INDEX TO APPENDIX

Statutes Involved

LOUISIANA STATUTES ANNOTATED—R. S. 14.401

"§401. DEMONSTRATIONS IN OR NEAR BUILDING HOUSING A COURT OR OCCUPIED AS RESIDENCE BY JUDGE, JUROR, WITNESS OR COURT OFFICER

"Whoever, with the intent of interfering with, obstructing or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty pickets or parades in or near a building housing a court of the State of Louisiana, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any soundtruck or similar device or resorts to any other demonstration in or near such building or residence, shall be fined not more than five thousand dollars or imprisoned not more than one year, or both.

"Nothing in this section shall interfere with or prevent the exercise by any court of the State of Louisiana of its power to punish for contempt. Acts 1950, No. 177, §§ 1, 2."

Opinion of District Court

DECISION

(545)

* * *

With regard to bill No. 42,201, that is where B. Elton Cox is charged that he:

(546)

> ". . . unlawfully violated the provisions of R. S. 14:401, in that he, with the intent of interfering with, obstructing, and impeding the administration of Justice, and with the intent of influencing a Judge, witnesses and Court Officers in the discharge of their duty, did picket, parade and engage in a demonstration in front of and near the East Baton Rouge Parish Courthouse, a building housing a Court of the State of Louisiana and occupied and used by such Judges, witnesses and Court Officers."

Mr. Jones has filed into the record this map which shows that the group which Reverend Cox led to the west side of America Street could not have been more than 103 feet from the steps of the courthouse to where his group was congregated directly across the street. That would be 103 feet and the Court feels that that would qualify under the definition of being near. With regard to the evidence as to whether or not he was the leader of the said group, he was the one who dealt with the officers, he is the Field Secretary of the Congress of Racial Equality and the evidence, not only from his own testimony but from Ronnie Moore and others of his affiliation with CORE, leaves no doubt in this Court's mind that he was the leader of the group

across the street from the Courthouse. That is also accurately reflected in the films. The real question, though, in
(547)
that statute is with regard to the intent. The bill charges "... in that he, with the intent of interfering with, obstructing, and impeding the administration of Justice, and with the intent of influencing a Judge . . . ." I asked many questions of the accused and others such as Ronnie Moore as to just what did they propose to accomplish by congregating on the other side of the Courthouse, on the street on the other side of the Courthouse, singing these songs and protesting the "illegal incarceration" of their fellow members in the East Baton Rouge Parish jail.

The defense is that they had no intent to influence anyone, that this is just mere freedom of speech, that this is their right to protest out against anything which they happen to think is a social wrong and a social injustice. Of course, even our Federal Government has recognized the danger of freedom of speech expressed in this manner and has made it a violation of Federal law to picket and parade and engage in a demonstration in front of or around a Federal Court. Our state statute, which was copied after the Federal statute, was enacted even before the Supreme Court issued its initial school integration decision. This statute was on our books in the year 1950, long before the school integration decision, and was copied after the Federal statute.

Now, what do people do when they come and parade in
(548)
front of the Courthouse? I was not a witness to the demonstration myself personally, but I was present in the Court-

house shortly before it occurred. I was present in this Courthouse when evidently the police had gotten notice that some demonstration was impending, and my reaction was to get away from it as fast as I could. If you asked me what I was afraid of, I can tell you best by saying that having lived here in the South all of my life and being present around a demonstration of some 1,500 colored people who are protesting against racial discrimination and being a part of this community and living in this community where I know that especially of late that there is tension between the races, I felt that it would be unpleasant in some way or it would be some unpleasant thing to me to see; and because I know that there is tension between the races, I think I felt apprehensive that trouble or violence could erupt from such a situation. That is what I felt in my heart and that is why I left, because I didn't want to be anywhere near or in connection with it. I can say that it had influence on me. I can say that it made me fearful. Perhaps a better word would be "apprehensive," that there might be some racial violence. I can say as a judge that that is the way I felt With all my heart I can say that. Then when I try to think of, if you want to protest, why protest around the Courthouse, I get the feeling that there is some subtle intimidation of me or of anyone of us who is responsible for upholding the laws of the State
(549)
of Louisiana and maintaining, according to certain of our laws, segregation.

For example, Mr. Jones, who has practiced law in my court for some time with success, sometimes without, well

knows that Division "B" and every other division up here has been segregated. He well knows that, and I think he also knows, too, that if I would just say to everybody white and colored, "Let's just all mix up together in the courtroom at the same time," I think that it would be calculated to cause disorder in court. Maybe some time that situation might not be, but he ought to know and I do know right now that it would cause disorder. When he makes such a statement in the presence of a courtroom almost entirely filled with colored persons and knowing the situation as he does, I think this is some intimidation of me. The Court gave half the section that was usually reserved for whites to the colored spectators in addition to the half that they have always customarily had, and he intimates that the Court is being unfair by allowing this trial to go on in a segregated courtroom. Yes, I feel that there is some intimidation of me, especially when there are some 250 colored people standing in the halls outside waiting to get in and overcrowd this courtroom when there is no place for them to sit if I gave them the whole courtroom.

In any event, I felt as a judge the subtle intimidation, (550)
and while I know that he protests bitterly against it as merely a freedom of his speech, I am sure when our Federal Government devised this statute which our state has copied that perhaps the Communists must have felt the same way.

