PARADE ORDINANCES AND PRIOR RESTRAINTS

The recent violent racial strife in our country has caused municipal officials to intensify their search for methods of preventing confrontation between antagonistic parties. One of these methods involves the implementation of laws requiring licensing of parades, marches or public gatherings before they occur. Ordinances of this type provide the municipality with advance information so that traffic may be rerouted, escorts can be supplied and community disruption can be minimized.[1] However such statutes present a difficult constitutional problem involving prior restraints on freedom of speech.[2]

The Supreme Court has found prior restraints on freedom of the press unconstitutional[3] but has upheld some licensing statutes which were prior restraints on freedom of speech in public places,[4] thus drawing a distinction between "pure speech" and "speech plus."[5] The Court recognizes the validity of licensing statutes which regulate in a general and non-discriminatory manner the time, location, and form of the demonstration with a view only to controlling the use of the streets to insure free movement of traffic.[6] On the other hand the Court has been concerned with the lack of standards and procedural safeguards in the licensing statutes which result in the licensor's unlimited power to censor any views, thus denying individuals equal protection of the law or establishing an invalid prior restraint.[7] Recent obscenity decisions also indicate that the Court approaches cases concerning prior restraints on

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[1] Cox v. New Hampshire, 312 U.S. 569, 576 (1941). Some feared that the effect of conversation relied on by the court in *Cox v. Louisiana*, 379 U.S. 559 (1965) between the protesters and municipal officials would inhibit further pre-march arrangements between protesters and the municipality. Kamin, *Residential Picketing and the First Amendment*, 61 NW. U.L. REV. 177, 218-19 (1966).

[2] "[L]iberty of the press, historically considered and taken up by the Federal Constitution, has meant, principally . . . immunity from previous restraints or censorship." Near v. Minnesota, 283 U.S. 697, 716 (1931); Grosjean v. American Press Co., 297 U.S. 233, 243-251 (1936) [Historic Development]; Lovell v. Griffin, 303 U.S. 444, 452 (1938) [Extended to leaflet distribution].

[3] Near v. Minnesota, 283 U.S. 697 (1931); Grosjean v. American Press Co., 297 U.S. 233 (1936).

[4] Cox v. New Hampshire, 312 U.S. 569 (1941); Kovacs v. Cooper, 336 U.S. 77 (1949); Poulos v. New Hampshire, 345 U.S. 395 (1953). Justice Jackson proposes that written words are less likely to incite mass action than spoken words which directly arouse emotions. Kunz v. New York, 340 U.S. 290, 307 (1951) (dissenting opinion).

[5] "Governmental authorities have the duty and responsibility to keep their streets open and available for movement." Cox v. Louisiana, 379 U.S. 536, 554-555 (1965). ". . . the First and Fourteenth Amendment [do not] afford the same kind of freedom to those who would communicate ideas by conduct such as patrolling, marching, and picketing on streets and highways as these amendments afford to those who communicate ideas by pure speech." *Id.* at 555.

[6] Cantwell v. Connecticut, 310 U.S. 296, 304 (1940); Cox v. New Hampshire, 312 U.S. 569, 576 (1941); Walker v. Birmingham, 388 U.S. 307, 328 (1967) (Warren, C.J., dissenting).

[7] Hague v. CIO, 307 U.S. 496, 516 (1939); Kunz v. New York, 340 U.S. 290, 293 (1951); Niemotko v. Maryland, 340 U.S. 268, 273 (1951); Saia v. New York, 334 U.S 558, 560 (1948).

freedom of expression with a presumption against their validity.[8] In order to be saved such a licensing statute must contain procedural safeguards which insure against the dangers of censorship.[9] The Court's reference to obscenity cases in political speech cases and the similar need for expeditious judicial review[10] in both situations indicate that procedural safeguards, together with proper delineation of subject matter and definite standards, may be requisites of a constitutional demonstration licensing statute. This article will discuss the procedural safeguards and the standards of such a statute.

