The Burger Court Opinion Writing Database

Coates v. City of Cincinnati

402 U.S. 611 (1971)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 11, 1971

1/15/71 To the circulate list

No. 117 -- Coates v. City of Cincinnati

MEMORANDUM TO THE CONFERENCE:

To get a "headstart" on Friday next, I venture to propose my notion of one possible disposition of this case. I would not lift a finger to help Appellant have his way "to force the Cour t to decide the Constitutional question." We should not encourage this kind of business.

Regards,

WEB

To: Mr. Justice Blac
Mr. Justice Doug s
Mr. Justice Harl
Mr. Justice Bren
Mr. Justice Ste
Mr. Justice Whi
Mr. Justice Mar
Mr. Justice Blac

From: The Chief Just

Circulated: JAN 12 1971

Recirculated: _____

No. 117--Coates v. City of Cincinnati

PER CURIAM

We noted probable jurisdiction to review a claim that Section 901-L6 of the Cincinnati Code of Ordinances is void on its face for vagueness and overbreadth. Appellant elected to present his case to the Supreme Court of Ohio on his claim in this posture and that Court rejected his claim that the statute was void on its face. He maintains the same position here. Except for fragments of the record included in the Appendix for reasons unrelated to the claim of voidness, we have none of the evidence to which the trier of facts applied the ordinance to

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_/ The ordinance provides: Section 901-L6. Loitering at Street Corners. "It shall be unlawful for three or more persons to assemble, except at a public meeting of citizens, on any of the sidewalks, street corners, vacant lots, or mouths of alleys, and there conduct themselves in a manner annoying to persons passing by, or occupants of adjacent buildings. Whoever violates any of the provisions of this section shall be fined not exceeding fifty dollars ($50.00), or be imprisoned not less than one (1) nor more than thirty (30) days or both." Code of Ordinances of City of Cincinnati, p. 498 (1956 ed.).

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 21, 1971

Re: No. 117 - Coates v. City of Cincinnati

MEMORANDUM TO THE CONFERENCE:

Enclosed is revised per curiam.

Regards,

WEB

To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

From: The Chief Justice

Circulated: JAN 21 1971

Recirculated:

No. 117 -- Coates v. City of Cincinnati

PER CURIAM

We noted probable jurisdiction to review a claim that Section 901-L6 of the Cincinnati Code of Ordinances[1/] is void on its face for vagueness and overbreadth. Appellant elected to present his case to the Supreme Court of Ohio without a bill of exceptions or a statement of facts. The Ohio Supreme Court rejected appellant's claim that the ordinance was imprecise and vague, and construed the ordinance as evincing a legislative judgment that specific conduct be proscribed. Cameron v. Johnson, 390 U.S. 611, 616 (1968). Noting the prohibition of conduct annoying to persons passing by, it defined "annoy" to mean "to trouble, to vex, to

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1/ The ordinance provides, as follows:

Section 901-L6. Loitering at Street Corners. It shall be unlawful for three or more persons to assemble, except at a public meeting of citizens, on any of the sidewalks, street corners, vacant lots, or mouths of alleys, and there conduct themselves in a manner annoying to persons passing by, or occupants of adjacent buildings. Whoever violates any of the provisions of this section shall be fined not exceeding fifty dollars ($50.00), or be imprisoned not less than one (1) nor more than thirty (30) days or both.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

February 8, 1971

Re: No. 117 - Coates v. City of Cincinnati

MEMORANDUM TO THE CONFERENCE:

My first per curiam circulation was to dismiss for want of a properly presented federal question. Other positions led me to alter that to the second per curiam.

Either disposition is acceptable to me and the first has perhaps some merit (hopefully) in discouraging these "eager beavers" who thrust constitutional issues on us prematurely.

On the merits I think the Court ought to be more cautious than it has been in striking down statutes and ordinances on vagueness just because they may be vague as applied in some circumstances.

If three more will join the first per curiam I will stand on that.

Regards,

WEB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 10, 1971

No. 117 - Coates v. City of Cincinnati

MEMORANDUM TO THE CONFERENCE:

With "D" day approaching I have recanvassed the posture of the above case.

It appears on my records that Justices Black, Harlan, White, and Blackmun have or are prepared to join the original circulation dismissing the appeal.

Justice Stewart's dissent directed at the second circulation has three supporting votes. I am unclear whether the same dissenters will join a dissent directed at the first circulation.

The first circulation, with unimportant verbal corrections, is enclosed.

