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The Language of Justice

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by Daniel Addis

Introduction

Arguing a case before jurors, judges, or the public at large demands a creative use of language. Strong arguments fall short if their language does not affect the reason and conscience of the listeners. Lawyers and leaders effectively persuade when they speak eloquently. The clarity of their reasoning is dependent on the clarity of their language. The substance of an argument is important, but it is substantially heightened when it is expressed in eloquent language.

This unit will examine the language of political argument in a historic chapter in the Civil Rights Movement—the Birmingham Campaign. Specifically, we will examine Martin Luther King's "Letter from Birmingham Jail," and Justice Stewart's opinion for the court and Chief Justice Warren's and Justice Brennan's dissenting opinions in the Supreme Court case *Walker v. City of Birmingham* which ruled against Martin Luther King and the Southern Christian Leadership Conference.

Examining the language in these four documents will teach students the importance of language. So often, when I counsel with students about their writing and question them about a particular sentence, they say something like, "You know what I mean." They do not appreciate the power of language and the power it gives them when they use it creatively.

Examining what Martin Luther King and Chief Justice Stewart, Justice Warren, and Justice Brennan do with language will enhance the students' appreciation of language and improve their writing. They will learn the different modes of expression, such as parallelism, consonance, metaphor, imagery, analogy, irony, and connotation. They will learn about the structure of an argument and become adept at dialectic. They will digest all of these techniques and utilize them in their writing.

Further, this unit will develop the students' cognitive capacity. Our discussion of the issues of the case will improve their understanding of politics and ethics. As they interpret, analyze, and synthesize, they will cultivate their intellect. When they present to the class, they will nurture their communication skills. As they write, they will cultivate their ability to organize, express their thoughts, and revise.

The context of *Walker v. City of Birmingham* is an important period in American history. Before reading these four texts, the students will learn about this period and come to understand the history that led to the turmoil

of 1963 in Birmingham—Reconstruction, Jim Crow laws, the Civil Rights Movement, *Brown v. Board of Education*, and other important political and societal events.

The students will learn about civil disobedience and analyze and evaluate its effectiveness. This will lead to discussions about their personal lives. So often, our students' first reaction to an affront is to attack the perpetrator. As they study this period and these three pieces of writing, students will realize how effective nonviolent active opposition to injustice is, and be encouraged to use nonviolent resistance in their personal lives.

The Birmingham Campaign

Following the Civil War, began a period known as Reconstruction when the Federal government imposed measures on the South for the purpose of bringing emancipated slaves and the Confederate states into American society. The South interpreted the policy as subjugation, and when the Federal Government ended Reconstruction and withdrew Federal troops, the white population lashed out at the black population, disenfranchising them, segregating them, demeaning them, and violently and mortally attacking them. This situation continued into the 20th century. However, following World War II, steps were taken to free African-Americans from racism and by 1955, a Civil Rights Movement had blossomed led by Martin Luther King and the Southern Christian Leadership Conference (SCLC). The movement used nonviolent disobedience of discriminatory laws. Large numbers of people nonviolently disobeyed a discriminatory law and during the judicial process, their attorneys would appeal to the Supreme Court to strike down these laws because they were unconstitutional.

Birmingham, Alabama was the heart of racism in the South. Since World War II, there had been 50 bombings of African-American buildings, and not a single one was solved (Lokos 123-124). In 1957, white men abducted a minister of a church, tied him to a tree and whipped and branded him. Later that same year, Klansmen castrated a black man as a warning of what would happen if school desegregation went forth (Ling 101). The city was segregated, and its police commissioner, "Bull" Conner, was a diehard segregationist.

In 1963, Martin Luther King and the SCLC began a campaign of direct action against the racist policies in Birmingham. Their demands were desegregation of department stores, and the hiring of African-American sales staff. His followers walked to various establishments which would not allow blacks, and sat down at the lunch counters. They demonstrated against segregation and discrimination. King planned a march on Good Friday and Easter to relate the message of Christ's love for all mankind to Alabama's and America's racist policies. The city of Birmingham would not issue a permit to march. King planned to march without a permit, but the day before Good Friday, he was served with an injunction from the Alabama state court that prohibited him from marching. King and his associates mulled over the injunction. Many urged him to break off the campaign. On Good Friday morning, he was still undecided. After consulting with his advisers again, he retired to a side room to pray. When he came out of the room, he was dressed in jeans and a work shirt—clothes he wore when he would be going to jail. His father tried to dissuade him, but King said, "If we obey this injunction, we are out of business" (Ling 114).

The march was composed of King and only fifty followers, and it was soon stopped by the police, and they led him away to jail and put him in solitary confinement. Many more protesters followed his example.

During his incarceration, a group of clergyman wrote a letter that was printed in the *Birmingham News* that condemned the protesters and praised the police for restraint. They wrote that King's nonviolent actions "incite hatred and violence" and have not "contributed to the resolution" to Birmingham's problems (Branch 738). In response, King, from his jail cell, using newspaper, wrote the "Letter from Birmingham Jail" in which he justified his disobedience of the injunction. King and others were found in contempt and sentenced to five days in jail and a \$50 fine. King's attorney appealed the conviction to the Supreme Court, which in 1967, found that even though the city parade ordinance was constitutionally questionable, King and his associates were guilty of contempt because they marched instead of attempting to have the injunction dissolved by a court.

The Three Opinions

The following are the texts of Justice Stewart's, Justice Warren's, and Justice Brennan's opinions edited by me.