Though the First Amendment speaks in absolute terms, "Congress shall make no laws . . . abridging the freedom of speech," the Court has employed a balancing test in deciding the constitutionality of free speech convictions under breach of the peace statutes. "[F]reedom of speech . . . is . . . protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that arises far above public inconvenience, annoyance, or unrest."[11] The Court dealing specifically with a licensing statute posed the question as whether "[the] control [of traffic by the licensor] is exerted so as not to deny or unwarrantedly abridge the right of assembly and the opportunities . . . for the discussion of public questions immemorially associated with resort to public places."[12] The Court approved a statute which granted the applicant a right to a license "if after a required investigation it was found that the convenience of the public in the use of the streets would not thereby be unduly disturbed, upon such conditions or changes in time, place and manner as would avoid disturbance."[13] The individual's right to express himself in public seems to be competing with the public's right to be free of disturbance in their travel over the public highways and sidewalks. Since these statutes may affect First Amendment rights and may be prior restraints, which carry a presumption against their validity, the Court is obligated to examine the facts in each case to establish whether a federal right has been infringed.[14] The presumption

[8] Bantam Books v. Sullivan, 372 U.S. 58, 70 (1963); Freedman v. Maryland, 380 U.S. 51, 57 (1965).

[9] Freedman v. Maryland, 380 U.S. 51, 58 (1965).

[10] Carroll v. President and Comm'rs of Princess Anne, 393 U.S. 175, 182 (1968) [Hereinafter cited as Carroll v. Princess Anne]; Shuttlesworth v. Birmingham, 394 U.S. 147, 155 n. 4 (1969) (Harlan concurring), 394 U.S. 147, 157 (1969). *See* Poulus v. New Hampshire, 345 U.S. 395, 420 (1954) (Frankfurther concurring).

[11] Terminello v. Chicago, 337 U.S. 1, 4 (1949); Edwards v. South Carolina, 372 U.S. 229, 237 (1963) (citing with approval *Terminello*).

[12] Cox v. New Hampshire, 312 U.S. 569, 574 (1941); *Accord*, Shuttlesworth v. Birmingham, 394 U.S. 147 (1969).

[13] Cox v. New Hampshire, 312 U.S. 569, 576 (1941). The Alabama Supreme Court's construction approved by the Court recently omitted the last clause "upon such conditions or changes in time and place and manner as would avoid disturbances." Shuttlesworth v. Birmingham 394 U.S. 147, 155 (1969).

[14] Norris v. Alabama, 294 U.S. 587, 589-590 (1935); Feiner v. New York, 340 U.S. 315,

against validity and the close scrutiny of facts weight the balance favorably for freedom of expression.

In *Shuttlesworth v. Birmingham*,[15] the Supreme Court approved of Birmingham's parade ordinance as interpreted by the Alabama Supreme Court. The Court indicated that without such an interpretation, the statute would have been unconstitutional on its face since it had granted the Commission the power to withhold issuance of a permit if in its judgment "the public welfare, peace, safety, health, decency, good order, morals, or convenience" required such action.[16] The statute had conditioned petitioners constitutional guarantees on the uncontrolled will of the Commission.

To provide the licensor with definite standards for making his decision the legislature should direct guidelines of prohibited activity. Statutes limiting courthouse,[17] jailhouse,[18] neighborhood,[19] and rush hour demonstrations,[20] loud and raucous sound amplification,[21] obstruction of streets and sidewalks,[22] have all been approved specifically or impliedly by the Court. Further, dicta has implied that any specific regulation of streets and sidewalks and parks for public safety and convenience would be found constitutional on its face.[23] Difficulty erupts when vague criteria are incorporated in the statute as grounds for refusal.

