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Constitutional Law-Civil Rights-Threat of Mob Violence as Justification for Restraint on Exercise of Right to Travel in Interstate Commerce

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CONSTITUTIONAL LAW—CIVIL RIGHTS—THREAT OF MOB VIOLENCE AS JUSTIFICATION FOR RESTRAINT ON EXERCISE OF RIGHT TO TRAVEL IN INTERSTATE COMMERCE—Pursuant to a plan to test for racial segregation in interstate commerce facilities, white and Negro students traveled through Alabama on an interstate bus journey. In Birmingham and Anniston, the students were assaulted by members of the Ku Klux Klan and other conspirators; at or near Anniston one of the buses was destroyed. On arrival at Montgomery, the students were again assaulted and intimidated by members of the Ku Klux Klan and various other individuals. The Montgomery police, with full knowledge of the impending violence, did nothing to protect the personal safety of the interstate travelers. The plaintiff, United States, initiated proceedings, seeking a preliminary injunction restraining the defendants, the Ku Klux Klan and others, from interfering with the travel of passengers into and through Alabama. Two of the defendants, Montgomery officials, then petitioned the court to issue a temporary restraining order against the students and the various groups[1] supporting them to prevent further use of the interstate facilities in the state. *Held*, preliminary injunction against the defendants and temporary restraining order against the students and their supporters granted. Although the defendants were unlawfully interfering with the acknowledged rights of the students and although the inactivity of the Montgomery police force constituted "state action" in violation of the equal protection clause of the fourteenth amendment,[2] the peaceful activity of the students and their supporters was an undue burden on interstate commerce. *United States v. U.S. Klans, Knights of Ku Klux Klan, Inc.*, 194 F. Supp. 897 (M.D. Ala. 1961).

The civil strife resulting from peaceful demonstrations in hostile communities often creates the difficulty of preserving individual rights without sacrificing the public's interest in maintaining peace and order within the community. As various interest groups have sought to restrict the activity of others, the federal courts have been increasingly called upon to distinguish permissible agitation from that which is deemed too great an invasion of the public interest. The courts must weigh the individual's rights of freedom of expression,[3] assembly[4] and travel[5] against

1 Foremost among these was the Congress of Racial Equality (CORE). Other groups and individuals affected by the court's decree included the Southern Christian Leadership Conference, the Student Nashville Non-Violent Movement, and Martin Luther King, Jr.

2 The court details facts which leave no question about the willful nature of the failure of the Montgomery officials to perform their duty. Principal case at 900. For a recent decision involving inaction as unlawful state action in violation of the equal protection clause, see Burton v. Wilmington Parking Authority, 365 U.S. 715, 725 (1961).

3 See Gitlow v. New York, 268 U.S. 652, 666 (1925).

4 See DeJonge v. Oregon, 299 U.S. 353, 364 (1937).

5 See Kent v. Dulles, 357 U.S. 116, 126 (1958).

the various state or national interests threatened. Verbalizations concerning the value and preferred status of certain constitutional rights, followed by the inseparable admonition that these rights are not absolute, accomplish nothing more than a restatement of the particular balancing problem confronting the court. Once these traditional generalizations have been invoked, the court, in seeking to resolve the conflict, may well search in vain for judicial precedent which is pertinent or helpful.

Arguably the questionable wisdom of the decree in the instant case stems from an over-reliance upon several incontrovertible legal propositions. Assuming the appropriateness of the injunctions against the various groups interfering with the interstate travelers, the obvious question is why the court felt compelled to go beyond the relief sought by the government and restrain the students as well. The court's opinion justified this decree primarily on the strength of two general principles: the broad and flexible equitable powers of the district courts to enjoin conduct deleterious to the public interest,[6] and the non-absolute nature of the constitutional rights of the "Freedom Riders."[7] Obviously the power to issue a certain type of decree is not a justification for doing so in any particular instance. And the fact that the right to travel in interstate commerce is not absolute in no way lessens the need to justify the curtailment of that right. The court's reference to cases deciding that the public interest was paramount to an individual's rights to operate sound trucks[8] or to parade through city streets[9] seems meaningless absent a showing of analogous circumstances. Furthermore, the court's statement that the restraining order was not directed at "bona fide" travelers in interstate commerce[10] does not provide any satisfactory justification for a restriction of constitutional rights. A bus ride to vindicate one's rights as a citizen of the United States could only be considered "non-bona fide" in the sense that the trips were planned and well organized. Organized group action of this nature is a concomitant of the right to peaceful demonstration and seems preferable to the probable results of "spontaneous" protest activity.