Regards,

WEB

To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

1st DRAFT

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

Circulated:

Recirculated: MAY 10 1971

No. 117.—October Term, 1970

Dennis Coates et al., Appellants, *v.* City of Cincinnati. } On Appeal From the Supreme Court of Ohio.

[May —, 1971]

Per Curiam.

We noted probable jurisdiction to review a claim that § 901–L6 of the Cincinnati Code of Ordinances is void on its face for vagueness and overbreadth.* Appellant elected to present his case to the Supreme Court of Ohio with his claim in that posture; that Court rejected his claim that the statute was void on its face. Appellant maintains the same position here. Except for fragments of the record included in the Appendix for reasons unrelated to the claim of voidness, we have none of the evidence to which the trier of facts applied the ordinance to reach a determination of guilt. Counsel for appellant asserted that the state of the record before us was a deliberate litigation tactic to force a decision that the ordinance is unconstitutional on its face.

*The ordinance provides: Section 901–L6. Loitering at Street Corners. "It shall be unlawful for three or more persons to assemble, except at a public meeting of citizens, on any of the sidewalks, street corners, vacant lots, or mouths of alleys, and there conduct themselves in a manner annoying to persons passing by, or occupants of adjacent buildings. Whoever violates any of the provisions of this section shall be fined not exceeding fifty dollars ($50.00), or be imprisoned not less than one (1) nor more than thirty (30) days or both." Code of Ordinances of City of Cincinnati, p. 498 (1956 ed.).

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 25, 1971

RE: No. 117 - Coates v. City of Cincinnati

Dear Byron:

Please join me in your dissenting opinion.

Regards,

WEB

Mr. Justice White

cc: The Conference

WJB

May 12, 1971

Dear Chief,

Re: No. 117 - Coates v. Cincinnati

I agree with your Per Curiam circulated May 10th in the above case.

Sincerely,

Hugo

The Chief Justice

cc: Members of the Conference

W.B

May 17, 1971

Dear Potter,

Re: No. 117 - Coutas v. City of Cincinnati

While not nearly so sure as you are that the Cincinnati ordinance is unconstitutional on its face, I am persuaded that we should not dismiss for want of a properly presented federal question". Consequently I join you in objecting to dismissal on that ground.

Sincerely,

Hugo

Mr. Justice Stewart

cc: Members of the Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

From: Black, J.

2nd DRAFT

Circulated: MAY 26 1971

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 117.—October Term, 1970

Dennis Coates et al., Appellants, *v.* City of Cincinnati. } On Appeal From the Supreme Court of Ohio.

[June —, 1971]

Mr. Justice Black.

First. I agree with the majority that this case is properly before us on appeal from the Supreme Court of Ohio.

Second. This Court has long held that laws so vague that a person of common understanding cannot know what is forbidden are unconstitutional on their face. *Lanzetta* v. *New Jersey,* 306 U. S. 451 (1939). *United States* v. *Cohen Grocery Co.,* 255 U. S. 81 (1921). Likewise, laws which broadly forbid conduct or activities which are protected by the Federal Constitution, such as, for instance, the discussion of political matters, are void on their face. *Thornhill* v. *Alabama,* 310 U. S. 88 (1940). On the other hand, laws which plainly forbid conduct which is constitutionally within the power of the State to forbid but also restrict constitutionally protected conduct may be void either on their face or merely as applied in certain instances. As my Brother White states in his opinion (with which I substantially agree), this is one of those numerous cases where the law could be held unconstitutional because it prohibits both conduct which the Constitution safeguards and conduct which the State may constitutionally punish. Thus, the First Amendment which forbids the State to abridge freedom of

February second
1971

Dear Potter:

I had agreed to go along with the Chief's proposed disposition in No. 117 -- Coates v. Cincinnati. But your dissent has persuaded me the other way. So please join me in it.

William O. Douglas

Mr. Justice Stewart

May 25, 1971

Dear Potter:

I am still with you in

No. 117 - Coates v. Cincinnati.

W. O. D.

Mr. Justice Stewart

WD
Adm #1487

February 3, 1971

Re: No. 117 - Gentes v. Cincinnati

Dear Chief:

My recollection of what transpired at our Conference on this case -- and my Conference notes confirm that recollection -- is that a substantial majority of the Court indicated their willingness to accept the proposed per curiam which you circulated on January 12 in anticipation of the Conference. That per curiam dismissed the appeal for want of a properly presented federal question on the theory, as I understood it, that the parties should not be allowed to require us to deal with the statute on its face by the simple expedient of not including a record as to how the statute was actually applied in this instance. I still think that disposition is the correct one, and would be glad to join your original per curiam if a Court can be mustered for it.