Therefore, the Court finds the defendant B. Elton Cox guilty of bill No. 42,201.

* * *

Opinion of Louisiana Supreme Court

(1)

SUPREME COURT OF LOUISIANA

No. 46,618

STATE OF LOUISIANA

v.

B. ELTON COX

APPEAL FROM DIVISION "A" OF THE NINETEENTH JUDICIAL DISTRICT COURT

HON. FRED A. BLANCHE, JR., JUDGE

FOURNET, Chief Justice.

This case was previously before us on an appeal taken by the defendant, B. Elton Cox, but the bills reserved during his trial were not then considered inasmuch as the only question presented for determination was the legality of the sentence imposed. Finding he had been sentenced within twenty-four hours after his conviction, contrary to the provisions of R. S. 15:521, the sentence was annulled and set aside, the defendant ordered released on bail until such time as legal sentence was imposed, and, in the meanwhile, he was afforded the opportunity to take any pro-

cedural steps to which he was entitled during the delay provided by that statute. See, State v. Cox, 243 La. 917, 148 So. 2d 600.[1]

(2)

This appeal is from the defendant's conviction of violating Section 14:401 of the Revised Statutes of 1950[2] and his sentence thereunder to "pay a fine of $5,000 and to be confined in the parish jail for one year, or in default of the payment of said fine to be imprisoned one year additional, this sentence to run consecutively with" the sentences that day imposed under two other convictions that were affirmed by this court in a decision handed down June 28, 1963. State v. Cox, — La. —, 156 So. 2d 448. The defendant in this case, as in the companion case, is relying for the reversal of his conviction and sentence on five Bills of Exceptions reserved and perfected during the trial, although in

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[1] For the same reason the sentences originally imposed following his conviction under two other statutes were set aside on writs granted to review this action by the trial judge. See, State ex rel. Cox v. Clemmons, 243 La. 264, 142 So. 2d 794.

[2] R. S. 14:401 is in that section of our criminal code dealing with "Offenses Affecting Law Enforcement." Its pertinent portion provides: Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the State of Louisiana, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined not more than five thousand dollars or imprisoned not more than one year, or both."

the record they are not numbered and considered in the order in which they were reserved.[3]

These three charges, as well as a charge of criminal conspiracy under R. S. 14:26 of which this defendant was exonerated by the trial judge, grew out of the same incident and were, by agreement, consolidated for trial, the evidence adduced at that time being made applicable to all. The basic attack on the legality of the conviction is, in essence, identical in all three cases, the only material difference being the facts and contentions specifically applicable to the charges under the statute involved in each.

(3)

In considering these companion cases we found it difficult, as we do here, to answer the arguments of defense counsel without a great deal of duplication and repetition, particularly since the last two bills include the contentions raised in the first three with the usual additional assertion there is no evidence to support the conviction; hence, in order to avoid such repetition and duplication, we adopt the four basic causes assigned by the accused for the reversal of his conviction and sentence as succinctly stated in the opinion in State v. Cox, — La. —, 156 So. 2d 448:

> "First, it is asserted that the specific laws under which he was charged, tried and convicted * * * are

[3] The 1st was reserved when the trial judge overruled the motion to quash the information; the 2nd when he ruled the state's answer to a request for a Bill of Particulars was adequate; the 3rd is levelled at a purported failure to secure an impartial trial because of the segregated character of the courtroom; and the 4th and 5th, respectively, when the judge overruled motions for a new trial and in arrest of judgment.

unconstitutional in their application, for the conviction thereunder infringes upon the defendant's right of free speech protected by the First Amendment of the United States Constitution which the States cannot deny its citizens because of the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States.

"Second, the claim is made that these laws and the bills of information are too vague and general and hence violate the due process and equal protection clauses of the Fourteenth Amendment.

"Third, it is contended that Cox's trial and conviction were violative of the Fourteenth Amendment for there was no evidence tending to prove the crime charged.

"Fourth, it is contended that the segregated conditions in the courtroom during the trial denied Cox a fair trial in violation of the Sixth and Fourteenth Amendments."

The argument by defense counsel in the case at bar is also almost identical with that presented in the companion cases, both orally and in brief, and, like the Bills of Exceptions, are not only lengthy and repetitious, but, when properly analyzed, as we found in these cases (Nos. 46,395 and 46,396 on the docket of this court), basically unsound in that they are without foundation in fact or in law.

Defendant's first contention is that R. S. 14:401—prohibiting any form of demonstration in or near a building housing a court of the State of Louisiana, or in or near a

(4)
building or residence occupied or used by a judge, juror, witness, or court officer, with the intent of interfering with the administration of justice, or with the intent of influencing such judge, juror, witness, or court officer in the proper discharge of his duties, under which statute the defendant was convicted—is unconstitutional in its application in this case.

While defense counsel concede that interfering with the administration of justice is illegal, as is also the influencing of a judge, juror, witness, or court officer in the proper discharge of his duties, it is contended that if the statute is construed to convict him for demonstrating with his followers in front of the East Baton Rouge Parish courthouse, it is unconstitutional in that it deprives him of his right to peacefully assemble and speak freely, as guaranteed by the First Amendment to the Constitution of the United States; further, that in denying him these rights, it also violates the equal protection and due process clauses of the Fourteenth Amendment to the federal constitution.

