CASE COMMENTS

THE FIRST AMENDMENT AND WARNINGS TO CRIMINAL SUSPECTS: CALIFORNIA PROHIBITS VERBALLY OBSTRUCTING ARREST

In re Angel P., 259 Cal. Rptr. 838 (Cal. Ct. App. 1989)

In *In re Angel P.*,[1] the California Court of Appeal for the Fourth District upheld, on a first amendment challenge, a state statute prohibiting verbal interruptions of a police officer.[2] The court also ruled that a verbal warning to a person selling narcotics to an undercover police officer, intended to delay or obstruct the arrest of the addressee, is not constitutionally protected speech.[3]

In *Angel*, an undercover narcotics officer was purchasing drugs from a

---

1. 259 Cal. Rptr. 838 (Cal. Ct. App. 1989).

The Supreme Court of California denied review of the appellate court decision and ordered that the decision not be published pursuant to rule 976 of the California Rules of Court. This rule provides in pertinent part:

> No opinion of a Court of Appeal or an appellate department of the superior court may be published in the Official Reports unless the opinion:
> (1) establishes a new rule of law, applies an existing rule to a set of facts significantly different from those stated in published opinions, or modifies, or criticizes with reasons given, an existing rule;
> (2) resolves or creates an apparent conflict in the law;
> (3) involves a legal issue of continuing public interest; or
> (4) makes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law.

CAL. R. CT. 976(b) (West 1989). Rule 977 further provides: "An opinion that is not ordered published shall not be cited or relied on by a court or a party in any other action or proceeding except [when a party to the unpublished action is affected by its result]." CAL. R. CT. 977(a) (West 1989).

Because the *Angel* decision was ordered not published in the official California Reporter, this Comment will cite only the West publication.

2. 259 Cal. Rptr. at 842.

3. The first amendment to the U.S. Constitution, which protects speech, provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. CONST. amend. I.

Free speech is protected from state regulation through the fourteenth amendment, which provides in part: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." *See* Jobin v. Arizona, 316 U.S. 584, 594 (1942) (freedom of speech is a fundamental liberty protected by the fourteenth amendment); Lovell v. City of Griffin, 303 U.S. 444, 450 (1938) (municipalities, as state actors, may not abridge free speech under the fourteenth amendment). *See also* Comment, *Constitutional Law: First Amendment Protection Encompasses Verbal Challenges to Police Action*, 27 WASHBURN L.J. 369, 381 (1988) (first amendment protects verbal challenges to police) [hereinafter Comment, *Verbal Challenges to Police Action*].

street dealer when the defendant Angel,[4] a bystander, pointed at the officer and yelled, "Narco, narco."[5] The dealer ran away;[6] Angel was arrested and charged with violating California Penal Code section 148,[7] which prohibits willfully resisting, delaying, or obstructing a police officer.[8] The Superior Court of Orange County convicted Angel. The Cal-

4. Angel was a minor. 259 Cal. Rptr. at 842. The *Angel* court did not discuss whether a defendant's minority should be considered when analyzing a first amendment defense. Supreme Court precedent, however, indicates that the speech of school children is constitutionally protected. *See, e.g.*, Tinker v. Des Moines Indep. School Dist., 393 U.S. 505, 506 (1969) ("It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.").

5. 259 Cal. Rptr. at 839. The court did not indicate whether Angel knew the dealer, but it is possible that he was working as a lookout. *See* Morgenthau, *Children of the Underclass*, NEWSWEEK, Sept. 11, 1989, at 22 ("The lookouts—little boys, some as young as 6—yell warnings as the police drive by, and the [crack dealers] run through a maze of alleys."). Even if Angel was not employed as a lookout, friendship or other loyalty may have motivated his warning. For an argument that such warnings are not deterrable, see Note, *Types of Activity Encompassed by the Offense of Obstructing a Public Officer*, 108 U. PA. L. REV. 388, 409 (1960) [hereinafter Note, *Obstructing a Public Officer*].

6. 259 Cal. Rptr. at 839. The dealer was never apprehended. *Id. See infra* notes 61-65, 75-80 and accompanying text.

7. Section 148 provided:

> Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician . . . in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, is punishable by a fine not exceeding one thousand dollars ($1000), or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

CAL. PENAL CODE § 148 (West 1988). When Angel was indicted, § 148 contained only the proscription quoted above. In 1989, however, the California legislature added to § 148 provisions prohibiting the taking of a weapon or firearm during the resistance, delay, or obstruction of a police officer. *See* CAL. PENAL CODE § 148(b)-(e) (West Supp. 1990). The amendment renumbered the obstruction provision as § 148(a) but did not alter the provision in any respect. The amendment provided that "[a] violation of subdivision (a) may not be charged in addition to a charge of a violation of subdivision (b), (c), or (d)." *Id.* § 148(e).

The statute was enacted in 1872 and was amended in 1983 to include resistance, delay, or obstruction of a "peace officer." 1983 Cal. Stat. ch. 73, § 1. Prior to the 1983 amendment, however, courts interpreted the term "public officer" to include police officers. *See, e.g., In re* Gregory S., 112 Cal. App. 3d 750, 169 Cal. Rptr. 540 (Cal. Ct. App. 1981) (applying § 148 to obstruction of police officer).

8. Section 148 may be violated without the use of force. *See* People v. Allen, 109 Cal. App. 3d 981, 987, 167 Cal. Rptr. 502, 506 (Cal. Ct. App. 1980) (hiding from police officer attempting to effect an arrest constitutes a delay under § 148); *In re* Bacon, 240 Cal. App. 2d 34, 55, 49 Cal. Rptr. 322, 334 (Cal. Dist. Ct. App. 1966) (conviction upheld for protestors who went limp when police attempted to arrest them, thereby forcing police to drag or carry them). However, the statute requires that the defendant willfully obstruct or delay an officer performing his or her duty. Some California decisions have interpreted § 148 as a general intent crime. *See, e.g.*, People v. Lopez, 188 Cal. App. 3d 592, 599, 233 Cal. Rptr. 207, 211 (Cal. Ct. App. 1986) (requiring only that defendant knew or should have known that the people chasing him were police officers); People v. Roberts, 131 Cal. App. 3d Supp. 1, 9, 182 Cal. Rptr. 757, 761 (Cal. App. Dep't Super. Ct. 1982) (finding no legislative

ifornia Court of Appeal for the Fourth District affirmed and *held*: section 148 properly allows punishment for a verbal warning intended to delay a police officer.[9]

The first amendment guarantees individuals the right of speech free from governmental interference.[10] The Constitution proscribes the punishment of speech in two ways. Initially, the first amendment may protect a particular instance of speech, making the prohibition of such speech unconstitutional.[11] In addition, a statute may be unconstitutionally "overbroad" if it prohibits a "substantial amount" of protected speech, in which case a court will strike down the law despite its applica-

---

intent to create a specific intent crime). However, the court in *In re Angel P.* ruled that § 148 requires the specific intent to delay or obstruct an officer's performance of his duty. *See infra* note 54 and accompanying text. In contrast, violations of § 148(b), (c), or (d) arguably require a use of force because each subsection prohibits the removal or attempt to remove a weapon from another person. *See* CAL. PENAL CODE § 148(b)-(d) (West Supp. 1990). Additionally, a defendant must have had specific intent to violate the attempt provision. *Id.* § 148(d) (enumerating several acts as evidence of specific intent).

