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onstrated against discrimination and the jailing of twenty-three fellow students. Cox, the leader of the demonstrators, had refused the sheriff's order to break up the demonstration and, when the demonstration was broken up by tear gas, had urged the students to go uptown to several luncheon counters and sit-in. In reversing, the Court held that the petitioner could not constitutionally be punished for this type of conduct, revealed in the record.

The case of *Feiner* v. *New York, supra,* was neither overruled nor modified by the decisions in the *Edwards* or *Cox* cases. The Supreme Court observed that the factual situations were "a far cry from the situation in *Feiner* v. *New York.*" *Edwards* v. *South Carolina,* 372 U.S. at 236; *Cox* v. *Louisiana,* 379 U.S. at 551. See also *People* v. *Turner,* 265 N.Y.S. 2d 841, 855 wherein the court, after a lengthy analysis, concluded that the *Cox* and *Edwards* cases had not undermined the *Feiner* decision which upheld the constitutionality of subdivision 3 of section 722 of the New York Penal Law.

Another question pertinent to this discussion concerns the discretion of a police officer in ordering citizens on a public sidewalk to move on, and the corresponding obligation of the persons so ordered to comply. For instance, if the surrounding circumstances fall short of an actual or impending breach of the peace, must a person still comply with the police order to move on? The rule in New York appears to be that a person must comply with an order to move on unless the order is shown to be clearly arbitrary. In *People* v. *Galpern,* 181 N.E. 572, 83 ALR 785 (Ct. App. 1932) the defendant had stopped on the sidewalk with five or six other persons at an entrance to a restaurant and engaged in social conversation. A police officer had ordered the group to disperse, the defendant refused and was arrested for disorderly conduct. The court found that, although the actions of the defendant and his companions on the sidewalk were not unreasonable and there was no indication of disorderly or offensive conduct, it was the duty of the police officer to see that the pedestrian passage was not unreasonably obstructed. Even if the police officer's interference was unnecessary or ill advised, the court decided that it must uphold the officer's discretion since the law authorized the officer to use his judgment under such circumstances. The court stated: "A refusal to obey such an order can be justified only where the circumstances show conclusively that the police officer's direction was purely arbitrary and was not calculated in any way to promote the public order.". 181 N.E. at 574.

This position was reiterated by a New York court as recently as 1965 in *People* v. *Turner,* 265 N.Y.S. 2d 841, 855.

The *Galpern* case was heavily relied upon by a New Jersey court in *State* v. *Taylor,* 118 A. 2d 36 (1955) in finding a defendant guilty of interfering with a police officer in the lawful discharge of his duty. In *Taylor* the defendant had approached two police officers who were questioning a group of persons on a sidewalk, had demanded to know what was going on, and had refused to move on when ordered by the officers. The court, recognizing the discretion of police officers to give reasonable directions to citizens, applied the *Galpern* test of arbitrariness and took the position that courts should not second guess the "wisdom of a police officer's directions when he is called upon to decide whether the time has come in which some directions are called for". 118 A. 2d at 49.

A D.C. case, *Scott* v. *District of Columbia,* 184 A. 2d 849 (1962) cites with approval the *Galpern* case and seems to indicate that a conviction for failure to move on after an order by the police can be upheld without proof of an actual or impending breach of the peace. There was in that case, however, proof that the demonstrators had assembled at the northwest gate of the White House which the court judicially noticed is used by visitors and others on official business. The court further noted that the police had adopted reasonable measures to keep that area free of congregants while permitting pickets and demonstrators to use a large area on the sidewalk to the east of the gate. The deliberate refusal of the defendants to comply with these reasonable police measures might well establish "circumstances under which a breach of the peace may be occasioned thereby."

The New York test that a citizen is justified in not obeying a police order to move on only if that order is arbitrary may not be good law. In several recent Supreme Court cases arising from convictions of Negroes in southern states, the Court has indicated that a police order to move on must be justifiable and in all respects lawful before a person may be punished for failing to obey that order. See *Wright* v. *Georgia,* 373 U.S. 284, 292 (1963); *Brown* v. *Louisiana,* 15 L. Ed. 2d 637, 643 (1966); *Shuttleworth* v. *Birmingham,* 382 U.S. 87, 96 (1965) (concurring opinion); *Edwards* v. *South Carolina,* 372 U.S. 229, 241 (1963) (dissenting opinion).

