LEWIS v. CITY OF NEW ORLEANS

SUPREME COURT OF THE UNITED STATES
415 U.S. 130
February 20, 1974
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This is another "overbreadth doctrine" case, perhaps more important for the dissent, so we will get there quickly.

OPINION: Justice Brennan...[T]he Louisiana Supreme Court...sustained appellant's conviction upon a charge of addressing spoken words to a New Orleans police officer in violation of [a] New Orleans Ordinance....[W]e reverse. We hold that [the statute], as construed by the Louisiana Supreme Court, is overbroad in violation of the First and Fourteenth Amendments and is therefore facially invalid. [It]...provides:

> It shall be unlawful and a **breach of the peace** for any person wantonly to **curse** or revile or to use **obscene or opprobrious language** toward or with reference to any member of the city **police** while in the actual performance of his duty.

[Officer Berner testified that Mrs. Lewis said, "you god damn m. f. police -- I am going to the Superintendent of Police about this."]...[The statute] plainly has a broader sweep than the

constitutional definition of "fighting words" announced in *Chaplinsky*[1] and reaffirmed in *Gooding*[2], namely, "those words which by their very utterance inflict injury or tend to incite an immediate breach of the peace."...

[T]he proscription of the use of "opprobrious language" embraces words that do not "by their very utterance inflict injury or tend to incite an immediate breach of the peace." That was our conclusion as to the word "opprobrious" in the Georgia statute held unconstitutional in *Gooding* v. *Wilson*, where we found that the common dictionary definition of that term embraced words "conveying or intended to convey disgrace" and therefore that the term was not limited to words which "by their very utterance inflict injury or tend to incite an immediate breach of the peace." The same conclusion is compelled...[here], for we find nothing in the opinion of the Louisiana Supreme Court that makes any meaningful attempt to limit or properly define -- as limited by *Chaplinsky* and *Gooding* -- "opprobrious," or indeed any other term in §49-7. **In that circumstance it is immaterial whether the words appellant used might be punishable under a properly limited statute or ordinance.** We reaffirm our holding in *Gooding v. Wilson* in this respect...Since §49-7, as construed by the Louisiana Supreme Court, is susceptible of application to protected speech, the section is constitutionally overbroad and therefore is facially invalid. [Reversed.]

CONCURRENCE: Justice Powell...Quite apart from the ambiguity inherent in the term "opprobrious," words may or may not be "fighting words," depending upon the circumstances of their utterance. It is unlikely, for example, that the words said to have been used here would have precipitated a physical confrontation between the middle-aged woman who spoke them and the police officer in whose presence they were uttered. The words may well have conveyed anger and frustration without provoking a violent reaction from the officer...[A] properly trained officer may reasonably be expected to "exercise a higher degree of restraint" than the average citizen, and thus be less likely to respond belligerently to "fighting words."

What if, instead of referring to words uttered against **police**, the Louisiana statute read, "It shall be unlawful and a breach of the peace for any person wantonly to curse or revile or to use obscene or opprobrious language toward or with reference to any **judge** while in the actual performance of his or her duty?" And, when Ms. Lewis came before the judge in this case, what if she had said, "you god damn m. f. judges -- I am going to [the Governor] about this"? And, what if the judge held Ms. Lewis in contempt of court for her choice of words? Would the Supreme Court reverse that conviction due to overbreadth of the statute?

This ordinance, as construed by the Louisiana Supreme Court, confers on police a virtually unrestrained power to arrest and charge persons with a violation. Many arrests are made in "one-on-one" situations where the only witnesses are the arresting officer and the person charged.

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[1]Case 1A-S-8 on this website.

[2]Case 1A-S-21 on this website.

All that is required for conviction is that the court accept the testimony of the officer that obscene or opprobrious language had been used toward him while in performance of his duties...The opportunity for abuse, especially where a statute has received a virtually open-ended interpretation, is self-evident.

I completely understand the "opportunity for abuse." Would there be similar "opportunity for abuse" in the judicial setting? Or, are judges "better" than "cops"? Should the Court even be examining the issue of "opportunity for abuse"? Isn't this a legislative function? Just wondering.

DISSENT: Justice Blackmun...The extreme to which we allow ourselves to be manipulated by theory extended to the end of logic is exemplified by the Court's opinion in this case and in its blood brother of two years ago, *Gooding v. Wilson.* The "overbreadth" and "vagueness" doctrines...are being invoked indiscriminately without regard to the nature of the speech in question, the possible effect the statute or ordinance has upon such speech, the importance of the speech in relation to the exposition of ideas, or the purported or asserted community interest in preventing that speech...This is the compulsion of a doctrine that reduces our function to parsing words in the context of imaginary events. **The result is that we are not merely applying constitutional limitations, as was intended by the Framers,...but are invalidating state statutes in wholesale lots because they "conceivably might apply to others who might utter other words."** *Gooding v. Wilson*...I believe my Brethren of the majority merely seek a result here, just as I was convinced they sought a result in *Gooding*...

Inherent in the use of these doctrines and this standard is a judicial-legislative confrontation. The more frequent our intervention, which of late has been unrestrained, the more we usurp the prerogative of democratic government. Instead of applying constitutional limitations, we do become a "council of revision." If the Court adheres to its present course, no state statute or city ordinance will be acceptable unless it parrots the wording of our opinions. This surely is not what the Framers intended and this is not our constitutional function...

The speech uttered by Mrs. Lewis to the arresting officer "plainly" was profane, "plainly" it was insulting, and "plainly" it was fighting. It therefore is within the reach of the ordinance, as narrowed by Louisiana's highest court. The ordinance, moreover, poses no significant threat to protected speech. And it reflects a legitimate community interest in the harmonious administration of its laws. Police officers in this day perhaps must be thick skinned and prepared for abuse, but a wanton, high-velocity, verbal attack often is but a step away from violence or passioned reaction, no matter how self-disciplined the individuals involved. In the interest of the arrested person who could become the victim of police overbearance, and in the interest of the officer, who must anticipate violence and who, like the rest of us, is fallibly human, legislatures have enacted laws of the kind challenged in this case to serve a legitimate social purpose and to restrict only speech that is "of such slight social value as a step to truth that any benefit that may be derived from [it] is clearly outweighed by the social interest in order and morality." *Chaplinsky*. In such circumstances we should stay our hand and not yield to the absolutes of doctrine.

Did Justice Blackmun get this one right?