Justice Stewart's Opinion of the Court

1. On Wednesday, April 10, 1963, officials of Birmingham, Alabama, filed a bill of complaint in a state circuit court asking for injunctive relief against 139 individuals and two organizations. It was alleged that this conduct was "calculated to provoke breaches of the peace," "threaten[ed] the safety, peace and tranquility of the City," and placed "an undue burden and strain upon the manpower of the Police Department."
2. The bill stated that these infractions of the law were expected to continue and would "lead to further imminent danger to the lives, safety, peace, tranquility and general welfare of the people of the City of Birmingham," and that the "remedy by law [was] inadequate." The circuit judge granted a temporary injunction, enjoining the petitioners from, among other things, participating in or encouraging mass street parades or mass processions without a permit as required by a Birmingham ordinance.
3. Five of the eight petitioners were served with copies of the writ early the next morning. Several hours later four of them held a press conference. There a statement was distributed, declaring their intention to disobey the injunction because it was "raw tyranny under the guise of maintaining law and order." At this press conference one of the petitioners stated: "That they had respect for the Federal Courts, or Federal Injunctions, but in the past the State Courts had favored local law enforcement, and if the police couldn't handle it, the mob would."
4. That night a meeting took place at which one of the petitioners announced that "[i]njunction or no injunction we are going to march tomorrow." The next afternoon, Good Friday, a large crowd gathered in the vicinity of Sixteenth Street and Sixth Avenue North in Birmingham. A group of about 50 or 60 proceeded to parade along the sidewalk while a crowd of 1,000 to 1,500 onlookers stood by, "clapping, and hollering, and [w]hooping." Some of the crowd followed the marchers and spilled out into the street. At least three of the petitioners participated in this march.
5. Meetings sponsored by some of the petitioners were held that night and the following night, where calls for volunteers to "walk" and go to jail were made. On Easter Sunday, April 14, a crowd of between 1,500 and 2,000 people congregated in the midafternoon in the vicinity of Seventh Avenue and Eleventh Street North in Birmingham. One of the petitioners was seen organizing members of the crowd in formation. A group of about 50, headed by three other petitioners, started down the sidewalk two abreast. At least one other petitioner was among the marchers. Some 300 or 400 people from among

the onlookers followed in a crowd that occupied the entire width of the street and overflowed onto the sidewalks. Violence occurred. Members of the crowd threw rocks that injured a newspaperman and damaged a police motorcycle.

6. At the ensuing hearing the petitioners sought to attack the constitutionality of the injunction on the ground that it was vague and overbroad, and restrained free speech. They also sought to attack the Birmingham parade ordinance upon similar grounds, and upon the further ground that the ordinance had previously been administered in an arbitrary and discriminatory manner.
7. The circuit judge refused to consider any of these contentions, pointing out that there had been neither a motion to dissolve the injunction, nor an effort to comply with it by applying for a permit from the city commission before engaging in the Good Friday and Easter Sunday parades. Consequently, the court held that the only issues before it were whether it had jurisdiction to issue the temporary injunction, and whether thereafter the petitioners had knowingly violated it. Upon these issues the court found against the petitioners, and imposed upon each of them a sentence of five days in jail and a \$50 fine, in accord with an Alabama statute.
8. In the present case, however, we are asked to hold that this rule of law, upon which the Alabama courts relied, was constitutionally impermissible. We are asked to say that the Constitution compelled Alabama to allow the petitioners to violate this injunction, to organize and engage in these mass street parades and demonstrations, without any previous effort on their part to have the injunction dissolved or modified, or any attempt to secure a parade permit in accordance with its terms. We cannot accept the petitioners' contentions in the circumstances of this case.
9. The breadth and vagueness of the injunction itself would also unquestionably be subject to substantial constitutional question. But the way to raise that question was to apply to the Alabama courts to have the injunction modified or dissolved. The injunction in all events clearly prohibited mass parading without a permit, and the evidence shows that the petitioners fully understood that prohibition when they violated it.
10. The petitioners also claim that they were free to disobey the injunction because the parade ordinance on which it was based had been administered in the past in an arbitrary and discriminatory fashion. In support of this claim they sought to introduce evidence that, a few days before the injunction issued, requests for permits to picket had been made to a member of the city commission. One request had been rudely rebuffed, and this same official had later made clear that he was without power to grant the permit alone, since the issuance of such permits was the responsibility of the entire city commission. Assuming the truth of this proffered evidence, it does not follow that the parade ordinance was void on its face. The petitioners, moreover, did not apply for a permit either to the commission itself or to any commissioner after the injunction issued. Had they done so, and had the permit been refused, it is clear that their claim of arbitrary or discriminatory administration of the ordinance would have been considered by the state circuit court upon a motion to dissolve the injunction.
11. 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 been met with delay or frustration of their constitutional claims. But there is no showing that such would have been the fate of a timely motion to modify or dissolve the injunction. There was an interim of two days between the issuance of the injunction and the Good Friday march. The petitioners give absolutely no explanation of why they did not make some application to the state court during that period. If the court had been presented with the petitioners' contentions, it might well have dissolved or at least modified its order in some respects. If it had not done so, Alabama procedure would have provided for an expedited process of appellate review. It cannot be presumed that the Alabama courts would have ignored the petitioners' constitutional claims. Indeed, these contentions were accepted in another case by an Alabama

appellate court that struck down on direct review the conviction under this very ordinance of one of these same petitioners.

12. The rule of law upon which the Alabama courts relied in this case was one firmly established by previous precedents. In *Fields v. City of Fairfield*, decided just three years before the present case, the defendants, members of a "White Supremacy" organization who had disobeyed an injunction, sought to challenge the constitutional validity of a permit ordinance upon which the injunction was based. The Supreme Court of Alabama, found that "until its unconstitutionality has been judicially declared in appropriate proceedings, no person may disregard or violate the order with immunity from a charge of contempt of court; and he may not raise the question of its unconstitutionality in collateral proceedings on appeal from a judgment of conviction for contempt of the order or decree."
13. The rule of law that Alabama followed in this case reflects a belief that in the fair administration of justice no man can be judge in his own case, however exalted his station, however righteous his motives, and irrespective of his race, color, politics, or religion. This Court cannot hold that the petitioners were constitutionally free to ignore all the procedures of the law and carry their battle to the streets. One may sympathize with the petitioners' impatient commitment to their cause. But respect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom.