In considering similar contentions urged in the two companion cases, we recognized, as did the court below, that under decisions of the Supreme Court of the United States the freedoms guaranteed individuals under the First Amendment are protected by the Fourteenth Amendment from invasion by the states, citing a number of authorities whereby this country's highest court established this rule in the jurisprudence. But we also pointed out that the United States Supreme Court has recognized that the right of freedom of speech and of the press is not absolute, and

held that a state may, by general and non-discriminatory legislation, regulate the exercise of that freedom under its police power. Cantwell v. Connecticut, 310 U. S. 296, 60 Sup. Ct. 900, 84 L. Ed. 1213.

Unquestionably these rights, freedoms, or privileges of peaceful assembly and of expression and discussion—however they may be considered—as well as the impartial administration of justice that is guaranteed under the Sixth Amendment to the Constitution of the United States, are all vital and important to the concepts on which this nation was founded. To paraphrase Mr. Justice Frankfurter in (5)
his concurring opinion in Pennekamp v. Florida, the claims with which we are faced are not those of right and wrong, but of two rights, each highly important to the well-being of society, the core of the problem being to arrive at a proper balance between basic conditions of our constitutional republic—freedom of utterance and peaceful assembly on the one hand, and the proper and impartial administration of justice on the other, and since the latter is one of the chief tests of the true concepts of our constitutional government, it should not be made unduly difficult by irresponsible actions.

In his excellent dissertation on the subject matter, which we adopt as based on sound reasoning and unassailable logic, Justice Frankfurter continues: "Without a free press there can be no free society. Freedom of the press, however, is not an end in itself but a means to the end of a free society. *The scope and nature of the constitutional protection of freedom of speech must be viewed in that light*

and in that light applied. The independence of the judiciary is no less a means to the end of a free society, and the proper functioning of an independent judiciary puts the freedom of the press in its proper perspective. For *the judiciary cannot function properly if what the press does is reasonably calculated to disturb the judicial judgment in its duty and capacity to act solely on the basis of what is before the court.* A judiciary is not independent unless courts of justice are enabled to administer law *by absence of pressure without,* whether exerted through the blandishments of reward *or the menace of disfavor.* * * * A free press is not preferred to an independent judiciary, nor an independent judiciary to a free press. *Neither has primacy over the other;* both are indispensable to a free society. The freedom of the press in itself presupposes an independent judiciary through which that freedom (whether of utterance, expression, speech, or peaceful assembly) may, if necessary, be vindicated. And one of the potent means for assuring judges their independence is a free press.'' Pennekamp v. Florida, 66 Sup. Ct. 1029, 328 U. S. 331, 90 L. Ed. 1295. (The emphasis and language within brackets has been supplied.)

(6)

We think it proper to mention here and now that R. S. 14:401 was not, as contended by defense counsel and urged in two of the bills reserved (to the denial of a motion for a new trial and one in arrest of judgment), adopted by the Louisiana legislature ''for the specific purpose and intent to implement and further the state's policy of enforced segregation of races.'' Instead, it was almost a duplicate of an act introduced in Congress in 1949 (Senate Bill No.

1681 and House Bill No. 3766) condemning picketing, parading, and demonstrations in the environs of federal courts, and passed in 1950 with the full support and approval of the American Bar Association for the reason that such conduct in the immediate vicinity of a building or residence housing a court or court officer was anathema to our concepts of justice according to law. The only difference in the federal statute (18 USCA 1507) and our Act No. 177 of 1950 (now R. S. 14:401), as reflected by the wording of our statute as set out in Footnote No. 2, is that in place of the words "in or near a building housing a court of the United States," our legislature substituted the words "in or near a building housing a court of the State of Louisiana."

The legislative history of the federal act on which ours was patterned discloses it was passed because of picketing conducted by large crowds outside of a federal district court building in Los Angeles, but, primarily, as the result of the disgraceful picketing and demonstrations in, around, and near a federal building in New York housing, among other courts, the one in which Judge Harold R. Medina was—for a period in excess of 9 months in 1949—endeavoring to conduct with some semblance of order the trial of 10 of the top leaders of the communist party in the United States, despite the attempt of followers of this philosophy to turn the trial into a travesty of justice by insults, jeers, and harassments through printed signs, calls, loudspeakers, and other methods of persecution heaped upon Judge Medina and court officers in an effort to intimidate the Judge in particular in the proper and impartial trial of that case. *It is significant to note,* however, *that the statute in its*

operation is not limited to any particular group or person. It applies alike to all. And although we can find no other (7)
decision of any court in which the constitutionality of this and like statutes have, heretofore, been assailed, we now hold that R. S. 14:401 is constitutional and was legally enacted under the police power with which this state is endowed to insure the orderly and impartial administration of justice.

The contention that the statute itself, as well as the Bill of Information, are too vague and uncertain to inform the defendant of the nature of the charge against him, as required by Section 10 of Article I of the Constitution of Louisiana; R. S. 15:227; and the Sixth Amendment to the Constitution of the United States, is without merit. As shown above, the mischief sought to be denounced by the statute is as clear as the English language can make it, and since, in drawing the Bill of Information, the district attorney not only tracked the language of the statute itself, but gave such additional facts and circumstances as were necessary to inform the defendant of the nature of the charge against him and also furnish the basis for a plea of former jeopardy, or autrefois acquit, in the event another charge covering this same incident was ever returned against him, it fully complies with all pertinent constitutional and statutory requirements. The Fifth Amendment to the Constitution of the United States; Section 9 of Article I of the Constitution of Louisiana; R. S. 15:274-283; State v. Straughan, 229 La. 1036, 87 So. 2d 523; State v. Scheler, 243 La. 443, 144 So. 2d 389, and the authorities therein cited.

