

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 86-243

TITLE CITY OF HOUSTON, TEXAS, Appellant V.
RAYMOND WAYNE HILL

PLACE Washington, D. C.

DATE March 23, 1987

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - -x
3 CITY OF HOUSTON, TEXAS, :

4 Appellant :

5 v. :

No. 86-243

6 RAYMOND WAYNE HILL :

7 - - - - -x

8
9 Washington, D.C.

10 March 23, 1987

11
12 The above-entitled matter came on for oral
13 argument before the Supreme Court of the United States at
14 1:55 o'clock p.m.

15
16 APPEARANCES:

17 ROBERT J. COLLINS, Houston, Texas;

18 Sr. Asst. City Attorney,

19 on behalf of Appellant

20 CHARLES ALAN WRIGHT, Austin, Texas;

21 on behalf of Appellee

22 ROBERT J. COLLINS, Houston, Texas;

23 Sr. Asst. City Attorney,

24 on behalf of Appellant - Rebuttal

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1 P R O C E E D I N G S

2 CHIEF JUSTICE REHNQUIST: Mr. Collins, you may
3 proceed whenever you're ready.

4 ORAL ARGUMENT OF
5 ROBERT J. COLLINS
6 ON BEHALF OF APPELLANT

7 MR. COLLINS: Mr. Chief Justice, and may it
8 please the Court:

9 This case raises serious questions about whether
10 a city can prohibit the intentional interruption of a
11 police officer during an investigation without infringing
12 Constitutional rights protected under the First Amendment.

13 The answer to this question is of vital
14 importance to both the city of Houston and many other
15 cities and states in this country. There are three
16 principle legal issues that must be addressed by the
17 court.

18 QUESTION: Mr. Collins, let me inquire about
19 that statement, that it's of vital importance to Houston.
20 I thought that the ordinance there had been repealed by
21 the City Council.

22 MR. COLLINS: It has not, Your Honor. In 19 --

23 QUESTION: And then reinstated just for purposes
24 of this litigation.

25 MR. COLLINS: That is not correct, your Honor.

1 In 1981, the city of Houston started out on a code
2 recodification process. That process took approximately
3 four years. Our initial, one of our initial
4 recommendations regarding this statute was to possibly
5 repeal it.

6 MR. COLLINS: After the Hill suit came around
7 the city of Houston City Council has reconsidered that
8 recommendation at this point.

9 QUESTION: Well, so what is the status? It's
10 going to become a permanent part of the Houston City Code
11 if you win this lawsuit?

12 MR. COLLINS: It is already a permanent part of
13 the city of Houston City Code. The fact that it is not
14 codified does not affect its enforceability at all.

15 QUESTION: Well why wasn't it put in the
16 codification?

17 MR. COLLINS: It was not put in the codification
18 because at the time of codification the panel decision in
19 the Hill case by the Fifth Circuit had been decided two to
20 one and we were concerned that if we did put it in, it
21 would be inadvertently be enforced.

22 So if it's not codified we're not enforcing it
23 at the current time. The legal issues before the Court
24 center around the application of the Overbreadth Doctrine
25 to a core criminal conduct statute.

1 It's the city's contention that the appellee,
2 Mr. Hill, was involved in activities that were well within
3 the Constitutionally prescribable realm of core criminal
4 conduct, and as such he should not be able to assert the
5 rights of other individuals not before this Court.

6 QUESTION: (Inaudible).

7 MR. COLLINS: That's correct.

8 QUESTION: Well, how can we possibly agree with
9 you on that if the man was acquitted?

10 MR. COLLINS: I think the question is: do the
11 police officers have probable cause to arrest somebody for
12 violation of this statute? I don't think we can hold a
13 statute unconstitutional because an individual who raises
14 it was acquitted.

15 QUESTION: I don't understand. You said that
16 the actions committed by this individual were plainly
17 within what the Constitution would permit to be acted upon
18 by the police.

19 MR. COLLINS: That is correct. He interfered
20 intentionally with a police officer during an
21 investigation.

22 QUESTION: But that's not what the jury found.

23 MR. COLLINS: There was no jury --

24 QUESTION: Oh, I'm sorry.

25 MR. COLLINS: -- in that case.

1 QUESTION: It was tried before a judge. A judge
2 found that he hadn't.

3 MR. COLLINS: That is not correct either. The
4 case was dismissed. It's not in the record as to why the
5 case was dismissed. The court reporter apparently had
6 lost the notes.

7 QUESTION: Well is there any other possible
8 reason why it would have been dismissed?

9 MR. COLLINS: There are a lot of speculative
10 reasons. There could of been a situation where the judge
11 felt that he had made a statement that prejudged the case
12 and therefore that for technical reasons it could have
13 been dismissed. There are a number of reasons, but it is
14 not in the record before this Court as to why it was.

15 QUESTION: Did it go to trial?

16 MR. COLLINS: It did not go to trial to my
17 knowledge, no.

18 The second legal issue that we have here
19 is if indeed Mr. Hill is allowed to raise the
20 Constitutional rights of others not before the Court and
21 if he can assert those rights, is the ordinances
22 overbreadth both real and substantial. And again, in a
23 subsidiary issue is a narrowing construction of the
24 ordinance available?

25 Late one evening, early in the

1 morning, in 1982, Officer James Kelley of the Houston
2 Police Department and his partner were on patrol in a
3 high crime area of the city of Houston.

4 While they were stopped and while Officer
5 Kelley's partner was issuing a traffic citation, Officer
6 Kelley observed an individual standing in the middle of a
7 street stopping traffic. He had stopped a city bus and a
8 number of cars.

9 Officer Kelley approached the man and directed
10 the man to the sidewalk in order to insure his safety and
11 attempt to unblock the traffic in the street. As part of
12 his investigation, Officer Kelley had been talking to the
13 man.

14 As he became more involved in the investigation,
15 the individual became erratic in his actions and started
16 to walk away from Officer Kelley. At that point in time,
17 Officer Kelley told the man to stop, approached the man,
18 touched him on the shoulder to turn him around.

19 At that point in time, Officer Kelley heard a
20 voice from the sidewalk where a crowd was gathering. That
21 voice was the voice of the appellee in this case, Ray
22 Hill.

23 Mr. Hill yelled at Officer Kelley, told him to
24 leave the man alone; he hadn't done anything wrong.
25 Officer Kelley continued to speak to the man. He

1 continued with his investigation.

2 Ray Hill also continued. He continued to yell
3 at Officer Kelley in a loud and boisterous voice, "leave
4 him alone, why don't you pick on somebody your own size,"
5 Mr. Hill yelled.

6 Officer Kelley then asked Hill if he was
7 interrupting him in his capacity as a police officer. Mr.
8 Hill replied, "Yes, why don't you pick on somebody my
9 size."

