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Constitutional Law - Censorship of Motion Picture Films

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interests of the riparian owners and the diversity of circumstances that attach to problems of this nature, it is felt that the court's liberal interpretation of Article 516 of the Civil Code will bring about more just and equitable results in allocation of alluvion between riparian proprietors in the future.

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CONSTITUTIONAL LAW — CENSORSHIP OF MOTION PICTURE FILMS

A Chicago ordinance required submission of motion picture films to the Commissioner of Police in order to obtain a permit for public exhibition.[1] Petitioner was denied a permit for public exhibition of the film "Don Juan" on refusal to submit the film to the Commissioner. Petitioner challenged the ordinance on the grounds that requiring submission of all films prior to public exhibition rendered the ordinance an unconstitutional prior restraint,[2] contending that all prior restraints on motion picture

riparian property is on a major navigable body of water the property owners' interest in maintaining access to such a watercourse can be significantly valuable.

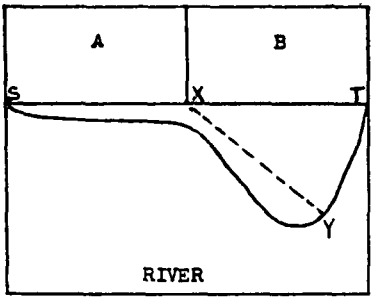

Figure 1

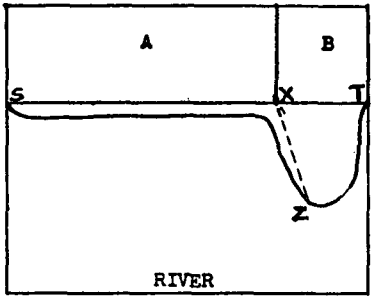

Figure 2

In Figure 1 riparian proprietors *A* and *B* own equal portions of original shore line. It can readily be seen that by using the area method of division, as represented by line xy, *B*'s access to the river is substantially decreased, while *A*'s shoreline is substantially increased. In Figure 2 riparian proprietor *A* has three times as much shoreline as *B*. Using the frontage method of division, as represented by line xz, will result in an inequitable distribution of the alluvial area.

1. MUNICIPAL CODE OF THE CITY OF CHICAGO § 155-4 authorizes the Commissioner of Police to refuse to issue a permit when a film is "immoral or obscene, or portrays depravity, criminality, or lack of virtue of a class of citizens of any race, color, creed, or religion and exposes them to contempt, derision, or obloquy, or tends to produce a breach of the peace or riots, or purports to represent any hanging, lynching, or burning of a human being."

2. A prior restraint is generally defined as interfering "by censorship or injunction before the words are spoken or printed." 2 SELECTED ESSAYS ON CONSTITUTIONAL LAW 1030 (1938).

films are unconstitutional within the prohibition of the first and fourteenth amendments of the Constitution. The federal district court dismissed the case[3] on the ground that there was no justiciable controversy and its decision was upheld by the court of appeals.[4] On certiorari to the United States Supreme Court, *held*, affirmed, four Justices dissenting. The fact that an ordinance provides for inspection of motion picture films by city officials prior to public exhibition does not render it unconstitutional on its face as a violation of freedom of speech and press, since those guarantees do not prohibit all prior restraints. *Times Film Corp. v. Chicago*, 81 Sup. Ct. 391, *rehearing denied*, 29 L.W. 3277 (U.S. 1961).

The first and fourteenth amendments of the Constitution prohibit the fedral government and the states from abridging freedom of speech and press.[5] Prior to *Joseph Burstyn, Inc. v. Wilson*,[6] decided in 1952, motion pictures were considered to be businesses operated for profit and were not afforded constitutional protection under the first and fourteenth amendments.[7] In the *Burstyn* case, however, the Supreme Court overruled its prior holding concerning motion pictures[8] and held that motion picture films are within the constitutional protection of freedom of speech and press.[9] In several cases following the *Burstyn* case, the Court held invalid particular local ordinances allowing discretion to public officials in imposing prior restraints on motion pictures.[10]

3. Times Film Corp. v. Chicago, 180 F. Supp. 843 (N.D. Ill. 1959).

4. 272 F.2d 90 (7th Cir. 1959).

