INDEX

SUBJECT INDEX

INDEX OF AUTHORITIES

STATUTES CITED

TREATISES

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

Nos. 24 and 49

B. ELTON COX,

Appellant,

against

STATE OF LOUISIANA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

CONSOLIDATED BRIEF FOR APPELLANT

Appellant Rev. B. Elton Cox appeals from two judgments of the Supreme Court of Louisiana entered in the above-entitled case. The first (No. 24 in this Court), rendered on June 28, 1963, affirmed a verdict of conviction for the crimes of breach of the peace and obstructing the sidewalk, and the second (No. 49 in this Court), rendered on November 12, 1963, affirmed a verdict of conviction for the crime of illegally demonstrating in or near a courthouse. All verdicts had been rendered at the same time upon the same trial by the District Court for the Nineteenth Judicial District, Parish of East Baton Rouge, Louisiana, but they were heard separately by the Supreme Court of Louisiana be-

cause of the statutes governing review in Louisiana.* They were appealed to this Court as separate cases, but a single brief for both is being submitted, because there are common issues of fact and law, and because the cases are to be argued together. Appellant's motion to proceed *in forma pauperis* and without a printed record has been granted by this court, and accordingly a short appendix is submitted with this brief.

Opinions Below

The oral opinion of the judge of the District Court given at the end of the trial of this case is unreported and is printed in the Appendix p. 7a. The opinion of the Supreme Court of Louisiana affirming the conviction for breach of the peace and obstructing the sidewalk (No. 24 in this Court) is reported at 244 La. 1087, 156 So. 2d 448 (1963) (Appendix p. 14a). The opinion of the Supreme Court of Louisiana affirming the conviction for illegally demonstrating in or near a courthouse (No. 49 in this Court) is reported at 245 La. 303, 158 So. 2d 172 (1963) (Appendix p. 28a).

Jurisdiction

Appellant was convicted under the Louisiana breach of the peace statute, L.S.A.-R.S. 14:103.1, and the Louisiana statute punishing obstruction of the sidewalk L.S.A.-R.S. 14:100.1, which are set out in the Appendix at pp. 1a, 2a, respectively. Affirming the conviction the judgment of the Supreme Court of Louisiana was entered on June 28, 1963;

* Under Article VII, Sec. 10, Louisiana Constitution, the Supreme Court of Louisiana has general supervisory powers over inferior courts. In addition appeal is available in criminal cases where a sentence of more than six months or a fine of more than $300.00 has been imposed. The convictions for breach of the peace and obstructing the sidewalk were reviewed under the former provision, and the conviction for illegally demonstrating was reviewed under the latter.

rehearing was denied on October 9, 1963. The appeal to this Court was filed on January 8, 1964.

Appellant was further convicted under a Louisiana statute, L.S.A.-R.S. 14:401, prohibiting demonstrations in or near a courthouse of the State of Louisiana, with the intent of interfering with, obstructing or impeding the administration of justice or of influencing any judge, juror, witness or court officer in the proper discharge of his duty, which is set out in the Appendix at p. 4a. Affirming this conviction the judgment of the Supreme Court of Louisiana was entered on November 12, 1963, rehearing was denied by that court on December 20, 1963. Appeal to this court was filed on March 19, 1964; probable jurisdiction was noted in both cases May 4, 1964, 377 U.S. 921.

The jurisdiction of this court to review both judgments by appeal in this case is conferred by Title 28 of the United States Code, Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the decision on appeal in this case: *Cantwell* v. *Connecticut,* 310 U.S. 296 (1940); *Winters* v. *New York,* 333 U.S. 507 (1948); *Herndon* v. *Lowry,* 301 U.S. 242 (1937).

Questions Presented

By reason of its vagueness and uncertainty, is the Louisiana breach of the peace statute L.S.A.-R.S. 14:103.1 repugnant to the due process clause of the Fourteenth Amendment to the Constitution?

Because they infringe appellant's right to freedom of speech and freedom of assembly, and to petition for redress of grievances, are the Louisiana breach of the peace statute, L.S.A.-R.S. 14:103.1, the Louisiana statute against obstructing the sidewalk, L.S.A.-R.S. 14:100.1, and the Louisiana statute punishing demonstrations in or near a

courthouse, L.S.A.-R.S. 14:401, as interpreted and applied to appellant by the courts of Louisiana, repugnant to the due process clause of the Fourteenth Amendment to the Constitution?

Has the discriminatory administration of all the Louisiana statutes involved in this case deprived appellant of equal protection of the laws and due process of law under the Fourteenth Amendment to the Constitution?

Since there is no evidence to support the charge under the said statute is the conviction of appellant under the Louisiana Statute punishing demonstrations in or near a courthouse, L.S.A.-R.S. 14:401, repugnant to the due process clause of the Fourteenth Amendment to the Constitution?

By being tried in a courtroom that was segregated as a result of state action has appellant been denied equal protection of the laws and due process of law under the Fourteenth Amendment to the Constitution?

Statutes Involved

The statutes involved are Louisiana Statutes Annotated R.S. 14:100.1, R.S. 14:103.1 and R.S. 14:401. They are printed in the Appendix at pp. 1a, 2a, 4a, respectively.

Statement

Protesting against segregation and discrimination against Negroes on December 14, 1961, twenty-three youngsters picketing stores in the downtown area of Baton Rouge, Louisiana were arrested (T. 348, 400, 458)* and incarcerated

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* The transcript of the trial in the District Court, though made by a court stenographer, is not physically part of the records prepared by the clerk of the Louisiana Supreme Court. To sup-

in the jail adjacent to the District Courthouse in Baton Rouge (T. 348, 466). Shortly before noon the following day, students from a nearby Negro college, Southern University, began to gather about the old Capitol Building in Baton Rouge (T. 251, 437, 510-512). At that time none of the twenty-three arrested the previous day was being tried or arraigned (T. 201-203, 346-347). About noon the students marched to the Courthouse under the leadership of the appellant, the Rev. B. Elton Cox, a Negro field secretary for the Congress of Racial Equality (T. 468, 513). Mr. Cox conferred with the Sheriff, the Chief of Police and other law-enforcement officers, and explained to them that the students intended to demonstrate in protest against segregation and discrimination in the stores and against the arrest of the pickets. He further presented a program for the demonstration (T. 351, 371, 470, 515). On cross-examination the Sheriff stated that he had had "no objection" to the demonstration under that program (T. 363-364). The Chief of Police allowed seven minutes for the demonstration (T. 101, 516-517), and limited it to the West side of the street, opposite the Courthouse (T. 371, 516).

More than fifteen hundred students (T. 51, 71, 269, 313), assembled on the sidewalk on the West side of the street. Curious white people gathered on the opposite side of the street (T. 20, 28, 167). In excess of seventy-five policemen and sheriff's deputies were present. According to the inspector who was in charge of the policemen, they "could handle any situation that should arise" (T. 329). No violence of any kind occurred during the demonstration; on the contrary, all testimony proved that the Rev. Mr. Cox maintained control of the students at all times (T. 38, 107, 257,

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plement the records, the transcript of the minutes of the trial, which has been submitted to this court, is referred to by the symbol "T —".

318, 355). In accordance with the program described to the Sheriff the students pledged allegiance to the flag of the United States, recited the Lord's Prayer, exhibited signs protesting segregation and sang freedom songs. Responding, the students in the jail (the ones who had been arrested the previous day) replied in song (T. 46). Upon hearing the prisoners, the demonstrators uttered a cheer (T. 54, 60, 353). Mr. Cox made a speech (T. 42, 235, 255, 325, 516-518) which not only contained nothing of violence in it (T. 29, 44, 158, 268, 302), but in fact directly forbade violence (T. 37, 299, 363). Mr. Cox advised that if any of the demonstrators should be attacked, he was not to retaliate. According to Cox's own testimony, with which other witnesses were in agreement (T. 29, 37, 53, 105, 153, 196, 272-3), he said at the close of his speech:

> " * * * all right. It's lunch time. Let's go eat.
>
> There are twelve stores we are protesting. A number of these stores have twenty counters, they accept your money from nineteen. They won't accept it from the twentieth counter. This is an act of racial discrimination. These stores are open to the public. You are members of the public. We pay taxes to the Federal Government and you who live here pay taxes to the state" (T. 518).

That was the sticking-point for the Chief of Police and the Sheriff (T. 364, 376). Commanding the demonstrators to break up the demonstration, tear gas was released into the group of students, which broke up immediately (T. 377).

The Reverend Mr. Cox was arrested and charged with criminal conspiracy, breach of the peace, obstructing the sidewalk, and demonstrating in front of a courthouse with the intent of interfering with, obstructing and impeding the administration of justice, and of influencing a judge, wit-

ness or court officer. The trial took place without a jury on January 29 through 31, 1962, in the District Court at Baton Rouge, the very building before which the demonstrators had gathered. The criminal conspiracy charge was dismissed, but Mr. Cox was convicted on the other three counts.

For breach of the peace Mr. Cox was sentenced to serve four months in jail and pay a fine of $200.00, or in default thereof to serve four months in addition; for obstructing the sidewalk his sentence was five months in jail and a fine of $500.00; in default thereof to serve five months in addition. For illegally demonstrating near a courthouse he received one year in jail and a fine of $5000.00; in default thereof to serve one year in addition. All convictions were reviewed in the Louisiana Supreme Court, the first two by way of application for supervisory writs of mandamus, certiorari and prohibition, 244 La. 1087, 156 So. 2d 448 (1963), (Appendix p. 16a) and the latter by appeal, 245 La. 303, 158 So. 2d 172 (1963) (Appendix p. 29a). In each the trial court was sustained.

Because of their repugnancy to the Constitution of the United States, the validity of the statutes involved here was called into question; other federal questions were raised in the District Court by motion to quash prior to trial (1R.16; 2R.22),* by motion in arrest of judgment (1R.30; 2R.13), and by motion for a new trial (1R.35; 2R.18). Each motion was denied, and with the opinions of the District Court, appear in the Appendix at pp. 44a-66a, respectively.

In the application of appellant for writs of certiorari, mandamus and prohibition against his convictions for

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* The transcript of the record before the Louisiana Supreme Court in these two cases is referred to by the following symbols:

No. 24: "1R.—"
No. 49: "2R.—".

breach of the peace and obstructing the sidewalk (No. 24) and on his appeal from the conviction for demonstrating illegally (No. 49), the validity of these statutes was again questioned on the ground of their repugnancy to the Constitution of the United States. The decisions of the Louisiana Supreme Court upheld their validity.

The record is clear that the courtroom was segregated by order of the District Court judge. The judge took judicial notice of this fact, stating:

> "The Court: 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 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" (T. 5-6, Appendix p. 44a).

The Deputy Sheriff in charge of the jail and a second deputy *testified as to the composition* of the courtroom, the numbers of empty seats reserved for whites, and the number of colored people waiting in the corridors of the courtroom (T. 340-345). These passages in the record appear in the Appendix at pp. 13a, 49a, 58a-71a. The question of the fairness of the trial was also raised in the motions in the District Court and in the application and appeal to the Louisiana Supreme Court.