The court's reasoning is not entirely responsive to the crucial issue of whether the facts demonstrated a continuing threat of a burden on interstate commerce sufficient to justify the curtailment of constitutional liberties. It is at once apparent that compliance with the injunctions sought by the United States should have lifted the burden from interstate commerce. Thus the necessity of a further exercise of judicial power seems predicated upon the contemplated ineffectiveness of the court's

6 FED. R. CIV. P. 65 (b).

7 See, *e.g.*, American Communications Ass'n v. Douds, 339 U.S. 382, 394-95 (1950); Cox v. New Hampshire, 312 U.S. 569, 574 (1941).

8 Kovacs v. Cooper, 336 U.S. 77 (1949).

9 Cox v. New Hampshire, 312 U.S. 569 (1941).

10 Principal case at 906.

mandate. Since the court found that the activity of the defendants was directly responsible for the burden on interstate commerce, the court's finding that the activity of the students and integrationist groups was also responsible[11] presents difficulty. Without the unlawful action of defendants there would have been no violence and consequently no burden on interstate commerce. While logically this is equally true of the student's lawful activity, the finding that the students were also *directly* causing the burden on interstate commerce must be based on a theory which isolates the violent reactions of defendants and considers them purely as a passive constant. Any activity which releases this potential reservoir of violence is then the cause of the violence. It would seem that compelling circumstances should be present before constitutional rights are restricted for threatening public harm when the causation is of this nature. While the court recognized the principle that the threat of mob violence is no excuse for the failure of the court to issue an injunction to protect the constitutional rights of private citizens,[12] it distinguished the present case on two grounds, neither of which is completely convincing. The fact that the injunction sought by the United States was granted does not appear to be an important distinction since the court then restrained the exercise of the very right which the injunction against defendants was intended to secure. Nor was it entirely clear that further testing of "local customs" would "frustrate" pending litigation involving a determination of the legality of racial discrimination in local bus terminals.[13] A finding that even after the defendants' conduct had been effectively enjoined there remained a threat of an undue burden on interstate commerce should have been a prerequisite to the restriction of the students' rights. The court simply stated that there was a burden, but other than a reference to some disruption in the bus scheduling there is no indication of any serious interruption of the flow of commerce.[14] And the order was not sought by the carriers, but by the defendants who had

11 *Id.* at 904.

12 See Cooper v. Aaron, 358 U.S. 1, 16 (1958). In this case the district court had granted the request of the Little Rock School Board to suspend for two and one-half years the operation of the School Board's court approved desegregation plan, finding that implementation of the plan had resulted in tension, bedlam, chaos and turmoil which disrupted the educational process. In affirming the Fifth Circuit's reversal, the Supreme Court said, "Thus law and order are not here to be preserved by depriving the Negro children of their constitutional rights." 358 U.S. at 16.

13 If the court meant to say that further testing is senseless since the pending litigation will settle everything, by the same reasoning, most lawful agitation of this nature is equally without purpose. Barring other complicating factors this question should probably be a matter for the interested groups themselves to determine.

14 There was of course violence in Anniston and Birmingham on the particular day on which the events described in the principal case took place. However, there is no indication that the defendants had, or threatened to, ignore the temporary restraining order which the court issued prior to the decision in principal case.

already been enjoined for contributing to the very burden for which they then unabashedly professed concern. Thus it appears that the opinion justified the restriction of constitutional rights on the basis of broad propositions of law without a convincing showing that the facts called for their application.

Two phenomona of the mid-twentieth century—a large racial minority actively pressing for "equality," and the unprecedented legal activity of the federal government in protecting minority rights—suggest that cases of this nature will increase in number. It is submitted that they require a candid recognition by the courts that a difficult evaluation is presented in which a thorough analysis of the factual and social background is often more important than judicial theory. Once the court is satisfied that a particular group is the cause of a substantial threat to the public interest, a variety of factors, depending upon the facts of the particular case, must be weighed before a decision is made. After all else is considered, the court must weigh the gravity of the threatened harm against the individual rights involved. Often, as in the principal case, consideration should be given to the possibility that restricting the rights of individuals because of the violence of others will only encourage such violence in future situations. This will protect the nation's interest in maintaining a society in which the right to travel and to demonstrate peacefully is determined, not by the Ku Klux Klan, but by law.

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