Any additional information thought necessary for the defense of Cox was available to counsel through the means of a Bill of Particulars. However, in resorting to this by motion, counsel only requested that the state advise "whether or not the defendant, in any manner, threatened or intimidated any Judge, witness and/or Court Officer in the discharge of their respective duties, and, if so, give the names and addresses of the Judges, witnesses and/or Court Officers allegedly so threatened or intimiated. Also, state how, when and where the threats and intimidations were made, if any." The second bill was reserved when the trial judge maintained the assertion of the district attorney in his answer that this information was neither relevant nor material for the trial of defendant's case, and in this court (8)
counsel has not shown either orally or in brief (1) in what respect the lower court erred by such ruling, (2) that this information was necessary or relevant under the statute, or (3) that such information was necessary for his defense.

The statute does not make threats or intimidations ingredients or elements of the mischief sought to be prohibited. The sole object is, as previously stated, to make the courts secure from undue interference or harassment by parades, picketing, and demonstrations in or near a building where courts in which the due administration of justice is dispensed are housed, or in or near the residence of officers of such courts.

The contention that there was no evidence tending to prove the criminal charge against the defendant also lacks substance. The jurisdiction of this court in criminal matters

is limited to questions of law alone under Section 10 of Article VII of the Constitution of Louisiana. And although there are decisions of this court recognizing that where there is no evidence at all to support the establishment of an essential element of the crime charged a question of law that we may review is presented (State v. Di Vincenti, 232 La. 13, 93 So. 2d 676; State v. La Borde, 234 La. 28, 99 So. 2d 11; and State v. Bueche, 243 La. 160, 142 So. 2d 381, as well as the authorities therein cited), where there is some evidence to sustain the conviction the sufficiency thereof is a matter that lies within the exclusive province of the trial judge and/or jury, and is not reviewable by this court. State v. Brazzel, 229 La. 1091, 37 So. 2d 609; State v. Domino, 234 La. 950, 102 So. 2d 227; and State v. Copling, 242 La. 199, 135 So. 2d 271, as well as the authorities therein cited.

In our opinion there is ample evidence to sustain the conviction in this case. The record of the testimony (made a part in its entirety by defense motions for a new trial and in arrest of judgment) discloses that according to the estimate of Cox himself between 1,500 and 3,800 colored people congregated in mass formation a couple of blocks (9)
from the courthouse on December 15, 1961. This was not only the largest mass grouping of any people in that or the downtown Baton Rouge area within the memory of any of the witnesses, but was composed largely of students from Southern University, a state university for colored people located a few miles north of Baton Rouge, that had absented themselves from school on that day in order to par-

ticipate in this demonstration. All were admittedly well trained and indoctrinated and subject to any desired activity required by Cox by so simple a signal as the snapping of his fingers.

This large mass of demonstrators was met by local law enforcement officers, and, when questioned, Cox informed them they were preparing to move on the courthouse in protest against the incarceration (on the fourth floor of that building) of some 23 colored people who had been "illegally" arrested the day previous; whereupon Cox was informed this would avail him and his followers nothing, the proper remedy being to resort to the courts since only there could it be decided whether these people had, indeed, been "illegally" arrested.[4] And despite the fact Cox told the officers he and the demonstrators were going to the courthouse anyway and would there *peacefully* for a few minutes by singing a hymn and patriotic song, praying, and pledging allegiance to the flag, upon arrival across the street from the front of the courthouse, and at a signal from Cox, and demonstrators immediately pulled from beneath their coats theretofore hidden placards and signs with shouts and yells that interspersed the singing and other parts of the purported "program," with the result that, in return, those in the jail answered by yelling, screaming, singing, and banging on the walls and doors of the cells in which they were lodged on that side of the building. Cox added to the situation that had by then reached a high pitch

[4] It does not appear from the record that any attempt whatsoever had been made to secure the release of these 23 persons on bail, or by resort to the available writ of habeas corpus.

of emotional tension by making an "inflammatory" speech, causing some of the officers to feel this now disorderly and seething mob intended to storm the courthouse and liberate the 23 people there incarcerated, and that a riot was inevitable.
(10)

The Sheriff, sensing the seriousness of this explosive situation, by means of a loudspeaker ordered the demonstrators to move on. However, Cox, and on his instruction the group, openly defied this command and continued the "fiery" and "frenzied" demonstration, in which they were still being joined by the 23 people incarcerated in the building, despite a second admonition by the Sheriff. It was only by the use of tear gas that the Sheriff, his deputies, and other law enforcement officers (about 80 in all) were able to disperse the group. The trial judge who presided over these proceedings against Cox—and who, with one or more of the other three judges having chambers in this building in which they had been holding court since early in September, would eventually be required to determine in a proper trial whether the incarcerated people had been "illegally" arrested—stated in his reasons for judgment that he was so "fearful" and "apprehensive" of the outcome of this demonstration by such a large mass of people in the area of the courthouse he was, in fact, intimidated, and, upon learning the demonstration was imminent, closed his office and left the building.