Summary of Argument

I The public demonstration of protest which took place herein is a peaceable assembly protected under the Fourteenth Amendment from infringement by the states. By reason of its vagueness and uncertainty, the Louisiana breach of the peace statute, infringes that freedom of speech in a case where, as here, the charge tracks the terms of the statute, the statute must be judged on its face.

II The breach of the peace statute, the statute against obstructing the sidewalk and the statute punishing illegal demonstrations, were administered, interpreted and applied in an unconstitutional manner by the Louisiana Courts. Any demonstration which "arouses from a state of repose" constitutes a breach of the peace said the Louisiana court. A large group in simple assembly on the sidewalk creates a "willful" obstruction of the sidewalk. When the assembly is conducted in protest against an arrest, this is sufficient proof of intent to obstruct justice or influence a court officer. By so determining the Supreme Court of Louisiana failed to recognize or apply the standards laid down by this Court for cases where a state statute touches upon an area of protected expression, and thus the conviction of the appellant resulted in a denial of due process of law. As interpreted these statutes fail to define a crime for which one may constitutionally be convicted, and they act as a restraint of freedom of speech. Furthermore, all the statutes were administered by the authorities so as to discriminate against Rev. Cox because of his protest against segregation.

III No evidence having existed under Louisiana law to prove the necessary intent, to obstruct justice or to influence a court officer, a conviction for illegally demonstrating near a courthouse constituted a denial of due process of law.

IV The trial of a Negro (particularly in a Civil Rights case) in a segregated courtroom is *per se* a denial of equal protection of the laws; by act of the state it implies the inferiority of the defendant, and fosters prejudice in witnesses and is based upon the prejudice of the trier of fact, in this case the court.

V The segregation constituted a denial of a fair trial and thus a denial of elementary due process, because Rev. Cox was protesting segregation; the court showed by its maintenance of segregation both that it was opposed to the protest and that it could not appreciate whether any clear and present danger was presented by the protest, nor the basic denial of due process, based upon its own prejudice. Finally, the discriminatory exclusion of any special group of persons is a denial of a public trial.

ARGUMENT

The Reverend Mr. Cox Was Punished For Peaceful Participation in Demonstration Protected Under the Fourteenth Amendment and First Amendment.

Since the time of the American Revolution peaceful demonstration has been protected as one of the means for the people to express their grievances. The "right of the people peaceably to assemble, to petition the government for a redress of grievances," guaranteed by the First Amendment, and applicable to the states under the Fourteenth Amendment, means nothing if it does not include the right to protest peacefully by non-violent means against manifest injustice. The more powerless, the more oppressed a minority is, the more important to all society is the right of peaceable assembly. Peaceable action in the streets calling attention to the evils of discrimination has been the lifeblood of protest against racial injustice in recent years.

Often it is the only means by which that "free trade in ideas," the essence of free speech, may be obtained. During the last two terms, this Court has reaffirmed the importance of non-violent demonstration as a means of expression. *Edwards* v. *South Carolina,* 372 U.S. 229 (1963); *Fields* v. *South Carolina,* 375 U.S. 44 (1963); *Henry* v. *City of Rock Hill,* 376 U.S. 776 (1964) (hereinafter sometimes collectively referred to as the "South Carolina demonstration" cases). Involved in those cases were charges of common law breach of the peace arising out of non-violent street demonstrations in South Carolina. Each resembles the case at bar in many respects. In *Edwards,* the demonstration took place on the State House grounds. One hundred eighty-seven demonstrators sang songs, listened to a speech, but did not obstruct pedestrian or vehicular traffic.

In the *Fields* case, a thousand demonstrators were found by the South Carolina Supreme Court to have blocked the sidewalks and streets in Orangeburg, South Carolina, during a demonstration, 240 S.C. 366, 126 S.E. 2d 6 (1962). The *Henry* demonstrators assembled in front of the City Hall at Rock Hill, and were found to have sung so loudly that work was disrupted in the City Hall. 241 S.C. 427, 128 S.E. 2d 775 (1962). As here, police protection was ample, and little or no threat of violence from bystanders.

Holding that the demonstrations were protected activities, this court stated in *Edwards*:

> " * * * the circumstances in this case reflect an exercise of these basic constitutional rights in their most pristine and classic form * * * " 372 U.S. at 235.

So important is speech, that in the above cases this court held it might not be proscribed as a common-law breach of the peace, defined by the Supreme Court of South Carolina:

> "By 'peace,' as used in the law in this connection, is meant the tranquility enjoyed by citizens of a municipality or community where good order reigns among its members, which is the natural right of all persons in political society." 239 S.C., at 343-344, 123 S.E. 2d, at 249.

The South Carolina Court had found, in effect, that *any* disturbance of "tranquility" is a breach of the peace; but as this Court said in *Terminiello,* 337 U.S. 1, 4 (1948):

> " * * * freedom of speech * * * is * * * protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest * * * "

A conviction for disturbance of tranquility has the effect of making "criminal the peaceful expression of unpopular views," *Edwards* v. *South Carolina,* 372 U.S. 229, 237 (1962); the greater the opposition of the community to the ideas expressed, the more the tranquility will be disturbed. Opposition in the community to the demonstration is not enough to justify a limitation on freedom of speech. It is the duty of the police to preserve and to protect the rights of demonstrators to exercise their freedom. See *Terminiello supra.* Were this not the case all that would be essential to inhibit speech would be threats by those who are not pleased by the views of the speaker. Upon receiving the complaint the police then make the speaker discontinue, or risk arrest, in effect responding to the threats, and giving in to blackmail.

The Louisiana Statute Punishing Breach of the Peace Is Unconstitutional on Its Face Under the Due Process Clause of the Fourteenth Amendment.

Suffering from the same infirmities as the common-law rule found unconstitutional by this Court in the South Carolina demonstration cases, the Louisiana breach of the peace statute under which Rev. Cox was convicted in this case, L.S.A.-R.S. 14:103.1, is unconstitutional for similar reasons under other rulings of this Court. As with other regulatory statutes found invalid on their face and while the state has an interest in the prevention of violence, the statute is so vague and indefinite it permits the punishment of forms of expression which are constitutionally protected. *Schneider* v. *State,* 308 U.S. 147 (1939); *Thornhill* v. *Alabama,* 310 U.S. 88 (1940). Such a statute acts as a prior restraint of freedom of speech, casting a pall over every form of expression that falls in its way. In *Thornhill, supra,* at 97-98 this Court said:

> " * * * The existence of such a statute, which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview. * * * "

No ascertainable standard of conduct short of interference with constitutional rights is set forth. For a man peaceably to exercise his freedom of speech and to escape punishment is nigh impossible under the statute. See *Herndon* v. *Lowry,* 301 U.S. 242, 261 (1937).

Vividly illustrated on the face of the Louisiana statute punishing breach of the peace are these vices. Because Mr.

Cox was charged and convicted upon information and evidence couched in the general terms of the statute and not charged with nor convicted of any crime more carefully defined than the crime described in the statute, we urge, under such circumstances, this Court should hold, *Thornhill, supra, Terminiello, supra,* that the statute must be considered improper on its face.

Anyone who crowds or congregates on a sidewalk or street and fails to "disperse or move on, when ordered to do so by any law enforcement officer," * * * "with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby" violates the statute L.S.A.-R.S. 14:103.1.

"Breach of the peace" is not defined in the statute; in attempting to comply, a citizen is thrown back upon the general concept of breach of the peace embodied in the common law. American Jurisprudence states:

> "In general terms, a breach of the peace is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence or tending to provoke or excite others to break the peace, or, as sometimes said, it includes any violation of any law enacted to preserve peace and good order. * * * " 8 Am. Jur. 834 (1937 Ed.).

This notion, concerned with some ill-defined unrest, is fully as vague as the concept disapproved by this Court in the South Carolina demonstration cases. The Louisiana concept of breach of the peace, as expressed by the Louisiana Supreme Court in this case, is even more indefinite:

> " * * * 'disturb the peace' in Louisiana means ' * * * to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet.' " 156 So. 2d at 455; Appendix at p. 23a.

This is a quotation from an older case, *Town of Ponchatoula* v. *Bates,* 173 La. 824, 138 So. 851 (1932). Insofar as existing Louisiana notions of breach of the peace are embodied in the words of the statute, then, it is still further objectionable as invalid because those notions infringe freedom of speech.

Several times this Court has made clear that a generalized concept of breach of the peace is too vague to be applied to constitutionally protected forms of expression. *Cantwell* v. *Connecticut,* 310 U.S. 296, 308 (1940); *Edwards* v. *South Carolina,* 372 U.S. 229; *Henry* v. *City of Rock Hill,* 376 U.S. 776 (1964). When the generalized concept is embodied in a statute, by that fact the statute is objectionable. The Louisiana breach of the peace statute purports to punish crowding in the streets and failing to disperse when ordered to do so, if these acts are done with the intent of provoking some ill-defined state of "disquiet", or under circumstances such that this ill-defined state *may be occasioned* (emphasis supplied). No congregation could take place in the street whereby the members could be sure that they were not running the risk of violating the state of mind contemplated by this statute. Congregations in the streets present such important occasions for free expression that this statute results in that " * * * continuous and pervasive restraint on all freedom of expression that might reasonably be regarded as within its purview", fatal to the statute in *Thornhill, supra* at 98.* The fact that it is an element of the offense under this statute that the accused has failed to disperse when ordered to do so, only serves to

* The Louisiana legislature obviously understood quite well that this statute would reach forms of expression rather than acts of violence, as it specifically exempted picketing by labor organizations from the effects of the statute. It was passed, moreover, after the present movement against segregation had begun, in the effort to stem the movement. See *Garner* v. *Louisiana,* 368 U.S. 157, 168 (1961).

dramatize the possibility of "harsh and discriminatory enforcement by local prosecuting officials", which was a further failing of the statute in *Thornhill, ibid.* Since a citizen need not obey every order of a policeman it is impossible to determine when the likelihood of that vague disquiet which constitutes the breach of the peace occurs; to obey every order of the police is to accede, literally, to the police state. To refuse to obey is a risk the citizen must assume; that risk must be diminished by reasonable clarity in the statute. Such is not true here. Unless one is given adequate notice where one falls afoul of the act, mere "breach of the peace" should fall for vagueness.

The Laws and Statutes Involved in This Case Were Applied So As to Deprive Appellant of Speech Protected by the Due Process Clause of the Fourteenth Amendment.

A statute may not encroach upon this area of protected expression unless it is " * * * narrowly drawn so as to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State * * * " *Cantwell* v. *Connecticut,* 310 U.S. 296, 311 (1940). Though the Louisiana Supreme Court has held that the statutes involved in this case were so drawn and applied, this Court has final authority to determine whether, upon the facts as found by the Louisiana Court, a clear and present danger to a substantial interest of the state actually existed. *Pennekamp* v. *Florida,* 328 U.S. 331, 345 (1946); *Edwards* v. *South Carolina,* 372 U.S. 299 (1963). Such a determination will show that the Louisiana statutes were applied and interpreted in such a way as to deny due process of law to Mr. Cox.