Whether the referred-to New York test is valid in the District of Columbia need not, however, be finally resolved in this opinion. On the contrary, it is my view that, because of the language of the District Code provision and in the interests of good police-community relations, the Metropolitan Police Department should operate on the assumption that a police officer must have a substantial basis for his order *before* ordering citizens to move on. Such a basis would necessarily involve an observation of a congregation on a public street and of additional circumstances which would measure up to the legal definition of breach of the peace as hereinabove outlined.

Note should also be taken of a related disorderly conduct statute found in Section 22–1107, D.C. Code, 1961 ed. It reads: "It shall not be lawful for any person or persons within the District of Columbia to congregate and assemble in any street, avenue, alley, road, or highway, or in or around any public building or inclosure, or any park or reservation, or at the entrance of any private building or inclosure, and engage in loud and boisterous talking or other disorderly conduct, or to insult or make rude or obscene gestures or comments or observations on persons passing by, or in their hearing, or to crowd, obstruct, or incommode, the free use of any such street, avenue, alley, road, highway, or any of the foot pavements thereof, or the free entrance into any public or private building or inclosure; it shall not be lawful for any person or persons to curse, swear, or make use of any profane language or indecent or obscene words, or engage in any disorderly conduct in any street, avenue, alley, road, highway, public park or inclosure, public building, church, or assembly room, or in any other public place, or in any place wherefrom the same may be heard in any street, avenue, alley, road, highway, public park or inclosure, or other building, or in any premises other than those where the offense was committed, under a penalty," etc.

It may well be that in some instances there will be a congregation which will result in the incommoding of the sidewalk or the entrance to a building constituting a violation of the above-quoted section.

If the Chief of Police desires a short summary of the foregoing to disseminate among members of the force, I suggest the following for distribution. It sets forth principles or general guidelines to be followed by police officers in the enforcement of the applicable Code provisions.

When a police officer may order citizens to "move on."

Code Section 22–1121(2) reads, in pertinent part, as follows: "Whoever, with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby * * * congregates with others on a public street and refuses to move on when ordered by the police; * * * shall be fined * * * or imprisoned * * * or both."

Section 22–1107 of the Code reads, in pertinent part: "It shall not be lawful for any person or persons within the District of Columbia to congregate and assemble in any street, avenue, alley, road, or highway, or in or around any public building or inclosure, or any park or reservation, or at the entrance of any private building or inclosure, and * * * incommode, the free use of any such street, avenue, alley, road, highway, or any of the foot pavements thereof, or the free entrance into any public or private building or inclosure."

Neither the foregoing partial quotations nor that which follows relates to other forms of disorderly conduct such as boisterousness, obscenity, etc., nor to other violations of law.

1. A congregation of persons on a public street is not, in and of itself, sufficient to justify a police order to "move on". There must, *in addition to the congregation, be* other circumstances which (a) amount to an actual obstruction of vehicular or pedestrian traffic, *or* (b) constitute an immediate threat to public safety, public peace or public order. Such threat need not necessarily be verbal; it may derive from the particular surrounding circumstances, and obscenities and the use of so-called "fighting words" *may* be included amongst the circumstances.

2. In the event the activities of a congregation of persons involve the exercise of some constitutionally protected right, such as freedom of speech, religion or assembly, police officers should endeavor to protect the participants and prevent any violence from occurring. However, if the assemblage of people around a speaker should result in obstruction to pedestrian or vehicular traffic, or if there are manifestations of anger and hostility in such a manner as to clearly indicate that a disorder is imminent, the police officer should instruct the speaker to stop speaking, break up the crowd, and distinctly give other appropriate orders for the preservation of public safety and order. If such orders are not complied with, then an arrrest for disorderly conduct under Section 22–1121 (2) may properly be made.

