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STATUTES CITED

IN THE

# Supreme Court of the United States

**OCTOBER TERM, 1963**

No. .....

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B. ELTON COX,

*Appellant,*

*against*

STATE OF LOUISIANA,

*Appellee.*

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ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

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## JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Supreme Court of Louisiana entered in the above-entitled case on November 12, 1963, affirming a conviction for illegally demonstrating near a courthouse rendered by the District Court for the 19th Judicial District, Parish of East Baton Rouge, Louisiana (hereinafter referred to as the "District Court").

## CITATIONS TO 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 at p. 2a. The opinion of the

Supreme Court of Louisiana affirming the judgment of the District Court on appeal, reported in — La. —, is printed in the Appendix at p. 6a.*

## JURISDICTION

Appellant was 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 discharge of his duty, which is set out in the Appendix at p. 1a. The judgment of the Supreme Court of Louisiana affirming the conviction was entered on November 12, 1963, and rehearing was denied by that court on December 20, 1963. The jurisdiction of this court to review the judgment 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).

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* The Rev. Mr. Cox was convicted on two other counts, for obstructing the sidewalk and breach of the peace at the same trial in the District Court. These convictions were reviewed by the Supreme Court of Louisiana on supervisory writs of mandamus certiorari and prohibition, pursuant to Article VII, Section 10, of the Louisiana Constitution. The convictions were affirmed, La. , 156 So. 2d 448 (1963), and a jurisdictional statement for appeal was filed in this Court on January 8, 1964.

## QUESTIONS PRESENTED

Whether the Louisiana statute regarding parades in or near a courthouse, L. S. A.-R. S. 14:401, by reason of its vagueness and uncertainty, is repugnant to the due process clause of the Fourteenth Amendment to the Constitution.

Whether the Louisiana statute regarding parades in or near a courthouse, L. S. A.-R. S. 14:401, as interpreted and applied to appellant by the courts of Louisiana, is repugnant to the due process clause of the Fourteenth Amendment to the Constitution, because it infringes his right of free speech and free assembly, and to petition for redress of grievances.

Whether the discriminatory application of the Louisiana statute regarding parades in or near a courthouse L. S. A.-R. S. 14:401, has denied appellant the equal protection of the laws under the Fourteenth Amendment to the Constitution.

Whether appellant was denied equal protection of the laws and due process of law under the Fourteenth Amendment to the Constitution by being tried in a court room that was segregated due to state action.

## STATUTES INVOLVED

The statutory provision involved is Louisiana Statutes Annotated, R. S. 14:401. It is printed in the Appendix at p. 1a.

## STATEMENT

On December 14, 1961, twenty-three youngsters who were picketing stores in the downtown area of Baton Rouge, Louisiana, in protest against segregation and discrimination against Negroes, were arrested (T. 348, 400, 458)* and were incarcerated 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). None of the twenty-three arrested the previous day was being tried or arraigned at that time (T. 201-203, 346-347). About noon the students marched down to the Courthouse under the leadership of the appellant, the Rev. B. Elton Cox, a 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). The Sheriff stated on cross-examination 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 lim-

* The transcript of the trial in the District Court, though made by a court stenographer, is not physically part of the record before the Louisiana Supreme Court. To supplement the record, referred to herein by the symbol "R-", the transcript of trial which was submitted to this Court in a companion case, *Cox* v. *Louisiana,* is referred to by the symbol "T-".

ited it to the West side of the street, opposite the Courthouse (T. 371, 516).

The students, more than fifteen hundred of them (T. 51, 71, 269, 313), assembled on the sidewalk on the West side of the street. A group of curious white people gathered on the opposite side of the street (T. 20, 28, 167). More than seventy-five policemen and sheriff's deputies were present, who, according to the inspector who was in charge of the policemen, "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, 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. In response the students in the jail (the same ones who had been arrested the previous day) began to sing (T. 46), and, 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), who then commanded the demonstrators to break up the demonstration. Tear gas was released into the group of students, and it then broke up immediately (T. 377).

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, or of influencing a judge, witness 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 Cox was convicted on the other three counts. In the course of his opinion in regard to obstructing justice by demonstrating in or near a courthouse, the judge said:

> "Now, what do people do when they come and parade in 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 of Louisiana and maintaining, according to certain of our laws, segregation." (T. 547-49; Appendix at pp. 3a-4a)

For obstructing justice, Cox was sentenced* to serve one year in jail and pay a fine of $5,000.00, or in default thereof

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* The Supreme Court of Louisiana reviewed the sentencing procedure in this case, and found it to be invalid. *State* v. *Cox,* 243 La. 917, 148 So. 2d 600 (1962). The appellant was subsequently resentenced.

to serve one year additional. The obstructing justice charge was reviewed in the Louisiana Supreme Court by way of appeal, and the conviction was affirmed. It is this conviction of which review is sought in this Court.*

The validity of the statute here involved, L. S. A.-R. S. 14:401, was called into question because of its repugnancy to the Constitution of the United States, and other questions were raised in the District Court by a motion to quash (R. 22) motion in arrest of judgment (R. 13) and a motion for a new trial (R. 18). Each of these motions was denied, and together with the opinions of the District Court (R. 26, 31, 37), they appear in the Appendix at pp. 22a-35a. In appellant's appeal to the Louisiana Supreme Court from the conviction of obstructing justice, the validity of the statute was again questioned on the ground of repugnancy to the Constitution of the United States. The decision of the Louisiana Supreme Court was in favor of the validity of the statute.