10 At that point in time, Officer Kelley, being
11 concerned with the gathering crowd, concerned about the
12 possibility of violence and feeling that Ray Hill was
13 baiting him, and challenging him, and interrupting him in
14 his investigation, arrested Mr. Hill and charged him with
15 the violation of the ordinance at issue here. The precise
16 wording of the ordinance at issue here is:

17 "It shall be unlawful for any person to assault,
18 strike, or in any manner oppose, molest, abuse or
19 interrupt any policeman in the execution of his duty, or
20 any person summoned to aid in making an arrest."

21 QUESTION: Mr. Collins, can I get something
22 squared away? I didn't, in our earlier, I didn't, I
23 understood your answer to the Chief Justice's question,
24 but it didn't comport with my recollection.

25 You said in your brief that Hill was later tried

1 and found not guilty of the offense. And likewise, the
2 Appellee's brief says the same thing.

3 Hill subsequently was found, not guilty of
4 violating the ordinance, following a non-jury trial before
5 a Houston Municipal Court. Now, was he tried and found
6 not guilty, or not?

7 MR. COLLINS: I believe that your question,
8 Justice Scalia, was, was he acquitted? He was found not
9 guilty. Yes, that is a true statement.

10 QUESTION: Well, I had asked you whether he was
11 tried and I thought you said he wasn't tried.

12 MR. COLLINS: What happened, well it's outside
13 the record, but he was not, the trial was interrupted in
14 the middle.

15 QUESTION: By what?

16 MR. COLLINS: The fact that the trial, the fact
17 that the trial court judge --

18 QUESTION: Found him not guilty. (Laughter).

19 MR. COLLINS: Right. The fact that the trial
20 court judge announced that, made a statement in front of
21 counsel for Mr. Hill that he felt Mr. Hill was guilty,
22 statement was in front of the jury, he felt that he had
23 pre-judged the case and so he found him not guilty at that
24 point in time. That is my recollection of what happened.
25 That is not in the record; however, before this Court.

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QUESTION: Were you (inaudible)?

MR. COLLINS: No, I was not.

QUESTION: But the fact is he was found not guilty. We have to assume that he was not, I mean, there's a, there was a record finding of not guilty whatever the reason for it was.

MR. COLLINS: That's correct, there was.

QUESTION: And you distinguish that from an acquittal?

MR. COLLINS: I distinguish it from acquittal because I took the word acquittal to mean that it was submitted to the jury, the jury deliberated and found that he was not guilty.

QUESTION: At least he was not convicted?

MR. COLLINS: He was not convicted, no.

QUESTION: (Inaudible).

MR. COLLINS: Pardon me, Your Honor?

QUESTION: Why are we sitting on a case where a man was found not guilty?

MR. COLLINS: Because the individual has raised the argument that the city of Houston is unconstitutional, unconstitutionally denying him the right to exercise his rights of free speech in the area and at the scene of arrest in the city of Houston.

QUESTION: The unsuccessful (inaudible).

1 MR. COLLINS: He has not been convicted under
2 the ordinance. He's been arrested four times under it.

3 QUESTION: Right. Right.

4 QUESTION: And he says, I may do it again, and
5 so I want to challenge the ordinance.

6 MR. COLLINS: That's precise, Your Honor.

7 QUESTION: (Inaudible).

8 QUESTION: And the Fifth Circuit sustained his
9 challenge to the ordinance.

10 MR. COLLINS: The Fifth Circuit sustained his
11 challenge to the ordinance --

12 QUESTION: And said he had standing to raise the
13 issue.

14 MR. COLLINS: Said he had standing to raise the
15 issue, found the ordinance over broad.

16 QUESTION: But they've taken it under en banc
17 consideration and held eight to seven that Mr. Hill had
18 standing and that the ordinance was overbroad.

19 QUESTION: Well now that he has created all of
20 this havoc, couldn't we just drop the case and get it over
21 with. (Laughter).

22 MR. COLLINS: I don't think so, Justice
23 Marshall. (Laughter). I think that there is a legitimate
24 interest that a city has in protecting its police officers
25 while they are involved in investigations from

1 interference and interruption.

2 The ordinance itself does not contain a scienter
3 requirement. But the scienter requirement is added by
4 state law. State law in Texas requires that all
5 ordinances have a scienter requirement.

6 Therefore in this case an individual cannot be
7 convicted under this ordinance unless he knowingly
8 interferes with a police officer in the performance of his
9 duties.

10 QUESTION: What does knowingly interferes mean?
11 That is your, whatever you say is not involuntary. You're
12 not sleepwalking or something of that sort, but you don't
13 necessarily have to know that what you're doing is a
14 violation of the law. Scienter doesn't require that.

15 MR. COLLINS: Scienter requires that you have an
16 intent to interrupt the officer. If you do not have --

17 QUESTION: Whatever that means.

18 MR. COLLINS: If you do not have an intent to
19 interfere with an officer --

20 QUESTION: Whatever interfere with the officer
21 means.

22 MR. COLLINS: Interfere with the officer means
23 to interrupt him during the course of his duties.

24 QUESTION: Yes, whatever a court later finds to
25 constitute an interruption. But you certainly, by reason

1 of the state's scienter requirement, you do not have to
2 know that you are violating the law, do you?

3 MR. COLLINS: The scienter requirement does not
4 require that. Scienter requirement would --

5 QUESTION: Right.

6 MR. COLLINS: -- allow you to have probable
7 cause. A police officer would not go out and arrest
8 somebody under a statute on the basis that they walked up
9 to them and asked them, could you please tell me how to
10 get to the police office downtown.

11 QUESTION: Why not? If he inter--, if he was
12 doing something else at the time why wouldn't that be a
13 plain and flagrant case of interruption? If he was
14 directing traffic and you walked up to him and said,
15 please tell me how to find the city hall.

16 MR. COLLINS: Unless the, it was done
17 intentionally --

18 QUESTION: It was done intentionally. He wanted
19 to interrupt so he could find out where the city hall is.
20 That's a plain violation, I think. Isn't it?

21 MR. COLLINS: I don't think it is. First of all
22 I'm not sure whether or not in the particular instance that
23 we're discussing that the officer would be involved in an
24 investigation and the record is clear that the only time
25 that this ordinance is enforced is during an

1 investigation.

2 QUESTION: It also says in the execution of his
3 duty as I thought it, unless the abuser interrupt any
4 policeman in the execution of his duty. And I have a
5 traffic officer executing, telling people to stop and to
6 start and so forth. Why isn't that executing his duty?

7 MR. COLLINS: The term execution of his duties
8 is limited by the fact that officers only arrest people
9 for interrupting them during investigations.

10 QUESTION: How do we know that?

11 MR. COLLINS: That is in the record. Joint
12 Appendix, page 77, where Officer Kelley testified that
13 that was his view of the law.

