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5.

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

6.

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

7.

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

8.

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

WHEREFORE, your mover prays that, a rule nisi issue out of this Honorable Court directed to Honorable Sargent Pitcher, Jr., District Attorney ordering him to show cause,

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if any he has, why a Motion in Arrest of Judgment should not be granted in these proceedings.

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

(Signed) By: Nils R. Douglas

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

Of Counsel:

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

(37)

Opinion on Motion in Arrest of Judgment

The Court, after due consideration of the Motion in Arrest of Judgment filed and submitted by counsel for accused, denied and overruled same. To which ruling of the Court, counsel for accused excepted and reserved a formal bill of exceptions, making a part of the bill, the entire record of these proceedings and the motion filed. Defendant first submitting this his bill of exceptions to the District Attorney now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court, pursuant to the statute in such case made and provided, which is done accordingly this *31st* day of *January* 1963.

(Signed) Fred A. Blanche, Jr.
JUDGE

(18)

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

—2—

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

—3—

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

—4—

That the courts overruling of defendant's objection to the segregated seating in the courtroom to which ruling defendant reserved a formal bill of Exceptions was error and prejudicial to the defendant in that it denied him the right to a fair trial guaranteed to him by Article I Section 6 of the Constitution of the State of Louisiana. Said error further denied defendant the equal protection of the laws and due process of law guaranteed to him by the First Section (19)

of the Fourteenth Amendment to the Constitution of the United States.

—5—

That the statute under which the defendant was convicted is unconstitutional and in contravention of the Fourteenth

Amendment of the Constitution of the United States in that it was enacted for the specific purpose and intent to implement and further the states policy of enforced segregation of races.

—6—

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

—7—

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

—8—

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

—9—

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

—10—

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

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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
LOUIS R. ELIE

(Signed) By: Nils R. Douglas

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

Of Counsel:

CARL RACHLIN
New York, New York

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority personally came and appeared:

NILS R. DOUGLAS

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

(Signed) Nils R. Douglas
NILS R. DOUGLAS

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

(Signed) Murphy W. Bell
NOTARY PUBLIC

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Opinion on Motion for New Trial

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

(Signed) Fred A. Blanche, Jr.
JUDGE

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Excerpts From Transcript of Trial

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

The Court: All right.

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

The Court: Show a minute entry to that effect.

Mr. Pitcher: No objection.

Mr. Jones: I would also like for the record to show that

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this case is one where the defendant is being charged for the protest of racial segregation and that within the Courthouse itself that the defendant is being tried in that racial segregation is being practiced and that there are interested parties, citizens on the outside of court waiting—

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

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

The Court: Also, let the record show that it has been the practice and custom in the East Baton Rouge Parish

(6)

Courthouse for many, many years, and in the purpose of maintaining order in the courtroom, separate portions are placed in the courtroom for both colored and white, and let the record especially show that the judge in this case ordered that half of the seats that were formerly reserved and available for white people are now being occupied and filled by colored people.

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

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court and the seats available and the number of white people present. I think the State is entitled to that.

The Court: All right.

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

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

The Court: Count them, too.

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

The Court: All right.

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

By the Court:

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

Mr. Jones: Monday, the twenty-ninth.

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

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

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

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

Q. When court opened there were 127 colored and 8
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whites, is that correct? A. Yes, sir.

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

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

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

By Mr. Jones:

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

By the Court:

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

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

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

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

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

The Court: All right, is that all?

By Mr. Jones:

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

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

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

WITNESS EXCUSED

The Court: Captain Thompson.

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

Direct examination by the Court:

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

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

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

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

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

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

By Mr. Pitcher:

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

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

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

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

By the Court:

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

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