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

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* For breach of the peace and obstructing the sidewalks, Cox was sentenced to serve a total of nine months in jail, and pay a fine of $700.00, or in default thereof to serve nine months additional. The Supreme Court of Louisiana reviewed the convictions by way of application for writs of mandamus certiorari and prohibition, the convictions were affirmed, *State* v. *Cox,* — La. —, 156 So. 2d 448 (1963), and a notice of appeal to this court has been filed.

> 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 at pp. 36a-37a)

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. 36a-41a. The question of the fairness of the trial was also raised in the motions in the District Court and in the application to the Louisiana Supreme Court.

## THE QUESTIONS ARE SUBSTANTIAL

### 1. Unconstitutionality of Statute

The non-violent demonstration which occurred in this case across the street from the District Courthouse in Baton Rouge is, like other peaceful forms of expression, part of the "free trade in ideas" which is protected by the guarantee of freedom of speech and of assembly in the First Amendment. *Edwards* v. *South Carolina,* 372 U. S. 229 (1963). A statute which may affect an area of protected expression must be "* * * 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). This standard is not altered by the simple fact that the demonstration in this case took place across the street from a courthouse and partly in protest against an arrest of prisoners incarcerated in a jail attached to the courthouse. This Court has many times dealt with the constitutional problem presented in this case, that of reconciling the right of the courts to be free of intimidation with the right of freedom of expression "* * * in the broadest scope compatible with the supremacy of order * * *." *Pennekamp* v. *Florida,* 328 U. S. 331, 334 (1946). While the present case, that of criminal sanctions 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.

The Louisiana statute prohibiting demonstrations in or near a courthouse "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" is unconstitutional on its face under the rigorous standard of clear and present danger established by this Court in cases involving protests directed at the administration of justice. Each of the publications found by this Court to be protected under the First Amendment in cases of contempt by publication, e.g., *Pennekamp* v. *Florida,* 332 U. S. 331, 346 (1946), was intended as a protest against some aspect of the administration of justice in the hope of affecting that administration, whether directly or indirectly. The phrase "with the intent of influencing any judge, witness or court officer in the discharge of his duty" would cover those cases of contempt. On its face, therefore, the phrase includes forms of expression which are protected by the First Amendment and it is an infringement of the freedom of speech. *Winters* v. *New York,* 333 U. S. 507 (1948).

This infirmity in the language of the statute the courts of Louisiana might perhaps have cured, see *Winters* v. *New York, supra,* either by limiting the application of the statute as a whole to situations which present a clear and present danger to the administration of justice, or by limiting the meaning of the "intent" necessary to this statute to such situations. Cf. *American Communications Association* v. *Douds,* 339 U. S. 382, 407-408 (1950).

The courts of Louisiana failed to take either course. In considering the statute as a whole, the judge of the Louisiana District Court said that he had the "feeling" that the demonstration was "* * * some subtle intimidation of me or of anyone of us who is responsible for upholding the laws of the State of Louisiana * * *" (Appendix at p. 4a). He did not consider whether the protest presented a clear and present danger to the administration of justice, nor whether it could possibly have presented such a danger, at a time when the prisoners were not being arraigned or tried before his court.

In affirming the decision of the District Court, the Louisiana Supreme Court failed in its turn to apply a constitutionally acceptable standard. It held only that the state has a legitimate right under its police power to protect the impartial administration of justice, without recognizing that the police power is limited in such cases to averting clear and present danger to the administration of justice. In this connection, the Louisiana Court said:

> "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 the press is not

absolute and held that a state may, by general and nondiscriminatory legislation, regulate the exercise of that freedom under its police power. *Cantwell* v. *Connecticut,* 310 U. S. 296.

"Unquestionably these rights, freedoms or privileges of peaceful assembly and of expression and discussion—however they may be considered—as well as the impartial administration and 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 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." — La. at —, Appendix at p. 10a.

This construction of the statute, like that of the District Court, is so broad as to draw within its scope protected forms of speech, because it fails to limit the effect of the statute to cases which present a clear and present danger to the administration of justice.