5. U.S. CONST. amend. 1 provides that "Congress shall make no law . . . abridging the freedom of speech, or of the press." In Gitlow v. New York, 268 U.S. 652 (1925), the Supreme Court held that freedom of speech and of the press protected from abridgment by the federal government under the first amendment is also protected from abridgment by the states under the due process clause of the fourteenth amendment.

6. 343 U.S. 495 (1952).

7. See Mutual Film Corp. v. Industrial Commission, 236 U.S. 230 (1915).

8. Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 502 (1952): "To the extent that language in the opinion in *Mutual Film Corp. v. Industrial Comm'n, supra*, is out of harmony with the views here set forth, we no longer adhere to it."

9. In the *Burstyn* case, the Court declared as an unconstitutional prior restraint a statute allowing a public official to refuse to issue a license for public exhibition of a motion picture which, in the opinion of the official, was sacrilegious.

10. Kingsley International Pictures Corp. v. Regents of the University of the State of New York, 360 U.S. 684 (1959) (refusal of license to exhibit publicly the film "Lady Chatterley's Lover" on the grounds that the motion picture is immoral); Superior Films, Inc. v. Department of Education, 346 U.S. 587 (1954) (refusal of license to exhibit publicly motion picture on the grounds that the picture would corrupt morals); Gelling v. Texas, 343 U.S. 960 (1952) (refusal to issue license to exhibit publicly motion picture on grounds that it was prejudicial to the best interests of the people of the city).

The constitutional protection of freedom of speech and of the press does not provide an absolute guarantee for any utterance or communication. In several cases, the Court has held the regulation of forms of communication under certain circumstances to be constitutionally permissible,[11] but the particular communication was restrained *after* being uttered or published. However, statutes and ordinances imposing *prior* restraints have generally been held unconstitutional when the particular law has allowed a public official to determine in his own opinion what should be spoken or distributed, or that the particular standards provided in such laws were not well defined.[12] Although the Court has displayed this reluctance to uphold any statute or ordinance imposing a prior restraint on forms of communication, it has, on previous occasions, indicated that a prior restraint on forms of communication is permissible in exceptional cases. Thus in *Near v. Minnesota*,[13] the Court, speaking through Mr. Chief Justice Hughes, stated that "protection even as to previous restraint is not absolutely unlimited. But the limitation has been recognized only in exceptional cases. . . . [T]he primary requirements of decency may be enforced against obscene publications. The security of the community life may be protected against in-

11. Beauharnais v. Illinois, 343 U.S. 250 (1952) (conviction for displaying lithographs in violation of statute making it unlawful to display a publication which "portrays depravity, criminality, unchastity, or lack of virtue of a class of citizens, of any race, color, creed or religion . . . or . . . exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy or which produces breach of the peace or riots"); Kovacs v. Cooper, 336 U.S. 77 (1949) (city ordinance making it unlawful to operate a loud speaker on the public streets emitting loud and raucous noises); Chaplinsky v. New Hampshire, 315 U.S. 568 (1942) (statute prohibiting any person from addressing any offensive, derisive, or annoying word to any other person in public places; Jehovah's Witness convicted of addressing certain remarks toward city marshal).