A license should not be denied on the grounds that the demonstration will likely cause a breach of the peace unless the applicant states breach of the peace to be his purpose and he appears to have the capabilities to carry out his intent.[24] (It is doubtful that such a potential applicant will apply.) The difference between protected speech, that "stir[s] people to anger, invite[s] public dispute or [brings] about a condition of unrest"[25] and prohibited speech that "creates a clear and present danger of a substantive evil that arises far above public inconvenience, annoyance, or unrest"[26] is too slight to distinguish *before* the

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322 (1951) (Black dissenting); *contra*, Niemotko v. Maryland, 340 U.S. 268, 287 (1951) (Frankfurther concurring).

[15] 394 U.S. 147 (1969).

[16] *Id.* at 149.

[17] Cox v. Louisiana, 379 U.S. 559 (1965); Cameron v. Johnson, 390 U.S. 611 (1968).

[18] Adderley v. Florida, 385 U.S. 39 (1966).

[19] Gregory v. Chicago, 394 U.S. 111, 113 (Black and Douglas concurring) (1969).

[20] Cox v. Louisiana, 379 U.S. 536, 554 (1965).

[21] Kovacs v. Cooper, 336 U.S. 77 (1949).

[22] Cox v. Louisiana, 379 U.S. 536, 553 (1965).

[23] Cox v. Louisiana, 379 U.S. 559, 581 (1965) (Black concurring and dissenting). The question of whether a municipality can totally prohibit all forms of speech on public streets or parks is still unanswered. *Compare* Commonwealth v. Davis, 162 Mass. 510, 39 NE 113 (1895), affirmed 167 U.S. 43 (1897) *with* Hague v. CIO, 307 U.S. 496, 515 (1939).

[24] *See* notes 32-33, *infra.*

[25] Terminello v. Chicago, 337 U.S. 1, 4 (1949); Edwards v. South Carolina, 372 U.S. 229, 237-238 (1963).

[26] *Id.*

event in question takes place. Making such a determination is difficult enough for learned courts *after the fact.* The licensor's decision, based as it must be on the hypothesized result of the interaction of many unknown variables, is necessarily quite unreliable and discretionary. Furthermore, subsequent punishment is always available "after freedom to speak has been so grossly abused that its immunity is breached."[27]

Some other forms of speech are not protected by the Constitution and thus would be proper subjects for consideration as grounds for denial in drafting a proper licensing statute. These unprotected forms include statements advocating incitement to riot,[28] fighting words,[29] and other expressions "so interlaced with burgeoning violence that [they are] not protected. . . ."[30] Fighting words, which by their very utterance inflict injury or tend to incite an immediate breach of the peace, were authoritatively found outside the constitution's protection in a "face to face" situation.[31] When such words are spoken to a *group* the likelihood of a breach of the peace is reduced and therefore the constitutional protections should be revitalized.[32] The remaining two previously mentioned unprotected forms of speech also should not be grounds for denial of a license unless the applicant specifically states his intent to engage in such activity since the relationship of such words to traffic control, the legitimate goal of parade licensing, is tenuous and subsequent punishment is always available.[33]

The Alabama construction, which almost saved the Birmingham statute, limited the scope of the licensor's discretion to considerations of safety, comfort, and convenience in the use of the streets and not to censorship. It also made the granting of a license mandatory after an investigation found the convenience of the public in the use of the streets or sidewalks would not thereby be *unduly disturbed.* The Alabama court unexplainably omitted the phrase "upon such conditions or changes in time, place, and manner as would avoid disturbance" approved by the Court in *Cox v.*

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27 Carroll v. Princess Anne, 393 U.S. 175, 180-81 (1968). Municipal officials seem to feel this is unsatisfactory and would prefer the result in Walker v. Birmingham, 388 U.S. 307 (1967) and Adderley v. Florida, 385 U.S. 39 (1966). Hoffman, *Report of Committee on City Disturbance,* NIMLO MUNI. L. REV. 105, 128 (1968).

28 Cantwell v. Connecticut, 310 U.S. 296, 308 (1940).

29 Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942). (The unanimous court included the following as unprotected speech: lewd, obscene, profane, libelous and insulting or fighting words).