On the other hand, I would be unable to join your recirculated per curiam of January 21, which holds the statute, on its face, valid.

Sincerely,

J.M.H.

The Chief Justice

CC: The Conference

May 13, 1971

Re: No. 117 - Costes v. Cincinnati

Dear Chief:

I am entirely satisfied with your circulation of May 10, and as earlier indicated in my letter of February 3, I am glad to join.

Sincerely,

J.M.H.

The Chief Justice

CC: The Conference

May 27, 1971

Re: No. 117 - Coates v. Cinn.

Dear Potter:

While I was prepared to subscribe to the Chief Justice's original per curiam, now that that disposition has proved impossible, I am glad to join your opinion.

Sincerely,

J. M. H.

Mr. Justice Stewart

CC: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 2, 1971

RE: No. 117 - Coates v. City of Cincinnati

Dear Potter:

Will you please join me in your dissent in the above.

Sincerely,

W. J. B. Jr.

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 14, 1971

RE: No. 117 - Coates v. City of Cincinnati

Dear Potter:

Please join me in your revised circulation in the above.

Sincerely,

Bill

W. J. B. Jr.

Mr. Justice Stewart

cc: The Conference

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr.
Mr.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Circulated: FEB 1 1971

No. 117.—October Term, 1970

Recirculated:

Dennis Coates et al., Appellants, *v.* City of Cincinnati. | On Appeal From the Supreme Court of Ohio.

[February —, 1971]

Mr. Justice Stewart, dissenting.

A Cincinnati ordinance makes it a criminal offense for "three or more persons to assemble . . . on the sidewalks . . . and there conduct themselves in a manner annoying to persons passing by . . . ." The appellants were convicted of violating this ordinance, and the convictions were ultimately affirmed by a closely divided vote in the Supreme Court of Ohio. 21 Ohio St. 2d 66. From the record brought before the reviewing courts, the only facts we know are that the appellant Coates was a student involved in a demonstration and the other appellants were pickets involved in a labor dispute. For throughout this litigation it has been the appellants' position that the ordinance is unconstitutionally invalid on its face. I think they are clearly right.

It is said that in affirming the judgments of conviction the Ohio Supreme Court "narrowly construed" the Cincinnati ordinance. With all respect, I think that court gave the ordinance no definitive construction whatever, let alone a "narrow" one. Instead, the state court was evidently content merely to reach for a dictionary, as its opinion simply informs us that "'Annoying' is the present participle of the transitive verb 'annoy' which means to trouble, to vex, to impede, to incommode, to provoke, to harass or to irritate." 21 Ohio St. 2d, at 69. Beyond this, the only construction put upon the ordi-

1, 3

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

No. 117.—October Term, 1970

Circulated: _____

Recirculated: FEB 3 197

Dennis Coates et al., Appellants, v. City of Cincinnati. } On Appeal From the Supreme Court of Ohio.

[February —, 1971]

Mr. Justice Stewart, with whom Mr. Justice Douglas and Mr. Justice Brennan join, dissenting.

A Cincinnati ordinance makes it a criminal offense for "three or more persons to assemble . . . on the sidewalks . . . and there conduct themselves in a manner annoying to persons passing by . . . ." The appellants were convicted of violating this ordinance, and the convictions were ultimately affirmed by a closely divided vote in the Supreme Court of Ohio. 21 Ohio St. 2d 66. From the record brought before the reviewing courts, the only facts we know are that the appellant Coates was a student involved in a demonstration and the other appellants were pickets involved in a labor dispute. For throughout this litigation it has been the appellants' position that the ordinance is unconstitutionally invalid on its face. I think they are clearly right.

It is said that in affirming the judgments of conviction the Ohio Supreme Court "narrowly construed" the Cincinnati ordinance. With all respect, I think that court gave the ordinance no definitive construction whatever, let alone a "narrow" one. Instead, the state court was evidently content merely to reach for a dictionary, as its opinion simply informs us that " 'Annoying' is the present participle of the transitive verb 'annoy' which means to trouble, to vex, to impede, to incommode, to provoke, to harass or to irritate." 21 Ohio St. 2d, at 69.

1, 4

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
[illegible]

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Stewart, J.