3. If a congregation of persons on a public street *actually incommodes* the sidewalk or the entrances to a building and constitutes a substantive violation of Section 22–1107, and the persons refuse to comply with a police order to move on, the police officer may, even in the absence of an actual or impending breach of the peace, charge the offenders under Code Section 22–1107—not under Code Section 22–1121(2).

4. Proceed always upon the principle that a police officer has no more *inherent* right than a civilian to order persons to "move on". His authority to do so depends upon special circumstances outlined in paragraphs 1, 2 and 3 hereof and, in the interest of police-community relations, should be exercised only when it appears that Code Section 22–1107 has been violated or that there is a *clear and present danger* that a breach of the peace will result if the order is not issued and obeyed.

Respectfully,

MILTON D. KORMAN,
Acting Corporation Counsel,
District of Columbia.

SENATOR MONDALE'S FAIR WARNING ACT

Mr. NELSON. Mr. President, on June 24 the Senate passed the Traffic Safety Act of 1966 by a unanimous vote of 70

to 0. The Senate bill included a classic piece of consumer protection legislation originally proposed by Senator WALTER F. MONDALE as the Fair Warning Act. As a cosponsor of the subsequent fair warning amendment to the traffic safety bill, I am most pleased that the Senate Commerce Committee and the administration supported its inclusion in that bill.

This legislation simply requires the automobile manufacturer to notify car owners of any safety-related defects which are discovered by the manufacturer. It asks nothing more than that the car owner, who has made a substantial investment in that purchase, be told as quickly as possible if it is known that the car contains a defect which threatens safe travel.

As Senator MONDALE points out in an American Trial Lawyers' recent article published in Trial, the publication:

A fundamental right of consumers is the right to know about any hidden hazards associated with products they buy.

This fair warning provision has been recognized nationally as one of the important features of the Senate traffic safety bill. I am hopeful that our colleagues in the House of Representatives will see fit to make it a part of the bill they are considering.

I ask unanimous consent that Senator MONDALE'S explanation of this measure, as published in Trial, be printed in the RECORD at this point.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

FUNDAMENTAL: CONSUMERS HAVE RIGHT TO KNOW HIDDEN HAZARDS

(By U.S. Senator WALTER F. MONDALE, Democrat, of Minnesota)

A fundamental right of consumers is the right to know about any hidden hazards associated with products they buy.

This right has long been recognized through laws and regulations requiring warning notices on such items as drugs, chemicals, inflammables, and other products which are inherently or potentially dangerous.

There are no warning labels on many dangerous items, of course, because the hazards associated with their use are inherent in the nature of the products and are assumed to be well-known, for example, guns—and automobiles.

But not all of the hazards of the automobile, it seems, are so obvious. Recent disclosures indicate that this intricate piece of machinery containing almost 15,000 parts is frequently subject to hazards which may not be apparent until too late—if then.

These are the so-called safety defects which have been so much in the news recently. The include design faults such as improper weight distribution which would cause the rear wheels to leave the ground in emergency stops; engineering defects such as a brake line which comes into contact with a wheel where it may be weakened and ruptured when braking pressure is applied; and construction deficiencies such as an inadequately secured steering linkage which could fall apart causing complete loss of control.

Quite obviously, things like this can cause serious accidents. And when they are discovered, it seems to me, the manufacturer has an obligation to warn those who might be injured or killed by them.

Nonetheless, Congressional inquiries last year and again this year—plus the private research of auto critic and attorney Ralph Nader—have revealed case after case where automobile manufacturers have not issued such warnings. The evidence accumulated to date includes instances where nothing whatsoever was done, except perhaps to correct the defect in next year's model; instances where only dealers were notified to make modifications on cars in their possession, and instances where cars were recalled for inspection or correction of a defect—but without telling the owner of the hazard involved.

As a result of these disclosures, I have introduced a proposed "Fair Warning" law in the U.S. Senate to require that car makers notify both owners and dealers by registered mail of any safety defect which might exist in their cars. The notice would contain a description of the defect, an evaluation of the safety risk involved, and a statement of the measures which should be taken to correct the problem.

No one knows, of course, exactly what percentage of traffic accidents are caused by safety defects of this kind. Available statistics—which are suspect in view of our almost total preoccupation with driver error to date—indicate the percentage is small.