30 Carroll v. Princess Anne, 393 U.S. 175, 180 (1968).

31 Chaplinsky v. New Hampshire, 315 U.S. 568, 572-73 (1942). Appellant was convicted for saying "telling the Marshall you are a God damned Racketeer and a damned Fascist and the whole government of Rochester are Fascists. . . ." *Id.* at 569.

32 Note, *Free Speech and the Hostile Audience,* 26 N.Y.U. INTRA L. REV. 489, 498 (1951).

33 *Cf.* Schenck v. United States, 249 U.S. 47, 52 (1919); Chaplinsky v. New Hampshire, 315 U.S. 568, 571-572 (1942); Kunz v. New York, 340 U.S. 290, 301 (1951) (Jackson, J., dissenting).

New Hampshire.[34] The difference between *unduly disturb* and *disturbance* may be significant. The former suggests *some* disturbance would be permissible, as does the clear and present danger test, while the latter could be interpreted to dictate changes to avoid *all* disturbance. The latter construction appears to place freedom of expression on the same footing as the public's convenience, which would invalidate the provision.[35] Significantly, the Court infers that a valid statute could contain provisions for changes in time and place which "would minimize the traffic problems."[36] This view recognizes that *some* traffic may be inconvenienced by a demonstration. The problem here, as throughout the licensing procedure, is the need for non-discriminatory administration based on specific statutory guidelines.[37]

In addition to the Alabama court's construction of the statute, the Supreme Court suggested that procedural safeguards were needed to insure constitutionality.[38] Justice Harlan, concurring, suggests several pertinent procedural queries. How should an application be submitted? Must every applicant personally appear before the commission or is the delivery of an application at a specified office sufficient to have the request considered? More importantly, will an applicant have effective relief on denial of the license? Harlan begins the inquiry by arguing that the *Freedman v. Maryland*[39] doctrine, relating to film obscenity cases, which prohibits states from requiring individuals to undergo time consuming procedures before they could exercise their protected right of expression is applicable to parade licensing cases. "The right to assemble peaceably to voice political protest is at least as basic as the right to exhibit a motion picture. . . . [T]iming is of the essence of politics."[40] The question of whether parade licenses need be administered on an expedited basis was not reached in *Cox v. New Hampshire*[41] and since appellant in *Poulus v. New Hampshire*[42] had sufficient time (almost two months) to obtain an order of mandamus from the courts the question of rapid remedy was likewise not discussed. Harlan suggests a required submission months before the event would place a great burden on one's constitutional rights.[43] Yet the submission must be made early enough to

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[34] 312 U.S. 569, 576 (1941).

[35] *See* note 11 *supra.*

[36] Shuttlesworth v. Birmingham, 394 U.S. 147, 158 (1969).

[37] Niemotko v. Maryland, 340 U.S. 268, 273 (1951); Cox v. Louisiana, 379 U.S. 536, 557-58 (1965).

[38] Shuttlesworth v. Birmingham, 394 U.S. 147, 155 n.4 (1969).

[39] 380 U.S. 51, (1965).

[40] Shuttlesworth v. Birmingham, 394 U.S. 147, 162-63 (1969). See note 9 *supra* and applicable text.

[41] 312 U.S. 569 (1941).

[42] 345 U.S. 395, 419-420 (1953) (Frankfurter, J., concurring).

[43] *Cf.* Williams v. Rhodes, 393 U.S. 23, 33 (1968).

allow time for an investigation, an administrative decision and a judicial review regarding the issuance of the license before the date of the event.[44]