These facts belie defense argument that by his conviction Cox and his followers were denied the right to "peacfully" assemble as guaranteed by the First and Fourteenth Amendments to the federal constitution.

Moreover, while the courts have recognized that picketing is an exercise of a form of free speech that is protected by these constitutional shields, this sweeping analogy as first enunciated by the United States Supreme Court in the case of Thornhill v. State of Alabama, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093, has since been greatly refined and restricted. For example, this high court in Hughes v. Superior Court of State of California, 339 U. S. 460, 70 S. Ct. 718, 721, 94 L. Ed. 985, pointed out that "* * * *while picketing is a mode of communication it is* inseparably *something more and different * * * 'since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated.'* (11)

* * * *the very purpose of a picket line is to exert influences, and it produces consequences, different from other modes of communication. * * *It has been amply recognized that picketing, not being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent.* Picketing is not beyond the control of a State if the manner in which picketing is conducted or the purpose which it seeks to effectuate gives ground for its disallowance. * * * 'a state is not required to tolerate in all places and all circumstances even peaceful picketing * * *.' " In addition, mass picketing is not only reprobated—particularly where it interferes with and hampers others in the orderly discharge of their duties and their right to be where they are in connection with them—but picketing that is not peaceful is prohibited. See the annotation on this subject in 32 ALR 2d 1026, particu-

larly the section No. 6 on page 1036, as well as the supplements thereto. (The emphasis has been supplied.)

From the foregoing it is manifest that the view of the incident as now contended by Cox bears no relation whatever to the established facts disclosing that between 1,500 and 3,800 people marched "en masse" against the halls of justice and acted near such halls in a manner calculated to interfere with the orderly administration of justice. As stated in our decision in the companion cases, "These demonstrators, like other citizens, must confine their exercise of constitutional freedom within lawfully regulated limits of those freedoms." Or, as Judge Learned Hand put it in upholding the conviction of the 10 communist leaders tried before Judge Medina, "Nobody doubts that when the leader of a mob already ripe for riot gives the word to start, his utterance is not protected by the Amendment." See, United States v. Dennis, 183 F. 2d 201.

The final error complained of in this case—that the spectators in the courtroom in which Cox was tried were segregated, thus denying him a fair trial in violation of the Sixth Amendment to the federal constitution, and the equal protection and due process clauses of the Fourteenth—was adjudicated adversely to the defendant in our decision in the companion cases.

Counsel do not claim that Cox did not receive a fair and
(12)
impartial trial in accordance with the accepted rules and regulations fixed for the orderly trial of cases in the courts of this state, as required by our constitution and statutes, or point out in what manner he was prejudiced by the separation of the spectators in the courtroom where he was tried.

Instead, it is contended that the constitutional rights of "these spectators" were violated during the process of his trial, and it is his right to assert the denial of the rights of these people thus purportedly occurring.

One need only review the record in this case to readily discern the defendant received a fair and impartial trial, being given every consideration and protection afforded all persons accused of crimes under our constitutional and laws by a judge who acted throughout with great patience and forebearance in an effort to maintain a reasonable semblance of order in the courtroom during the trial, as well as to accommodate the colored spectators, even authorizing the use by them of all seats not then occupied by the white people. Finally, on the third day of the trial, he went so far as to have an officer of the court count the number of seats still vacant and then go into the corridors outside the courtroom and inform those congregated there of their availability. Nevertheless, the trial continued with many still remaining vacant.

To hold, as contended by Cox, that his conviction is a nullity merely because of the segregated condition of the courtroom, would, of necessity, make every conviction of an accused during the past years in all of the courts of the state, and regardless of race, nullities, with the result that everyone now confined in our penal institutions would be entitled to have his conviction set aside, and these thousands of criminals would then be turned loose on the people of the state.

For the reasons assigned, the conviction and sentence are affirmed.

(22)

Notice of Motion to Quash

To the Honorable, the Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

AND NOW into this Honorable Court, through his undersigned counsels, comes B. Elton Cox, the defendant in the above entitled and numbered cause, moves to quash the Bill of Information for the following reasons, to-wit:

1.

That the defendant alleges and avers that he did on December 15, 1961, in protest of racial segregation, engage in a demonstration by assembling on the West side of St. Louis Street, across the street from the Courthouse Building of East Baton Rouge Parish, State of Louisiana, but denies that he engaged in any activity whatsoever with the intent of violating LSA-R. S. 14:401 as charged in the Bill of Information.

(23)

2.

That LSA-R. S. 14:401 is sufficiently vague and indefinite to be unconstitutional on its face, in that, it does not prescribe the distance or a limit from the Courthouse Building where the defendant or any other citizen of the United States of America can lawfully assemble in exercise of the rights accorded the defendant, or any other citizen of the United States of America, by the First Amendment to the Constitution of the United States of America.

Notice of Motion to Quash

3.

That LSA-R. S. 14:401 is so vague and indefinite in its construction so as to deprive defendant of his rights, privileges, immunities and/or liberties without due process of law and denies him the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

4.

That the said Bill of Information does not allege any unlawful act or acts committed by the defendant, except violating the rights of freedom of speech, press, assembly and petition accorded the defendant, a citizen of the United States, by the First Amendment to the Constitution of the United States of America.

5.