Analysis of Justice Stewart's Opinion of the Court

Justice Stewart begins by narrating the course of events. His writing is in the guise of objectivity, but a close reading reveals he is sympathetic with the city officials of Birmingham. He quotes the complaint and elaborates the concerns of the city officials; however, he does not elaborate the views of the petitioners, the fact that the City of Birmingham discriminated against black people, and the vow of the police commissioner that the SCLC would never get a parade permit. Stewart makes it seem that the city officials were solely concerned with keeping the peace. If one knew nothing about Birmingham during this time period, one would have thought that these city officials are conscientious people trying to run a decent city.

In paragraph 2, Stewart implies that the city officials and the judge were decent men keeping the peace by preventing the march and the petitioners were pernicious men inciting violence by disobeying the injunction. Quoting the bill, he says that "lives, safety, peace, tranquility and the general welfare of the people" were at risk. He says that the judge had "enjoin[ed]" the petitioners not to march, as if he reasonably asked them not to march for the good of the city. However, in paragraph 3 and 4, Stewart quotes the petitioners rancorously saying that the judge's injunction was "raw tyranny." Stewart gives more strokes to his threatening image of the petitioners by quoting one of them saying, "That they had no respect for the Federal Courts, or Federal Injunctions, but in the past the State Courts had favored local law enforcement, and if the police couldn't handle it, the mob would." This makes the petitioners seem like revolutionaries, and implies that deciding on their behalf would put the judiciary and the American society at risk. Stewart does not quote any reasonable words from the petitioners, like they were going to nonviolently disobey the injunction. Stewart also does not explain the circumstances of Birmingham, the many years of segregation and oppression, the refusal to give them a parade permit, and the terror black people experienced.

In paragraph 4, Stewart continues his *objective* narrative by describing the march. Nothing he says indicates that the march endangered lives; however, he describes the enthusiastic reaction of the bystanders to make the point that the disobedience was public and therefore, the marchers had to be confronted. Stewart, though, does not describe the peaceful way the marchers conducted themselves.

Paragraph 5 makes the marchers seem dangerous, not heroic. During the Easter Sunday march, he says,

"Violence occurred. Members of the crowd threw rocks and injured a newspaperman and damaged a police motorcycle." Stewart does not describe how many people threw rocks. Was it one or thirty? Was it the majority of the marchers or just one or two isolated people? Stewart's silence on this point tells us that the rock throwing was minimal; otherwise, he would have explained the mass number of people throwing rocks. Again, Stewart leaves out important information, like the peaceful marchers and the hate-filled bystanders yelling racist epithets and throwing things at the marchers.

In paragraph 7 and 8, Stewart describes the hearing that followed and explains that the judge refused to hear complaints about the injunction because the petitioners never filed a motion to dissolve it or apply for a parade permit. Again, Stewart leaves out information that would have justified the petitioners. He does not explain the efforts of the petitioners to get a permit. He does not explain that appealing the injunction would have severely damaged their campaign because marching on Good Friday and Easter expressed a profound religious message about their movement. He does not mention that they did not try to flee from justice but stayed so that they could challenge the parade ordinance and injunction in court.

In paragraph 8, Stewart elaborates the point that the petitioners never filed a complaint against the injunction. Then he ironically says, "We are asked to say that the Constitution compelled Alabama to allow the petitioners to violate this injunction, to organize and engage in these mass street parades and demonstrations, without any previous effort on their part to have the injunction dissolved or modified, or any attempt to secure a parade permit in accordance with its terms." According to Stewart the petitioners cannot disobey an injunction but apparently it is alright for government officials and a judge to disobey the Constitution.

In paragraph 9, though, he concedes that "the injunction itself would also unquestionably be subject to substantial constitutional question." However, he repeats his main point that "the way to raise that question was to apply to the Alabama courts to have the injunction modified or dissolved." Stewart's point is that all court injunctions must be obeyed, and if one disagrees with an injunction, one should file a complaint with the court. Again, though, Stewart does not raise the petitioners' point that waiting to file a complaint would have ended the Birmingham campaign and the authorities who were determined to uphold segregation would have been victorious.

In paragraph 11, Stewart writes as if he would have liked to side with the petitioners, but since they did not follow legal procedures, he has no choice but to find in favor of the city of Birmingham and its racist authorities. He asserts that an appeal could have been filed and reviewed in the two days prior to Good Friday and that they cannot assume that "the Alabama courts would have ignored the petitioners' constitutional claims." He supports his claim by citing another case in which the court found in favor of one of the petitioners. In paragraph 12, he adds more support to his argument by explaining a case in which a member of a White Supremacy organization was convicted of violating an injunction because he claimed it was unconstitutional.

Stewart closes by stating some principles that we must follow. Using repetition, he says, "No man can be judge in his own case, however exalted his station, however righteous his motives, and irrespective of his race, color, politics, or religion. The second principle is: "This Court cannot hold that the petitioners were constitutionally free to ignore all the procedures of the law and carry their battle to the streets." He adds that although one's cause is right, one must follow legal procedures. Then he closes with a metaphor: "respect for judicial process is a small price to pay for the civilizing hand of law" and adds that this position is one that gives "abiding meaning to constitutional freedom."