12. See Staub v. Baxley, 355 U.S. 313 (1958) (city ordinance prohibiting labor unions from soliciting members without first receiving a permit from the mayor and city council); Kunz v. New York, 340 U.S. 290 (1951) (city ordinance prohibiting the holding of public worship meetings on the street without first obtaining a permit from the city commissioner); Niemotko v. Maryland, 340 U.S. 268 (1951) (Jehovah's Witness denied permit to hold Bible talk in public park by park commissioner and city council); Thomas v. Collins, 323 U.S. 516 (1945) (state statute prohibiting soliciting members for labor unions without first obtaining organizer's permit from secretary of state); Largent v. Texas, 318 U.S. 418 (1943) (prohibition on soliciting orders or selling literature without first obtaining permit from mayor); Cantwell v. Connecticut, 310 U.S. 296 (1940) (prohibition on soliciting for any religious group without first obtaining a permit from secretary of the public welfare council); Hague v. CIO, 307 U.S. 496 (1939) (city ordinance prohibiting public assembly in streets and parks without obtaining permit from director of public safety); Schneider v. State, 308 U.S. 147 (1939) (prohibition on distributing literature without receiving permit from police official); Lovell v. City of Griffin, 303 U.S. 444 (1938) (prohibition on distributing literature without first obtaining written permission from city manager).

13. 283 U.S. 697 (1931).

citements to acts of violence and the overthrow of orderly government."[14]

In cases prior to the instant case, the particular standards and procedures prescribed by the statute or ordinance were challenged. Upon examining these standards or procedures, if the Court found them to be not well defined or allowing a wide latitude of discretion to public officials issuing permits, the law was declared unconstitutional. In the instant case, however, the majority of the court was of the opinion that the particular standards or procedures prescribed by the ordinance were not challenged; rather, the basic authority to censor motion pictures was at issue.[15]

It would seem that in the instant case the formulation of the issue by the majority of the Court is subject to question. The question was not whether *all* forms of motion picture censorship are unconstitutional; rather, the question was specifically whether local governments may require submission of all motion picture films to public officials for licensing prior to public exhibition.[16] The Court has consistently refused to uphold such requirements in dealing with other forms of communication. If motion pictures are to be accorded the same protection of freedom of speech and press as other forms of communication, it would seem that requiring motion picture films to be submitted to a public official for licensing prior to public exhibition would be equally as unconstitutional as requiring submission of books, magazines, or newspapers prior to distribution.

14. *Id.* at 715-16. This statement also quoted in part in Kingsley Books, Inc. v. Brown, 354 U.S. 436, 441 (1957) and in Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 503-04 (1952).

15. Times Film Corp. v. Chicago, 81 Sup. Ct. 391, 393 (1961): "The challenge here is to the censor's basic authority; it does not go to any statutory standards employed by the censor or procedural requirements as to the submission of the film."

16. Brief for the Petitioner, Times Film Corp. v. Chicago, 81 Sup. Ct. 391 (1961), p. 4: "The real question presented by the case is whether those sections of the Chicago censorship ordinance which require every motion picture to be submitted for censorship of content prior to public exhibition can withstand a constitutional challenge under the First and Fourteenth Amendments to the United States Constitution." Mr. Chief Justice Warren's dissenting opinion (Times Film Corp. v. Chicago, 81 Sup. Ct. 391, 398 (1961)) stated: "I hesitate to disagree with the Court's formulation of the issue before us . . . the question presented in this case is not whether a motion picture exhibitor has a constitutionally protected, 'complete and absolute freedom to exhibit, at least once, any and every kind of motion picture.' . . . The question here presented is whether the City of Chicago — or, for that matter, any city, any State or the Federal Government — may require all motion picture exhibitors to submit all films to a police chief, mayor or other administrative official, for licensing and censorship prior to public exhibition within the jurisdiction."

By its decision in the instant case, the majority of the Court may be placing motion pictures in a different category from other constitutionally protected forms of communication.[17] There is a substantial body of opinion supporting this distinction. The contention is that because motion pictures have a greater potential for creating an undesirable effect on public opinion, on the peace and order of the community, and on the attitudes and character of children than other forms of communication, local governments should be able to utilize licensing and censorship requirements in order to prevent the showing of those motion pictures which may produce these adverse effects.[18] A motion picture audience has the immediate capability of producing riots, whereas a reader of a book or a television viewer does not. Graphic portrayals in motion pictures have a greater capacity for provoking immoral conduct than public speeches.