Breach of the Peace

A long line of decisions by this court has established that a general law punishing breach of the peace may not be used to punish the act of peaceful assembly in the streets, or other forms of peaceful expression. *Cantwell* v. *Connecticut,* 310 U.S. 296 (1940); *Terminiello* v. *Chicago,* 337 U.S. 1 (1949); *Edwards* v. *South Carolina,* 372 U.S. 229 (1963); *Fields* v. *South Carolina,* 375 U.S. 44 (1963); *Henry* v. *City of Rock Hill,* 376 U.S. 776 (1964).

In *Edwards,* this Court left open the possibility that street demonstrations might constitutionally be limited by a proper exercise of the police power:

> "We do not review in this case original convictions resulting from the even handed application of a precise and narrowly drawn regulatory statute evincing a legislative judgment that certain specific conduct be limited or proscribed. If, for example, the petitioners had been convicted upon evidence that they had violated a law regulating traffic, or had disobeyed a law reasonably limiting the periods during which the State House grounds were open to the public, this would be a different case." 372 U.S. at 236.

The Louisiana Supreme Court, 156 So. 2d at 454 (Appendix at p. 21a) held that the breach of the peace statute was such a "precise and narrowly drawn" statute, had the Louisiana Supreme Court interpreted the statute narrowly, it would not have been valid as applied to Mr. Cox, because, as we have urged, the statute is unconstitutional on its face, and Mr. Cox was charged in the general terms of the statute; to have narrowed the meaning of the statute, at the appellate level would have been to convict him of a crime

with which he was not charged.* In any case the Louisiana Supreme Court did not narrow the meaning of the statute so as to make it constitutional. In the effort to define the meaning of "breach of the peace," that court said:

> " * * * 'disturb the peace' in Louisiana means ' * * * to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet.' " 156 So. 2d 455; Appendix at p. 10a.

But in *Terminiello, supra,* the Illinois court had defined breach of the peace in terms similar to those used here by the Louisiana Supreme Court.

> "Misbehavior may constitute a breach of the peace if it stirs the public to anger, invites dispute, brings about a condition of unrest or creates a disturbance, or if it molests the inhabitants in the enjoyment of peace and quiet by arousing alarm." 337 U.S. at 3.

This court declared that the above standard was an infringement of freedom of speech in these words:

> "Accordingly a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound un-

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* The crime of which Rev. Cox was actually convicted, defined by the trial judge, was more extraordinary than the crime charged or the crime defined by the Louisiana Supreme Court. The trial judge held that a mass demonstration by colored people in the "predominantly white business district in the City of Baton Rouge" against segregation is "inherently" a breach of the peace. This ruling clearly makes criminal the peaceful expression of unpopular views (T. 545; Appendix at p. 10a).

> settling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, *Chaplinsky* v. *New Hampshire, supra* is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." 337 U.S. at 4.

The rule of the Louisiana Supreme Court has failed to restrict the meaning of breach of the peace to any crime which may constitutionally be forbidden under *Terminiello.* The rule quoted above from *Terminiello* has been held applicable to a non-violent street demonstration, *Edwards* v. *South Carolina,* 372 U.S. 229, 237 (1963), and thus the Louisiana breach of the peace statute does no more than punish "the peaceful expression of unpopular views." *Ibid.*

That it was unconstitutionally applied is shown by the fact that Mr. Cox spoke with the permission of the authorities until he referred to eating in segregated eating places. Although nothing more than this happened, the meeting was suddenly ordered to disperse, the tear gas followed, and Mr. Cox was arrested thereafter. It is not unreasonable to surmise that the halting of the demonstration and its dispersion were to prevent a situation protected by this Court in *Garner* v. *Louisiana,* 368 U.S. 157 (1961). *Garner* was decided by this Court but three days before the activity described herein and concerned Baton Rouge.

Obstructing Public Passages

The Louisiana statute L.S.A.-R.S. 14:100.1 punishes any person who "willfully obstructs" the normal use of the sidewalk or street by "impeding, hindering, stifling, retarding or restraining traffic therein or thereon".

The Supreme Court of Louisiana held, as in the case of the peace statute, that this statute was a "narrowly drawn regulatory statute," within the meaning of *Edwards* v. *South Carolina,* 372 U.S. 229 (1963). Though the defendant was charged in the terms of the statute, it might have been rendered constitutional in a proper case by a narrow definition of the phrase "willfully obstructs." But in this case no more "will" was alleged or proved than the will to congregate on the sidewalk for purposes of peaceful assembly. Since this non-violent demonstration against segregation was a form of expression protected under the Fourteenth Amendment, the Supreme Court of Louisiana in effect held that this protected expression was a "willful" obstruction of the sidewalk. So far from being a narrowly drawn regulatory statute, then, this statute literally punishes free speech on the streets, for the *scienter* necessary for a protest demonstration in the street or on the sidewalk. Any group congregated on the street, whether organized for peaceful purposes or not, may be arrested at any time under this statute.* See Holmes, *J.,* dissenting, in *Abrams* v. *United States,* 250 U.S. 616, 626 (1919).

The situation in this case resembles that in *Smith* v. *California,* 361 U.S. 147 (1959). There the defendant was convicted under a statute which punished solely the possession of obscene books, without requiring knowledge of their contents. This court reversed, holding that the statute, lacking an element of scienter, acted as a restraint of the free circulation of books. So here, the improper definition of "willful" permits the authorities to prevent all street demonstrations, and thus acts as a damper on such street demonstrations.

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* In the case of the statute against obstructing the sidewalk, as in the case of the breach of the peace statute, the Louisiana legislature obviously understood that the statute was applicable to street demonstrations, as it specifically exempted picketing and other "concerted activity" by labor organizations from the statute.

Demonstrating Near a Courthouse

Louisiana statute L.S.A.-R.S. 14:401 punished anyone who pickets, parades, or otherwise demonstrates in or near a courthouse of the State of Louisiana, "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." The charge against Rev. Cox tracks the terms of the statute.

This Court has many times dealt with the constitutional problem presented in this case, admirably defined by the Louisiana Supreme Court in the decision below in these words:

> "* * * 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. * * * " 158 So. 2d at 175; Appendix at p. 32a.

While the present case, that of a criminal sanction for a protest against an arrest, has not been presented to this Court, the same constitutional question has been presented in the cases concerning the sanction of contempt for protest against actions taken by courts in cases pending before them. In a long line of cases, this Court has held that the standard to be applied in determining whether an expression of opinion upon a pending case may be punished by the state is whether that expression presents a clear and present danger to the administration of justice. *Wood* v. *Georgia,* 370 U.S. 375 (1962); *Craig* v. *Harney,* 331 U.S. 367 (1947); *Pennekamp* v. *Florida,* 328 U.S. 331 (1946); *Bridges* v. *California,* 314 U.S. 252 (1941). The standard applicable in such cases was clearly stated in *Craig* v. *Harney, supra,* and was reaffirmed in *Wood* v. *Georgia, supra*:

> "The fires which (the expression) kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil." 331 U.S. at 376, 370 U.S. at 385.

While the Louisiana Supreme Court correctly apprehended the nature of the constitutional problem, it failed to apply in a speech case the stringent standard of clear and present danger required by this Court under the Fourteenth Amendment. It was content to say simply that it struck a balance between the two competing interests in favor of the administration of justice with little regard to the actual effect of the protest upon the administration of justice. 158 So. 2d at 175; Appendix p. 32a.

No reason exists to apply a different standard to the case of a criminal penalty for a peaceful demonstration in front of a courthouse than the standard of clear and present danger applied in the contempt cases. No distinction should be made upon the supposed ground that a physical demonstration near a courthouse, however peaceful, presents a different or more immediate threat to the administration of justice than a publication, however vituperative.

When the demonstration takes place before the trial or arraignment of the prisoners whose arrest is protested, and when it is peaceful, it seems plain that it presents less of a threat than intemperate new articles written during the actual trial proceedings. It affords more opportunity for a peaceful reply, and that opportunity is at the root of the requirement that speech shall present a clear and present danger before it can be limited by the police power of a state. See Brandeis, *J.*, concurring, in *Whitney* v. *California,* 274 U.S. 357, 375 (1927).

Nor should it be forgotten that the demonstration was held in this location with police permission. Not in defiance of it. Protesting arrests, singing, responses from the jail hardly constituted an impediment to justice since the jailees had not even been arraigned. The officials saw the size of the crowd, agreed to the meeting in the vicinity of the Court and jail, knew there was singing to be held and a sermon-like talk to be given protesting the arrest of the people in jail. Except for a preacher's liberty in extended talk, this is what took place. It ill behooves the state to complain when it consented in advance.

In two of the chief cases of contempt by publication decided by this Court, a statement was made by a politically influential person or publication upon a matter actually in the process of decision by the court or its officers at the time. In *Wood* v. *Georgia, supra,* the defendant, a sheriff, disputed the reasons for calling a grand jury which was then sitting. In *Craig* v. *Harney, supra,* a newspaper claimed that there had been a miscarriage of justice in a case for which a motion for a new trial was pending. These cases do not present a less immediate threat to the administration of justice than a peaceful demonstration against the arrest of persons not yet arraigned, and the standard applied to them should be applied here.

The statute under which Mr. Cox was convicted, moreover, is a criminal statute for the violation of which a severe penalty is exacted. Such a statute must give a clear standard of conduct, so that a citizen may know how to conduct himself so as to avoid punishment. It requires, if anything, a more exacting standard than a citation for contempt. A vague balance between the competing interests of the administration of justice and freedom of speech fails to supply such a standard. *Herndon* v. *Lowry,* 301 U.S. 242, 261 (1937).

The Louisiana Supreme Court would have us believe, by its characterization of the facts, that the demonstration was not peaceful, and was in fact a near riot, averted only by the action of the sheriff. 158 So. 2d at 177-178 (Appendix pp. 23a, 24a). Although the Louisiana Supreme Court applied the wrong standard, had its characterization of the facts been accurate, conceivably it might be argued that Mr. Cox presented a clear and present danger to the administration of justice such if some testimony were believed that jail was to be torn down.

To affirm on the basis of such an argument would be error; it would be equivalant to a conviction for a crime with which he was not charged. In any case, the characterization by the Louisiana Supreme Court gives an erroneous impression of the facts, and an independent examination of the undisputed facts on the record, which this Court has the power to make, *Pennekamp* v. *Florida,* 328 U.S. 331, 345 (1946). Such examination will show that this was a peaceful demonstration; no clear and present danger to the administration of justice existed (T. 35, 38, 90-92, 119, 123, 128, 168-9, 254, 257, 268, 270, 304, 376, 469, 514, 526, 529). The only violence were the acts of the police acting on superior orders.