The prosecution bears the burden of proving all elements of a violation of § 148, including the element of duty. People v. Perry, 79 Cal. App. 2d Supp. 906, 908, 914, 180 P.2d 465, 466, 470 (Cal. App. Dep't Super. Ct. 1947) (obstructing an unlawful arrest does not violate § 148 because police officers have no duty to make unlawful arrests). *See also In re* Gregory S., 112 Cal. App. 3d 764, 772, 169 Cal. Rptr. 540, 543 (Cal. Ct. App. 1980) ("[I]t is settled that no violation of Penal Code section 148 can result when the public officer is performing an activity which is not lawful, since an officer does not discharge a duty of his office when he engages in unlawful conduct"). *Cf.* People v. Roberts, 131 Cal. App. 3d Supp. 1, 9, 182 Cal. Rptr. 757, 761 (Cal. App. Dep't Super. Ct. 1982) (assuming that police officers wrongfully ordered defendant to wait in his car, defendant's scuffling and use of obscenities violated § 148); Recent Cases, *Resisting an Unlawful Arrest Punishable as a Misdemeanor Under California Penal Code Section 834A*, 7 SAN DIEGO L. REV. 128, 132 (1970) (contrasting the application of § 834A, a battery statute, with all arrests).

It may be unclear whether an officer is performing a duty at any given moment. Note, *Obstructing a Public Officer*, *supra* note 5, at 397 ("the courts have resorted to viewing the policeman's activity as a complex of separate, discontinuous, specific duties"). *But see* People v. Powell, 99 Cal. App. 2d 178, 182, 221 P.2d 117, 120 (Cal. Dist. Ct. App. 1950) (peace officers arriving at the scene of a disturbance are continuously in the performance of their duties). An officer need not be attempting an arrest to be performing a duty. *See* People v. Allen, 109 Cal. App. 3d 981, 987, 167 Cal. Rptr. 502, 506 (Cal. Ct. App. 1980) (defendant who hid from officer violated § 148); *In re* Joe R., 12 Cal. App. 3d 80, 86, 90 Cal. Rptr. 530, 533 (Cal. Ct. App. 1970) (police officer was performing duty when questioning minors about their ages and reasons for being outside after curfew). For a general discussion of the crime of obstructing a police offer, see Note, *Obstructing a Public Officer*, *supra* note 5. 259 Cal. Rptr. at 840. *See infra* notes 51-59 and accompanying text.

9. 259 Cal. Rptr. at 840. *See infra* notes 51-59 and accompanying text.

10. *See supra* note 6.

11. *See, e.g.*, United States v. Dennis, 341 U.S. 494, 502-11 (1951) (deciding whether Smith Act, as applied to specific individuals and actions, violates the first amendment); Chaplinsky v. New Hampshire, 315 U.S. 568, 574 (1942) (addressing whether New Hampshire statute, as applied to inciting language, violates the first amendment).

tion in the instant case to clearly unprotected speech.[12] Overbroad statutes violate the first amendment because of the "chilling effect" they have on persons who would assert their right to free speech.[13]

The Supreme Court has recognized specifically that the first amendment protects the right to challenge and criticize police action.[14] However, the right verbally to oppose police conflicts with a state's interest in efficient law enforcement,[15] and the Court has not defined precisely the

12. City of Houston v. Hill, 482 U.S. at 458-59 (citing Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc., 455 U.S. 489, 494 (1982) and Kolender v. Lawson, 461 U.S. 352, 359 n.8 (1983)). *See also* Lewis v. City of New Orleans, 415 U.S. 130, 133 (1974) (in evaluating an overbroad statute, "[i]t is immaterial whether the words appellant used might be punishable under a properly limited ordinance"); Gooding v. Wilson, 405 U.S. 518, 521 (1972) (defendant need not show that particular language is protected).

The Supreme Court has stated that "[i]n a facial challenge to the overbreadth and vagueness of a law, a court's first task is to determine whether the enactment reaches a substantial amount of constitutionally protected conduct." *Id.* The Supreme Court summarized this first amendment overbreadth analysis in the criminal context. The Court stated that statutes criminalizing a "substantial amount of constitutionally protected conduct" may be held facially invalid "even if they also have legitimate application." *Id.* at 458. *See infra* notes 31-40 and accompanying text. The case of Lewis v. City of New Orleans, 415 U.S. 130 (1974) exemplifies the application of the overbreadth doctrine. The *Lewis* Court invalidated an ordinance proscribing "wantonly . . . curs[ing] or revil[ing] or . . . us[ing] obscene or opprobrious language toward or with reference to any member of the city police while in the actual performance of his duty." *Id.* at 132 (quoting NEW ORLEANS, LA., MUN. CODE § 49-7). Rather than considering whether the defendant's particular language could be punishable under a narrow interpretation, the Court invalidated the ordinance on its face because it punished only speech, was susceptible of application to protected speech, and was not limited solely to unprotected words. *Id.* at 132, 134. *See also* Coates v. City of Cincinnati, 402 U.S. 611, 616 (1971) (White, J., dissenting); Baggett v. Bullitt, 377 U.S. 360, 366 (1964); NAACP v. Button, 371 U.S. 415, 433 (1963); United States v. Raines, 362 U.S. 17, 21-22 (1960).

13. Gooding v. Wilson, 405 U.S. 518, 522 (1972) (" 'Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity.' ") (quoting NAACP v. Button, 371 U.S. 415, 433 (1963)). *See infra* notes 17-23 and accompanying text. For a thorough discussion of the overbreadth doctrine, see generally L. TRIBE, AMERICAN CONSTITUTIONAL LAW § 12-38, at 1055-57 (2d ed. 1988) and Note, *The First Amendment Overbreadth Doctrine*, 83 HARV. L. REV. 844 (1970).