14 QUESTION: Well does that show that the statute
15 is not overbroad simply because you don't use it in those
16 areas which it shouldn't properly, which it shouldn't
17 apply to? That doesn't prove that the statute isn't
18 overbroad. It just proves that their not using it in the
19 overbroad areas.

20 MR. COLLINS: But on the other hand if the
21 statute doesn't cover those areas then what you're saying
22 the overbreadth doctrine is there for is to prevent the
23 city --

24 QUESTION: But the statute does cover it. All
25 you're saying is the enforcement doesn't cover it. An

1 overbroad statute is a statute whose statutory scope, you
2 don't have a court decision do you that says it can't be
3 enforced in this other area.

4 MR. COLLINS: No, we do not.

5 QUESTION: So you're just saying we're not
6 enforcing it in the overbroad areas, but that doesn't make
7 it any less overbroad it seems to me.

8 MR. COLLINS: I think that it makes it less
9 overbroad in the fact that if we looking at whether the
10 statute is overbroad, we have to look at whether it's real
11 and substantial overbreath. And, if indeed, the only
12 enforcement ambit of the statute is intentional
13 interference during an arrest, there are not too many
14 types of protected speech that could be alleged to be used
15 in that circumstance.

16 QUESTION: I think that would be a good argument
17 if you had a court decision that said this statute only
18 applies to arrests, but you don't. You told me it applies
19 to what Justice Stevens described. You're just saying, we
20 won't use it in that situation.

21 MR. COLLINS: I would also refer you, Justice
22 Scalia, to the complaint which is on page two of the Joint
23 Appendix which states that people are charged for
24 interrupting, willfully, intentionally interrupting a
25 police officer during an investigation.

1 QUESTION: Mr. Collins, the ordinance is broad;
2 there's no question about this. Are there not Texas state
3 statutes that cover some of the possible application of
4 the statute?

5 MR. COLLINS: There are three Texas statutes
6 that would cover assault.

7 QUESTION: And to that extent do they preempt
8 the ordinance?

9 MR. COLLINS: Yes, they do to that extent.

10 QUESTION: Can you give us some examples of
11 instances that are not preempted by state statutes?

12 MR. COLLINS: Yes. I think that the instances
13 in the record are prime examples of it. The cameramen who
14 were involved on the crime scene, interfering with the
15 officers in two cases.

16 The individual who attempted to hold back the
17 officers that were making a vice investigation into a
18 club. Those instances have been characterized by the
19 counsel in the lower court in this case as being
20 representative of the way the ordinance is enforced.

21 QUESTION: Well can you give a, any kind of a
22 definition of a so-called legitimate scope of the
23 ordinance.

24 MR. COLLINS: I think that the ordinance's
25 legitimate scope should be limited to intentional acts

1 during an investigation where an individual attempts to
2 interfere or interrupt a police officer.

3 QUESTION: Didn't the Court of Appeals here say
4 that the conduct that was involved here could
5 constitutionally be forbidden?

6 MR. COLLINS: I think it did, yes.

7 QUESTION: Said this was a, this was a proper,
8 this was a constitutional application of the ordinance but
9 that didn't cure the overbreadth problem.

10 MR. COLLINS: That's correct. That was the holding
11 the Fifth Circuit en banc.

12 QUESTION: How do you distinguish the Lewis Case
13 from this --

14 MR. COLLINS: Lewis was a case where the statute
15 was directly aimed at speech. Lewis prohibited
16 opprobrious language. Our statute does not prohibit
17 words, it prohibits conduct.

18 QUESTION: Well, but could not the statute under
19 your interpretation of its legitimate scope fall squarely
20 under Lewis? Can't you interrupt, can't you intend to
21 interrupt an investigation or arrest by speech alone?

22 MR. COLLINS: Yes you can, Justice O'Connor.

23 QUESTION: And so in your view, it would be
24 legitimate to apply the ordinance to that.

25 MR. COLLINS: That is correct.

1 QUESTION: So how do you distinguish Lewis?

2 MR. COLLINS: I distinguish Lewis because Lewis
3 on its face dealt with words, there was, it was an
4 overbroad statute. It simply said you could not speak
5 opprobrious words to anyone. I think we have a statute
6 here that is entirely different.

7 Here we're talking about you cannot interrupt a
8 police officer intentionally during an investigation. The
9 only other instance --

10 QUESTION: What, what, excuse me, what is left
11 other than speech that isn't preempted by the other state
12 laws? I mean, you say interrupt an investigation. How do
13 you do it other than by speech unless you physically stop
14 the officer. That would be covered by the assaulting an
15 officer statute.

16 MR. COLLINS: If you touched him or caused
17 bodily injury it would be covered by assault statute.

18 QUESTION: Right.

19 MR. COLLINS: But if you walked into the middle
20 of the investigation, stood next to the arresting officer
21 and the suspect and began talking in a loud voice while he
22 was reading the Miranda warning to the suspect --

23 QUESTION: That's speech.

24 MR. COLLINS: -- that's certainly is misconduct.

25 QUESTION: Right.

1 MR. COLLINS: It's also speech with action.
2 QUESTION: So what's the action?
3 QUESTION: So, in your view, it only applies to
4 speech?
5 MR. COLLINS: No, it will also apply to conduct.
6 It can apply to somebody who walks into the middle of an
7 investigation. Let's say they were holding a sign on the
8 side and the officer is doing an investigation of somebody
9 and they walk out in the street and while the officer is
10 interrogating the individual they take the sign and they
11 put it right in front of the officer and the individual.
12 They interfere with his --
13 QUESTION: Does this sign say something on it?
14 QUESTION: (Inaudible).
15 MR. COLLINS: I don't think it's relevant
16 whether the sign would say anything on it, or not.
17 QUESTION: It isn't? You don't think it would
18 be speech if it said something on it?
19 MR. COLLINS: It would be, it would be speech
20 but it would also be conduct.
21 QUESTION: Well didn't the ordinance --
22 QUESTION: It would be conduct?
23 QUESTION: -- in the Lewis case, wasn't it
24 directed only to obscene or opprobrious language with
25 reference to the police while in the actual performance of

1 their duty? Isn't that what the statute or ordinance in
2 Lewis involved?

3 MR. COLLINS: Yes, it was directed at, only at
4 language. It was directed at nothing else.

5 QUESTION: At the police. Directed at the
6 police --

7 MR. COLLINS: Directed at the police.

8 QUESTION: -- in the performance of their duty.
9 And the court said that's invalid. Now what do you have
10 left here that isn't covered by Lewis?

11 MR. COLLINS: I have a whole area of conduct. I
12 have situations where somebody may drive a car into the
13 middle of an investigation and park it there. I have
14 instances --

15 QUESTION: Well are you now saying that it could
16 not apply then to interruption by speech?

17 MR. COLLINS: No, I am not saying that.

18 QUESTION: You think it could apply to the
19 speech, the interrupt?

20 MR. COLLINS: Yes.

21 QUESTION: And how do you distinguish Lewis?

22 MR. COLLINS: I distinguish Lewis on the basis
23 that Lewis, the statute in Lewis was a statute that could
24 not apply to conduct. It was limited by its words to
25 speech.