Chief Justice Warren's Opinion

1. Petitioners in this case contend that they were convicted under an ordinance that is unconstitutional on its face because it submits their First and Fourteenth Amendment rights to free speech and peaceful assembly to the unfettered discretion of local officials. They further contend that the ordinance was unconstitutionally applied to them because the local officials used their discretion to prohibit peaceful demonstrations by a group whose political viewpoint the officials opposed. The Court does not dispute these contentions, but holds that petitioners may nonetheless be convicted and sent to jail because the patently unconstitutional ordinance was copied into an injunction, forbidding the march. I dissent because I do not believe that the fundamental protections of the Constitution were meant to be so easily evaded, or that "the civilizing hand of law" would be hampered in the slightest by enforcing the First Amendment in this case.
2. The salient facts can be stated very briefly. Petitioners are Negro ministers who sought to express their concern about racial discrimination in Birmingham, Alabama, by holding peaceful protest demonstrations in that city on Good Friday and Easter Sunday 1963. For obvious reasons, it was important for the significance of the demonstrations that they be held on those particular dates. A representative of petitioners' organization went to the City Hall and asked "to see the person or persons in charge to issue permits, permits for parading, picketing, and demonstrating." She was directed to Public Safety Commissioner Connor, who denied her request for a permit in terms that left no doubt that petitioners were not going to be issued a permit under any circumstances. "He said, 'No, you will not get a permit in Birmingham, Alabama to picket. I will picket you over to the City Jail,' and he repeated that twice." A second, telegraphic request was also summarily denied, in a telegram signed by "Eugene 'Bull' Connor," with the added information that permits could be issued only by the full City Commission, a three-man body consisting of Commissioner Connor and two others. According to petitioners' offer of proof, the truth of which is assumed for purposes of this case, parade permits had uniformly been issued for all other groups by the city clerk on the request of the traffic bureau of the police department, which was under Commissioner Connor's direction. The requirement that the approval of the full Commission be obtained was applied only to this one group.
3. Understandably convinced that the City of Birmingham was not going to authorize their demonstrations under any circumstances, petitioners proceeded with their plans despite Commissioner Connor's orders. On Wednesday, April 10, at 9 in the evening, the city filed in a state circuit court a bill of complaint seeking an ex parte injunction. The complaint recited that petitioners were engaging in a series of demonstrations as "part of a massive effort . . . to forcibly integrate all business establishments, churches, and other institutions" in the city, with the result that the police department was strained in its resources and the safety, peace, and tranquility were threatened. It was alleged as particularly menacing that petitioners were planning to conduct "kneel-in" demonstrations at churches where their presence was not wanted. The city's police dogs were said to be in danger of their lives. Faced with these recitals, the Circuit Court issued the injunction in the form requested, and in effect ordered petitioners and all other persons having notice of the order to refrain for an unlimited time from carrying on any demonstrations without a permit. A permit, of course, was clearly unobtainable; the city would not have sought this injunction if it had any intention of issuing one.
4. Petitioners were served with copies of the injunction at various times on Thursday and on Good Friday. Unable to believe that such a blatant and broadly drawn prior restraint on their First Amendment rights could be valid, they announced their intention to defy it and went ahead with the planned peaceful demonstrations on Easter weekend. On the following Monday, when they promptly filed a motion to dissolve the injunction, the court found them in contempt, holding that they had waived all their First Amendment rights by disobeying the court order.

5. These facts lend no support to the court's charges that petitioners were presuming to act as judges in their own case, or that they had a disregard for the judicial process. They did not flee the jurisdiction or refuse to appear in the Alabama courts. Having violated the injunction, they promptly submitted themselves to the courts to test the constitutionality of the injunction and the ordinance it parroted. They were in essentially the same position as persons who challenge the constitutionality of a statute by violating it, and then defend the ensuing criminal prosecution on constitutional grounds. It has never been thought that violation of a statute indicated such a disrespect for the legislature that the violator always must be punished even if the statute was unconstitutional. On the contrary, some cases have required that persons seeking to challenge the constitutionality of a statute first violate it to establish their standing to sue. Indeed, it shows no disrespect for law to violate a statute on the ground that it is unconstitutional and then to submit one's case to the courts with the willingness to accept the penalty if the statute is held to be valid. The Court concedes that "[t]he generality of the language contained in the Birmingham parade ordinance upon which the injunction was based would unquestionably raise substantial constitutional issues concerning some of its provisions." I believe it is patently unconstitutional on its face. Our decisions have consistently held that picketing and parading are means of expression protected by the First Amendment, and that the right to picket or parade may not be subjected to the unfettered discretion of local officials. Although a city may regulate the manner of use of its streets and sidewalks in the interest of keeping them open for the movement of traffic, it may not allow local officials unbridled discretion to decide who shall be allowed to parade or picket and who shall not. "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied." When local officials are given totally unfettered discretion to decide whether a proposed demonstration is consistent with "public welfare, peace, safety, health, decency, good order, morals or convenience," as they were in this case, they are invited to act as censors over the views that may be presented to the public. The unconstitutionality of the ordinance is compounded, of course, when there is convincing evidence that the officials have in fact used their power to deny permits to organizations whose views they dislike. The record in this case hardly suggests that Commissioner Connor and the other city officials were motivated in prohibiting civil rights picketing only by their overwhelming concern for particular traffic problems. Petitioners were given to understand that under no circumstances would they be permitted to demonstrate in Birmingham, not that a demonstration would be approved if a time and place were selected that would minimize the traffic difficulties. The only circumstance that the court can find to justify anything other than a per curiam reversal is that Commissioner Connor had the foresight to have the unconstitutional ordinance included in an ex parte injunction, issued without notice or hearing or any showing that it was impossible to have notice or a hearing, forbidding the world at large (insofar as it knew of the order) to conduct demonstrations in Birmingham without the consent of the city officials. This injunction was such potent magic that it transformed the command of an unconstitutional statute into an impregnable barrier, challengeable only in what likely would have been protracted legal proceedings and entirely superior in the meantime even to the United States Constitution.
6. I do not believe that giving this Court's seal of approval to such a gross misuse of the judicial process is likely to lead to greater respect for the law any more than it is likely to lead to greater protection for

First Amendment freedoms. Nothing in our prior decisions, or in the doctrine that a party subject to a temporary injunction issued by a court of competent jurisdiction with power to decide a dispute properly before it must normally challenge the injunction in the courts rather than by violating it, requires that we affirm the convictions in this case.