14. The Supreme Court recently affirmed the right to challenge and criticize police in City of Houston v. Hill, 482 U.S. 451 (1987). *See infra* notes 32-40 and accompanying text. The *Hill* Court opined that the freedom to oppose police verbally is "one of the principal characteristics by which we distinguish a free nation from a police state." 482 U.S. at 463. The Court found this tenet consistent with common law. *Id.* at 463 n.12 (citing The King v. Cook, 11 Can. Crim. Cas. Ann. 32, 33 (B.C. County Ct. 1906) (loudly stating that another's arrest is unjustified is not unlawful because "policemen are not exempt from criticism any more than Cabinet Ministers")). *See also* State v. Williams, 205 Conn. 456, 534 A.2d 230 (Conn. 1987) (punishment for fighting words only); Comment, *Verbal Challenges to Police Action*, *supra* note 3, at 377. *See infra* notes 18, 31 and accompanying text.

15. *See* Note, *Obstructing a Public Officer*, *supra* note 5, at 407 (efficiency must be sacrificed to preserve the power to resist police action, which guards individuals from "the danger of an omnipotent, unquestionable officialdom").

extent to which an individual may interfere verbally with police activity without punishment.[16]

The Supreme Court has excepted certain categories of speech from first amendment protection. In *Chaplinsky v. New Hampshire*,[17] the Court affirmed a state's power to proscribe words[18] "which by their very utterance inflict injury or tend to incite an immediate breach of the peace."[19] The Court explained that a state may prohibit such "fighting words"[20] because they are not necessary for the free communication of

16. *See, e.g.*, City of Houston v. Hill, 482 U.S. 451 (1987). The *Hill* Court struck down an ordinance prohibiting the interruption of police, but did not determine at what point the first amendment ceases to protect verbal interference. *See infra* notes 32-40 and accompanying text.

17. 315 U.S. 568 (1942).

18. The New Hampshire statute prohibited:

> [addressing] any offensive, derisive or annoying word to any other person who is lawfully in any street or other public place, [or calling] him any offensive or derisive name [or] mak[ing] any noise or exclamation in his presence and hearing with intent to deride, offend or annoy him, or to prevent him from pursuing his lawful business or occupation.

Id. at 569 (citing 1926 N.H. Laws ch. 378, § 2).

New Hampshire courts had construed the statute to proscribe only words having a "direct tendency to cause acts of violence" by an average addressee. *Chaplinsky*, 315 U.S. at 573 (citing State v. McConnell, 70 N.H. 294, 47 A. 267 (1900) and State v. Brown, 68 N.H. 200, 38 A. 731 (1895)). Because the *Chaplinsky* Court based its analysis on the state courts' narrow construction of the statute, it did not find the statute overbroad. *Id.*

19. 315 U.S. at 573 (citing Z. CHAFEE, FREE SPEECH IN THE UNITED STATES 149 (1941)). In *Chaplinsky*, a city marshall warned the defendant that citizens were complaining about the defendant's public denunciations of religions other than his own. In response, the defendant called the marshall a "damn fascist" and a "racketeer." *Id.* at 569.

The Court highlighted certain classes of speech—"the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace"—which are not constitutionally protected. *Id.* This comment is concerned only with the last category, or "fighting words." More recently, the Supreme Court has narrowed the application of this exception to a blatant invitation to a fight. *See* Cohen v. California, 403 U.S. 15, 20 (1971) (fighting words are "those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction"). *See also* L. TRIBE, *supra* note 12, § 12-8, at 837 (defining fighting words as "a class of face-to-face epithets which tend to provoke acts of violence by the person to whom, individually, they are addressed"). The "fighting words" doctrine comports with common-law principles of punishable speech. Rutzick, *Offensive Language and the Evolution of First Amendment Protection*, 9 HARV. C.R.-C.L. L. REV. 1, 3 (1974). Although § 148 may be violated without the use of force, the statute requires that the defendant willfully obstruct or delay an officer performing his or her duty. *See supra* notes 7, 8.

20. *Chaplinsky* represents the only Supreme Court decision affirming a conviction for the use of fighting words. The absence of similar holdings has led commentators to speculate whether the fighting words doctrine remains viable. *See, e.g.*, Gard, *Fighting Words as Free Speech*, 58 WASH. U.L.Q. 531, 536 (1980) ("the fighting words doctrine is nothing more than a quaint remnant of an earlier morality that has no place in a democratic society dedicated to the principles of free expression"); Shea, *"Don't Bother to Smile When You Call Me That"—Fighting Words and the First Amendment*, 63 KY. L.J. 1, 2 (1975) (fighting words, even when narrowly defined, are protected

ideas and have little social value.[21] Reasoning that the fighting words doctrine incorporates the likelihood that the language will invoke response,[22] subsequent courts have noted that police officers should respond calmly to some verbal attacks because they are trained to do so.[23]

In *Gooding v. Wilson*,[24] the Supreme Court affirmed its position that the states may proscribe unprotected speech. The Court, however, ruled that a state cannot prohibit fighting words under a statute[25] also "suscep-

---

speech). In dictum, the Supreme Court recently recognized the doctrine. *See* City of Houston v. Hill, 482 U.S. 451 (1987). Nevertheless, the Court in *Hill* found that the particular statute at issue was not sufficiently narrow to withstand constitutional scrutiny. *See infra* notes 32-40 and accompanying text.

21. 315 U.S. at 572. *But see* Cohen v. California, 403 U.S. 15 (1971). The Court in *Cohen* reversed a conviction for disrupting the peace by wearing a jacket emblazoned "Fuck the Draft" in a courthouse corridor. The conviction was reversed because, *inter alia*, Cohen did not intend, and did not actually cause, a violent reaction. *Id.* at 20. The Court explained that forbidding particular words creates the risk of suppressing ideas. *Id.* at 26. *See also* Brandenburg v. Ohio, 395 U.S. 444, 446-47 (1968) (Ku Klux Klan member's use of racial epithets and advocacy of violence not punishable in the absence of intent to incite imminent lawless action and the likelihood that such action would result).