1 The other thing that needs to be made, as far as
2 the ordinance goes, the other point that needs to be made
3 is that in many instances this ordinance is violated by an
4 individual who refuses to obey an officer. In some
5 respects the ordinance can be characterized as a refusal
6 to move on ordinance.

7 The other important factor to remember about the
8 ordinance is the ordinance itself does not include trivial
9 and insignificant interruptions within it's ambit.
10 There's testimony in the record by the city's chief
11 prosecutor that these are not considered to be violations
12 under the ordinance.

13 So what you have is an ordinance that regulates
14 and prohibits. And what it prohibits is within a narrow
15 range. It prohibits conduct intentionally done with the
16 view to interrupt and interfere with a police officer at
17 the time that they're making their investigation.

18 There are a number of statutes contained in the
19 appendix to the city's reply brief that use similar words
20 to the city's ordinance. They would use words like
21 hinder, obstruct.

22 Most of them have scienter requirements. Some
23 of them are a little different in that they do apply to
24 language by their own terms. We feel that the city
25 ordinance is valid and these ordinances are also valid.

1 QUESTION: Thank you, Mr. Collins. We'll hear
2 now from you, Mr. Wright.

3 ORAL ARGUMENT OF
4 CHARLES ALAN WRIGHT
5 ON BEHALF OF APPELLEE

6 MR. WRIGHT: Thank you, Mr. Chief Justice. If
7 the court please I'd like to begin, I suffer from the
8 disadvantage that Mr. Collins does that I was not present
9 at the trial in municipal court, but I think on the basis
10 of what is in the record that several of the answers that
11 he gave were not wholly accurate.

12 We have in the Joint Appendix at page three, the
13 judgment as signed by the state judge on that day in April
14 1982 and it says: "This day this cause was called for
15 trial and both parties appeared, announced ready for trial
16 and the defendant pleaded not guilty and the court having
17 heard the evidence is of the opinion that the defendant is
18 not guilty it as charged."

19 It seems to me that --

20 QUESTION: Said that could be a form, Mr. Wright,
21 that isn't inconsistent with Counsel's oral statement here.

22 MR. WRIGHT: It is certainly inconsistent, Mr.
23 Chief Justice, with his answer to you that the defendant
24 was not tried. The defendant was surely tried. It was
25 not a dismissal on some legal reason, it is an entry of

1 the judgment that he is not guilty and to me that amounts
2 to an acquittal.

3 In response to a question from Justice O'Connor
4 about the status of the ordinance, Mr. Collins said that
5 in an early stage in the code revision process, the
6 thought was that possibly the ordinance should be
7 repealed. If you will look at the footnote at the bottom
8 of page eleven of our brief, we state the fact that the
9 city, the Houston City Council unanimously passed motion
10 Number 811303 on April 7th, 1981, approving the city legal
11 department's recommendation to omit the ordinance from
12 what ultimately became the revised 1985 Code of Ordinances.

13 So that it was not merely a thought that
14 possibly we will repeal the ordinance. It was an act by
15 the City Council saying in the new Code of Ordinances this
16 is not to appear --

17 QUESTION: Well, Mr. Wright, perhaps I didn't
18 follow you just then. I understood the resolution to say
19 it would be omitted from the Code of Ordinances.

20 MR. WRIGHT: That's right.

21 QUESTION: Are you saying that inexorably means
22 that it was repealed?

23 MR. WRIGHT: It would have been had the city
24 attorney not in the request for council action in 1985
25 said, do not include section 3411A in the new code but do

1 not repeal it also because we are currently involved in a
2 lawsuit. We might have to pay substantial attorney's fees
3 if we repeal it.

4 QUESTION: So it isn't repealed.

5 MR. WRIGHT: It is not repealed, no. No, it is
6 still on the books. But it is on the books as the record,
7 as the actions of the Houston City Council clearly show
8 only because of the pendency of this lawsuit.

9 Getting to the constitutional issue itself, it
10 seems to me common ground here that this ordinance has
11 unconstitutional applications. In its jurisdictional
12 statement at page seven, the city said, "On its face the
13 ordinance can be applied to a wide variety of activities,
14 some of which concededly cannot constitutionally be
15 punished."

16 And again at page eleven of that document,
17 "Since the state courts may yet limit the ordinance's
18 application to proscribable conduct." And, Judge
19 Higginbotham speaking for the seven dissenting justices,
20 judges in the Court of Appeals, "Because the Houston
21 ordinance is undeniably susceptible to applications that
22 would impermissibly regulate or proscribe protected
23 speech." (Inaudible).

24 QUESTION: That the Court of Appeals held that
25 the conduct involved here was subject to sanction.

1 MR. WRIGHT: No, sir.

2 QUESTION: It isn't?

3 MR. WRIGHT: It is not. Judge Higginbotham in
4 his dissent says that we are all agreed that the ordinance
5 was unconstitutionally applied. Judge Ruben in the
6 majority opinion does not speak to that issue. In his
7 majority opinion in the panel he specifically said we are
8 not deciding that issue.

9 QUESTION: So it wouldn't, so it didn't
10 make any difference to him whether it was proscribable or
11 not?

12 MR. WRIGHT: No, on the view that he took of the
13 case he found it invalid for overbreadth --

14 QUESTION: Right.

15 MR. WRIGHT: -- did not, as we read the opinion,
16 reach the issue of as applied. That is the subject of a
17 cross appeal --

18 MR. WRIGHT: -- that we took and on which this
19 Court has not yet ruled.

20 MR. WRIGHT: Because (inaudible) --

21 QUESTION: Why did you take a cross appeal?

22 MR. WRIGHT: Pardon?

23 QUESTION: Why did you take a cross appeal?

24 MR. WRIGHT: To collect damages since he held
25 that we were not entitled to damages and also that for

1 reasons that we did not fathom that we're not entitled to
2 have expunged record of Mr. Hill's arrest.

3 QUESTION: But you don't, you weren't
4 appealing against any claim that the ordinance was
5 constitutionally applied in this case?

6 MR. WRIGHT: We are taking a cross appeal from
7 the failure to award us remedies to which we believe that
8 we are entitled.

9 The question was the ordinance constitutionally
10 applied in this case hardly can arise, Justice White,
11 because the ordinance does not apply to this case.
12 Raymond Hill was acquitted. The conduct that was the
13 centerpiece of all the discussion here was found by the
14 state court not to be a violation of the ordinance.