Assuming the application contains sufficient information on which the licensor can base his determination, i.e., size, composition (people, animals, vehicles), route, time, duration and date of the planned activity, a city official with knowledge of the city's traffic situation should be able to make a decision within twenty-four hours. In the event of a conflict a prompt discussion of alternatives (time, place or manner) should be initiated. The discussion must be limited by time to a relatively short period—perhaps a day. After this time (maximum of two days) the issuing officer would issue one of two possible licenses. The absolute license will be issued when the licensor believes the activity will not unduly disturb the convenience of the public in their use of the streets. If the licensor finds otherwise he would issue a conditional license. The conditional license would permit the activity unless a judicial determination[45] after due notice and an adversary hearing found[46] the proposed activity to be such as would unduly disturb the convenience of the public in the use of their streets. This dual licensing scheme would place the burden of seeking judicial review on the licensor and tend to prevent any delaying tactics on his part. To insure that the applicant will not delay the judicial determination, his stalling tactics (failure to appear after due notice, purposely making himself unavailable to receive notice) should be grounds for a judicial revokation of the conditional license.

Assuming that local courts are influenced greatly by community attitudes and may be less sensitive to the individuals constitutionally protected rights,[47] rapid appellate review of the lower court's decision may be mandatory. The conditional parade license should similarly be conditioned on a determination by the appellate court since the censorship of political expression requires greater scrutiny than censorship of alleged obscene material.

Time limitations must also be imposed on the judicial process.[48] The hearing should closely follow (within one day) adequate notice and the joinder of issue. The applicant's formal application can be used as his pleading thus leaving the licensor with control of the time factor. A

[44] Freedman v. Maryland, 380 U.S. 51, 61 (1965); Shuttlesworth v. Birmingham, 394 U.S. 147 (1969) (Harlan, J., concurring).

[45] "[O]nly a procedure requiring a judicial determination suffices to impose a valid final restraint." Freedman v. Maryland, 380 U.S. 51, 58 (1965); Bantam Books Inc. v. Sullivan, 372 U.S. 58, 70 (1963); Marcus v. Search Warrant, 367 U.S. 717, 731-32 (1961); Manual Enterprises, Inc. v. Day, 370 U.S. 478, 518-519 (1962).

[46] Carroll v. Princess Anne, 393 U.S. 175, 185 (1968).

[47] Roth v. United Statss, 354 U.S. 476, 496 (1957) (Harlan, J., concurring and dissenting); *cf.* Times Film Corp. v. Chicago, 365 U.S. 43, 45 (1961) (approving a statute leaving final appeal to the mayor, though this specific question was unanswered).

[48] Freedman v. Maryland, 380 U.S. 51, 59 (1965).

rapid judicial decision should also be required by statute—perhaps two days. Thus after one and half weeks an initial determination by the courts could be obtained. If appellate review is also desired the licensor, still with the burden of going forward, must quickly initiate the action. The appellate court will also be required to decide within a specified time. By computing the maximum time needed for the total review process, perhaps three weeks, the proper time for submission can be determined. To reduce the time needed for the entire project, the first judicial determination could be omitted and an appeal from the licensor taken directly to the appellate court. This would remove what may be a duplicate decision making of the local licensor and the local judge and would reduce the total time needed for review by nearly a week. Throughout the proceedings the burden of proof would be on the licensor to show that the convenience of the public would be unduly disturbed if the activity were sanctioned.[49]

The Birmingham statute, litigated in *Shuttlesworth*, with the Alabama Supreme Court's construction lacked the above mentioned procedural standards but this was not the Court's grounds for reversal. The Court distinguished the instant case from *Cox v. New Hampshire*,[50] since in that case there was other evidence to indicate that the statute had been administered in a discriminatory manner,[51] and accordingly reversed appellant's conviction for demonstrating without a permit. Had there been no prior evidence of discriminatory licensing the decision would have been difficult in light of the Alabama Supreme Court's construction since the statute on its face literally gave unconstitutional discretion to the licensor.[52] The "remarkable job of plastic surgery" performed by the Alabama Supreme Court, four years after the event, would have much less effect in situations where the statute's language is so patently discretionary.[53]

The Good Friday and Easter Sunday marches involved in *Shuttlesworth* had previously been before the Court in *Walker v. Birmingham*.[54] At that time a one vote majority affirmed a finding of contempt against petitioners who had violated an *ex parte* injunction which incorporated the same statute litigated in *Shuttlesworth*. The *Walker* Court based its

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[49] *Cf.* Speiser v. Randall, 357 U.S. 513, 526 (1958).