22. *Chaplinsky* requires a tendency to incite violence. 315 U.S. at 572. According to the Supreme Court, however, the fighting words doctrine mandates that the words be of a nature to incite the *average* addressee to violence. *See Cohen*, 403 U.S. at 20. Some commentators agree. *See* Gard, *supra* note 20, at 536 (fighting words require a "direct tendency to an immediate violent response by *any* recipient") (emphasis added); Shea, *supra* note 20, at 22 (considering the likelihood of violent reaction from the individual addressee leads to the absurd result that insults to "strong men who are unfettered by inhibitions" may be criminalized while "a legless cripple, a feeble old woman and a dedicated police officer are fair game for the vilest personal abuse because they are unable or unlikely to retaliate physically").

23. *See, e.g.*, Lewis v. City of New Orleans, 415 U.S. 130, 135 (1942) (Powell, J., concurring) ("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' "), *cited with approval in* City of Houston v. Hill, 482 U.S. 451 (1987). *But cf.* Note, *Criminal Law: Violation of a Statute Prohibiting Interference with a Police Officer*, 11 HASTINGS L.J. 220, 222 (1959) (police officers lack the training to determine when a citizen's interference is disorderly). *See supra* note 21.

24. 405 U.S. 518 (1972).

25. The Georgia statute in question provided that: "Any person who shall, without provocation, use to or of another, and in his presence, . . . opprobrious words or abusive language, tending to cause a breach of the peace . . . shall be guilty of a misdemeanor." *Id.* at 520 (quoting GA. CODE ANN. § 26-6303 (1970)).

Unlike the New Hampshire statute in *Chaplinsky*, the Georgia statute had not been construed by the state courts to apply only to fighting words. *Id.* at 524. Georgia courts had applied the statute to offensive or insulting words that would not tend to incite violence. *Id.* at 525 (citing Fish v. State, 124 Ga. 416, 52 S.E. 737 (1905) (the statement, "you swore a lie" presented a jury question); Lyons v. State, 94 Ga. App. 579, 95 S.E.2d 478 (1956) (conviction for awakening female campers by shouting, "Boys, this is were we are going to spend the night . . . . Get the G— d— bed rolls out . . . let's see how close we can come to the G— d— tents."); and Jackson v. State, 14 Ga. App. 19, 80 S.E. 20 (1913) (jury question presented by the statement, "God damn you, why don't you get out of the road?")).

tible of application to protected expression."[26] The Court found the statute, which prohibited the use of "opprobrious words,"[27] overbroad on its face.[28] According to the Court, the statute's coverage exceeded mere fighting words as defined in *Chaplinsky*.[29] The Court thus refused to uphold the defendant's conviction even though his speech[30] properly would have been punishable under a narrow statute.[31]

In *City of Houston v. Hill*,[32] the Supreme Court specifically addressed the first amendment protection of statements interrupting a police officer. The ordinance in *Hill* prohibited verbal interruptions of a police officer in the performance of his duties.[33] The Court held the ordinance unconstitutionally overbroad.[34] Noting that "the First Amendment protects a significant amount of verbal criticism and challenge directed at police

26. *Id.* at 522.

27. *See supra* note 25. The *Gooding* Court defined "opprobrious" as "conveying or intended to convey disgrace." 405 U.S. at 525.

28. *Id. See supra* notes 19, 25 and accompanying text; *infra* note 36.

29. 405 U.S. at 525.

30. When police officers attempted to remove the defendant from the scene of a Vietnam War protest, he said, "White son of a bitch, I'll kill you .... I'll choke you to death," and "[I]f you ever put your hands on me again, I'll cut you all to pieces." *Id.* at 519 n.1.

31. *Id.* at 523. According to the Court, a statute regulating speech "must be carefully drawn or be authoritatively construed to punish only unprotected speech and not be susceptible of application to protected expression." *Id. Cf. id.* at 536 (Blackmun, J., dissenting) ("[T]his Court attack[s] the statute, not as it applies to the appellee, but as it conceivably might apply to others who might utter other words."). The Court reasoned that the Georgia statute prohibited only spoken words and therefore posed a danger of deterring constitutionally protected speech by persons fearing punishment. *Id.* at 522. The danger that protected speech might be restrained by fear of sanctions justifies "allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his conduct could not be regulated by a statute drawn with the requisite specificity." *Id.* at 521. *See also* Lewis v. City of New Orleans, 415 U.S. 130, 133 (1974) (whether particular language is covered by overbroad statute is irrelevant). *But see Gooding*, 405 U.S. at 523 (Burger, C.J., dissenting) (Court previously invalidated statutes when the potential for improper application was greater than under the Georgia statute).

32. 482 U.S. 451 (1987).

33. The Houston ordinance provided: "It shall be unlawful for any person to assault, strike or in any manner oppose, molest, abuse or interrupt any policeman in the execution of his duty ...." *Id.* at 455 (quoting HOUSTON, TEX., MUN. CODE § 34-11(a) (1984)). Because the Texas Penal Code preempted the portion of the ordinance concerning assaulting or striking an officer, the Court found that the ordinance regulated only speech. *Id.* at 460-61 (citing TEX. PENAL CODE ANN. §§ 1.08, 22.01-.02 (Vernon 1974)).

34. The defendant in *Hill* attempted to distract police officers who were questioning his friend, by shouting, "Why don't you pick on somebody your own size?" One of the officers asked Hill, "Are you interrupting me in my official capacity as a Houston police officer?" Hill responded, "Yes, why don't you pick on somebody my size?" *Id.* at 454. Hill was acquitted of the charge of intentionally interrupting a police officer by verbal challenge and brought suit seeking a declaration that the

officers,"[35] the Court reiterated its prior holdings that only speech tending to incite violence or a serious public disturbance[36] is punishable.[37] Because police officers should respond calmly to verbal attacks, the Court suggested such language does not constitute fighting words.[38] Instead, the Court emphasized that the right to challenge police verbally is an essential characteristic of a free society,[39] and that the state's interest in curbing interruptions of police activity does not outweigh the importance of this right.[40]

Unlike the Houston ordinance at issue in *Hill*, California Penal Code section 148 applies to both verbal and nonverbal police interruptions.[41]

---

ordinance was unconstitutioinal, an injunction against its enforcement, an order expunging the record of his arrest, and damages under 42 U.S.C. §§ 1983 and 1988. *Id.* at 455.