In defining the phrase, "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," the Louisiana Supreme Court again violates standards set forth in decisions of this Court. In a proper case, the meaning of this phrase might be sufficiently narrowed so as to cover only situations which present a clear and present danger to the administration of justice. See Holmes, *J.,* dissenting in *Abrams* v. *United States,* 250 U.S. 616, 626 (1919). But here the only "intent" proved was the intent

to have a demonstration across the street from the courthouse. The prisoners whose incarceration was being protested were not on trial, and their trial was not immediately in prospect (T. 201-203). All the witnesses both for the prosecution and the defense agreed that the purpose of the demonstration was peaceful (T. 29, 37, 44, 158, 268, 299, 302, 363). No evidence was offered that the demonstration was intended to disrupt a trial or to intimidate anyone. Such evidence was in fact specifically excluded by the trial court, and the ruling was affirmed by Louisiana Supreme Court. 158 So. 2d at 176. Both the District Court and the Louisiana Supreme Court found that the necessary intent was proved. In their opinion the intent necessary to violate the statute is no more than the intent necessary to carry out a form of peaceful expression protected under the Fourteenth Amendment, and hence the statute, like the other Louisiana statutes involved here, "makes criminal the peaceful expression of unpopular views." *Edwards* v. *South Carolina,* 372 U.S. 229 (1963).

The Conviction of the Appellant Under the Louisiana Statute Punishing Demonstrations in or Near a Courthouse Deprived Him of Due Process of Law Because There Was No Evidence Upon Which the Conviction Could Be Based.

The State of Louisiana failed at the trial of this case to present any evidence of intent to obstruct justice or to influence a court officer, evidence which is required by the Louisiana Statute punishing demonstrations in or near a courthouse. The only evidence of any sort presented against the Rev. Mr. Cox was the simple fact that he had led a demonstration in a manner prescribed by the police, across the street from a courthouse in protest against the arrest of prisoners then incarcerated in the jail attached to the court-

house. To treat this simple demonstration as evidence of such a danger or of intent to obstruct justice would infringe the right of freedom of speech, *supra* p. 10-12, and thus Mr. Cox has been convicted without evidence of any crime which could constitutionally be proscribed by the legislature of Louisiana. Such a conviction constitutes a denial of due process of law under the Fourteenth Amendment. *Thompson* v. *Louisville,* 362 U.S. 199 (1960), *Garner* v. *Louisiana, supra.* We must assume at the outset, however, that merely demonstrating to protest an arrest is not, "because it could not be," *Thompson* v. *Louisville,* 362 U.S. 199, 206 (1960), enough to show a clear and present danger to the administration of justice or of intent to obstruct justice or influence an officer of the court. Concepts applied by the Louisiana Supreme Court in analogous cases support this conclusion even though this statute has not previously been construed by the Supreme Court of Louisiana. In *Graham* v. *Jones,* 200 La. 137, 159, 171, 179, 183, 7 So. 2d 688, 695, 699, 702, 703 (1942), the clear and present danger rule outlined by this Court in *Bridges* v. *California,* 314 U.S. 252 (1941) was applied to dismiss five convictions for contempt by publication. It was not applied in the present case of a demonstration outside a courthouse, which is constitutionally indistinguishable. In *State* v. *Daniels,* 236 La. 998, 109 So. 2d 896 (1959), a rigorous standard of intent was required for a statute similar to the one in this case. In that case the defendant, a convict who had struck a prison guard was charged with the crime of "Public Intimidation", being the use of force upon a public officer "with the intent to influence his conduct in relation to his position, employment, or duty." L.S.A.-R.S. 14:122. The Louisiana Supreme Court reversed the conviction on the ground that merely to have struck the guard was not enough to show the required intent. Here, however, the Louisiana Supreme Court held that a simple demonstration is enough to show intent to obstruct

justice or influence a court officer in the discharge of his duty. The Louisiana Supreme Court has failed in this case to apply the rigorous standards for clear and present danger and for intent which it has developed in closely similar cases, and it has thus affirmed a conviction based upon no evidence of acts which may be punished either under Louisiana law, or The United States Constitution.

Discriminatory Administration of the Louisiana Statutes Involved in This Case Has Deprived Appellant of Due Process of Law and Equal Protection of the Laws Under the Fourteenth Amendment.

Passing from the construction of the statutes involved here to the manner of their administration, the facts in this case show that the statute was used by the state and city authorities, and by the District Court judge as well, to discriminate against active campaigning for integration of the races. The Louisiana Supreme Court has attempted to characterize this demonstration in such a way that it appears that a riot was "inevitable," and was averted only by timely action by the authorities. It refers to the speech by Rev. Cox as "inflammatory" and to the demonstration as "fiery" and "frenzied." 158 So. 2d at 177; Appendix at p. 36a. Nevertheless, all witnesses agreed and the state's witnesses and the Louisana Supreme Court made much of the fact, that Mr. Cox was in complete control of the students at all times (*Ibid;* T. 38, 107, 257, 318, 355).

The speech of Mr. Cox was not only not a violent statement (T. 158, 268) but according to all the witnesses, it actually recommended peaceful protest, turning the other cheek (T. 299, 363) and love for one's enemy (T. 254). In fact Sheriff Clemmons specifically stated that the "inflammatory" element in Cox's speech was his advocacy of a sit-in

at segregated lunch counters (T. 364). There was testimony that there was no threat of violence from the demonstrators; one witness for the state, in fact, felt that there was no fear of violence except from the white onlookers (T. 128), and the police were well able to handle them (T. 329). The demonstration was carried on in the manner prescribed by the chief of police and the sheriff, and they were willing to permit and did permit the demonstration until Rev. Cox advocated a sit-in at lunch counters.* They felt that to be a breach of the peace (T. 364, 376) and the trial judge agreed with them when he said:

> "It must be recognized to be inherently dangerous and a breach of the peace to bring 1,500 people, colored people, down in the predominantly white business district in the City of Baton Rouge and congregate across the street from the Courthouse and sing songs as described to me by the defendant as the CORE national anthem carrying lines such as "black and white together" and to urge those 1,500 people to descend upon our lunch counters and sit there until they are served. That has to be an inherent breach of the peace, and our statute 14:103.1 has made it so" (T. 545; Appendix p. 10a).

Thus all the authorities intended to permit the demonstration only so long as it did not openly oppose segregation.**

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* The Louisiana Supreme Court stated that Rev. Cox told the demonstrators, "Don't move," in reply to the order of the Sheriff to break up. 156 So. 2d at 448. While it is disputed just what Rev. Cox did say, if anything, it is clear that the question whether he meant to obey the order or not is only relevant if the command was made in a valid manner (T. 58, 82, 106, 275, 315, 354, 373, 521).

** Other actions of the Louisiana authorities arising out of this demonstration have reinforced the proof of this intent. In *Lemmons* v. *CORE*, an injunction was granted in the United States District Court for the Eastern District of Louisiana against the

Under the decisions of this Court, to permit a demonstration until it advocates ideas with which the authorities or the general public disagrees is a discriminatory application of the law which contributes both an interference with freedom of speech and a denial of equal protection of the laws under the Fourteenth Amendment. See *Niemotko* v. *Maryland,* 340 U.S. 268 (1951); *Yick Wo* v. *Hopkins,* 118 U.S. 356 (1886); *Terminiello* v. *Chicago,* 337 U.S. 1 (1948).

A Trial in a Courtroom Segregated by Imposition of the State Constituted a Denial of Equal Protection of the Laws and Due Process of Law.

The trial judge stated that the courtroom was segregated for "the purpose of maintaining order in the courtroom"; he had ordered that half of the white section be turned over to Negroes (T. 5-6; Appendix p. 13a).* See *Johnson* v. *Virginia,* 373 U.S. 61 (1963). In *Johnson* the conviction of the defendant, a Negro, for contempt for sitting in the section reserved for whites in a Virginia courtroom, was reversed because such a conviction would be a denial of equal protection of the laws. Whether, as we urge, such unconstitutional state action improperly permeates the trial itself of Mr. Cox, a Negro defendant, in a case arising out of a civil rights demonstration in protest against segregation

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activities involved in this case, under the old Civil Rights Act, 42 USCA 1985. This injunction was vacated by the Fifth Circuit, 323 F. 2d 54 (1963) and this Court denied certiorari, 375 U.S. 992 (1964).

* The testimony of policemen who were appointed to count the number of whites and Negroes inside and outside the courtroom indicated that there were forty-two seats "reserved" for whites, of which eight were filled on one occasion and fourteen on another. In the meantime there were counted waiting in the hallways eighty-eight Negroes at one time, and two hundred and fifty at another (T. 340-344).

and against the arrest of others who had protested against segregation is the issue in the case at bar. Answering this question squarely in the negative, the Louisiana Supreme Court stated:

> "In the case before us, there is no charge against the defendant for having violated the court-imposed seating arrangement and none of the parties upon whom the segregation was imposed are before this court in this case. Hence the Johnson case is not authority for reversing this conviction. It has not been made to appear that the segregation resulted in a miscarriage of justice to this defendant. L.S.A.-R.S. 15:557. If it were otherwise, it would result that every Negro convicted in that court in the past would be entitled to have his conviction set aside" (56 So. 2d at 456; Appendix p. 26a).

Nevertheless, the trial of Mr. Cox resulted in a denial of equal protection of the laws and due process and "a miscarriage of justice."

Even though discrimination is not specifically directed toward the person being tried, this Court has held that discrimination in the administration of justice is a denial of equal protection of the laws. Racial discrimination in the selection of the grand jury by which a Negro is indicted is a denial of equal protection of the laws, regardless of the fairness with which the trial jury may have been chosen. *Eubanks* v. *Louisiana,* 356 U.S. 584 (1958). This decision is not made upon a direct showing that injustice was done to the Negro accused in the particular case, but because the Fourteenth Amendment is intended to prevent any state from creating, in the words of Mr. Justice Strong:

> " * * * legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the

> rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race." *Strauder* v. *West Virginia,* 100 U.S. 303, 308 (1879).