15 The cases here, in response to Justice
16 Marshall's question because Raymond Hill, having been
17 arrested four times for violation of this ordinance,
18 never having been convicted, has what all of the judges
19 below thought was reason to believe that this is a
20 significant threat that it may happen to him in the
21 future and --

22 QUESTION: (Inaudible) standing?

23 MR. WRIGHT: That's what gives him standing,
24 right.

25 QUESTION: Different from O'Shea and Rizzo and

1 Lyons, those cases?

2 MR. WRIGHT: I, the judges below thought so and
3 I submit so, yes. That this, this is a much stronger case
4 for standing than for example Steffel where there has
5 never even been one arrest, but in which the person sees
6 that his companion is arrested and so he brings the action
7 for a declaratory judgment that --

8 QUESTION: Mr. Wright, anyone who reads the
9 first dozen pages of Mr. Hill's testimony knows that he'll
10 be back. (Laughter).

11 MR. WRIGHT: That, that, that seems to me a fair
12 statement, Justice Marshall. (Laughter).

13 QUESTION: That's what the Court of Appeals
14 thought too, I guess.

15 MR. WRIGHT: Yes, I think so.

16 QUESTION: But we have an ordinance that
17 everyone agrees reaches some forms of speech that are
18 constitutionally protected. On the other side, the
19 argument then really is not is this ordinance overbroad,
20 of course it is.

21 The question has to be in the terms in which
22 this Court formulates it, is it substantially overbroad?
23 And there, our submission is that it is hard even to think
24 of a valid application of the ordinance given the Texas
25 preemption doctrine.

1 The Texas preemption doctrine has been something
2 that is, something that is very hard to persuade the city
3 to acknowledge the reality of. They know about it.

4 The city attorney's memorandum to the, to the
5 city council on why he recommended in 1981 that the
6 ordinance be repealed says because it's all covered by the
7 Texas Penal Code. The issue of preemption has been raised
8 by my colleague, Mr. Maness at every stage in this case
9 and yet it is not until the city's reply brief in this
10 Court that it mentions for the first time that there is
11 even a doctrine that city ordinances cannot work in the
12 same field in which there are state statutes.

13 QUESTION: Well is that necessarily relevant to
14 the constitutional analysis, Mr. Wright? Supposing that
15 we were to conclude by some mathematical calculation of
16 which you were capable that this ordinance is capable of
17 70 percent constitutional application, 30 percent
18 unconstitutional application. If it covered, if it could
19 apply in every situation which by its terms it applied to.
20 And, and this Court would say under those circumstances
21 it is not substantially overbroad; this is all
22 hypothetical.

23 But then you come in and say, well yes but in
24 70, in half of that 70 percent it can't apply because of
25 the Texas preemptious, preemption doctrine.

1 Is there a case from this Court saying that if
2 a, if an ordinance is preempted by state law it, it is not
3 applicable for overbreadth purposes?

4 QUESTION: I can't recall any.

5 MR. WRIGHT: I, can't recall the case either,
6 but I think that --

7 QUESTION: Well, I don't think there is one.

8 MR. WRIGHT: No, it may well be but on principle
9 that has to be the result I submit, Mr. Chief Justice,
10 that the reason for Broderick v. Oklahoma and for the
11 substantial overbreadth is that if a statute in most of
12 its applications is valid then we're not going to strike
13 it even though there is some imprecision and the stretch
14 is too far at the outside.

15 But if it turns out that the statute, though
16 making a pretty verbal display of covering a lot of
17 conduct that validly can be prohibited, in fact doesn't,
18 and I don't think it's a question of 30 percent, I would
19 be very hard put and be happy to hear Mr. Collins help us
20 with a single instance in which the ordinance can validly
21 be applied today as a matter of Texas law to conduct that
22 is not constitutionally protected.

23 He gave examples in his opening argument that,
24 I think he discounts the full range of Texas statutes.
25 Article 38.05, for example, --

1 QUESTION: Could you think of some valid
2 applications of the statute if there weren't this Texas
3 Preemption Doctrine.

4 MR. WRIGHT: Well sure. Assaulting a policeman.

5 QUESTION: Yes, a lot of them. There are a lot
6 of them. There would be a lot of them.

7 MR. WRIGHT: There would be a lot of them.
8 Yes.

9 QUESTION: Absent the preemption doctrine would
10 it be substantially overbroad?

11 MR. WRIGHT: I think that becomes a very close
12 question because I think there are so many impermissible
13 applications and it is used in practice so often in an
14 impermissible way. But I think, given the preemption
15 doctrine that there -- I have not yet been able to think of
16 a single valid application of the statute to something
17 that would not be constitutionally protected.

18 QUESTION: Mr. Wright, is it clear that whether
19 overbroadness is, overbreadth is substantial overbreadth
20 is determined on the basis of proportionality? What the
21 statute covers versus what the statute, properly covers
22 versus what the statute improperly covers?

23 Because that seems to me a very strange doctrine
24 that the same statute can be valid or invalid depending
25 upon whether its latched on to another statute that has a

1 lot of valid stuff in it, or not.

2 This same ordinance could be perfectly all right
3 if it were elevated to the state level and put together
4 with the state statutes that have preempted the valid
5 portion of it, or arguably that --

6 MR. WRIGHT: There is a great deal, Justice
7 Scalia, of the overbreadth doctrine as this Court seems to
8 have formulated it, that I find very strange indeed.

9 It seems to me that the Court would do well as
10 it twice has in Justice Blackmun's opinion in Munson and
11 in Justice White's opinion in Ferber to read Professor
12 Monahan's article in the 1981 Supreme Court Review, I
13 think it offers analytically sound approach to all of
14 this that gets you out of a lot of the verbal traps of
15 the sort that you have just instanced.

16 But the real issue is not how do we count up the
17 number of valid and invalid things, it's really a less
18 restrictive means approach. Is there a way that the state
19 can accomplish its legitimate purpose of protecting the
20 police without sweeping into interference with people's
21 rights to express themselves.

22 That, I think, is the way you ought to come to
23 overbreadth problems. But here, I submit, there really is
24 very little, if anything, that is a valid application of
25 this statute.

1 And I was especially pleased to hear my friend,
2 Mr. Collins, refer the Court to page 77 of the Joint
3 Appendix, Officer Kelley's testimony that it's only in the
4 course of an investigation you do this. Because I was re-
5 reading the Joint Appendix this week-end and something
6 struck me that somehow I'd missed the significance of it
7 in all my other preparation of the case.

8 On that very page, Officer Kelley says that in
9 the course of my investigations I have been interrupted
10 thousands of times without making an arrest. And the
11 court intervenes; Judge DeAnda says: how often have you
12 made an arrest for violation of this ordinance? And Officer
13 Kelley says: twice, this case and one other that's
14 referred to.

15 It seems to me the danger in an ordinance where
16 an officer feels that I've been interrupted thousands of
17 times and he only makes an arrest twice suggests that the
18 real flaw in this ordinance is that it does give such wide
19 discretion to the arresting officer to decide what is an
20 interruption and what is not.