The Court struck down the ordinance as unconstitutionally overbroad, rather than unconstitutional as applied to the case. The Court pointed out that, in the past, people had been arrested under the statute for "talking" and "failing to remain quiet." *Id.* at 457. In considering arrests under the statute rather than convictions, the *Hill* Court effectively evaluated the constitutionality of the statute as interpreted by the police, not the state courts. The Court thus departed from its usual format for overbreadth analysis. *See supra* note 18. This approach seems to take into account that the fear of arrest as much as the fear of conviction can chill protected speech. *See supra* note 12.

35. *Id.* at 451.

36. Provocative and challenging speech is protected "unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest." *Id.* at 461. *See also* Lewis v. City of New Orleans, 415 U.S. 131 (1974). In *Lewis*, the Court struck down an ordinance prohibiting the use of "opprobrious language" toward city police. The Supreme Court of Louisiana construed the ordinance to apply to "fighting words" as defined in Chaplinsky v. New Hampshire, 315 U.S. 568 (1942) and Gooding v. Wilson, 405 U.S. 518 (1972). *Lewis*, 415 U.S. at 133. The *Lewis* Court found that "opprobrious language" included "words conveying or intended to convey disgrace" that would not "by their very utterance inflict injury or tend to incite an immediate breach of the peace." *Id.*

37. 482 U.S. at 461. *See supra* notes 19-20 and accompanying text (*Chaplinsky* fighting words doctrine).

38. 482 U.S. at 461. *See also* Lewis v. City of New Orleans, 415 U.S. 130, 135 (1974) (Powell, J., concurring). *But see id.* at 141 (Blackmun, J., dissenting) ("Police officers in this day perhaps must be thick-skinned and prepare 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 individual involved.").

39. 482 U.S. at 462-63, 463 n.12. The Court pointed out that, although *Chaplinsky* allows regulation of fighting words, it places no other limits on the right to challenge police. *Id.*

40. 482 U.S. at 464-65. *See supra* note 15 and accompanying text. The Court was particularly concerned that broad ordinances and statutes give police "unguided discretion" to arrest annoying or suspicious individuals when no other reason for arrest exists. 482 U.S. at 465-67, 465 n.15. The Court found that the enormous discretion allowed police in enforcing the Houston ordinance "particularly repugnant given '[t]he eternal temptation . . . to arrest the speaker rather than to correct the conditions about which he complains.' " *Id.* at 466 n.15 (quoting Younger v. Harris, 401 U.S. 37, 65 (1971) (Douglas, J., dissenting)).

41. *See supra* note 7 and accompanying text.

In addition, the statute specifically prohibits resistance, delay, and obstruction.[42] The section has withstood constitutional attack. In *People v. Cooks*,[43] a California superior court held that section 148 proscribes advising a suspect to refuse to cooperate with police.[44] The *Cooks* court reasoned that section 148 regulated speech incidentally, rather than directly,[45] and therefore did not impermissibly prohibit constitutionally protected speech.[46]

---

42. *Id.*

43. 58 Cal. Rptr. 550 (Cal. App. Dep't Super. Ct. 1967).

44. The defendant, a bartender, told a patron not to show identification to a police officer who believed the patron resembled a robbery suspect. The defendant repeated his advice numerous times, and the patron told the officer that he would not produce identification until the bartender said it was all right. *Id.* at 551-52.

45. *Id.* at 552-53. The court explained that the statute punishes obstructions achieved by any conduct, not merely verbal obstructions. *Id.* In comparison, § 415 of the California Penal Code provides:

> Any of the following persons shall be punished by imprisonment in the county jail for a period of not more than 90 days, a fine of not more than four hundred dollars ($400), or both such imprisonment and fine:
> (1) Any person who unlawfully fights in a public place or challenges another person in a public place to fight.
> (2) Any person who maliciously and willfully disturbs another person by loud and unreasonable noise.
> (3) Any person who uses offensive words in a public place which are inherently likely to provoke an immediate violent reaction.

CAL. PENAL CODE § 415 (West 1988). Section 415 specifically proscribes certain verbal disruptions. The Supreme Court of California narrowly construed speech punishable under § 415 in *In re* Brown, 9 Cal. 3d 612, 108 Cal. Rptr. 465, 510 P.2d 1017 (1973). In *Brown*, the court held that noise prohibited by § 415 is limited to two situations: when there is a clear and present danger of imminent violence, and when the speech is not intended to communicate, but only to disrupt lawful activity. *Id.* at 619, 108 Cal. Rptr. at 469, 510 P.2d at 1021.

Section 415(3)'s reference to words "inherently likely to provoke an immediate violent reaction" is based on the fighting words doctrine, which originated in Chaplinsky v. New Hampshire, 315 U.S. 568 (1942). *See supra* notes 19-20 and accompanying text.

46. 58 Cal. Rptr. at 553. The court noted that the bartender was not "seeking the redress of grievance, engaging in religious or political discussion, propagandizing, protesting a wrong, or even shouting nonsense in Horton Plaza." *Id.* at 552. Although it did not explain the significance of this observation, the court likely found that the content of the defendant's speech was not entitled to the same protection as politically motivated or purely expressive speech. Other courts have made similar distinctions. *See* People v. Gibbs, 115 Ill. App. 2d 113, 115-17, 253 N.E.2d 117, 118-19 (1969) (conviction for knowingly interfering with police upheld when defendant not only disputed the legality of the officers' attempt to arrest several boys, but also successfully instructed the boys to enter a building where they mingled with other youths, preventing the police from identifying them); *In re* Clive W., 109 Misc. 2d 788, 795, 441 N.Y.S.2d 188, 194 (N.Y. Fam. Ct. 1981) (use of speech did not immunize defendant from arrest for a physical obstruction); State v. Claybrook, 57 Ohio App. 2d 131, 135-34, 385 N.E.2d 1080, 1082-83, (1978) (lying to officer about presence of criminal suspect in house is punishable when accompanied by physical act of blocking doorway); State v. Lalonde, 35 Wash. App. 54, 61-62, 665 P.2d 421, 417-18 (1983) (repeatedly approaching officer attempting to

In *In re Angel P.*,[47] the California Court of Appeal for the Fourth District similarly upheld section 148. The court rejected an overbreadth challenge to the statute.[48] Moreover, the court found the state constitutionally could prohibit a verbal warning intended to delay or obstruct police activity.[49] In so holding, the *Angel* court found the Supreme Court's decision in *City of Houston v. Hill* inapplicable.[50]

The *Angel* court first concluded that section 148 is not unconstitutionally overbroad.[51] The court distinguished section 148 from the Houston ordinance challenged in *Hill* on three grounds. First, unlike the Houston ordinance, section 148 applies to nonverbal as well as verbal police challenges.[52] In addition, the court construed section 148 to encompass only words that have the effect of "physically restricting, delaying, or obstructing," rather than merely interrupting, a police officer's duty.[53] Finally, the majority ruled that a violation of section 148 is a specific intent

---

subdue raucous group after officer warned defendant away is punishable). *But see* People v. Wetzel, 11 Cal. 3d 104, 106-07, 520 P.2d 416, 417-18, 113 Cal. Rptr. 32, 33-34 (1974) (refusing to consent to officers' search of apartment is not punishable absent a physical obstruction).