That while the arrest and charge were for demonstrating with the intent to interfere with, obstruct and impede the administration of justice, and with the intent of influencing a Judge, witnesses and Court Officers, in the discharge of their duties, there was no such activity or activities, except the activity or activities in which the defendant engaged to protest racial segregation, and that the use of the criminal process in such a situation denies and deprives the defendant, a citizen of the United States, of his rights, privileges immunities and liberties guaranteed defendant by the Fourteenth Amendment to the Constitution of the United States of America.

(24)

6.

That if said Statute LSA-R. S. 14:401, as amended, does embrace within its terms and meanings, that defendant, by

engaging in a demonstration in protest of racial segregation interferes with, obstructs, impedes the administration of justice, and influences Judges, witnesses and Court officers in the discharge of their duties, then and in that event said Statute, LSA-R. S. 14:401, is unconstitutional in that it deprives your defendant of his rights, privileges, immunities and/or liberties without due process of law and denies him the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

7.

That the Bill of Information is insufficient to charge an offense or crime under LSA-R. S. 14:401, except violating the rights, privileges, immunities and liberties accorded and guaranteed the defendant, a citizen of the United States, by and under the First and Fourteenth Amendments to the Constitution of the United States of America.

WHEREFORE, your defendant, B. Elton Cox, prays that this Motion to Quash be maintained and that the said Bill of Information as to him, and as far as he is concerned be declared null and void and that he be discharged therefrom.

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Opinion on Motion to Quash

(26)

That on a subsequent day of Court a hearing was had contradictorily with the state on said motion to Quash and that the court overruled and denied the said motion to Quash to which your defendant then and there objected and reserved a bill of exceptions to the information, the motion to Quash, the States answer to the motion to quash and to the Courts ruling denying the said Motion to Quash, and now your defendant perfects this formal bill of exceptions making a part of same the said information, the motion to Quash, the States answer to the motion to Quash, any evidence offered or testimony heard on the motion to Quash, the Courts ruling on same, and the entire record in these proceedings, and first submitting this his formal bill of exceptions to the District Attorney, now tenders the same to the court

and prays that the same be signed and sealed by the judge of this Court, pursuant to the statute in such case made and provided, which is done accordingly this *31st* day of *January* 1963.

(Signed) Fred A. Blanche, Jr.
JUDGE

Notice of Motion in Arrest of Judgment

(13)

Now into Court, after verdict against B. Elton Cox, and before sentence comes the said B. Elton Cox, through undersigned counsel, and moves the Court here to Arrest Judgment herein and not to pronounce the same because of manifest errors in the record appearing to-wit:

1.

That at the beginning of the trial (Transcript Page 4) attorney Johnny Jones moved for the record to show that Murphy Bell, Attorney, was associated on the case with him. That the court ordered a minute entry to that effect. That Attorney Jones also asked for the same record to show that the courtroom was segregated to which request the District Attorney objected and to which the court replied:

> "*Also let the record show* that it has been the practice and custom in the East Baton Rouge Parish Courthouse for many, many years, and in the purpose of maintaining order in the courtroom, separate portions are placed in the courtroom for both colored and white and *let the record* especially show that the

(14)

> judge in this case ordered that half of the seats that were formerly reserved and available for white people are now being occupied and filled by colored people". (italics ours)

That on Wednesday, January 31, 1962 (transcript page 278) Johnny Jones renewed his objection to the segregated courtroom, in the following words:

Notice of Motion in Arrest of Judgment

> "Your Honor, I want to renew our objection about court being segregated and I want to reserve a formal bill".

To which the court replied:

> "Well, I just don't think it makes any difference I don't know if he has got any right to a bill on it or not, but I will let him perfect on it, if he wants to".

Then after some discourse between Mr. Pitcher and Mr. Jones the court said:

> "Let it stand as it is".

The above statements are held by counsel to constitute a correct reserving of an objection and reserving of a Bill of Exceptions to the overruling of the Motion to Desegregate the Courtroom. If not so deemed, then it is our alternative position that the remarks of the court constitutes a part of the record which may properly be presented in review for error in a Motion in Arrest of Judgment.

Thus the record shows on its face that defendant was deprived of rights guaranteed him under the equal protection of the laws and due process of law clauses of the Fourteenth Amendment to the Constitution of the United States.

2.

That the Bills of Information are insufficient to charge a crime under L. S. A.-R. S. 14:401.

(15)

3.

That the convictions of defendant for violation of L. S. A.-R. S. 14:401 denied defendant rights guaranteed to

him under the first amendment to the Constitution of the United States.

4.

That the convictions of defendant for violation of L. S. A.-R. S. 14:401 denied defendant rights guaranteed to him under the Sixth Amendment to the Constitution of the United States.

5.

That the statute under which the defendant was convicted is unconstitutional and in contravention of the Fourteenth Amendment of the Constitution of the United States in that it was enacted for the specific purpose and intent to implement and further the state's policy of enforced segregation of races.

6.

That the statute under which the defendant was convicted is unconstitutional and in contravention of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that they were arbitrarily, capriciously and discriminately enforced against persons peacefully exercising their rights of freedom of speech in protest against racial segregation.

7.

That the statute under which defendant is convicted and the Bill of Information filed thereunder is unconstitutional for want of adequate notice, vagueness and uncertainty therefore said statute could not constitutionally be con-

strued to cover the activities sought to be punished by the Louisiana Courts.

8.