21 But, even if the person he arrests is acquitted,
22 as Raymond Hill was, to be arrested and to spend 18 hours
23 in jail is not insignificant. The probability, I hardly
24 need remind this court is that sweeping statutes of this
25 kind are not likely to be used against people who wear

1 three-pieced suits. They are likely to be used against
2 those who are not at the top of the ladder socially.

3 I well remember in 1967, the night before the
4 Texas/Oklahoma game, I was in Dallas and observing what
5 I observed, what I thought to be improper police force in
6 arresting a young man for allegedly jaywalking, my friend
7 and I went to every police officer in sight and said:
8 Officer, I want to get your name and badge number for
9 the 1983 action I am bringing Monday morning.

10 And the officers were all very cooperative and
11 indeed we didn't have a pen so we'd have to say, would you
12 please lend us your pen and they would.

13 Now I am glad that the game was played in
14 Dallas and not in Houston because I take it that I would
15 have violated the ordinance, although it seems to me
16 highly unlikely that I would have been prosecuted for
17 violating it.

18 I want to change slightly, if I may, an example
19 that was discussed during Mr. Collins' argument and put it
20 in the terms that the American Civil Liberties Union did
21 in its amicus brief.

22 Let us suppose that we have a police officer who
23 is actually writing a ticket and someone comes up to him
24 and says, excuse me officer, a man was shot in the next
25 block.

1 I do not see any way one can read that ordinance
2 without concluding that that is a violation of the
3 ordinance even though it is hard to see how you protect
4 the police or what social value there is in purporting to
5 --

6 QUESTION: Don't you think the Texas courts
7 might take that into consideration in construing the
8 ordinance?

9 MR. WRIGHT: It's awfully hard, Mr. Chief
10 Justice, when you have an ordinance that says, "in any
11 manner interrupt". Now there's been talk here of getting a
12 limiting construction or perhaps belatedly after five
13 years of litigation sending the case over to see if the
14 state court will tell us what it means.

15 I do not see how a state court can put a
16 limiting construction on it in the sense of any valid
17 interpretative process clear where there is no legislative
18 history of what the Houston City Council meant in 1886
19 when it originally adopted the ordinance of the words
20 themselves, "in any manner interrupt". Those are very
21 broad words. It is hard to say as a matter of
22 interpretation they apply only to physical conduct or
23 things of that sort.

24 If there is a need in Houston that is not
25 covered by the state statutes and I commend particularly

1 to the Court the statement we quoted, pages 17 and 18 of
2 our brief, from the committee that drew up the Texas
3 Penal Code in 1974. It seems to me it's a sensitive,
4 thoughtful statement of why we aren't legislating more
5 broadly than we are in this murky constitutional waters
6 of disorderly conduct.

7 But if there is a need that is met here, the way
8 to achieve that need is not to ask some court to pretend
9 that we are interpreting the intention of the Houston City
10 Council. It is for the Houston City Council to adopt an
11 ordinance that will address itself to the things it's
12 concerned about that are not already adequately protected
13 against by state legislation.

14 QUESTION: Mr. Wright, the Seconds, this is a
15 hundred year old ordinance and just for fun, I looked up
16 interrupt in the Second Webster's International and it
17 gives an obsolete meaning of the word. It says obsolete,
18 but a hundred years is old enough to obsolesce I suppose,
19 and the obsolete meaning is about the same obstruct,
20 prevent, something like that.

21 Now, you know, if the state court said that's
22 what it means, obstruct or prevent, would that be close
23 enough to validate it? I mean there ought to be something
24 that covers actions including speech, I suppose, where an
25 officer is trying to make an arrest and he gets a lot of

1 verbal abuse from someone or someone trying to excite a
2 crowd against the officer. If you would acknowledge that
3 that's a legitimate subject now.

4 MR. WRIGHT: Of course I would. But I would go
5 on, Justice Scalia, to say that that's something, that what
6 is needed is a narrowly drawn, regulatory statute rather
7 than trying to breathe validity into obsolete meanings of
8 the word in a century old ordinance.

9 MR. WRIGHT: Just have the state court interpret
10 it, to put in a modern word for what the old one was,
11 right?

12 MR. WRIGHT: Well is that a valid part of the
13 interpretive process? I would wonder about that. And I
14 wonder even whether there is anyway to get a state court
15 interpretation of it.

16 We now have a, have had since January 1st a
17 certification procedure in Texas. But whether a Texas
18 court, given their historic reluctance in these matters,
19 is likely in fact to answer some general question about
20 the meaning of the ordinance seems to me quite unlikely.

21 QUESTION: What is your understanding of the
22 relationship between the overbreadth doctrine and the
23 ability to limit an ordinance in one city? Suppose an
24 ordinance covers A and B, and A may validly be,
25 unconstitutionally be prohibited. B may not. And the

1 defendant is accused of A. But he says that you can't
2 convict me as long as this statute meets B, reaches B.

3 I suppose, even though a state court might
4 easily narrow the statute to constitutional proportions
5 that this defendant can't be convicted.

6 MR. WRIGHT: I think --

7 QUESTION: Just because he's done A.

8 MR. WRIGHT: I think that it would, depends on
9 how the case comes to you. If the case has come up
10 through a state court, you --

11 QUESTION: (Inaudible) this is in the federal
12 court. This is in the federal court.

13 MR. WRIGHT: In that case you would consider
14 whether there is a realistic possibility of a limiting
15 construction from the state court.

16 QUESTION: What if there was?

17 MR. WRIGHT: If there is a realistic
18 possibility then abstention becomes possible --

19 QUESTION: You couldn't uphold the conviction
20 though. You would have to, without sending it to the
21 state court.

22 MR. WRIGHT: In federal court, you wouldn't be
23 upholding a conviction I wouldn't think.

24 QUESTION: I mean, you wouldn't uphold the
25 ordinance. You would say the ordinance is invalid until

1 and unless there is a limiting instruction.

2 MR. WRIGHT: You would either say it's invalid
3 or if there seemed a reasonable, a real possibility of
4 getting an answer by abstention from the state court, you
5 might abstain.

6 QUESTION: Yes.

7 MR. WRIGHT: But it seems to that Justice
8 O'Connor in the Hawaiian Housing case to which we heard
9 reference early today made the very important point that
10 there are always possibilities.