47. 259 Cal. Rptr. 838 (Cal. Ct. App. 1989).

48. *Id.* at 840-42. *See infra* notes 51-56 and accompanying text.

49. 259 Cal. Rptr. at 842.

50. 482 U.S. 451 (1987). *See supra* notes 32-40 and accompanying text.

51. 259 Cal. Rptr. at 840-42.

52. *Id.* at 840. The ordinance in *Hill* proscribed only verbal interruptions. *See supra* note 33 and accompanying text.

53. 259 Cal. Rptr. at 839-40. According to the court, the Houston ordinance prohibited mere interruptions. *Id.* at 840. *See supra* note 33. The court explained that the term "interrupt" could include merely asking a question without making the officer's task "difficult or impossible," while "obstruct" and "interfere" mean "substantially frustrating or hindering the officer in the performance of his duties." *Id.* at 841 (quoting State v. Krawsky, 426 N.W.2d 875, 877 (Minn. 1988)). The *Krawsky* court upheld a Minnesota statute proscribing intentionally interfering with a peace officer engaged in the performance of official duties. *Krawsky*, 426 N.W.2d at 876.

The California statute at issue in *Angel*, Penal Code § 148, proscribes delays as well as obstructions, yet the court did not define "delay." *See supra* note 7. California precedent indicates that a delay is a temporary postponement of the completion of an officer's task. *See, e.g.*, People v. Allen, 109 Cal. App. 3d 981, 987, 167 Cal. Rptr. 502, 506 (Cal. Ct. App. 1980) (hiding from officer violates § 148); *In re* Bacon, 240 Cal. App. 2d 34, 55, 49 Cal. Rptr. 322, 334 (Cal. Dist. Ct. App. 1966) (going limp when placed under arrest violates § 148). *See also* BLACK'S LAW DICTIONARY 383 (5th ed. 1979) (to delay is, inter alia, to "defer; procrastinate; prolong the time of or before; hinder; [or] interpose obstacles").

A California appellate court found no error in the trial court's refusal to define "obstruct" under § 148 despite a juror's request for a definition. *See* People v. Roberts, 131 Cal. App. 3d Supp. 10, 12, 182 Cal. Rptr. 757, 759 (Cal. App. Dep't Super. Ct. 1981) (reasoning that a "person of ordinary understanding" could interpret § 148). Although Angel's warning arguably did not interfere with the officer's immediate task, Angel did not raise the argument that the officer was not performing a duty.

crime.[54] According to the court, language specifically intended to obstruct an officer's performance of his duty is not protected under the first amendment.[55] Because the ordinance in *Hill* proscribed "any interruption," the *Angel* court read *Hill* as invalidating only statutes with no specific intent requirement.[56]

The court next addressed the validity of section 148 as applied to Angel's speech.[57] The court found it reasonable to infer that Angel's warning was intended to frustrate the arrest of the dealer, noting that the dealer was not arrested.[58] According to the court's previous analysis, the

54. 259 Cal. Rptr. at 841-42. The court defined "specific intent" as the " 'intent to do some further act or achieve some additional consequence' " beyond the proscribed act itself. *Id.* at 842 (quoting People v. Hood, 1 Cal. 3d 444, 82 Cal. Rptr. 618, 462 P.2d 3702 (1969)).

55. *Id.* at 841. The *Angel* court found that a showing of specific intent to delay or obstruct an officer was necessary to comply with constitutional requirements of specificity. *Id. See supra* note 31. The court's conclusion is supported by People v. Superior Court, 135 Cal. App. 3d 812, 816-17, 185 Cal. Rptr. 492, 495 (Cal. Ct. App. 1982). Construing California Penal Code § 415, *see supra* note 45, the court there stated: " 'The use of the human voice to disturb others by the mere volume of the sound when there is no substantial effort to communicate or when the seeming communication is used as a guise to accomplish the disruption may be prohibited consistent with First Amendment guarantees.' " (quoting *In re* Brown, 9 Cal. 3d 612, 510 P.2d 1017, 108 Cal. Rptr. 465 (1973)). *See also* Colten v. Kentucky, 407 U.S. 104, 111 (1971) (upholding a conviction for disobeying a police officer's order under a Kentucky disorderly conduct statute that Kentucky courts applied only when the defendant had "no bona fide intention to exercise a constitutional right"). *But see* City of Houston v. Hill, 482 U.S. 451, 461 (1987) (interruption of police is constitutionally protected).

Although the *Angel* court concluded that § 148 requires specific intent to obstruct an officer, the trial court had not expressly required specific intent. 259 Cal. Rptr. at 845 n.6. (Crosby, J., dissenting). Furthermore, the trial judge admitted unfamiliarity with *Hill*. *Id.* The majority declared the trial judge's findings not inconsistent with its holding. The court reasoned, in a circular fashion, that because the lower court applied the statute, it must have found the statute constitutional and, necessarily, to require specific intent. *Id.* at 841 n.9.

56. 259 Cal. Rptr. at 841-42. The court thus concluded that "section 148 is not, on its face, unconstitutionally overbroad, *if* interpreted to require a specific intent." *Id.* (emphasis in original). The *Angel* majority based this requirement on a Connecticut case, State v. Williams, 205 Conn. 456, 534 A.2d 230 (1987). The *Williams* court, however, applied a specific intent inquiry in its vagueness analysis of a statute under the due process clause, not its overbreadth analysis. *Id.* at 469-71, 534 A.2d at 237-38. Moreover, the Supreme Court in *Hill* did not even question whether Houston's ordinance encompassed only specific intent, much less lower its overbreadth scrutiny on the basis of such a requirement. *See supra* notes 32-40 and accompanying text.

57. 259 Cal. Rptr. at 842.

