were litigants who clearly represented the rights of all the people that we sued on behalf of, and whether or not no one was arrested because of one statute, that had been threatened to be used in the future, you see we then get of the horns of a dilemma of the 2283, the anti-injunction statute which says if they be through the court you cannot get an

1 onjunction, if you be gone to court you have no standing.
2 Now I submit, Your Honors, that this is a precarious and
3 it's a wrongful position that people were to be put in because,
4 as advocates of First Amendment freedoms, which is the
5 touchstone of our very democracy, if we are going to deny by
6 this dilemma the court system and the judicious use of the
7 court system because I recognize also that we cannot innundate
8 this Court with these types of cases, because then this Court
9 would have to cease to function because of the shuffling pap-
10 ers. But I submit that that is an apparent but unreal feeling
11 because first of all you have to run this gauntlet, you have to
12 go through a Three Judge Court which must be convened by a
13 single judge before he will even conveen a Three Judge Court.
14 One of the judges sitting on that Three Judge Court is a
15 member of the Court of Appeals. Now these judges, at least the
16 majority of these three judges must then rule on the matter be-
17 fore the matterwwill get here as a matter of ritht. Now if the
18 matter is frivolous,,and no three Judge Court is convened, then
19 we don't have a Matter of Right Appeal, here. We would then
20 have to go th the Court of Appeals.
21 If it was not frivolous and a Three Judge Court decided
22 the issue, then I submit to Your Honors that you have got a
23 screening device. You'ge got a Three Judge Court here which
24 is convened and then the matter is not frivolous and then Your
25 Honors have the duty to hear it because that carving out of

First Amendment freedoms that we're dealing with I cannot emphasize how important it is because if we cut off the valve and say that you cannot get to this court in matters of freedom of speech or redress of grievances, peaceful assembly and I'm not talking about anarchy and I'm not talking about violence or anything like that.

I'm talking about legitimate peaceful First Amentment rights that we all suggest are tribulations. Then everybody will then say well, if I cannot use the courts, what is my next remedy? And the next remedy may then well be that we have to all become revolutionaries as they did in 1776 and overthrow the entire government because the courts, if they don't give you a remedy, a speedy remedy, an open remedy, one that you can count and rely on as advocates and lawyers, then I suggest what do you tell your clients when they say the doors have been closed, let us take to the streets?

And it's with that in mind that I say to you you have a duty in Dombrowski, I must say when I read the opinion I felt that it was a long time coming but I'm saying you have no right in light of what's happening today to turn back the clock with respect to Dombrowski. You have a duty to open that door wider. Thank you very much.

Q. Thank you Mr. Reid. Mr. Brannigan, you have approximately four minutes.

FURTHER ARGUMENT BY THOMAS BRANNIGAN, ESQ.

ON BEHALF OF APPELLANTS

A. Thank you, Your Honor. It's been suggested that the question the standing of the plaintiffs to raise this constitutional objection to the Illinois Intimidation Statute, this subsection ought to be sustained on pendant jurisdiction. And I think I disagree with that. I don't think it's called for.

First of all, Dombrowski and Zwickeer were, as the Court said, extraordinary cases. Nobody here has been charged with a violation of this intimidation statute. Nobody has been charged with a violation of this subsection. I think to take an extraordinary step like was taken in Dombrowski, that alone I think as the court recognized in the opinion that it was taking a significant new step. To say now that we can drag in all sorts of challenges to state statutes on the concept of pendant jurisdiction, I just think it's uncalled for.

I think that this would create a monster that the court would never be able to control if it incorporates the challenges to statutes whether they be used or not, or whether they ever had been used against the plaintiffs in a complaint drawn like the complaint in the Lower Court, and so we want an adjudication of all these statutes whether or not they are constitutional. I think that that's a step that this Court shouldn't take.

Now so far as what was going on in Chicago in 1967, Mr.

Reid has been talking about a lot of things here that I don't know if they occured or not, but they put us in a bad light. The fact remaiss, however, that one fact that the Court can take notice of, is an appeal to the United States Court of Appeals for the Seventh Circuit which was decided on February 5, 1970 in Cause #17346 entitled Boyle vs Landry. This was another aspect of this case where the Court decided that certain sections challenged in this action were constitutional. It remanded the case to the single Judge Court and said not you determine whether or not they're being applied unconstitutionally and there were hearings held and witnesses brought in, the people who had been arrested, and they said "We were peacefully demonstrating. We weren't doing anything, and the police came along and charged us with violations of all these statutes which the Three Judge Court had just held were constitutional, and we weren't doing anything except exercising out First Amendment rights, and we were being charged with these things." And the single judge said that shows---we didn't offer any evidence whatsoever.

We said that the courts would submit to the bar of 2283. The court was conducting probable cause hearings and when they says there was no probable cause for the arrest that indicates that this is a bad face prosecution and therefore they enjoined us from prosecuting even under these valid constitutional statutes.

The United States Court of Appeals for the Seventh Circuit reversed that. But they also said that there was no finding even though that court was open, the District Court was open, to present all the sort of evidence what was going on, these allegations of conspiracy and so on.

There is no finding in the District Court that there was no expectation of convictions or that the sole motive of the prosecution was to discourage the exercise of civil rights. They had their opportunity to proove this gigantic conspiracy and they didn't proove it.

I submit that the opinion of the Three Judge Court should be reversed.

Q. Thank you Mr. Brannigan, Thank you, Mr. Reid. Your case is submitted.

(Whereupon at 11:50 o'clock a.m. argument in the above-entitled matter was concluded.)