7. The Alabama Circuit Court did not issue this temporary injunction to preserve existing conditions while it proceeded to decide some underlying dispute. In point of fact, there is only one apparent reason why the city sought this injunction and why the court issued it: to make it possible to punish petitioners for contempt rather than for violating the ordinance, and thus to immunize the unconstitutional statute and its unconstitutional application from any attack. I regret that this strategy has been so successful.

Analysis of Chief Justice Warren's Dissenting Opinion

Chief Justice Warren is more concerned about the defending the rights of the petitioners than upholding the authority of the government officials. At the end of his introduction, he states his two reasons for dissenting: "I do not believe the 'fundamental protections of the Constitution were meant to be so easily evaded, or that the 'civilizing hand of law' would be hampered in the slightest by enforcing the First Amendment." The words he quotes are from Stewart's opinion.

In paragraph 2, Chief Justice Warren begins by explaining the side of the petitioners. He mentions that they are "ministers," who "sought to express their concern about racial discrimination in Birmingham," by means of a "peaceful protest." Warren's language clearly implies the good-will of the petitioners. They are heroes speaking out through a march against a great injustice.

Like Justice Stewart, Chief Justice Warren summarizes the events, but he does so from the point of view of the petitioners with the point that a parade permit was unobtainable. He explains that the Public Safety Commissioner "left no doubt that the petitioners were not going to be issued a permit under any circumstances." He quotes the commissioner's hostile words. The commissioner is known as "Bull Conner." Stewart never mentions this nickname; Warren does, for it connotes that Conner is a beastly character. Between some ministers and someone named "Bull Conner," one would inevitably side with the ministers. Stewart explains that Conner told the applicant for the permit that the full City Commission, consisting of Conner and two others, must approve the permit. This policy was never applied to any other parade permit. Warren makes the injustice of the matter clearer by quoting Conner's rude words and explaining that the petitioners tried two times to get a parade permit but were summarily turned down in a way that indicated they would never get one.

In paragraph 2, Warren makes the point that it was most important that the march be held on Good Friday and Easter Sunday—for "obvious reasons." King was connecting the meaning of Good Friday, Christ's suffering, with the suffering of black people, and he was connecting the resurrection on Easter Sunday with the vision of black people rising out of their oppression and living free. Although Warren does not explain, it is clear to the reader who understands how drawn out court proceedings are, that a hearing about the injunction would have prevented the petitioners from using Good Friday and Easter as their protest days and thereby lose the religious significance of their campaign.

Warren summarizes the injunction the city filed against the march. He mentions that their main objection was that they demonstrators were "part of a massive effort to forcibly integrate all business establishments, churches, and other institutions." Quoting these words demonstrates that the city officials were concerned about ending segregation, not about keeping order. Then Warren adds sarcasm and mocks the city officials. He writes: "It was alleged as particularly menacing that petitioners were planning to conduct 'kneel-in'

demonstrations at churches." With more sarcasm and jocularly, he says, "The city's police dogs were said to be in danger of their lives." Warren's sarcasm undermines the Birmingham officials' case.

Warren continues to paint a benevolent portrait of the petitioners. In paragraph 4, he says that when they were served with the injunction, they were "unable to believe that such a blatant and broadly drawn prior restraint on the First Amendment rights could be valid." Then he adds that they "went ahead with the planned peaceful demonstrations."

In paragraph 5, Warren explains that the petitioners' disobedience of the injunction was proper, for it was done for the purpose of establishing the unconstitutionality of the parade statute. They were not endangering the community but trying to gain constitutional rights for it. He asserts, "It has never been thought that violation of a statute indicated such a disrespect for the legislature that the violator always must be punished even if the statute was unconstitutional." Then he argues someone is punished when he violates a constitutional statute, indirectly making the point that since the statute was unconstitutional, the petitioners should not be punished.

Warren then uses the Stewart's own words to support his position, mentioning that the Court concedes that the constitutionality of the parade ordinance is questionable, and then he adds the court has "consistently held that picketing and parading are means of expression protected by the First Amendment." He elaborates this point by discussing that if the government has the power to decide whether a demonstration is consistent with keeping order, they are "invited to act as censors over the views that may be presented to the public." In this case, it is more egregious because the city commissioner denied permits to organizations whose views they disliked. Warren argues that it is proper for American citizens to use the streets and parks to express their views. The only time the government may subordinate these rights is for the purpose of protecting "peace and good order." However, he writes, governments should not be permitted to disguise their restrictive actions as actions to protect the society from disorder, and this is what the city of Birmingham was doing when they refused a parade permit to the petitioners and issued an injunction not to march. The court, Warren argues further, played a role in this deception by stopping any arguments about the unconstitutionality of the parade statute.

As Warren comes to a close, in paragraph 6, he, using parallelism, writes that he does not believe: "such a gross misuse of the judicial process is likely to lead to greater respect for the law any more than it is likely to lead to greater protection for First Amendment freedoms. Then he concludes with his main point made more eloquent with consonance and parallelism: "there is only one apparent reason why the city sought this injunction and why the court issued it: to make it possible to punish petitioners for contempt rather than for violating the ordinance, and thus to immunize the unconstitutional statute and its unconstitutional application from any attack." Then with a personal touch and consonance again, he closes: "I regret that this strategy has been so successful."

Justice Brennan's Opinion

1. Under cover of exhortation that the Negro exercise "respect for judicial process," the Court empties the Supremacy Clause of its primacy by elevating a state rule of judicial administration above the right of free expression guaranteed by the Federal Constitution. And the Court does so by letting loose a devastatingly destructive weapon for suppression of cherished freedoms heretofore believed indispensable to maintenance of our free society. I cannot believe that this distortion in the hierarchy of values upon which our society has been and must be ordered can have any significance beyond its function as a vehicle to affirm these contempt convictions.