The trial of a Negro in a segregated courtroom is unconstitutional for similar reasons. By the very conduct of the proceedings, the defendant and the society around him are reminded of his inferior status. Over a range of cases, moreover, more Negro defendants will be convicted under a system of segregation than without it. Racial segregation exists to reinforce prejudice against Negroes and to maintain their lower status. Conversely, studies have shown that integrated contact between the races produces more friendly relations and a change in attitude. See *e.g.,* Wilner, Walkley & Cook, *Human Relations in Interracial Housing* III (1955). It is the very nature of prejudice to prevent an observer from making a fair appraisal of the facts. Racial prejudice makes it difficult for an individual even to follow a train of reasoning about Negroes, let alone to determine the facts. Allport, *The Nature of Prejudice* 168 (1954 Ed.).*

Segregation affects not only the preceptions and reasoning of white witnesses, and the deliberations of a white trier of fact, but it affects Negro witnesses equally if not more. In a segregated community Negroes often find it inadvisable to tell the truth to white people, to the point where such evasion becomes a habitual form of "accommodation" to segregated society. See Dollard, *Caste and Class in a South-*

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* Two parallel syllogisms, both fallacious, and both involving statements about Negroes, were tested. Prejudiced individuals identified one as valid and the other as invalid.

ern Town 259 (1937 Ed.); Hyman, *Interviewing in Social Research,* 159 ff. (1954).*

Segregation produces a situation in which it is difficult for witnesses, both Negro and white, to testify accurately to the facts regarding Negro defendants, and it is difficult for the trier of fact fairly to weigh the evidence in such cases. Trials under such circumstances must necessarily produce different results, over the long run, than trials free of prejudice. The effects of segregation in the courtroom cannot be clearly separated from the effects of segregation elsewhere in the community. The great difference is that the trial court has no control over segregation elsewhere in the community, but it does over segregation in the courtroom. It is important, moreover, that a court of law should give notice that it is conducted without prejudice, even when, or rather especially when, the community is prejudiced. The moral effect of integration in the courtroom can be very great, and it may contribute a great deal to the creation of an atmosphere where fair perception, veracity, and free deliberation can prevail. It is absurd to say that segregation in the courtroom has no effect on the protection afforded a Negro defendant by a court. It has obvious effects, which create a denial of equal protection of the laws, and which require reversal of the conviction of a Negro defendant. It is apparent that sanctions other than the reversal of convictions have failed to end segregation in the courtroom, and this action therefore becomes the only effective alternative. See *Mapp* v. *Ohio,* 367 U.S. 643 (1961).

The Reverend Mr. Cox was vigorously attempting to eliminate the discrimination based upon such prejudice.

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* Study showing that a large number of Negroes in Memphis, Tennessee, gave substantially different answers, on matters of fact as well as of opinion, to Negro and to white interviewers.

The considerations outlined above, showing that trial of a Negro defendant in a segregated courtroom is a denial of equal protection of the laws, apply *a fortiori* to a case where, as here, the defendant is also being tried for engaging in a protest against segregation. All the witnesses and the trier of fact will tend to have reactions conditioned by their prejudices and fears, which will be reinforced by segregation. In a segregated courtroom the trial of Mr. Cox must have been a denial of a fair and impartial tribunal. When the court itself expresses its own built-in prejudice as to the status of Negroes, no fair trial can result. In this case the judge had to make a number of decisions about the effect of a protest demonstration upon the community. He had to decide, for example, whether the demonstration was a "breach of the peace" and whether it presented a clear and present danger to a substantial interest of the state. These are questions of mixed law and fact, which leave a large area of discretion for the judge; he had to decide whether the protest actually attacks the fabric of society and presents a danger of disorder. Surely he is disqualified from making that decision when he discloses that he both favors and administers the system against which the protest is directed. The judge betrayed his opinion about the effects of the demonstration when he said that the courtroom was segregated "in the purpose of maintaining order" (T. 6; Appendix p. 13a); more sharply such prejudice was illustrated when the Court indicated that the demonstration of Negroes against segregation in downtown Baton Rouge was an "inherent breach of the peace" (T. 545; Appendix p. 10a). Whether advocacy of integration as Cox preached, would lead to disorder, was foreclosed to him, just as it was foreclosed by his automatic maintenance of segregation in Court. Were Cox successful in his preaching it would affect, not only the restaurants in Baton Rouge, but the very Courtroom in which this Judge sat.

Segregation has created a special pattern of prejudice against a person such as Mr. Cox, who protests against it, and the judge, as trier of fact, by his administration of a segregated courtroom, has shown that he participates in the prejudice. The judge has demonstrated that he is prejudiced about a central issue in this case, and thus Rev. Cox has been denied a fair and impartial tribunal. See *In Re Murchison,* 349 U.S. 133 (1955).

The segregation of the courtroom, furthermore, has denied the Rev. Mr. Cox a public trial, within the meaning of the Sixth Amendment. The requirement of a public trial is applicable to trials in state courts under the due process clause of the Fourteenth Amendment, *Re Oliver,* 333 U.S. 257 (1948). Two of the bases for the requirement of a public trial, as outlined by Dean Wigmore, are to discover new witnesses and make existing witnesses disinclined to falsify. Wigmore, *Evidence,* Section 1834 (1940 Ed.). These two elements of the requirement have been infringed in this case, where the officers who made a count of the persons present, inside and outside the courtroom, found that colored people were waiting to get in, while seats were empty in the courtroom (T. 340-341, in the Appendix at pp. 67a, 68a). To exclude them in a discriminatory way was to deny the petitioner the essential elements of a public trial. Cf. *United States* v. *Kobli,* 172 F. 2d 919 (3 Cir. 1949).

A trial, in a courtroom segregated by the act of the judge, denied Mr. Cox equal protection of the laws: more than that, it denied him the elements of a fair trial; further it denied him a public trial as required by the Constitution.

Conclusion

For the foregoing reasons it is respectfully submitted that the judgments of the Louisiana Supreme Court should be reversed.

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Proof of Service

This is to certify that I have forwarded a copy of the foregoing consolidated brief and appendix in the within-described cases to the Hon. Jack P. F. Gremillion, Attorney General of the State of Louisiana, Office of the Attorney General, New Orleans, Louisiana.

CARL RACHLIN
Attorney for the Appellant

IN THE

SUPREME COURT OF THE UNITED STATES

Nos. 24 and 49

OCTOBER TERM, 1964

B. ELTON COX,

Appellant,

—against—

STATE OF LOUISIANA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

APPENDIX TO CONSOLIDATED BRIEF

INDEX TO APPENDIX

Statutes Involved

LOUISIANA STATUTES ANNOTATED—R. S. 14:100.1

§100.1 OBSTRUCTING PUBLIC PASSAGES

No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road, or other passageway, or the entrance, corridor or passage of any public building, structure, water craft or ferry, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein.

Providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions.

Whoever violates the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both fined and imprisoned.

This section shall not be applicable to the erection or construction of any barricades or other forms of obstructions as a safety measure in connection with construction, excavation, maintenance, repair, replacement or other work, in or adjacent to any public sidewalk, street, highway, bridge, alley, road, or other passageway, nor to the placing of barricades or other forms of obstruction by governmental authorities, or any officer or agent thereof, in the proper performance of duties. Added Acts 1960, No. 80, §1.

Emergency. Effective June 22, 1960.

Statutes Involved

LOUISIANA STATUTES ANNOTATED—R. S. 14:103.1

§103.1 DISTURBING THE PEACE

A. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

(1) crowds or congregates with others, providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions, in or upon a shore protection structure or structures, or a public street or public highway, or upon a public sidewalk, or any other public place or building or in any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, motion picture theatre, drive-in, beauty parlor, swimming pool area, or any sports or recreational area or place, or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or parish, in which such act or acts are committed, or by any law enforcement officer of the state of Louisiana, or any other authorized person, or

(2) insults or makes rude or obscene remarks or gestures, or uses profane language, or physical acts, or indecent proposals to or toward another or others, or disturbs or obstructs or interferes with another or others, or

(3) while in or on any public bus, taxicab, boat, ferry or other water craft or other vehicle engaged in transporting members of the public for a fare or charge, causes a disturbance or does or says, respectively, any of the matters or things mentioned in sub-section (2) supra, to, toward,

or in the presence of any other passenger on said vehicle, or any person outside of said vehicle or in the process of boarding or departing from said vehicle, or any employee engaged in and about the operation of such vehicle, or

(4) refuses to leave the premises of another when requested so to do by any owner, lessee, or any employee thereof, shall be guilty of disturbing the peace.

B. Whoever commits the crime of disturbing the peace as defined herein shall be punished by a fine of not more than two hundred dollars, or imprisonment in the parish jail for not more than four months, or by both such fine and imprisonment. Added Acts 1960, No. 69, §1.

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."

No. 42,201

STATE OF LOUISIANA—PARISH OF EAST BATON ROUGE
NINETEENTH JUDICIAL DISTRICT COURT

SARGENT PITCHER, JR., District Attorney of the Ninteenth Judicial District of the State of Louisiana, who, in name and by the authority of said State, prosecutes in this behalf, in proper person, comes into the Nineteenth Judicial District Court of the State of Louisiana, in the Parish of East Baton Rouge, and gives the said Court here to understand and be informed that B. ELTON Cox, late of the Parish of East Baton Rouge, on the Fifteenth (15th) day of December in the year of our Lord One Thousand Nine Hundred and Sixty-one (1961) with force of arms, in the Parish of East Baton Rouge, aforesaid, and within the jurisdiction of the Nineteenth Judicial District Court of Louisiana in and for the Parish of East Baton Rouge, then and there being, 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, contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State and against the peace and dignity of the same.

SARGENT PITCHER, JR.
District Attorney,
Nineteenth Judicial District of Louisiana

STATE OF LOUISIANA—PARISH OF EAST BATON ROUGE
NINETEENTH JUDICIAL DISTRICT COURT

SARGENT PITCHER, JR., District Attorney of the Ninteenth Judicial District of the State of Louisiana, who, in name and by the authority of said State, prosecutes in this behalf, in proper person, comes into the Nineteenth Judicial District Court of the State of Louisiana, in the Parish of East Baton Rouge, and gives the said Court here to understand and be informed that B. ELTON COX, late of the Parish of East Baton Rouge, on the Fifteenth (15th) day of December in the year of our Lord One Thousand Nine Hundred and Sixty-one (1961) with force of arms, in the Parish of East Baton Rouge, aforesaid, and within the jurisdiction of the Nineteenth Judicial District Court of Louisiana in and for the Parish of East Baton Rouge, then and there being, unlawfully violated R. S. 14:103.1, [illegible].
in that he did under circumstances such that a breach of the peace could be occasioned thereby, congregate with others in and upon a public street and upon public sidewalks in front of the Courthouse in the Parish of East Baton Rouge, a public building, and in and around certain entrances of places of business and failed and refused to disperse and move on when ordered to do so by the Sheriff of East Baton Rouge, a person duly authorized to enforce the laws of this State, contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

SARGENT PITCHER, JR.
District Attorney,
Nineteenth Judicial District of Louisiana

Opinion of Hon. Fred A. Blanche, Judge of the Nineteenth Judicial District of East Baton Rouge, Louisiana

(540)

REASONS FOR JUDGMENT

By the Court:

Before rendering a verdict, I want to caution the members present in court that I expect complete orderliness to be carried out just as it has been while arguments of counsel were going on and just like it has been throughout this entire trial.

First of all, the Court would like to thank both counsel for their respect to the Court and toward each other. The Court takes cognizance of the fact that during a heated trial sometimes both witnesses and counsel and the Court have heated exchanges, and I think that in a case of the character of this case involving demonstrators or rather the leader of a demonstration protesting segregation in this community, it is particularly admirable. It is admirable because, as counsel pointed out in argument, we have lived here peacefully in this community under a system of segregation from time immemorial and then all of a sudden in one day we have a protest of 1,500 people strong in the City of Baton Rouge and against what has been a custom for so long.