11 Possibilities are not enough for abstention,
12 that the test be something that is realistically likely to
13 happen.

14 And I think that anyone who studies the
15 practices of the Texas courts in matters of this sort plus
16 the problems in trying to put a construction on this
17 ordinance would have to say that it is not realistically
18 likely to happen. I would have --

19 QUESTION: Well, we could test out the
20 certification procedure, I guess.

21 MR. WRIGHT: Well you can if Mr. Hill wants to
22 be a guinea pig I suppose we'll have to test the
23 certification procedure. But I wonder, Justice O'Connor,
24 what question it is that you would put to the Texas Court
25 of Criminal Appeals other than, can you think of a

1 constitutional meaning for this ordinance and if all the
2 Texas Court of Criminal Appeals can say is, well it would
3 be unconstitutional if it applied merely to speech so we
4 will say that it only applies to physical conduct, then in
5 effect what you have done is simply given the state court
6 the first opportunity to decide that you can't apply it
7 because of the federal Constitution contrary to what
8 Wisconsin v. Constantineau indicates is the appropriate
9 practice.

10 QUESTION: Suppose it just said, interrupt means
11 obstruct?

12 MR. WRIGHT: I would have considerable
13 difficulty still --

14 QUESTION: Then you would have considerable
15 difficulty with, not just this ordinance, but the whole
16 mess of ordinances that are included as an appendix to the
17 reply brief of the state.

18 MR. WRIGHT: I would have, not at all, Justice
19 Scalia, and I am glad that you addressed that point
20 because it seems to me that these ordinances that are
21 contained in the reply brief are a remarkably unhelpful
22 collection of things, many of them on their face, have no
23 possible application.

24 The very first one, page 1-A, the Federal
25 Statute, whoever forcibly assaults. Page 2-A, the Alabama

1 and Alaska statutes both are resisting or interfering with
2 arrest and the Alaskan one requires force, risk of
3 physical injury to any person. That is true of many of
4 those.

5 QUESTION: Others that say for example, any
6 person who shall in any way or manner hinder, obstruct,
7 molest, resist or otherwise interfere with any city
8 officer.

9 MR. WRIGHT: But that doesn't help us.

10 QUESTION: It's very hard to get more precise
11 language to prevent what they're trying to prevent.

12 MR. WRIGHT: With respect, I don't think, I do
13 not agree that it is. They make rather fun in their
14 brief, of the fact that we say the Texas Disorderly
15 Conduct Statute, 42.01, covers much of the ground that
16 34.11 does and yet, the Texas Disorderly Conduct Statute is
17 not the ancient, vague sorts of disorderly conduct
18 statute that this Court has worried with in the past.

19 It bears a clear ancestry from the model penal
20 code and seems to me a remarkably careful statute. I'm
21 not saying that I couldn't imagine some constitutional
22 problems with it, but that on the whole I would have no
23 difficulty with it.

24 But even with regard to those statutes and
25 ordinances here that use words that on their face might

1 appear to reach the kind of situation we are talking
2 about, we don't know anything until we know, (a) how is
3 that statute or ordinance interpreted, if it has been in
4 the state, and (b) how in fact is it used in practice?

5 For example, they have here in their appendix at
6 page 23, a Utah statute. And then they also have a Salt
7 Lake City Ordinance at page 34-A. In our brief, in the
8 footnote on page 22, we have cited to you a Utah case in
9 which the court says: we cannot believe that the
10 legislature intended to make it an offense merely to
11 interrupt or distract a policeman.

12 And so, despite the breadth of language in the
13 Utah statute and the Salt Lake City ordinance, what Mr.
14 Hill was arrested for could not have been a criminal
15 offense in Utah.

16 And I suspect that if we were to make an
17 examination that we would find that either by court
18 interpretation or by administrative implementation that
19 very few if any places in the country would hold that the
20 police can arrest for matters as insignificant as the
21 Houston Police arrest people for by the thousands. In my
22 view, the court below properly held the Houston Ordinance
23 unconstitutional and we urge you affirm it.

24 QUESTION: Professor Wright, I think,
25 obviously you would agree that the part of the ordinance

1 that deals with physical interruption, if that were all
2 that were before us, would be perfectly lawful.

3 MR. WRIGHT: Would be what, sir?

4 QUESTION: Physical interruption rather than
5 speech? The pedestrian --

6 MR. WRIGHT: That would raise no First Amendment
7 problem. They concede however, page ten of their reply
8 brief that that portion of the ordinance is no longer
9 enforceable because of the state preemption law.

10 QUESTION: Preemption, right. So that leaves a
11 speech component of this ordinance. Are you suggesting
12 you can't imagine any situation where speech alone could
13 interrupt an officer in the discharge of his duty?

14 MR. WRIGHT: Oh, no. No, I'm not suggesting
15 that at all.

16 QUESTION: The problem is one that Justice
17 Scalia raised on how do you write that out?

18 MR. WRIGHT: I think that they can if they need
19 too. I really doubt that they need to. I think, for
20 example, Section 38.05 of the state statutes on hindering
21 an investigation is a very good statute and other
22 portions. We have said throughout in our brief, Justice
23 Powell, that of course there are times when even words
24 constitutionally are proscribable. Contrary to what is
25 suggested in reply brief we have never argued that pure

1 speech is all that's left. That is if words in themselves
2 are a threat of imminent violence, you can arrest.

3 If the words are reasonably likely to incite
4 others to imminent violence that also can be made
5 criminal. Those are the general, normal bounds that the
6 First Amendment puts on the situation in which words by
7 themselves can be regarded as closely enough brigaded with
8 actions so that one is inseparable from the other to use
9 Justice Douglas's phrase.

10 We think that you can draw, if it is needed, an
11 ordinance that will reach those situations where the city
12 has a valid concern.

13 QUESTION: May I put a very simple example to
14 you? Let's assume a motorist, at a very busy intersection
15 with a traffic officer in the center of the intersection
16 directing traffic concluded that the officer had made a
17 dreadful mistake and had directed him or her to move, or
18 not to move at the right time.

19 The individual gets out of the automobile, goes
20 over to the officer and engages in extended conversation.
21 Heavy traffic, the officer has to try to direct the
22 traffic and the person is interrupting his efforts to
23 conduct his duties. Don't you think that would be
24 unlawful?

25 MR. WRIGHT: I think yes.

1 QUESTION: And the problem I come back to and
2 this is one you have addressed is how one draws an
3 ordinance that would cover a situation like that and yet
4 not be overbroad.

5 MR. WRIGHT: I repeat that I think it can be
6 done, but I would take my stand with the draftsmen of the
7 Texas Penal Code and that portion of the report at page 18
8 of our brief that in case of doubt it is better to under
9 penalize than to over penalize. That this is the lesson
10 taught us by our regard for liberty. That if we have to
11 err, it is better to err in the direction of having the
12 policeman hear too much talk than of arresting people for
13 talking.

14 You yourself, Justice Powell, in your concurring
15 opinions twice in Lewis pointed out that we should expect
16 the police to be trained and to be better able to resist
17 words that are directed at them than our populous
18 generally. And it seems to me that that is right and that
19 a policeman carrying as they normally do a gun and with a
20 badge of authority that I think they're going to be able
21 to take care of themselves. I think --

22 QUESTION: Sometimes it involves language as it
23 occurred here that isn't just directed to the policeman,
24 but it stirs up a crowd as well and the policeman worries
25 about that.