2. 2. Petitioners are eight Negro ministers. They were convicted of criminal contempt for violation of an ex parte injunction issued by the Circuit Court of Jefferson County, Alabama, by engaging in street parades without a municipal permit on Good Friday and Easter Sunday 1963. These were the days when Birmingham was a world symbol of implacable official hostility to Negro efforts to gain civil rights, however peacefully sought. The purpose of these demonstrations was peaceably to publicize and dramatize the civil rights grievances of the Negro people. The underlying permit ordinance made it unlawful "to organize or hold . . . or to take part or participate in, any parade or procession or other public demonstration on the streets . . ." without a permit. A permit was issuable by the City Commission "unless in its judgment the public welfare, peace, safety, health, decency, good order, morals or convenience require that it be refused."
3. 3. Like the Court, I start with the premise that States are free to adopt rules of judicial administration designed to require respect for their courts' orders. But this does not mean that this valid state interest does not admit of collision with other and more vital interests. Surely the proposition requires no citation that a valid state interest must give way when it infringes on rights guaranteed by the Federal Constitution. The plain meaning of the Supremacy Clause requires no less.
4. 4. In the present case we are confronted with a collision between Alabama's interest in requiring adherence to orders of its courts and the constitutional prohibition against abridgment of freedom of speech, more particularly "the right of the people peaceably to assemble," and the right "to petition the Government for a redress of grievances." Special considerations have time and again been deemed by us to attend protection of these freedoms in the face of state interests the vindication of which results in prior restraints upon their exercise, or their regulation in a vague or overbroad manner, or in a way which gives unbridled discretion to limit their exercise to an individual or group of individuals. To give these freedoms the necessary "breathing space to survive,"
5. 5. "The decisions of this Court have uniformly held that the failure to apply for a license under an ordinance which on its face violates the Constitution does not preclude review in this Court of a judgment of conviction under such an ordinance. Constitutionally secured rights to challenge prior restraints invalid on their face are lost if the State takes the precaution to have some judge append his signature to an ex parte order which recites the words of the invalid statute. The State neatly insulates its legislation from challenge by mere incorporation of the identical stifling, overbroad, and vague restraints on exercise of the First Amendment freedoms into an even more vague and pervasive injunction obtained invisibly and upon a stage darkened lest it be open to scrutiny by those affected.
6. 6. It is said that petitioners should have sought to dissolve the injunction before conducting their processions. That argument is plainly repugnant to the principle that First Amendment freedoms may be exercised in the face of legislative prior restraints. The suggestion that petitioners be muffled pending outcome of dissolution proceedings without any measurable time limits is particularly inappropriate in the setting of this case. Critical to the plain exercise of the right of protest was the timing of that exercise. First, the marches were part of a program to arouse community support for petitioners' assault on segregation there. A cessation of these activities, even for a short period, might deal a crippling blow to petitioners' efforts. Second, in dramatization of their cause, petitioners, all ministers, chose April 12, Good Friday, and April 14, Easter Sunday, for their protests hoping to gain the attention to their cause which such timing might attract. Petitioners received notice of the order April 11. The ability to exercise protected protest at a time when such exercise would be effective must be as protected as the beliefs themselves. It is a flagrant denial of constitutional guarantees to balance away this principle in the name of "respect for judicial process." To preach "respect" in this context is to deny the right to speak at all.
7. 8. The Court today lets loose a devastatingly destructive weapon for infringement of freedoms jealously

safeguarded not so much for the benefit of any given group of any given persuasion as for the benefit of all of us. We cannot permit fears of "riots" and "civil disobedience" generated by slogans like "Black Power" to divert our attention from what is here at stake; not violence or the right of the State to control its streets and sidewalks, but the insulation from attack of ex parte orders and legislation upon which they are based even when patently impermissible prior restraints on the exercise of First Amendment rights, thus arming the state courts with the power to punish as a "contempt" what they otherwise could not punish at all. Constitutional restrictions against abridgments of First Amendment freedoms limit judicial equally with legislative and executive power. Convictions for contempt of court orders which invalidly abridge First Amendment freedoms must be condemned equally with convictions for violation of statutes which do the same thing. I respectfully dissent.

Analysis of Justice Brennan's Dissenting Opinion

Justice Brennan begins by metaphorically describing the Supreme Court as acting "under the cover of exhortation that the Negro exercise 'respect for judicial process,'" and then he adds ironically that its decision "empties the Supremacy Clause of its primacy by elevating a state rule of judicial administration above the right of free expression guaranteed by the Federal Constitution." In other words, by standing up for respect for the law, the Court has minimized one of the most important rules of U.S. law, namely that free expression has primacy over a state rule of judicial administration. The Court, Brennan writes with consonance, is "letting loose a devastatingly destructive weapon for suppression of cherished freedoms." Then, using pathos, he, in first person exclaims: "I cannot believe that this distortion in the hierarchy of values upon which our society has been and must be ordered . . ." The closing sentences of this paragraphs use consonance—contempt convictions, a simile—this distortion of justice functions as a vehicle, and a pun describing the convictions as *contempt convictions*—the petitioners are charged with contempt but their conviction of contempt is contemptible.

In paragraph 2, like, Warren, Brennan mentions that the petitioners are ministers, revealing their righteous motive for acting—serving God and man. He contrasts these ministers with the city of Birmingham, which he eloquently describes as "a world symbol of implacable official hostility to Negro efforts to gain civil rights." He adds to his righteous description of the petitioners by stating that they "peacefully sought" these rights. This paragraph uses irony: Brennan depicts the convicted petitioners as upholding justice by demonstrating and the government officials as denying justice by outlawing a march.

In paragraph 3, Brennan seems to agree with the court and then he contradicts it. He agrees that the states are free to adopt the rule that "require respect for their courts' orders.' However, he points out, there are more "vital interests,"—the rights "guaranteed by the Federal Constitution." He also uses the metaphor "collision" to explain how that the one statute can contradict another more important statute. He elaborates this point in paragraph 4, explaining that "special considerations" have been given by the Supreme Court to protect the freedoms guaranteed by the Constitution. Using three metaphors, he explains that in the "face of state interests, . . . [the exercise of regulation] gives unbridled discretion" to officials to limit a group's freedom, but the duty of the court is to give people's freedoms "the necessary 'breathing space to survive.'"