I want to dictate into the record exactly all of my reasons for judgment because much of the evidence adduced by both the prosecution and by the defense was based on hearsay, but I, as the judge of this court, am able to

(541)

discriminate as to what is hearsay and what is not hearsay and what, in my opinion, is valid evidence.

With regard to the charge in 42,199, the Court finds B. Elton Cox not guilty. (I promise you, if I hear any further demonstration, I will empty the courtroom.) I find B. Elton Cox not guilty because he is charged under our attempt statute which is 14:26, and I cannot find him guilty of this charge because it is my opinion that the law of this state is that there must be some overt act perpetrated in violation of the statute which he is charged with, namely, 14:100.1 and 14:100.3, and the only evidence to

prove this was that the defendant told the demonstrators to go down to the lunch counter and stay there. Our law, however, I think is that there must have been some overt act on the part of those with whom he was in conspiracy to violate that law, and I think probably had it not been for the police breaking up the demonstration that he would have been found guilty of this charge. I do think that the police broke it up before any one of them could make one move in that direction.

Now, with regard to the charge that is contained in bill No. 42,200. In bill No. 42,200 he is charged:

> "... in that he did willfully obstruct the free, convenient and normal use of a public sidewalk within the City of Baton Rouge thereby impeding, hindering and restraining passage thereon."

(542)

This Court takes cognizance of the fact that there has been testimony of competent witnesses from our police force who have had experience in estimating crowds; I have seen the pictures taken by Mr. Bob Durham which reflect to me that the sidewalk was effectively blocked. To place some 1,500 people— The evidence was that the people did not block the service station area which is shown on a map of E. R. Nilson Map Service, but the testimony of both the police and disinterested witnesses not in anywise connected with law enforcement as well as the photographs taken by the photographer in the news film show that in the area ten feet wide according to this map and some 256 feet long that there were contained by the minimum estimate some 1,500 people; and if 1,500 people can congregate in 256 feet without blocking it, then the Court would have to be blind to physical facts. So, for that reason, as a consequence of what I saw on the film and from what I heard, I say and hold that this sidewalk on the west side of the Courthouse was obstructed for the convenient and normal use as a public sidewalk in the City of Baton Rouge and that it did impede and hinder and restrain passage thereon in the direct words of the statute that this bill of information which I read from tracks the statute. I find the defendant guilty of that charge.

With regard to No. 42,202 wherein he is charged with violating R. S. 14:103.1, R. S. 14:103.1 says that:
(543)

> "Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of peace may be occasioned thereby: (1) crowds or congregates with others . . . upon a public sidewalk, (and, of course, I have omitted the parts of the statute which are not pertinent) or any other public place or building (which is what he is charged with in the bill of information) . . . and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or parish, in which such act or acts are committed, or by any law enforcement officer of the State of Louisiana . . ."

commits the crime of disturbing the peace. With regard to this statute, an attack has been made on this statute on the grounds that it is unconstitutional because it seeks to prohibit or punish the defendant by virtue of a criminal statute when he has a right as a citizen to peacefully protest against the segregation laws of the State of Louisiana or to protest against racial segregation and discrimination.

First of all, let me say that this Court respects the right of freedom of speech. It respects the right to picket, but even the right to picket and the right of freedom of speech is subject to limitation. Restrictions have been placed on
(544)
the right to picket by the Federal Government and elsewhere under our state law involving labor activities with regard to their right to picket. In any event, picketing is said to be lawful when it is peaceful because it represents freedom of speech. Now, the right to protest is lawful, and the right to protest is lawful if it is conducted in a lawful manner. Our courts have held that picketing is unlawful when it is mass picketing, and if this protesting is a form of freedom of speech, I say it is unlawful when it is done en masse by some 1,500 people of the colored race parading on the streets of Baton Rouge and congregating on the sidewalk in violation of this statute.

If this statute is a "segregation statute," it should be one of the segregation statutes that should be upheld by every court in this land. It should be upheld because it undertakes to understand the mood and the nature of our people, both colored and white. It recognizes, as this Court recognizes, that in the City of Baton Rouge there is racial tension. It recognizes, as our legislators must have recognized, that there is racial tension within the State of Louisiana; and the intent of the statute is to give the police the power to punish or disband or break up mass demonstrations, especially where they might involve racial overtones. It doesn't take a smart judge or it doesn't take any evidence to be presented to this Court to know that since (545)
the advent or since the decision of the United States Supreme Court (I think the case was Brown v. Topeka), that racial tension has mounted in the south, and understandably so, because after living under that system for hundreds and hundreds of years the change didn't just occur overnight. They recognize the basic human instinct that there would be resentment toward integration in the South, and I think our Legislature wisely took steps to have a statute on the books that would give law enforcement authorities the power to make it unlawful for anyone to demonstrate in such a manner so as to effectively block the sidewalk, which was done in this case. It should be inherently dangerous and a breach of the peace, recognizing racial tension as we have it in the south. It must be recognized to be inherently dangerous and a breach of the peace to bring 1,500 people, colored people, down in the predominantly white business district in the City of Baton Rouge and congregate across the street from the courthouse and sing songs as described to me by the defendant as the CORE national anthem carrying lines such as "black and white together" and to urge those 1,500 people to descend upon our lunch counters and sit there until they are served. That has to be an inherent breach of the peace, and our statute 14:103.1 has made it so.

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 congegrated 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 Courthouse 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 the Supreme Court of Louisiana

(1) in case No. 24 in this Court

SUPREME COURT OF LOUISIANA

No. 46,395

STATE OF LOUISIANA

versus

B. ELTON COX

APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
FOR THE PARISH OF EAST BATON ROUGE

HONORABLE FRED A. BLANCHE, JR., JUDGE

No. 46,396

STATE OF LOUISIANA

versus

B. ELTON COX

IN RE: B. ELTON COX APPLYING FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION TO THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

SUMMERS, Justice.

In these consolidated cases[1] defendant, B. Elton Cox, was charged by the district attorney of East Baton Rouge

[1] There were four bills of information filed against the accused that were consolidated for trial below. On one charge involving

Parish with obstructing public passages as defined and prohibited by R. S. 14:100.1. He was convicted, sentenced (2)
to pay a fine of $500 and to be imprisoned in the parish jail for a period of five months, and, in default of the payment of the fine, to be imprisoned an additional five months. An appeal was taken in this case and is docketed in this court under Number 46,395.

By separate bill of information Cox was charged with disturbing the peace as defined and prohibited by R. S. 14:103.1. He was convicted, sentenced to pay a fine of $200 and to imprisonment in the parish jail for a period of four months, and, in default of the payment of the fine, to be confined in the parish jail for four months. The accused having no right of appeal in this latter case, made application to this court for writ of certiorari, mandamus and prohibition which we granted under our supervisory powers to review the correctness of certain actions below.[2]

The bill of information in No. 46,395 charges that defendant "did violate the provisions of R. S. 14:100.1 in that he did wilfully obstruct the free, convenient and normal use of a public sidewalk within the City of Baton Rouge,

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criminal conspiracy the accused was acquitted; another charge of obstructing justice is on appeal in this court and is separately docketed; the remaining two of the four charges are the subject of this opinion.

[2] In both of these cases the accused was incarcerated in the parish prison pursuant to the sentences which were decreed to run consecutively. But, originally, because of the trial court's failure to allow proper delay after verdict and before sentence as required by R. S. 15:521 we granted writs of habeas corpus in both of these cases. In our review of the trial court's action (See State v. Clemmons, 243 La. 264, 142 So. 2d 794 (1962)) the writs were made peremptory, the sentences were annulled and set aside and the accused was ordered released on bail until such time as legal sentences were imposed and the accused was afforded an opportunity to take the procedural steps necessary to bring the matter before this court either on appeal or by writ application.

When the cases were again resumed below, the accused filed certain motions, perfected bills of exceptions and, in due time, was again sentenced as outlined in the body of this opinion.

(3)
thereby impeding, hindering and restraining passage thereon."

The pertinent parts of the statute relied upon by the State provide:

> "No person shall willfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road, or other passageway, or the entrance, corridor or passage of any public building, structure, water craft or ferry, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein.
>
> Providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions. * * *" R. S. 14:100.1

The bill of information in No. 46,396 charges that defendant "violated R. S. 14:103.1, * * * in that he did under circumstances such that a breach of the peace could be occasioned congregate with others in and upon a public street and upon public sidewalks in front of the Courthouse in the Parish of East Baton Rouge, a public building, and in and around certain entrances of places of business and failed and refused to disperse and move on when ordered
(4)
to do so by the Sheriff of East Baton Rouge, a person duly authorized to enforce the laws of this State."

The pertinent portion of the statute upon which this charge is based provides:

> "A. Whoever with intent to provoke a breach of the peace or under circumstances such that a breach of the peace may be occasioned thereby: (1) crowds or congregates with others, providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as

picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions, in or upon a shore protection structure or structures, or a public street or public highway, or upon a public sidewalk, or any other public place or building, or in any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, motion picture theatre, drive-in, beauty parlor, swimming pool area, or any sports or recreational area or place, or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any

(5)

municipality, or parish, in which such act or acts are committed, or by any law enforcement officer of the state of Louisiana, or any other authorized person * * * shall be guilty of disturbing the peace * * *."

The defendant filed motions to quash and motions for bills of particulars to each of these bills of information prior to trial. These motions were overruled and the cases proceeded to trial, where these facts were established.

On the morning of December 15, 1961, the defendant, Cox, as the unquestioned leader, with a crowd of Negroes variously estimated at 1,500 to 3,800 (we think 2,000 persons is a fair conclusion to be derived from the evidence) assembled in the heart of Baton Rouge in the vicinity of the Old State Capitol Building, a short distance from the parish courthouse. Shortly before noon, Cox led these demonstrators in an orderly fashion to the vicinity of the parish courthouse, where the sheriff, chief of police and a substantial contingent of approximately eighty law enforcement officials had gathered in preparation for the march upon the courthouse. Twenty-three Negroes had

been arrested the day before for demonstrations in Baton Rouge and they were at that time imprisoned in the parish jail located in the upper floor of the courthouse building.

Arriving near the courthouse in the vanguard of the marchers, Cox was confronted by the sheriff and chief of police and was asked what his intentions were. He announced to them that the marchers were demonstrating (6)
against segregation and their activities would be confined to a few songs, a speech, and peaceful demonstrations, the whole of which would consume only a few minutes. The sheriff then advised Cox to confine his demonstration to the time mentioned and no more.