No. 117.—October Term, 1970

Circulated: _____

Recirculated: FEB 4 1971

Dennis Coates et al., Appellants, *v.* City of Cincinnati. | On Appeal From the Supreme Court of Ohio.

[February —, 1971]

Mr. Justice Stewart, with whom Mr. Justice Douglas, Mr. Justice Brennan, and Mr. Justice Marshall join, dissenting.

A Cincinnati ordinance makes it a criminal offense for "three or more persons to assemble . . . on the sidewalks . . . and there conduct themselves in a manner annoying to persons passing by . . . ." The appellants were convicted of violating this ordinance, and the convictions were ultimately affirmed by a closely divided vote in the Supreme Court of Ohio. 21 Ohio St. 2d 66. From the record brought before the reviewing courts, the only facts we know are that the appellant Coates was a student involved in a demonstration and the other appellants were pickets involved in a labor dispute. For throughout this litigation it has been the appellants' position that the ordinance is unconstitutionally invalid on its face. I think they are clearly right.

It is said that in affirming the judgments of conviction the Ohio Supreme Court "narrowly construed" the Cincinnati ordinance. With all respect, I think that court gave the ordinance no definitive construction whatever, let alone a "narrow" one. Instead, the state court was evidently content merely to reach for a dictionary, as its opinion simply informs us that " 'annoying' is the present participle of the transitive verb 'annoy' which means to trouble, to vex, to impede, to incommode, to

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 13, 1971

MEMORANDUM TO THE CONFERENCE

No. 117 - Coates v. Cincinnati

Within the next day or two, I plan to circulate a dissent to the most recently proposed Per Curiam in this case.

P.S.

pp. 1, 2, 5

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 117.—OCTOBER TERM, 1970

From: Stewart, J.

Circulated:

Recirculated: MAY 14 1971

Dennis Coates et al., Appellants, *v.* City of Cincinnati. } On Appeal From the Supreme Court of Ohio.

[May —, 1971]

MR. JUSTICE STEWART, dissenting.

The Court dismisses the appeal in this case "for want of a properly presented federal question." I find this disposition of the case almost unbelievable. For the appeal is here as a matter of absolute right,[1] and the federal question it involves is presented not only "properly," but presented in the clearest and least "cloudy" way imaginable. The federal question, quite simply, is whether a Cincinnati ordinance is or is not unconstitutional on its face. It is exactly the kind of question that this Court is here to decide, and exactly the kind of question that, Term after Term, we have routinely decided.[2]

Earlier this year the Court in a series of decisions drastically limited the power of federal district courts to pass upon the constitutionality of state laws.[3] Those decisions make it imperative that we here never abdicate our

[1] 28 U. S. C. § 1257 (2).

[2] See, *e. g., Times Film Corp.* v. *Chicago*, 365 U. S. 43. There the petitioner clearly had used a "deliberate litigation tactic" to insure that the only federal question presented would be the constitutionality of a Chicago ordinance on its face. This Court was unanimous in dealing with that question on the merits.

[3] *Younger* v. *Harris*, 401 U. S. —; *Boyle* v. *Landry*, 401 U. S. —; *Samuels* v. *Mackell*, 401 U. S. —; *Dyson* v. *Stein*, 401 U. S. —; *Perez* v. *Ledesma*, 401 U. S. —; *Byrne* v. *Karalexis*, 401 U. S. —.

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan ✓
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

1st DRAFT

From: Stewart, J.

Circulated: MAY 24 1971

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 117.—October Term, 1970

Dennis Coates et al., Appellants, *v.* City of Cincinnati. } On Appeal From the Supreme Court of Ohio.

[June —, 1971]

Mr. Justice Stewart delivered the opinion of the Court.

A Cincinnati, Ohio, ordinance makes it a criminal offense for "three or more persons to assemble . . . on the sidewalks . . . and there conduct themselves in a manner annoying to persons passing by . . . ."[1] The issue before us is whether this ordinance is unconstitutional on its face.

The appellants were convicted of violating the ordinance, and the convictions were ultimately affirmed by a closely divided vote in the Supreme Court of Ohio, upholding the constitutional validity of the ordinance. 21 Ohio St. 2d, 66. An appeal from that judgment was

[1] "It shall be unlawful for three or more persons to assemble, except at a public meeting of citizens, on any of the sidewalks, street corners, vacant lots, or mouths of alleys, and there conduct themselves in a manner annoying to persons passing by, or occupants of adjacent buildings. Whoever violates any of the provisions of this section shall be fined not exceeding fifty dollars ($50.00), or be imprisoned not less than one (1) nor more than thirty (30) days or both." Section 901-L6, Code of Ordinances of the City of Cincinnati (1956 ed.).