That the judgment is contrary to the law and the evidence in that there is no evidence to support a finding of guilt under said statute thus violating defendant's rights (16)
under the Due Process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States of America.

WHEREFORE, your mover prays that, a rule nisi issue out of this Honorable Court directed to Honorable Sargent Pitcher, Jr., District Attorney ordering him to show cause, if any he has, why a Motion in Arrest of Judgment should not be granted in these proceedings.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 Dryades Street
New Orleans 13, Louisiana

(Signed) By: Nils R. Douglas
MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

Of Counsel:

CARL RACHLIN, ESQ.
280 Broadway
New York, New York

Opinion on Motion in Arrest of Judgment

(37)

The Court, after due consideration of the Motion in Arrest of Judgment filed and submitted by counsel for accused, denied and overruled same. To which ruling of the Court, counsel for accused excepted and reserved a formal bill of exceptions, making a part of the bill, the entire record of these proceedings and the motion filed. Defendant first submitting this his bill of exceptions to the District Attorney now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court, pursuant to the statute in such case made and provided, which is done accordingly this *31st* day of *January* 19*63*.

(Signed) Fred A. Blanche, Jr.
JUDGE

Notice of Motion for New Trial

(18)

NOW INTO COURT, through undersigned counsel comes B. Elton Cox, the defendant in the above entitled and numbered cause and moves the court that the verdict rendered herein be set aside and a New Trial ordered, for the following reasons:

—1—

That the Bill of Information is insufficient to charge a crime under L. S. A.-R. S. 14:401.

—2—

That the conviction of defendant for violation of L. S. A.-R. S. 14:401 denied defendant rights guaranteed to him under the First amendment to the Constitution of the United States.

—3—

That the conviction of defendant for violation of L. S. A.-R. S. 14:401 denied defendant rights guaranteed to him under the Sixth Amendment to the Constitution of the United States.

—4—

That the courts overruling of defendant's objection to the segregated seating in the courtroom to which ruling defendant reserved a formal bill of Exceptions was error and prejudicial to the defendant in that it denied him the right to a fair trial guaranteed to him by Article I Section 6 of the Constitution of the State of Louisiana. Said error further denied defendant the equal protection of the laws and due process of law guaranteed to him by the First Section

(19)
of the Fourteenth Amendment to the Constitution of the United States.

—5—

That the statute under which the defendant was convicted is unconstitutional and in contravention of the Fourteenth Amendment of the Constitution of the United States in that it was enacted for the specific purpose and intent to implement and further the states policy of enforced segregation of races.

—6—

That the statute under which the defendant was convicted is unconstitutional and in contravention of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that it was arbitrarily, capriciously and discriminately enforced against persons peacefully, exercising their rights of freedom of speech in protest against racial segregation.

—7—

That the statute under which defendant is convicted and the Bill of Information filed thereunder are unconstitutional for want of adequate notice, vagueness and uncertainty therefore said statute could not constitutionally be construed to cover the activities sought to be punished by the Louisiana Courts.

—8—

That the judgment is contrary to the law and the evidence in that there is no evidence to support a finding of guilt

under said statute thus violating defendant's rights under the Due Process Clause of the Fourteenth Amendment.

—9—

That the Court erred to the prejudice of the accused by denying the Motion to Quash.

—10—

That the Court erred to the prejudice of the accused by denying the Application for a Bill of Particulars.

(20)

WHEREFORE, your mover prays that, a rule nisi issue out of this Honorable Court directed to Honorable Sargent Pitcher, Jr., District Attorney ordering him to show cause; if any he has, why a New Trial should not be granted in these proceedings.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS R. ELIE

(Signed) By: Nils R. Douglas
MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

Of Counsel:

CARL RACHLIN
New York, New York

Notice of Motion for New Trial

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority personally came and appeared:

NILS R. DOUGLAS

who after first being duly sworn did depose and say that he is the attorney in the above matter and all the allegations herein contained are true and correct.

(Signed) Nils R. Douglas
NILS R. DOUGLAS

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 29 DAY
OF JANUARY, 1963.

(Signed) Murphy W. Bell
NOTARY PUBLIC

(31)

Opinion on Motion for New Trial

The Court, after hearing the said Motion of the defendant for a New Trial, denied and overruled the same, and to such action of the court, counsel for the defendant then and there objected and reserved a formal bill of exceptions and counsel now perfects this his formal bill of exceptions to the overruling of the Motion for a New Trial and makes a part hereof the bill of information, the motion to quash, the Courts ruling overruling the motion to quash and any evidence offered or testimony heard on the trial of the case on the merits, the motion for a New Trial, the courts ruling on the motion for a New Trial and the entire record in these proceedings, and first submitting this his bill of exceptions to the District Attorney now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court, pursuant to the statute in such case made and provided, which is done accordingly this 31st day of January 1963.

(Signed) Fred A. Blanche, Jr.
JUDGE

(4)

Excerpts From Transcript of Trial

Mr. Jones: Your Honor, I would like to move to associate attorney Murphy Bell on the case with me.

The Court: All right.

Mr. Jones: I would like for the record to show that he is now being associated on the case.

The Court: Show a minute entry to that effect.

Mr. Pitcher: No objection.