The marchers then occupied the sidewalk across the street from the western entrance of the courthouse. The testimony and motion pictures in evidence unmistakably establish the fact that the marchers completely occupied the entire sidewalk for the greatest portion of a block across from the courthouse in such a manner that no passage was possible thereon. All of the entrances to many offices facing that sidewalk were blocked, their occupants being unable to enter or leave. In the words of one witness the demonstrators were "tightly packed" along most of the sidewalk. Unmistakably, too, these activities resulted in an obstruction of the street separating the sidewalk occupied by the marchers and the courthouse. Because of this, it was necessary to reroute traffic away from that street. Meanwhile, several hundred white persons had gathered in front of the courthouse across the street from the demonstrators.

There were silent prayers and a display of signs, which the demonstrators had kept hidden in their clothing. These signs being the identical ones used by the demonstrators who had been arrested the day before. All of these activities took place under Cox's command and according to instructions he issued during each phase of the demonstration.

Cox then made a speech which was in effect "a protest against the illegal arrest of some of their members." He admonished the multitude of demonstrators to remain

(7)
peaceful and generally built them up emotionally for further sit-in demonstrations which he instructed them to conduct at lunch counters in the business district of the city upon leaving the scene.

The crowd then sang songs, answered by the prisoners in the jailhouse, and this in turn evoked loud and frenzied outbursts and "wild yells" from the demonstrators assembled on the sidewalks.

Whereupon "grumbling" was heard among the white people, a feeling of "impending excitement" was apparent to all and a fear arose among those present that they were "about to have a riot." Several witnesses testified that in their lifetime no demonstration of this nature or scope had ever taken place in Baton Rouge. As one witness expressed it the crowd was "rumbling." In the large crowd the "tension was running high." Some of the witnesses felt the demonstrators were about to storm the courthouse to get the prisoners who had been arrested the day before.

At this time the prisoners in jail were "hollering", "screaming", "beating on bars", "beating on walls and so on" trying to attract the attention of the demonstrators across the street.

The sheriff, feeling that a riot was imminent, and fearing the crowd would get out of hand instructed Cox by means of a loudspeaker so that all present could hear to "move on" and "break it up", that he had had his time. Cox then instructed the demonstrators by saying "Don't move" and by his actions and demeanor defied the sheriff's orders. The demonstrators and Cox stood immobile. They refused to move on.

(8)
The police them dispersed the crowd with tear gas and Cox was arrested the next day.

Four causes are assigned by the accused for setting aside the conviction below.

First, it is asserted that the specific laws under which he was charged, tried and convicted (R. S. 14:100.1 and R. S. 14:103.1) are unconstitutional in their application, for the conviction thereunder infringes upon the defen-

dant'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.

Defendant's first contention is based upon the proposition that the statutes (R. S. 14:100.1 and R. S. 14:103.1) prohibiting the obstructing of public passage and disturbing the peace, under which defendant was convicted, are unconstitutional in their application in this case. The defendant asserts that if those statutes are construed to con-
(9)
vict defendant for his action in obstructing the sidewalks while demonstrating against segregation it deprives him of the freedom of assembly and freedom of speech and the right to peacefully picket guaranteed by the First Amendment to the Constitution of the United States. Under the due process and equal protection of the laws clause of the Fourteenth Amendment, it is contended, the State of Louisiana must afford the right of freedom of speech to this defendant. Defendant relies upon the case of Thornhill v. Alabama, 310 U. S. 88, 60 Sup. Ct. 736, 84 L. Ed. 1093 (1940), holding that peaceful picketing was within the liberties protected by the First and Fourteenth Amendments. The argument is advanced that such interest as the State of Louisiana has in protecting the public peace is not substantial enough to justify this prosecution which has the effect of denying to the accused the guarantees of freedom of speech and expression.

Thus we understand the contention to be that even though the statute might be constitutionally enforced under

other circumstances, it cannot be invoked to punish this demonstration which the defendant asserts is no less an expression than is speech against segregation; and this freedom of expression, like freedom of speech, is protected by the First Amendment. Citing concurring opinion of Mr. Justice Harlan in Garner v. Louisiana, 368 U. S. 157, 82 Sup. Ct. 248, 7 L. Ed. 2d 207 (1961).

The United States Supreme Court has long ago announced that these First Amendment freedoms are protected by the Fourteenth Amendment from invasion by the States. Edwards v. South Carolina, 372 U. S. 229, 83 Sup. (10)
Ct. ——, 9 L. Ed. 2d 697 (1963); Thornhill v. Alabama, supra; Cantwell v. Connecticut, 310 U. S. 296, 60 Sup. Ct. 900, 84 L. Ed. 1213 (1940); DeJonge v. Oregon, 299 U. S. 353, 57 Sup. Ct. 277, 81 L. Ed. 270 (1937); Stromberg v. California, 283 U. S. 359, 51 Sup. Ct. 532, 75 L. Ed. 1117 (1931); Whitney v. California, 274 U. S. 357, 47 Sup. Ct. 641, 71 L. Ed. 1095 (1927); Gitlow v. New York, 268 U. S. 652, 45 Sup. Ct. 625, 69 L. Ed. 1138 (1925).

But the right of freedom of speech is not absolute and a State may by general and non-discriminatory legislation, under its police power, regulate the exercise of that freedom. Cantwell v. Connecticut, supra.

Our inquiry, then, must be directed to the regulation of the constitutional guarantee and a careful consideration of whether that regulation is within the allowable area of state control. And so in this inquiry we must look to the conduct to be limited or proscribed.

The statutes in question do not come within the objection that they punish conduct which is so generalized as to be "not susceptible of exact definition" as was the case in Edwards v. South Carolina, supra. To the contrary, in each instance the proscribed conduct is precisely and narrowly defined for it is to "obstruct * * * any public sidewalk * * * by impeding, hindering, stifling, retarding or restraining traffic or passage thereon" in one instance which is proscribed and it is those who "under circumstances such that a breach of the peace may be occasioned thereby: (1) crowds or congregates with others * * * in or upon * * * a public sidewalk" who are guilty of disturbing

(11)
the peace in the other instance. See also Garner v. Louisiana, 368 U. S. 147, 82 Sup. Ct. 248, 7 L. Ed. 2d 207 (1961), Town of Ponchatoula v. Bates, 173 La. 824, 138 So. 851 (1933).

Laws having the character of those under attack have been before the courts of last report in other States, and have been upheld as reasonable regulations in the exercise of police power. City of Tacoma v. Roe, 190 Wash. 444, 68 P. 2d 1028 (1937); State v. Sugarman, 126 Minn. 477, 148 N. W. 466, 52 L. R. A. (N. S.) 999 (1914); Benson v. City of Norfolk, 163 Va. 1037, 177 S. E. 222 (1934).

In the statutes under consideration there is no discrimination, but where labor picketing is concerned a clearly defined exclusion recognized in Thornhill v. Alabama, supra, is set forth.

In Edwards v. South Carolina, supra, the court announced that no infringement upon constitutional guarantees would be involved "If, for example, petitioners had been convicted upon evidence that they had violated a law regulating traffic, or had disobeyed a law reasonably limiting the periods during which the State House grounds were open to the public * * *" And this is the precise nature of the regulation which these contested statutes invoke. The reasons which support such enactments are obvious and have been approved on many occasions. They are that:

> "Municipal authorities, as trustees of the public, have the duty to keep their communities' streets open and available for movement of people and property, the primary purpose to which streets are dedicated. So long as legislation to this end does not abridge the con-
(12)
> stitutional liberty of one rightfully upon the street to impart information through speech or the distribution of literature, it may lawfully regulate the conduct of those using the streets. For example, a person could not exercise this liberty by taking his stand in the middle of a crowded street, contrary to traffic regulations, and maintain his position to the stoppage of all traffic; a group of distributors could not insist upon a con-

> stitutional right to form a cordon across the street and to allow no pedestrian to pass who did not accept a tendered leaflet; nor does the guarantee of freedom of speech or of the press deprive a municipality of power to enact regulations against throwing literature broadcast in the streets. Prohibition of such conduct would not abridge the constitutional liberty since such activity bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion." Schneider v. State, 308 U. S. 147, 160, 60 Sup. Ct. 146, 84 L. Ed. 155 (1939).

And on this authority, and others, it is manifest that the right to freely speak against segregation, if that was the true motive of the demonstrators in the case at bar, bears no relation to facts involving two thousand persons marching against the halls of justice and obstructing the public sidewalks there in such a manner that a violation of the
(13)
statute proscribing that conduct is manifest. These demonstrators, like other citizens, must confine their exercise of constitutional freedoms within lawfully regulated limits of those freedoms.

In support of the second grounds for setting aside this conviction, it is asserted 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.

R. S. 14:103.1 is said to be ambiguous for it is not clear whether the prosecution must show an actual disturbance or only circumstances such that a disturbance may be occasioned. In either event, however, we think there is no ambiguity in that language of the statute for to "disturb the peace" in Louisiana means " * * * to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet." Town of Ponchatoula v. Bates, 173 La. 824, 138 So. 851 (1932). To "breach the peace" has the identical meaning in our view and the statute so declares, for it provides that "Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach may be occasioned thereby" commits certain acts "shall

be guilty of disturbing the peace." Because the words of the statute have a fixed, definite and commonly understood meaning and a meaning ascribed to them by this court, they are not ambiguous nor is it objectionable that the statute seeks to proscribe conduct which will result in a disturbance of the peace. The statute may lawfully have the prevention of a disturbance as its object as well as punishing
(14)
an actual disturbance. Therefore the accused had adequate notice of the proscribed conduct. Garner v. State of Louisiana, 368 U. S. 157, 82 Sup. Ct. 248, 7 L. Ed. 2d 207 (1961).

With respect to R. S. 14:100.1 the contention is made that the bill of information charging a violation of that statute is fatally defective because it fails to inform defendant of the nature and the cause of the accusation against him, though it is conceded that the statute may be sufficient to describe or legally characterize the offense. U. S. Const. amend. VI; La. Const. of 1921 art. I, §10; R. S. 15:2, R. S. 15:5 and R. S. 15:227.

The Louisiana Constitution, like the United States Constitution, provides that in all criminal prosecutions the accused has a right to be informed of the nature and cause of the accusation.

The argument is advanced here that one cannot be charged with obstruction "of a public sidewalk within the City of Baton Rouge . . . " One must be charged with obstruction of a particular sidewalk, i.e., " . . . that sidewalk on the West side of St. Louis Street, in the City of Baton Rouge, Louisiana, identified by municipal number 200, bounded on the North by . . . and bounded on the south by . . . " But we cannot agree with the contention; the quoted language of the bill of particulars in the beginning of this opinion refers to the sidewalk in "front of the Courthouse", which, together with the date of the occurrence, is definite and clear and furnishes the requisite information to satisfy the constitutional test, which is threefold:
(15)

First, the statement of the accusation should inform the accused of the charges that will be brought against him at the trial in order that he may properly defend himself. Second, the trial judge should be informed by the indict-

ment of what the case involves, so that, as he presides and is called upon to make rulings, he may do so intelligently. Third, the indictment should form a record from which it can be clearly determined whether or not a subsequent proceeding is barred by the former adjudication.