In paragraph 5, Brennan proceeds to reason, using a metaphor again, that allowing a government to impose an injunction and then for a judge to negate an evaluation of the ordinance, "insulates its legislature from challenge." He closes this paragraph with an elaborate metaphor, commenting that Birmingham obtained the injunction "invisibly and upon a stage darkened lest it be open to scrutiny by those affected."

Brennan then, in paragraph 6, vehemently responds to Stewart's central argument, namely that the

petitioners should have appealed the injunction. He declares that this "argument is plainly repugnant to the principle that First Amendment freedoms may be exercised in the face of legislative prior restraints." Again, Brennan uses a metaphor: "The suggestion that petitioners be muffled. Brennan explains his point that waiting for a court to hear and rule on their appeal would have severely damaged the petitioners' protest campaign. Brennan uses the metaphor "crippling blow." Good Friday and Easter were important days for their religious connection to the civil rights movement. Brennan closes this argument with a pun using the word *preach*: "To preach 'respect' in this context is to deny the right to speak at all." The petitioners preach, for they are preachers, and the Court is preaching to them now with its ruling.

Brennan closes as he began: passionately, using consonance: "The Court today lets loose a devastatingly destructive weapon for infringement of freedoms" and then metaphorically describes the "infringements of freedoms" being "jealously safeguarded." Brennan discloses what he thinks is the central reason behind the Court's decision, namely fear of "riots" and "Black Power." He then repeats the central issue, using consonance: "the right of the State to control its streets and sidewalks" and the "exercise of First Amendment rights," and adds: "Constitutional restrictions against abridgments of First Amendment freedoms limit judicial equally with legislative and executive power." In other words, siding with the City of Birmingham is giving the state courts more power, power to prevent marching and protesting, but if the Court had ruled against Birmingham, it would have leveled the field between the judiciary, legislative, and executive.

Brennan finalizes with the eloquence he demonstrates throughout his opinion; using parallelism, he writes: Convictions for contempt of court orders which invalidly abridge First Amendment freedoms must be condemned equally with convictions for violation of statutes which do the same thing.

Analysis of "Letter from Birmingham Jail"

Since *Letter from Birmingham Jail* is copyrighted, its text is not printed here; however, it can easily be found. For this unit, I will use two sections of the letter: paragraphs 1- 4 and paragraphs 12 - end. These parts of the letter focus on Martin Luther King's reasoning for disobeying the law in Birmingham.

King begins by explaining why he is writing the letter. He quotes the words of some ministers who wrote a letter to the editor in the local newspaper. They assert that the civil disobedience campaign in Birmingham is "unwise and untimely." King responds respectfully, hoping that he will answer their statements in "patient and reasonable terms." In other words, their disagreement will be a civil one based on philosophy and theology.

In the next paragraph, King explains why he is in Birmingham. Since he does not live there, he has been criticized as an outsider. He explains the invitation and then in the third paragraph makes an allusion to the prophets in the Old Testament and the Apostle Paul. Since his audience is ministers and rabbis, it is quite effective that he supports his work in Birmingham by comparing it to the work of the prophets and St. Paul who were compelled by God to speak the truth in various places. More exactly, King compares himself to the prophet Amos when he describes himself as "compelled" to come to Birmingham; the situations are similar: Amos, like King, was severely criticized for coming to Israel, the northern kingdom, to prophesy when his home was Judah, the southern kingdom. Amos tells the critical priest, "The Lord took me from tending the flock and said to me, 'Go, prophesy to my people Israel'" (Am. 7:15). Clearly, King is telling the ministers the same thing—*God took me from tending my flock in Atlanta and said to me, 'Go, free my people in Birmingham.'* The critical ministers are like the ungodly priest in the book of *Amos* who was contradicting God's aim.

We now move to paragraph 12. There, King explains why he was acting righteously by disobeying the parade

statute and the injunction. He begins by presenting his opponents' side, paraphrasing their criticism, that he advocates obeying *Brown v. Board of Education*, yet breaks the law in Birmingham. He responds by quoting St. Augustine, a man highly esteemed by the Christian ministers and even the Jewish ones. Choosing Augustine demonstrates the King is speaking on a religious plain, demonstrating that he is following God's will by leading the Birmingham campaign. The quote is also eloquent: "An unjust law is no law at all."

King proceeds to reason about the difference between a just and unjust law. He supports his reasoning by referring to St. Thomas Aquinas, another religious figure, especially revered by Catholics. King's reasoning becomes philosophical when he refers to natural law and eternal law. This is also effective because it demonstrates that his actions are not reckless but based on sound reasoning and philosophy. He then explains, in a philosophical way, why segregation statutes are unjust laws and supports his point by referring to Martin Buber, a Jewish philosopher, one who would be especially revered by the rabbis. King continues to follow the strategy of citing revered religious figures when he refers to Paul Tillich, a Protestant theologian, and like his references to Augustine, Aquinas, and Buber, Tillich's sophisticated theology strengthens King's contention that his actions are thoughtful and theologically sound.

King then discusses his violation of the law, and explains why it is unjust and thereby should be disobeyed. He emphasizes that when one breaks an unjust law, he must do it "openly, lovingly, and with a willingness to accept the penalty." Such behavior, he says, arouses the conscience of the community to leads them to see the unjustness of the particular law. As earlier, he uses religion to support his view; this time the book of *Daniel*, and the passage that narrates the three Jewish young men who refused to obey Nebuchadnezzar's dictate to worship him. Then King gathers support from American history—the Boston Tea party. These patriots broke the law too, but we consider their actions good.