[50] "There is no evidence that the statute has been administered otherwise than in the fair and non-discriminatory manner. . . ." 312 U.S. 569, 577 (1941).

[51] The court took judicial notice of uncontradicted testimony in Walker v. Birmingham, 388 U.S. 307, 317 n. 9, 325, 335, 339 (1967) which indicated that the censor thought the ordinance meant what it said. Shuttlesworth v. Birmingham, 394 U.S. 147, 157 (1969).

[52] *Cf.* Cox v. New Hampshire, 312 U.S. 569 (1941); Poulos v. New Hampshire, 345 U.S. 395 (1953).

[53] Shuttlesworth v. Birmingham, 394 U.S. 147, 153-56 (1969).

[54] 388 U.S. 307 (1967).

decision on the general rule stated in *Howat v. Kansas*,[55] that court injunctions are to be obeyed until error is found by normal and orderly review procedures. Moreover, the Court felt obligated to affirm since Alabama precedent had firmly established this rule.[56] The dissenters objected to the *ex parte* aspects of the injunction and relied on *In re Green*[57] as precedent for reversal. In that case the Court reversed a conviction for contempt of an order prohibiting labor picketing because petitioner was not permitted—due to the *ex parte* nature of the injunction—to show that the dispute was arguably subject to the National Labor Relations Board and not state regulation. The majority suggests that if *In re Green* is a limitation on *Howat* it does not control in *Walker*. In *In re Green*, unlike the situation in *Walker*, the petitioners *attempted* to challenge the injunction *before* they violated it.[58] Continuing this reasoning the court strongly infers that an *attempt* to have the injunction dissolved or modified through judicial process would have made reversal possible.[59] *Walker* and *Shuttlesworth* are consistant in that both illustrate the Court's belief that state regulations over freedom of expression can only be exercised with judicial sanction or expeditious judicial review. In *Walker* the necessary statutory standards to minimize licensor's discretion were satisfactorily replaced by a judicial hearing. But, does the injunction procedure provide other safeguards needed in the licensing statute such as notice, adversary hearings, speedy decisions, speedy appellate review, and the proper placement of the burdens of proof and going forward?

A year after *Walker* in *Carroll v. President and Commissioners of Princess Anne*[60] the type of hearing required was determined. Petitioners identified with "white supremacist" groups were served with an *ex parte* order enjoining them for ten days from holding meetings in the county "which will tend to disturb and endanger the citizens of the county."

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[55] Howat v. Kansas, 258 U.S. 181, 189-90 (1922); *see also* United States v. United Mine Workers of America, 330 U.S. 258, 293-294 (1947).

[56] In affirming the conviction of members of a "White Supremacy" group who disobeyed an injunction, the Alabama Supreme Court ruled that "no person charged with [a statute's] observance under an order or decree may disregard or violate the order or decee with immunity from a charge of contempt of court. . . ." Fields v. City of Fairfield, 273 Ala. 588, 590, 143 So.2d 177, 180 (1962), *rev'd on other grounds* 375 U.S. 248 (1963).

[57] 369 U.S. 689 (1962).

[58] 338 U.S. 307, 315 & n. 6 (1967); *Cf., id.*, at 332-33 n. 9 (Warren, C.J., dissenting) "Nor is it clear to me why the Court regards this fact as important, unless it means to imply that the petitioners in this case would have been free to violate the court order if they had first made a motion to dissolve in the trial court."

[59] "This case would arise in quite a different constitutional posture if the petitioners, before disobeying the injunction, had challenged it in the Alabama courts and had met with delay or frustration of their constitutional claims. . . . There was an interim of two days between the issuance of the injunction and the Good Friday march. The petitioners gave . . . no explanation of why they did not make some application to the state court. . . . Alabama procedure would have provided an expedited process of appellate review." Walker v. Birmingham, 388 U.S. 307, 318-319 (1967).