May 22, 1971

MEMORANDUM TO THE CONFERENCE

Re: No. 117 - Coates v. City of Cincinnati

This dissent is to Potter's latest dissent which, as I understand it, will be the opinion of the Court.

B.R.W.

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Mr. Justice White, J.

No. 117.—October Term, 1970

Circulated: 6-22-71

Recirculated: _____

Dennis Coates et al., Appellants, *v.* City of Cincinnati. | On Appeal From the Supreme Court of Ohio.

[June —, 1971]

Mr. Justice White, dissenting.

The claim in this case, in part, is that the Cincinnati ordinance is so vague that it may not constitutionally be applied to any conduct. But the ordinance proscribes assembling with others and "conduct[ing] themselves in a manner annoying to persons passing by . . . ." Cincinnati Code of Ordinances § 901–L6. Any man of average comprehension should know that some kinds of conduct, such as assault or blocking passage on the street, will annoy others and is clearly covered by the "annoying conduct" standard of the ordinance. It would be frivolous to say that this and many other kinds of conduct are not within the foreseeable reach of the law.

It is possible that a whole range of other acts, defined with unconstitutional imprecision, is forbidden by the ordinance. But as a general rule, when a criminal charge is based on conduct constitutionally subject to proscription and is clearly forbidden by a statute, it is no defense that the law would be unconstitutionally vague if applied to other behavior. Such a statute is not vague on its face. It may be vague as applied in some circumstances, but ruling on such a challenge obviously requires knowledge of the conduct with which a defendant is charged.

In *Williams* v. *United States*, 341 U. S. 97 (1951), a police officer was charged under federal statutes with

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 3, 4

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
✓Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun

2nd DRAFT

From: White, J.

Circulated:

Recirculated: 5-27-71

SUPREME COURT OF THE UNITED STATES

No. 117.—October Term, 1970

Dennis Coates et al., Appellants, v. City of Cincinnati. | On Appeal From the Supreme Court of Ohio.

[June —, 1971]

Mr. Justice White, with whom The Chief Justice and Mr. Justice Blackmun join, dissenting.

The claim in this case, in part, is that the Cincinnati ordinance is so vague that it may not constitutionally be applied to any conduct. But the ordinance prohibits persons from assembling with others and "conduct[ing] themselves in a manner annoying to persons passing by . . ." Cincinnati Code of Ordinances § 901–L6. Any man of average comprehension should know that some kinds of conduct, such as assault or blocking passage on the street, will annoy others and are clearly covered by the "annoying conduct" standard of the ordinance. It would be frivolous to say that these and many other kinds of conduct are not within the foreseeable reach of the law.

It is possible that a whole range of other acts, defined with unconstitutional imprecision, is forbidden by the ordinance. But as a general rule, when a criminal charge is based on conduct constitutionally subject to proscription and clearly forbidden by a statute, it is no defense that the law would be unconstitutionally vague if applied to other behavior. Such a statute is not vague on its face. It may be vague as applied in some circumstances, but ruling on such a challenge obviously requires knowledge of the conduct with which a defendant is charged.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 3, 1971

Re: No. 117 - Coates v. Cincinnati

Dear Potter:

Please join me in your dissent.

Sincerely,

T.M.

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 17, 1971

Re: No. 117 - Coates v. Cincinnati

Dear Potter:

Please join me in your revised opinion.

Sincerely,

T.M.

Mr. Justice Stewart

cc: The Conference

February 8, 1971

Re: No. 117 - Coates, et al. v. City of Cincinnati

Dear Chief:

This is in response to your memorandum of February 8. I would be willing to join the first Per Curiam which was prepared for this case.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference

May 12, 1971

Re: No. 117 - Coates v. Cincinnati

Dear Chief:

As was indicated in my note of February 8 to you, I am now in agreement with the Per Curiam you have proposed and circulated on May 10.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

May 26, 1971

Re: No. 117 - Coates, et al. v. Cincinnati

Dear Byron:

I assume that your dissent circulated May 22 is directed at Potter's opinion circulated May 24. On that assumption, please join me in your dissent.

Sincerely,

H.A.B.

Mr. Justice White

cc: The Conference