Then King questions the ministers' religious integrity. He criticizes them for not acting aggressively to end racial injustice. Using hyperbole with metaphors, he says, "I have almost reached the regrettable conclusion that the Negro's great stumbling block in his stride toward freedom is not the White Citizen's Council or the Ku Klux Klanner, but the white moderate." He urges them to "reject the myth" that in time black people will be given their just rights.

His campaign, King argues, is an effective way to reduce racial violence: "The Negro has many pent-up resentments and latent frustrations, and he must release them." King asserts that his campaign for civil rights is a relief valve for black people. However, his words have a subtle warning: If progress is not made in the civil rights struggle, the "pent-up resentments and latent frustrations" will blow up into violence. Therefore, waiting is dangerous. Black people are losing their patience.

King, then proceeds with his argument by comparing his actions and himself to revered religious and American figures: Jesus, Lincoln, and Jefferson. When he compares his campaign and his actions to these men, he is implying that the ministers are not fulfilling their religious and American duty when they do not support his movement.

King comes to his closing by criticizing the ministers for "warmly commending the police force." He uses imagery to describe the behavior of the police: "dogs sinking their teeth into unarmed, non-violent Negroes" and the "ugly and inhumane treatment of Negroes in the city jail." These vivid images diminish the religious integrity of these ministers while advancing the righteousness of the protesters. In a subtle ways, King is saying: "These people are risking everything to win justice and you are sitting in a safe office criticizing them and praising the police." King then praises the protesters for their courage and nonviolent discipline. He says one day they will be recognized as heroes. This closing paragraph puts the ministers on the defensive. A wise

strategy. While they are defending themselves, they cannot attack King and the civil rights campaign. It also discourages other ministers from criticizing him in the future.

Student Activities

I will assign the class to find information about the context of *Walker v. City of Birmingham*. The students will present their information to the class. Using the summary prepared in this unit, I will fill in any details the students overlooked. Then I will lead a discussion about whether the City of Birmingham was right not to issue a parade permit and the court was right to issue an injunction against marching, or was Martin Luther King right in marching without a permit and disobeying the injunction. I will play the devil's advocate and argue against whatever point of view the students express. The purpose is for them to understand the circumstances and the constitutional and moral question of the case.

When we examine each of the three opinions, I will divide the class into groups of three or four and assign a section of the opinion to each group. The groups will prepare a presentation of their section, which will entail reading the section aloud to the class, explaining its reasoning, and analyzing its language, arguments, and perspective. To do this, they must read the section to themselves and highlight and annotate it. They will prepare the presentation together using their annotations. The group will decide who reads, and that person(s) must prepare the reading so that they read it fluently. They will put together the presentation and present it in the way they think is best. The class will notate the particular section during the presentation. At the conclusion of the presentation will be a question and answer session. I will add anything that was missed in their presentation.

Another option, in the technology is available, is having the students prepare their presentation on Power Point. They can paste their assigned text on slides and point out certain phrases, words, and letters by changing their color. This strategy will make analyzing a text fun and it will induce them to focus more on the language and reasoning.

We will examine the opinions in the following order: Stewart, Warren, Brennan, and King. The students will analyze the reasoning and the language in each of the three texts. However, in each particular one, I will tell them to look for some additional quality. In Stewart's opinion, they will look for what Stewart left out and explain what that implies. For Warren's and Brennan's opinions, they will look for the ways they answer Stewart's assertions. For King, they will compare King's style of argumentation with the justices and analyze how the audience of King's letter affects his writing.

After they have presented the four texts and notated them, the students will write a paper that contrasts the four men's perspective and explains how the language they use communicates their perspective. I will work with them in preparing an outline. (See Lesson Plan 3). This is important, for I have found that without doing an outline with my guidance, the students create a nebulous paper. Following the outline, the students will go to the computer lab and begin working on the paper. We will spend about three class periods there and then the students will finish the paper on their own. I want them to begin working on the paper at school, so I can monitor their progress and help them stay on track. I will actively move around the computer lab, examining what they have written, give them advice, and, most importantly, spur them to keep working. Many students find writing laborious and they give in to their inclination to give up and talk to someone or play a game on the

computer. A good strategy is to pair students together, so that they can help each other.

Lesson Plans

Lesson Plan 1: Analyzing Justice Stewart's Opinion

The students will be divided in groups of three or four. The first group will be assigned paragraph 1-3 and the rest of the groups will have two paragraphs each. The students will read the assigned paragraphs, highlight the main points and any literary technique and notate them. The groups will prepare their presentation by writing down what they plan to say.

In this lesson the students will work cooperatively at analyzing prose—its arguments and diction. They will synthesize their notations into an organized presentation.

Lesson Plan 2: Presentations

The groups will come to the front of the room, and behind the podium, clearly and fluently read their assigned passage. They will then analyze the passage for the class, who will highlight and take notes, and answer their classmates' questions. The groups will decide how they will do their presentation. I will assess their presentations on how well the passage is read, how clear their presentation is, how hermeneutic their analysis is, and how well they answer questions.

In this lesson the students will develop their public speaking skills, their capacity to articulate their thoughts, and their ability to think on their feet.

Lesson Plan 3: Outline for Comparison Paper

The class will be divided into five groups. One group will be responsible for creating an outline of the historical events of the case. The rest of the groups will outline the main points of their assigned text using their notes and highlighted passages. Each group will instruct the class about their text using the chalkboard. The rest of the class will copy down their outline. Each section of the outline will stay on the board so that each group will be adding to the outline. I will add anything that is left out or is misconstrued. Before the first group begins, I will leave a space on the board for the introduction. When all the groups have finished, I will lead the class in creating an outline for the introduction. The closing they will compose independently. This outline will be used to write the comparison paper.

In this lesson, the students will work cooperatively at analyzing prose—its arguments and diction. They will synthesize their notations into an outline. They will develop their speaking skills and formulate a structure for a comparison paper.

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