On the other hand, the dissenting opinions advance strong arguments as to the unconstitutionality of laws imposing licensing or censorship on any constitutionally protected form of communication.[19] The dissenters appeared to feel that the proper method of preventing the showing of motion pictures which would tend to produce undesirable effects is not by allowing a censor to restrain motion pictures, but by penalizing those who actually exhibit undesirable motion pictures through a criminal proceeding in a court of law.

It would seem that the position advanced by the dissenting

17. *Id.* at 395: "We recognized in *Burstyn, supra*, that 'capacity for evil . . . may be relevant in determining the permissible scope of community control,' . . . and that motion pictures were not 'necessarily subject to the precise rules governing any other particular method of expression. Each method,' we said, 'tends to present its own peculiar problems.' "

18. Brief for Respondents, Times Film Corp. v. Chicago, 81 Sup. Ct. 391 (1961), p. 9: The City of Chicago advances a strong argument for this proposition in the instant case. "Movies, like television, cannot be placed in the same category with newspapers, books, magazines, and the like. The appeal of the motion picture to the young and innocent, to the susceptible, and to the potential killer, rapist or armed robber, require some kind of governmental protection."

19. Mr. Chief Justice Warren, with whom Mr. Justice Black, Mr. Justice Douglas, and Mr. Justice Brennan joined, dissented on the ground that the issue in the case was *not* whether all prior restraints on motion picture films are unconstitutional but whether the City of Chicago or any local government may require all motion picture exhibitors to submit all films to a police chief, mayor, or other administrative official for licensing and censorship prior to public exhibition within the jurisdiction. Further, although the Court has stated on previous occasions that prior restraints on speech and press are permissible in exceptional cases, licensing or censorship does not come within these exceptional cases. Times Film Corp. v. Chicago, 81 Sup. Ct. 391, 395 (1961). Mr. Justice Douglas, with whom the Chief Justice and Mr. Justice Black concurred, dissented on the ground that *all* prior restraints violate the first amendment to the Constitution. *Id.* at 410.

opinions in the instant case is the more desirable one. In a free society, it is necessary that there be a minimum of restraint on means of communication, and that permissible restraints be within limited areas. Although local governments should be able to restrain those communications which are obscene or would tend to incite unrest or riots, this power should be exercised in such a manner as to impose only those restraints which are absolutely necessary to accomplish the community purpose. In censorship and licensing regulations, there is a great opportunity for the censor to apply his personal opinion as to what should be allowed to be communicated. On the other hand, if local governments are obliged to restrain undesirable communications through judicial remedies, then the community purpose is still accomplished and at the same time the individual is deprived of communicating freely only after an open hearing in a court of law.[20] If it is necessary to regulate forms of communication in order to maintain proper standards in the community, it would seem more desirable that standards be interpreted and restraints be imposed by courts of law rather than by censors.

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CRIMINAL LAW — LIABILITY FOR PRIOR CRIMINAL NEGLIGENCE

The defendant loaned his car to a person who was intoxicated and who subsequently became involved in an automobile accident in which the driver of another car was killed. At the time of the accident the defendant was not in the car, but he was tried and convicted for the crime of involuntary manslaughter. The defendant contended that he could not be convicted because he was not a principal to the killing. On appeal to the Supreme Court of Michigan, *held,* reversed. The accountability of the owner of the automobile must rest upon his complicity in the misconduct involved. Where the criminal conduct was not counseled by him, was not accomplished by another acting jointly with him and did not occur in the attempted accomplishment of some joint enterprise, the defendant cannot be held criminally

20. See Kingsley Books, Inc. v. Brown, 354 U.S. 436 (1957). The Supreme Court upheld a law authorizing a public official to maintain action in court for an injunction to prevent the sale or distribution of obscene matter possessed by any person within the municipality with intent to sell or distribute the same on the ground that the statute provided for a trial within one day after joinder of issue with decision to be rendered within two days after the close of the trial.