[60] 393 U.S. 175 (1968).

Following the dictates of *Walker*, petitioners obeyed the order and applied to the courts for relief. Ten days later, after a hearing, the Circuit Court extended the injunction for ten months. The Maryland Court of Appeals dissolved the ten month injunction since "the period of time was unreasonable and that it was arbitrary to assume that a clear and present danger of civil disturbance and riot would persist for ten months."[61] The court affirmed the ten day order. As noted above the Supreme Court found the *ex parte* hearing to be valid grounds for dissolution of the ten day injunction. The Court rejected the respondent's plea that the availability of a judicial hearing within two days of issuance saved the statute.[62] The obvious fear expressed by the Court in rejecting such an argument was that local officials might wait until the last possible moment, obtain an *ex parte* injunction and be assured that the planned march will not take place with immunity to the participants.

The majority in *Walker* indicated that Alabama's Supreme Court Rule 47 would provide expeditious judicial review of attempts to modify or dissolve the *ex parte* injunction.[63] Justice Brennan, dissenting, suggested that the statute "leaves the timing of full judicial consideration of the validity of the restraint to that court's untrammeled discretion."[64] In *Carroll*, petitioners, following the procedure suggested in *Walker*, did not have their rights correctly defined for over two years.[65] The solution intimated in *Walker* is to challenge the order in the courts. If a proper hearing and appeal have been frustrated so that a final determination will not be given until after the event planned, the petitioners should be permitted to violate the order without fear of conviction for contempt.[66] The Court appears to be allowing greater discretion to judges acting under general equity powers by not requiring a specific timetable for actions than to judges acting under the licensing statutes,[67] in the belief that the former will see the need for appellate determination and make speedy appeals possible. Furthermore the court seems to be granting the demonstrators an alternative not available under the licensing statutes—the right to disobey the contempt order if after a diligent attempt they failed to procure appellate review before the planned activity. The burden of going forward ought to be on the city officials, as on the licensor, to in-

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61 Carroll v. Princess Anne, 247 Md. 126, 136, 230 A.2d 452, 457-458 (1967).

62 "[D]enial of a basic procedural right . . . is not excused by the availability of post-issuance procedure which could not possibly serve to rescue the . . . meeting, but at best, could have shortened the period in which petitioners were prevented from holding a rally." Carroll v. Princess Anne, 393 U.S. 175, 184 (1968).

63 388 U.S. 307, 318-319 (1967).

64 *Id.* at 348.

65 The rally enjoined was to take place on August 7, 1966. The Supreme Court's decision was delivered on November 19, 1968. 393 U.S. 175 (1968).

66 *See*, note 59 and accompanying text *supra.*

67 *See* note 48 and accompanying text, *supra.*

sure that petitioners have an appellate hearing before they are censored. Any stalling tactics by the petitioners should relieve the municipality of seeking further action.[68] The burden of proof should also remain on the municipality defending the injunction.[69] A proper licensing statute should eliminate the need to resort to the *Walker* type injunction. But should the practice continue the court will probably require reviewing procedure similar to effective relief now suggested in the proposed licensing statute.

The Court has begun to recognize the importance of time and judicial determinations in deciding controversies involving state regulation of freedom of expression. *Walker* should be read as a warning to those tempted to flaunt the authority of the courts. *Carroll* and *Shuttlesworth* should likewise warn municipal officials who would abuse individual's rights that the court will protect such rights. Adversary hearings, rapid judicial review and properly drafted statute are needed to insure that the individual's First Amendment right to express his views are free from the abuse of intolerant local officials.

Charles K. Ledsky

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[68] *See* text following note 46, *supra.*

[69] *See* note 49 and accompanying text, *supra.* Walker v. Birmingham, 388 U.S. 307, 348 (1967) (Brennan, J., dissenting).