When the accusation fulfills these purposes, it satisfies the constitutional mandate that the accused must be informed of the nature and cause of the accusation. State v. Scheler, 243 La. 443, 144 So. 2d 389 (1962).

The third contention charged is without merit.

This court is limited in the scope of its review in criminal matters by Article VII, Section 10 of the Constitution of this State "to questions of law only." Although it is recognized in our jurisprudence that a proper interpretation of the foregoing constitutional provision permits a complaint that a conviction based upon "no evidence at all" presents the question of law whether it be lawful to convict an accused without any proof whatsoever as to his guilt, it is firmly established that it is only when there is no evidence at all upon some essential element of the crime charged that the court may set aside a verdict. But, where there is *some* evidence to sustain the conviction, *no matter how little,* this court cannot pass upon the sufficiency thereof. That comes within the exclusive province of the trial judge or jury. State v. Copling, 242 La. 199, 135 So. 2d 271 (1961). (16)

Undoubtedly, from the facts recited, there is some evidence. In our view there is ample evidence to sustain this conviction.

The final grounds relied upon to reverse this conviction is that racial segregation existed in the court where defendant was tried and convicted and this segregation denied him a fair trial in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

The record undoubtedly establishes that racial segregation existed in the courtroom as it had for many years.

On April 29, 1963, the United States Supreme Court held that "State-compelled segregation in a court of justice is a manifest violation of the State's duty to deny no one the equal protection of its law." Johnson v. Virginia, 31

U. S. L. Week 3353 (U. S. April 29, 1963). But in the Johnson case the objection to segregation was made by a Negro who had been arrested for contempt of court for sitting in seats assigned for white citizens, and the arrest and conviction was for that conduct. In the case before us, there is no charge against the defendant for having violated the court-imposed seating arrangement and none of the parties upon whom the segregation was imposed are before this court in this case. Hence the Johnson case is not authority for reversing this conviction. It has not been made to appear that the segregation resulted in a miscarriage of justice to this defendant. R. S. 15:557. If it were otherwise, it would result that every Negro convicted in that court in the past would be entitled to have his conviction set aside.

For the reasons assigned the conviction and sentence are affirmed.

REHEARING REFUSED

OCT 9 1963

STATE OF LOUISIANA vs. B. ELTON COX—No. 46,395.

McCALEB, J., Dissenting.

The ruling herein that the bill of information is sufficient to apprise the accused of the nature and cause of the accusation against him is in conflict with our recent decision in State vs. Smith, 243 La. 656, 146 So. (2d) 152, handed down on November 5, 1962.

In the Smith case the defendants were charged in a bill of information containing two counts with violating (1) R. S. 14:100.1 (obstructing public passages) and (2) R. S. 14:103.1 (disturbing the peace) under allegations similar to those made in the separate bills of information which have been upheld in the instant matter. The Court, after setting forth the settled jurisprudence of this State to the effect that it is not a sufficient compliance with the constitutional mandate of Section 10 of Article 1 of the State Constitution (that the accused shall be informed of the nature and cause of the accusation against him) for the bill of information to be couched in the language of the statute when the statutory words do not, themselves, set forth the elements necessary to constitute the offense intended to be punished (see, among other cases, State vs. Verdin, 192 La. 275, 187 So. 666; State vs. Varnado, 208 La. 319, 23 So. (2d) 106 and State vs. Blanchard, 226 La. 1082, 78 So. (2d) 181), quashed the bill of information, holding that the provisions of R. S. 14:100.1 and 14:103.1 were not specific enough to support a charge drawn in their language and that allegations of the particular facts were required in order to comply with the Constitution.

The motion to quash should be sustained.

REHEARING REFUSED

Oct 9th 1963

Opinion of Louisiana Supreme Court

(1) in case No. 49 in this Court

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 procedural 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]

[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)

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 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.

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[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."

[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.

(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 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—how-

ever 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 intimidated. 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 participate 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

[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.

added to the situation that had by then reached a high pitch 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 "peacefully" 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 picket-*

ing 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 communications. * * * 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, particularly 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 forbearance 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.

Motions in Case No. 24 in This Court,

(16)

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 defendant denies that he violated the provision of LSA-R. S. 14:100.1 as charged in the Bill of Information. However, defendant alleges and avers that on the 15th day of December 1961, in protest of racial segregation, defendant, a citizen of the United States, together with others, did in exercise of his rights accorded defendant by and under the First Amendment to the Constitution of the United States of America, peaceably assemble on a public sidewalk within the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana.

-2-

That while the arrest and charge were for "Obstructing Public Passages", there was no commission of such crime

(17)

or offense, except for the 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 of his rights, privileges, immunities and liberties guaranteed defendant, a citizen of the United States, by the First and Fourteenth Amendments to the Constitution of the United States of America.

-3-

That LSA-R. S. 14:100.1 is unconstitutional on its face, repugnant to the due process and equal protection of the law clauses of the Fourteenth Amendment to the Constitution of the United States of America, in that, it expressly extends to a bona fide legitimate labor organization the rights accorded and guaranteed citizens of the United States by the First Amendment to the Constitution of the United States of America, while denying and depriving defendant, a member of the Negro race, the same rights.

-4-

That LSA-R. S. 14:100.1 is unconstitutional on its face, in that it denies and deprives defendant, a citizen of the United States of America, of due process and equal protection of the laws, guaranteed the defendant by the Fourteenth Amendment to the Constitution of the United States of America.

-5-

That if said Statute, LSA-R. S. 14:100.1, as amended, does embrace within its terms and meanings, that the defendant, by protesting racial segregation "obstructs public passages", then and in that event said Statute, LSA-R. S. 14:100.1 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 law guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

-6-

That the Bill of Information is insufficient to charge an (18)
offense or crime under LSA-R. S. 14:100.1, 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.

Attorney for Defendant:

JOHNNIE A. JONES

Robert F. Collins
Nils R. Douglas
Lolis E. Elie
2211 Dryades Street
New Orleans 13, Louisiana

(Signed) BY: JOHNNIE A. JONES

(42)

Opinion Overruling Motion

That on a subsequent day of Court a hearing was had contradictorily with the state on the said motions to Quash and that the court overruled and denied the said motions 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 their 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 10th day of October 1962.

(Signed) Fred A. Blanche, Jr.
JUDGE

(30)

Motion in Arrest of Judgment

NOW INTO COURT, after verdict against B. ELTON COX, and before sentence 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 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".

(31)

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

> "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 the 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. 14:103.1 and 14:100.1.

-3-

That the convictions of defendant for violation of L. S. A.-R. S. 14:103.1 paragraph A subpart 1 and for violation of L. S. A.-R. S. 14:100.1 denied defendant rights guaranteed to him under the first amendment to the Constitution of the United States.

(32)
That the convictions of defendant for violation of L. S. A.-R. S. 14:103.1 paragraph A subpart 1 and for violation of L. S. A.-R. S. 14:100.1 denied defendant rights guaranteed to him under the Sixth Amendment to the Constitution of the United States.

-5-

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

-6-

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

-8-

That the judgments are contrary to the law and the evidence in that there is no evidence to support a finding of guilt under either statute thus violating defendants rights under the Due Process Clause of the Fourteenth Amendment.

-9-

That the judgments are unconstitutional in violation of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that (33)
it is constitutionally impossible to charge and convict a defendant for disturbing the peace when the body of the

statute prohibits crowding or congregating" . . . under circumstances such that a breach of the peace *may* be occasioned thereby.

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 St., N. O. La.

(Signed) BY Nils R. Douglas

MURPHY W. BELL
971 South 13th St., B. R., La.

OF COUNSEL:

CARL RACHLIN
280 Broadway
New York, New York

(56)

Opinion on Motion in Arrest of Judgment

The Court after hearing the said Motion in Arrest of Judgment of the defendants, 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 now counsel perfects this his formal bill of exceptions to the overruling and denying of the said Motion in Arrest of Judgment and makes a part hereof, the bill of information, the Motion to Quash, any evidence or testimony heard or offered on the trial of these cases on the merits, the Motion in Arrest of Judgment, the Motion For A New Trial, the Courts ruling on the Motion In Arrest Of Judgment, 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 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 10th day of October 1962.

(Signed) Fred A. Blanche, Jr.
JUDGE

PER CURIAM

With regard to the objection of the accused to the segregated seating in the courtroom, the Court on its own order turned over approximately three-fourths of the seats in the courtroom to members of the colored race leaving approximately one-fourth of the courtroom for members of the white race. Notwithstanding this, counsel urges that this denied the accused a fair trial. The transcript of the record of trial will speak for itself in this regard.

Finally, the wisdom of segregating the races at the time of this trial when racial tension had been occasioned by the accused, whether in pursuit of freedom of speech or not, is beyond question. Indeed, it insured the accused a fair trial and was a step to preserve order in the Court, for which this judge is responsible.

Baton Rouge, Louisiana,
this 10th day of October,
1962.

(signed) Fred A. Blanche, Jr.
Judge, 19th Judicial District Court

(35)

Motion for New Trial

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 Bills of Information are insufficient to charge a crime under L. S. A. R. S. 14:103.1 and 14:100.1.

—2—

That the convictions of defendant for violation of L. S. A. R. S. 14:103.1 paragraph A subpart 1 and for violation of L. S. A. R. S. 14:100.1 denied defendant rights guaranteed to him under the first amendment to the Constitution of the United States.

—3—

That the convictions of defendant for violation of L. S. A. R. S. 14:103.1 paragraph A subpart 1 and for violation of L. S. A. R. S. 14:100.1 denied defendant rights guaranteed to him under the Sixth Amendment to the Constitution of the United States.

—4—

That the courts overruling of defendants objection to the segregated seating in the courtroom to which ruling de-
(36)
fendant 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 of the Fourteenth Amendment to the Constitution of the United States.

—5—

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

—6—

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

—8—

That the judgments are contrary to the law and the evidence in that there is no evidence to support a finding of guilt under either statute thus violating defendant's rights under the Due Process Clause of the Fourteenth Amendment.

(37)

—9—

That the judgments are unconstitutional in violation of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that it is constitutionally impossible to charge and convict a defendant for disturbing the peace when the body of the

statute prohibits crowding or congregating " . . . under circumstances such as a breach of the peace *may* be occasioned thereby".

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 E. ELIE
2211 Dryades Street
New Orleans 13, Louisiana

(Signed) By: NILS R. DOUGLAS

MURPHY W. BELL
971 South 13th St., Baton Rouge, La.

OF COUNSEL:

CARL RACHLIN
280 Broadway
New York, New York

(48)

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 cases 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 10th day of October 1962.

(Signed) Fred A. Blanche, Jr.
JUDGE

Motions in Case No. 49 in This Court

(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.

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.

Attorneys for Defendant:

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

/s/ By: Johnnie A. Jones

(26)

Opinion on Motion to Quash

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

(13)

Notice of Motion in Arrest of Judgment

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:

> "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.