Mr. Jones: I would also like for the record to show that
(5)
this case is one where the defendant is being charged for the protest of racial segregation and that within the Courthouse itself that the defendant is being tried in that racial segregation is being practiced and that there are interested parties, citizens on the outside of court waiting—

Mr. Pitcher: I object to the remarks of counsel—

Mr. Jones: —who are interested in the case and that there are seats vacant in the court which are being reserved for the whites and that the Negro citizens who are interested in the case and the outcome of the case are not permitted to utilize these seats. I would like for that to be made a part of the record.

The Court: Also, let the record show that it has been the practice and custom in the East Baton Rouge Parish
(6)
Courthouse for many, many years, and in the purpose of maintaining order in the courtroom, separate portions are placed in the courtroom for both colored and white, and let the record especially show that the judge in this case ordered that half of the seats that were formerly reserved

and available for white people are now being occupied and filled by colored people.

Mr. Pitcher: If Your Honor Please, while Your Honor is well aware of what is going on, I am sure that the Supreme Court of the United States will not be, and for that reason, I ask that Your Honor appoint a Deputy Sheriff to personally count the number of people in this room to be able to testify as to the number of people present in (7)
court and the seats available and the number of white people present. I think the State is entitled to that.

The Court: All right.

(A Deputy Sheriff was so appointed by the Court at this time and ordered to count the people in the courtroom while the proceedings were going on.)

Mr. Jones: If the count is to be made, Your Honor, we would also like to make a count of those who are waiting on the outside.

The Court: Count them, too.

Mr. Jones: And count the number of seats that are still available.

The Court: All right.

Excerpts From Transcript of Trial

(340)

Testimony of Thomas Terrell Edwards, Captain in Charge of Jail, and Herman Thompson

By the Court:

Q. In response to a request of the Court did you count the number of colored people sitting in the courtroom at the time court opened on, what day was that—Monday? A. Day before yesterday.

Mr. Jones: Monday, the twenty-ninth.

Q. Did you do that? A. Yes, sir, I did.

Q. And how many people were sitting in here? A. There was 127 colored and 8 whites in the courtroom behind the rail.

Q. Behind the rail. A. At the first count I made. Now, I made two, If Your Honor remembers. The second count there was the same number of colored, 127, and there were 14 whites.

Q. How much later was that? A. Oh, about two hours, if I recall correctly.

Q. When court opened there were 127 colored and 8

(341)

whites, is that correct? A. Yes, sir.

Q. And approximately how many seats were reserved by the Court for whites? A. Forty-two.

Q. How many colored were on the outside? A. Eighty-eight.

Q. Eighty-eight? A. Yes, sir.

Excerpts From Transcript of Trial

By Mr. Jones:

Q. Would they be waiting to get in, sir? A. None of them indicated that they wanted to get in. They were standing in the hall is all I could tell.

By the Court:

Q. Was that at the same time, because it looked like to me that there were more than eighty-eight. A. At the time I counted, sir, there were just eighty-eight. Now, I was told—

Q. How much later was that than when I first told you—when we opened Court, how much longer after that did you go out and count? A. Well, I made the second count in the courtroom and then I went outside and made a count, and I believe it was approximately two hours between the two counts. I am guessing at that time. At the time I really don't recall, sir.

(342)

Q. At the time that the court was opened, wasn't there more out there in the hall than there were at the time you took the count? A. I don't know, sir.

Q. I was told there were. A. I was told that at several times in the afternoon there 200 or 250, but I didn't see them. I didn't go out there.

Q. Do you know anyone who could make an estimate to that effect among the officers? A. Captain Henderson or Captain Thompson could.

The Court: All right, is that all?

Excerpts From Transcript of Trial

By Mr. Jones:

Q. Did you reserve any seats in the courtroom for the white people? A. I didn't reserve any seats for anyone.

Q. Was there any seats in the courtroom reserved for the whites then? A. No, sir, His Honor—

The Court: I will answer that from the bench. I reserved one-half of what was formerly the white
(343)
section for white people and I gave the other half of it to the colored people.

WITNESS EXCUSED

The Court: Captain Thompson.

HERMAN A. THOMPSON, called as a witness by the Court, being first duly sworn, testified as follows:

Direct examination by the Court:

Q. How many colored people were out in the hall at the time court started on Monday? A. There were two hundred or better, Judge.

Q. Is that your estimate? A. Yes, sir, that was why we called the fire marshals.

Q. Could it have been as many as 250? A. It could very easily.

Q. Could it have been more than 250? A. They were solid from this courtroom door about four foot out from the door down to the Grand Jury room, and there were some of them sitting on benches down the hall.

Q. Did you clear a corridor between them for a passage-
(344)
way to the door here? A. We were having difficulty. That is why we called the fire marshals in order to enforce the fire laws.

Q. How long did a crowd of that size remain outside? A. I would say for at least two hours.

By Mr. Pitcher:

Q. Captain, at the time there were 250 people in the hall, was that the same time that Captain Edwards has said there were 127 in the courtroom? A. That is correct, sir.

Q. And there were only eight white people in it at that time? A. That is correct, sir.

Mr. Pitcher: That's all. Your witness.

A. (Directed to the Court) Do you want what you asked for yesterday?

By the Court:

Q. What is that? A. You asked how many vacant seats there were.

Q. What time was it? A. At 11:15 A. M. yesterday you asked me and there were twenty vacant seats and only five waiting outside, and out of the five we asked—one was Reverend Johnson and he said he didn't care to come in.