1 Now does he have to wait until the crowd is
2 actually moved to violence? I'm not talking about
3 expressly saying to the crowd, let's assault the
4 policemen, but violent protests saying, you know, you're
5 only doing this because you're picking on someone and the
6 person was innocent and what not.

7 Does the policeman really have to wait until the
8 crowd gets violent before he --

9 MR. WRIGHT: I think, Justice Scalia, the
10 statute for example that was upheld in Colten v. Kentucky
11 and that seems to me to address itself to that kind of a
12 problem in a much more effective way. The elements in
13 that statute, as the Court will remember are first, the
14 crime was not merely speaking.

15 The crime was refusal to disperse in response to
16 a lawful order by a law enforcement officer to do so. So
17 you had to first be given the order to disperse. It has
18 to be lawful or it will fail. It must be with intent to
19 cause public inconvenience, annoyance, or alarm and the
20 Kentucky Court of Appeals had put a limiting construction
21 on it that this ordinance, this statute does not apply to things
22 that are not predominately speech, but only to those in
23 which speech is an incidental element of a dangerous
24 situation. And this court accepted that limiting
25 construction.

1 I think those show the kinds of possibilities
2 there are of protecting these perfectly legitimate
3 situations without allowing the police unfettered
4 discretion to make arrests where it is not legitimate to
5 do so.

6 QUESTION: Thank you, Mr. Wright.

7 Mr. Collins, you have eight minutes remaining.

8 REBUTTAL ARGUMENT OF

9 ROBERT J. COLLINS

10 ON BEHALF OF APPELLANT

11 MR. COLLINS: In response to the argument about
12 the unfettered discretion of the Houston Police
13 Department, I think that the testimony of Officer Kelley
14 in the record is a perfect example of the fact that this
15 discretion is not abused.

16 Over a thousand instances of interruptions and
17 only two of them did he feel qualified under the terms of
18 the ordinance. In regards to the fact that the city of
19 Houston may be able to write a more precise ordinance, I
20 feel we have a precise ordinance.

21 It applies in a very narrow band of
22 circumstances. There are cases that this Court has held
23 before --

24 QUESTION: Mr. Collins, do you, I just want to
25 be sure of one thing. Do you agree with your opponent's

1 statistics that the, there are about a thousand arrests
2 every year under this ordinance?

3 MR. COLLINS: Yes, we agree with it.

4 QUESTION: And about how many convictions under
5 the ordinance?

6 MR. COLLINS: I do not know, Your Honor.
7 Insofar as the language and what we are prohibiting, we are
8 simply prohibiting utterances intentionally directed at
9 disturbing a legitimate governmental function.

10 I think this case is very similar to the
11 situation that existed in the Grayned case where the
12 speech, whether it was violent or non-violent, was not
13 allowed where it would tend to disturb a school in
14 session. I think we have the same type of situation here.

15 If we have a situation where the substantial
16 reach of the ordinance covers situations that the city
17 has a legitimate interest in preventing and I think in
18 determining substantiality of overbreadth that one needs
19 to weigh the substantial interest that the city has
20 against the potential effect on speech. Especially the
21 potential chilling effect on speech.

22 Nowhere today have we heard anything about
23 anyone who this ordinance has prevented them from
24 complaining about the incidents that Mr. Hill wished to
25 complain about.

1 Those incidents can be complained about in many
2 places and at many times other than at the scene of an
3 arrest. They can be complained at city council. They can
4 be complained at by picketing the police department, but
5 the fact that we are involved in a situation that is a
6 highly delicate situation, that of an investigation,
7 detention and arrest, makes it an inappropriate place to
8 allow the unfettered exercise of freedom of speech.

9 Most of the examples that we've talked about
10 today have been examples of an officer walking up to, or
11 an officer writing a ticket and the man comes up and says
12 he was shot in the back and he can be arrested.

13 Well, I don't think he would be arrested under
14 that ordinance. I think a police officer would turn
15 around and say where.

16 Part of a police officer's job is communicating
17 with citizens. But that's not what we're dealing here.
18 It's not an ordinance that says you cannot talk to a
19 police officer.

20 It's not an ordinance that says you cannot annoy
21 a police officer. It's an ordinance that says you cannot
22 obstruct a police officer who is involved in an
23 investigation.

24 QUESTION: That isn't what it says at all, is
25 it?

1 MR. COLLINS: It has a scienter requirement and
2 the fact is that the city has applied it only in
3 investigations. The record is clear as to the police
4 officer saying that that's what they have to have, intent.

5 QUESTION: Mr. Collins, if that's the case when
6 they've repealed it and they're putting it back in the
7 code, why don't they re-write it in that fashion? Cause
8 it surely, on its face, it's much broader than that. You
9 would agree to that.

10 MR. COLLINS: I would agree on its face it is,
11 but I also think that this Court has in the past taken
12 cognizance of administrative determinations and
13 administrative constructions placed on it.

14 QUESTION: I mean, just the very change of the
15 words from execution of his duty to during an
16 investigation which carve out a big chunk of this
17 ordinance. And I don't know why the prosecutor doesn't
18 tell the city counsel that when they've got the thing on
19 the shelf over there.

20 MR. COLLINS: Again, if we go back and look at
21 what people are charged with and what they're tried for in
22 the Appendix, it is willfully, or intentionally
23 interrupting an officer during an investigation.

24 QUESTION: This great investigation were to find
25 out if a man was drunk or crazy, right?

1 MR. COLLINS: No, it was not, Justice Marshall.

2 QUESTION: Well, what else was he investigating?

3 MR. COLLINS: He was attempting to find out why
4 the man was standing in the middle of the street, blocking
5 traffic.

6 QUESTION: Well can you give me any other reason
7 than those two? (Laughter).

8 MR. COLLINS: Not at this point in time. No,
9 Your Honor.

10 QUESTION: Well that's, you going to investigate
11 to find a third reason?

12 MR. COLLINS: I believe the reason that was
13 given, and it's in the record, is that the individual
14 wanted to stop traffic so he could back a truck out into
15 the street.

16 In conclusion, what I would like to say is that
17 this ordinance is a constitutional regulation and
18 it protects police officers in the performance of their
19 duties without impinging and is not on a great deal
20 protected free speech.

21 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
22 Collins. The case is submitted.

23 MARSHAL WONG: The honorable Court is now adjourned
24 until tomorrow at 10:00.

25 (Whereupon, at 2:53 p.m. oral argument in the

1 above-entitled case was submitted).

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CERTIFICATION

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#86-243 - CITY OF HOUSTON, TEXAS, Appellant V. ~~RAYMOND WAYNE HILL~~

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BY Paul A. Richardson

(REPORTER)

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