The question, however, is irrelevant. We have a right to know about defects which could cause death and injury, regardless of the number of accidents they may have caused in the past.

And the fact remains that there is growing evidence that the possibility of vehicle failure has been grossly underestimated. For example, my own investigatory efforts turned up the startling fact that more than 20% of all new cars inspected by the District of Columbia and New Jersey are rejected for safety deficiencies, mostly minor, but some major. The District and New Jersey are the only jurisdictions with government-owned and operated inspection systems which require inspection of new cars. Thus they are the best guides we have as to the condition of new cars when they begin their life on our streets and highways.

There is also the data the auto industry supplied Senator RIBICOFF last month showing that over the past six years, some 8.5 million cars have been recalled for inspection or correction of defects—about half of which involved a possible safety factor.

The auto industry has argued that these recalls show their concern for safety. This may be true, but it is also true that in many other instances involving safety defects cars were not recalled, while in those instances where cars were recalled, the owners were not told of a safety hazard.

There have been indications recently that some segments of the auto industry are ready to improve defect notification procedures, including telling the owner whether or not safety is involved. The importance of such information is obvious. A representative of one company emphasized recently, in his zeal to show the industry's concern about car owners who fail to respond to recall notices: "Some people think the letter we send them to bring their cars in are just gimmicks to get business." Little wonder when one considers the kind of letter the industry has been sending out.

For example, here is the key paragraph of a recall letter Ford Motor Co. sent some 5,500 owners of 1965 Comets last year:

"As part of the continuing effort of the Lincoln-Mercury Division to provide owners of our products with the highest quality standards, an improvement has been made in the 1965 Comet, and is currently being incorporated in production. It is our desire to similarly modify your car, at no cost to you, whatsoever. The changes are calculated to improve your enjoyment and contribute to continued satisfaction with your 1965 Comet."

And what was the "improvement?" According to information recently made available by Ford Motor Co., the rocker arm cover and the brake tube on 8-cylinder power brake equipped vehicles were too close together. "This condition," the company said, "could result in brake tube abrasion during engine roll"—and also, it would seem fair to assume, brake failure when the rubbing action wore through or weakened the brake tube.

Yet this information, which might have conveyed a more appropriate sense of urgency than commercials about changes "to improve your enjoyment and contribute to continued satisfaction," was totally absent from the Ford letter—as it also has been totally absent from recall letters sent out by General Motors, American Motors and Chrysler.

It has been absent, one assumes, because of fears that admitting the existence of a safety defect might hurt new car sales or be used as evidence in lawsuits arising out of accidents.

And well it might—in both instances.

Thus the question becomes: Who should bear the risks of safety defects—the manufacturer, who has economic considerations at stake, or the motorist, who has his life at stake? I don't think there is much room for argument.

Human life is more important than corporate profits.

PACIFIC TRUST TERRITORY

Mr. FONG. Mr. President, congressional hearings are scheduled this week on proposed legislation to authorize increased appropriations for the Trust Territory of the Pacific Islands. The bill, introduced in both Houses at the request of the Department of the Interior, would authorize a ceiling of $172 million for a 5-year capital improvement and public works program in the fields of health and education, utilities, roads, transportation, communications, and public buildings. The bill also authorizes additional Federal funds for the administration of the trust territory.

As the administering authority under agreement with the United Nations Security Council, the United States has committed itself to promote the political, economic, and social development of the people of the trust territory.

Some progress in this direction has been made since our Government assumed responsibility for the Micronesian people in the western Pacific. But much more needs to be done; therefore, the request for authority to expend the increased sum of Federal funds to step up the tempo of progress in the trust territory.

The Honolulu Star-Bulletin, Hawaii's largest newspaper, has begun a timely series of articles on American-controlled territories in the western Pacific. The series is being written by the editor, A. A. Smyser, a capable, longtime newsman familiar with Pacific affairs, who is on a 3-week trip of the area.

I call attention to the first article over "Bud" Smyser's byline. It describes the staggering problems of communications and transportation facing the farflung Pacific islands. It furnishes strong arguments why more must be done to promote the development of Micronesia.