58. *Id.* A warning intended to prevent the commission of a crime is distinguishable from a warning intended to allow a person committing a crime to avoid apprehension. *See* Note, *Obstructing a Public Officer*, *supra* note 5, at 396 (warning motorists to slow down before driving past speed detection device is punishable only upon showing that motorists were speeding) (citing two English cases, Bastable v. Little, [1907] 1 K.B. 59 (1906) (no conviction without proof of speeding motorists) and Betts v. Stevens, [1910] 1 K.B. 1 (1909) (conviction upon proof that motorists were speeding prior to warning)).

Although Angel argued that he was too far from the drug purchase (ten to twelve feet) to know

first amendment does not protect a verbal warning specifically intended to obstruct a police officer.[59]

The dissenting justice in *Angel* contended that *Hill* protects speech intended to interfere with the performance of a police officer's duty and that the state may proscribe only words intended to cause "a violent response or an immediate and direct physical obstruction of an officer."[60] The dissent argued that, although Angel could have intended his words to provoke violence,[61] he probably intended them to "warn the dealer or frustrate the officer's mission in the neighborhood."[62] The dissent further reasoned that had the undercover officer wanted to arrest the dealer,[63] the officer would have revealed his identity, and Angel's words would have had no impact on the officer's performance of his duty.[64] Therefore, Angel's speech neither provoked violence nor physically and immediately interfered with the officer's duty;[65] it merely impeded police activity in the area.[66]

In re Angel P. presented the California Court of Appeal with a ques-

whether a crime had occurred, the court of appeal summarily disposed of this argument by inferring from Angel's shout that he intended to delay or obstruct the officer. 259 Cal. Rptr. at 842.

59. *See supra* notes 54-55 and accompanying text.

60. 259 Cal. Rptr. at 842 (Crosby, J., dissenting). The dissent gave as one example of a verbal-physical obstruction the situation in which a person calls for a dump truck to pull out into the street, timed in such a way that it impedes the officer's police car. *Id.* at 844 n.4 (Crosby, J., dissenting). The dissent contrasted this situation with the instant case, in which the defendant merely passed information to the prospective arrestee. *Id.*

61. *Id.* at 842-43 (Crosby, J., dissenting). The dissent speculated that the dealer might have assaulted the officer upon learning his true identity from the defendant's words. The trial court, however, required no proof of intent to incite violence, nor did the majority apply that standard. *Id. See supra* note 21.

62. 259 Cal. Rptr. at 843 (Crosby, J., dissenting). The dissent noted that frustration of the investigation, rather than violence, was the actual consequence of Angel's shout. *Id.*

63. Under the "buy program," uniformed police officers planned to arrest the dealer after the undercover officer left the area in order to protect the undercover officer's true identity. *Id.* at 844 (Crosby, J., dissenting).

64. *Id.* One commentator has argued that ill-intentioned conduct not resulting in actual societal harm should not be punished because the state has no interest in deterrence, rehabilitation, or retribution in the absence of harm. *See* Robinson, *A Theory of Justification: Societal Harm as a Prerequisite for Criminal Liability*, 23 U.C.L.A. L. REV. 266, 266-67 (1975). "If the criminal law is extended to punish bad intent alone or the mere possibility of harmful conduct, it goes beyond its accepted role, appears unfair and overreaching, and ultimately loses its credibility and integrity." *Id. See also* Tinker v. Des Moines Indep. School Dist., 393 U.S. 505, 508 (1969) ("undifferentiated fear or apprehension of disturbance is not enough to overcome the right to free expression").

65. 259 Cal. Rptr. at 844 (Crosby, J., dissenting). By the time Angel spoke, the officer and dealer had exchanged narcotics and money, so the officer's immediate task was complete. *Id.*

66. *Id.* Because his identity had been disclosed, the officer could no longer purchase narcotics in the neighborhood. *Id.*

tion never addressed by the Supreme Court—whether verbal warnings are protected by the first amendment.[67] In finding the statute constitional, the *Angel* court ill-advisedly narrowed first amendment protection.[68] As the Supreme Court in *Hill* explicitly held,[69] a statute proscribing any intentional interruption of a police officer is unconstitutionally overbroad on its face.[70] California Penal Code section 148 proscribes merely delaying an officer.[71] The *Angel* court, however, did not define "delay" as used in the California statute, nor did the court explain how a verbal delay differs from a mere interruption.[72] California decisions prior to *Angel* indicate that a "delay" within the meaning of section 148 may be only temporary and need not thwart the completion of the officer's task,[73] bringing the term into conformity with an interruption. Given the decision in *Hill*, both prior California cases and the likely arrest history under section 148 prove the statute's overbreadth.[74]

67. The Supreme Court has only answered the question whether verbal challenges to a police officer merit first amendment protection. *See, e.g.*, Houston v. Hill, 482 U.S. 451 (1987); Lewis v. City of New Orleans, 415 U.S. 130 (1974); Gooding v. Wilson, 405 U.S. 518 (1972). Unlike this kind of speech, which potentially loses first amendment protections due to the "fighting words" doctrine (*see supra* notes 17-40), warnings involve no abuse or threat. *See infra* note 76 and accompanying text.

One might argue that the Court would treat warnings which interrupt police duty as unprotected speech, based on Haig v. Agee, 453 U.S. 280 (1981). There the Court upheld the passport revocation of a person accused of repeatedly disclosing the identity and location of intelligence personnel abroad. *Id.* at 308-10. However, Chief Justice Burger, writing for the majority, based his opinion on two foundations: the first amendment does not protect actual obstruction of military recruiting or the publication of sailing dates, to which the defendant's disclosures were analogous, *id.* at 308-09; and that which the government prevents is *action*, not speech. *Id.* at 309. Neither foundation applies directly to *Angel*'s facts.

68. Because the Supreme Court has never addressed the question of verbal warnings as interference to police duty (*see supra* note 67), the Court necessarily has not found this type of speech to be unprotected by the first amendment. Under current first amendment jurisprudence, the state cannot therefore make such speech illegal.

69. 482 U.S. 451 (1987).

70. *Id.* at 461. *See supra* notes 32-40 and accompanying text.

71. *See supra* notes 7, 8.

72. The court reasoned that § 148 requires proof that a defendant intended to delay or obstruct, rather than simply to speak. 259 Cal. Rptr. at 839-40. However, it seems unlikely that a person verbally would delay an officer without intending to do so. The statute at issue in *Hill* proscribed intentional interruptions of officers, yet the Supreme Court found the statute invalid. *See supra* notes 32-40 and accompanying text.

73. *See supra* notes 7, 52 and accompanying text.

74. According to California precedent, § 148 prohibits speech protected under *Hill*. In *In Re* Bacon, 240 Cal. App. 2d 34, 49 Cal. Rptr. 322 (Cal. Dist. Ct. App. 1966), the California Court of Appeal defined "obstruction" within § 148 thus: " '[T]o interpose obstacles or impediments, to hinder, impede, or *in any manner interrupt* or prevent . . . .' " *Id.* at 52, 49 Cal. Rptr. at 333 (emphasis added) quoting United States v. McDonald, 26 F. 1074, 1077 (1879)). *Accord* People v. Kelly, 189

Further, the *Angel* court specifically punished the use of protected speech in its application of section 148. Although the Constitution may not protect some action causing delay,[75] a purely verbal expression[76] that delays an officer is entitled to protection so long as the words are not fighting words.[77] As the dissent pointed out, Angel's words were not fighting words as recognized in *Chaplinsky*.[78] Even the majority acknowledged that the words did not immediately affect police activity.[79] It is not conceivable that Angel could have been punished under section 148 had he informed the dealer months later that his customer was an undercover narcotics officer.[80] The actual result of the warning, how-

Cal. Rptr. 338, 342 n.6 (Cal. Ct. App. 1983) (opinion withdrawn by order of court) (quoting the *Bacon* definition with approval). The statute invalidated in *Hill* prohibited interrupting a police officer in any manner. City of Houston v. Hill, 482 U.S. 451, 455.

A possible example of protected speech being punished under § 148 appears in *In re* Joe R., 12 Cal. App. 3d 80, 90 Cal. Rptr. 530 (Cal. Dist. Ct. App. 1970). In *Joe R.*, the trial court may have convicted the defendant based solely on his verbal questioning of an officer involved in a curfew check. *Id.* at 83-86, 90 Cal. Rptr. at 531-33. The possibility of such a conviction demonstrates § 148's overbreadth under Gooding v. Wilson, 405 U.S. 518 (1972).

Likewise the arrest record under § 148 could lead to the statute's invalidation under *Hill*. *See supra* note 34. It is difficult to know how often people are arrested under § 148 for exercising verbal rights protected by *Hill* because many cases are disposed of without a reported court opinion. For example, charges may be dismissed or the defendant may plead guilty. *See Hill*, 482 U.S. at 455 n.4 (discussing defendant's prior arrests); *see also* D. JONES, CRIME WITHOUT PUNISHMENT 44 (1979) (9.1% of criminal charges in California are dismissed; 85.6% of criminal charges result in conviction; 84.4% of convictions are obtained by guilty pleas). Because a violation of § 148 is a misdemeanor, a person charged with violating § 148 may be more likely to plead guilty than a person charged with a more serious offense. *See* Newman, *Reshape the Deal*, 9 TRIAL 11, 11 (May/June 1973) (about 90% of serious charges are disposed of by guilty pleas; if misdemeanors and serious crimes are considered together, "the frequency of convictions by plea approaches 98% of all those charged").

75. In *Hill*, the Supreme Court indicated that, in some circumstances, physical obstruction could be proscribed although the speech alone could not. 482 U.S. at 462 n.11. The Court gave the example of a person running alongside and cursing at an officer as he chased a suspect. *Id.*

76. The *Angel* majority pointed out that Angel's speech had the purpose and result of physically impeding the officer's work. 259 Cal. Rptr. at 842. The court found the speech punishable because of this physical effect. *Id.* As discussed in *Hill*, however, an interruption necessarily involves a physical impediment as well. If words directed toward an officer did not disrupt his work in some way, they could not be considered an interruption. Yet, as *Hill* made clear, verbal interruptions are constitutionally protected. *See supra* notes 32-40, 52 and accompanying text.

77. *See supra* notes 19-21 and accompanying text.

78. 315 U.S. 568 (1942). *See supra* notes 17-23 and accompanying text.

79. *See supra* notes 63-66 and accompanying text.

80. *Angel*, 259 Cal. Rptr. at 843 (Crosby, J., dissenting). The dissent noted, "[t]he First Amendment would surely allow a speaker to inform a drug dealer he had sold to an undercover officer six months earlier without fear of prosecution under Penal Code section 148." *Id.* The dissent nevertheless recognized that helping an offender avoid apprehension after a crime could violate other statutes. *Id.* at 843 n.1 (Crosby, J., dissenting).

ever, would have been the same.[81]

The *Hill* Court recognized that drafting and interpreting obstruction statutes to prohibit only unprotected speech is a task states must approach with restraint.[82] State legislatures and courts legitimately are concerned with protecting officers' safety by allowing them to maintain control of potentially volatile situations.[83] However, statutes aimed solely at protecting police officers' control over situations in which violence is not imminent and in which physical obstruction does not occur restrict citizens' rights to challenge and criticize police verbally.[84]

In finding the California obstruction statute not overbroad, the *In re Angel P.* court failed to provide a constitutional distinction between verbal interruptions and verbal delays of police officers. Moreover, the court failed to limit the application of the statute to fighting words. Under the court's construction, section 148 impermissibly proscribes constitutionally protected speech.[85]

Sherry L. Gunn

---

81. In this situation, the dealer, and perhaps others in the neighborhood, would no longer sell narcotics to the officer, and probably would avoid him to evade arrest. Indeed, it is possible that the officer would be in greater physical danger by going into the neighborhood unaware that his true identity was known.

82. 482 U.S. at 479. The Court noted that "a certain amount of expressive disorder not only is inevitable in a society committed to individual freedom, but must itself be protected if that freedom would survive." *See supra* note 15 and accompanying text; *infra* note 84 and accompanying text.

83. *See supra* note 15 and accompanying text.

84. As Justice Marshall once observed, "[o]f course, efficiency and promptness can never be substituted for due process and adherence to the Constitution. Is not a dictatorship the most 'efficient' form of government?" United States v. Ross, 456 U.S. 798, 842 n.13 (1982) (Marshall, J., dissenting).

85. The California Supreme Court missed an opportunity to clarify § 148's scope in ordering that the decision not be published. *See supra* note 1. Several explanations might account for this disposition, which removes any precedential value from the decision. Perhaps the most plausible theory is that the Supreme Court recognized the statute's overbreadth, but did not want to overturn this conviction. The problem with this reasoning—if in fact it was the court's thought—lies in its prolonging the "chilling effect" such an overbroad law has on protected speech. *See supra* note 13 and accompanying text. Much more than a single conviction was at stake in *Angel*; the freedom to speak without fear, even near a police officer, hangs in the balance.