In defining intent in the clause: "*with the intent* of interfering with, obstructing, or impeding the administra-

tion of justice, or *with the intent* of influencing any judge, juror, witness or court officer in the discharge of his duty" (emphasis supplied), the Louisiana courts again ran afoul of standards set forth in the decisions of this Court. The meaning of this phrase could have been narrowed so as to include only situations in which the accused, by unmistakable acts, shows his intention to affect the outcome of a case or otherwise interfere with the administration of justice. See *Yates* v. *United States,* 354 U. S. 298, 318 (1957) (narrow construction of the meaning of "teaching and advocacy" under the Smith Act so as to cover only situations which present a clear and present danger); *Winters* v. *New York,* 333 U. S. 507 (1948). The decisions of the Louisiana courts exclude such a narrow interpretation, however. This is not a case in which the demonstration was intended to disrupt a trial, and nothing was said during the demonstration which was construable as intimidation of any court. 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 protest demonstration was peaceful (T. 29, 37, 44, 158, 268, 299, 302, 363). Yet both the District Court and the Louisiana Supreme Court found that the necessary intent to obstruct justice or influence an officer of the court was proven. Both courts in effect found *ipso facto* that any demonstration near a courthouse in protest against an arrest, regardless whether the trial of the person arrested is in progress or even imminent, is enough to make out the necessary intent. This ruling utterly fails to restrict the

meaning of intent to obstruct justice or influence a court officer to situations which present a clear and present danger to the administration of justice. Such a vague definition of intent as has been applied here by the Louisiana courts acts as an unconstitutional restraint of freedom of speech. *Pennekamp* v. *Florida,* 328 U. S. 331, 347 (1946).

The construction by the District Court and the Louisiana Supreme Court of the statute as a whole, and of the clause regarding intent in particular, is so general, in the end, as to render the statute too vague and indefinite to give fair notice of what acts may be punished under the statute. It is plain that the statute cannot punish speech which is protected by the First Amendment. It is therefore impossible under the interpretations of the District Court and the Louisiana Supreme Court for any person to ascertain what conduct is prohibited by the statute. *Winters* v. *New York,* 333 U. S. 507 (1948); *Herndon* v. *Lowry,* 301 U. S. 242, 261 (1937).

The only evidence of a danger to the administration of justice or of intent to obstruct justice or influence an officer of the court presented against the Rev. Mr. Cox was the simple fact that he had led a protest, 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 courthouse. 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, *Pennekamp* v. *Florida,* 328 U. S. 331, 347 (1946), 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. *Louisivlle,* 362 U. S. 199 (1960), *Garner* v. *Louisiana,* 368 U. S. 157 (1961); *Taylor* v. *Louisiana,* 370 U. S. 154 (1962).

While this statute has not previously been construed by the Supreme Court of Louisiana, we must assume 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. 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. 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. The Louisiana Supreme Court has failed in this case to apply the rigorous standard for clear

and present danger and for intent which it has established in similar cases, and it has thus affirmed a conviction of crime based upon no evidence of any acts which might be punished as criminal under the United States Constitution or the laws of Louisiana.

***Discriminatory Administration of the Law***

Passing from the construction of the statute involved here to the manner of its administration, the facts in this case show that the statute was used by the state and city auhorities to discriminate against active campaigning for integration of the races. The demonstration in this case was carried out in the manner prescribed by the chief of police and the sheriff, and they were willing to permit and did permit the demonstration until Mr. Cox advocated a sit-in at lunch-counters; only then did the demonstration seem to them a violation of law (T. 364, 376). Under the decisions of this Court, to permit a demonstration until it advocates ideas with which the authorities or the general public disagree is a discriminatory application of the law which constitutes 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).

The question of the repugnancy to the Constitution of the Louisiana statute concerning demonstrations in or near a courthouse, L. S. A.-R. S. 14:401 both on its face and as applied, is a most important and pressing problem. Like

the breach of the peace statute under which the Rev. Mr. Cox has been convicted in the companion case to this, arising out of the same demonstration,* the statute in this case is a powerfully repressive influence on freedom of speech. The peaceful protest against segregation is surely one of the most important means of political expression of our time, and the question whether a statute may validly be drawn or construed and applied in such a way as to kill that form of expression is one of the most important problems before this Court. Unless the decision of the Supreme Court of Louisiana is reversed, it will act as a prior restraint on speech against racial discrimination. *Smith* v. *California,* 361 U. S. 147 (1959).

**2. Segregated courtroom**

The segregation in the courtroom at the trial of this case, though it presents no appealable issue under 28 United States Code §1257(2), does present a most urgent federal question affecting the administration of justice. The case of *Johnson* v. *Virginia,* 373 U. S. 61 (1963), in which this Court reversed the conviction of the defendant, a Negro, for contempt for sitting in the section reserved for whites in a state courtroom, has established the proposition that segregation of a courtroom by state action is a denial of equal protection of the laws.

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* A jurisdictional statement for appeal to this Court was filed on January 8, 1964. The statute mentioned is L. S. A.-14:103.1 (1960).

It is perfectly clear on the record in this case that the courtroom here, like that in the *Johnson* case, was segregated by action of the judge (T. 5; *supra,* p. 8). In the companion case to the present one, the Louisiana Supreme Court distinguished the *Johnson* case on the ground that the defendant here was not the person discriminated against in the courtroom. — La. at —, 156 So. 2d 448, 456 (1963) Appendix at p. 20a. This decision begs the question whether racial discrimination against persons in the courtroom is not also discrimination against the defendant. It leaves open entirely the question whether the appellant here had a fair trial, or could have had one, in a courtroom blatantly administered in an unconstitutional way. Whether or not a court may have the objectivity necessary for the administration of due process of law when trying one who protests against segregation and discrimination where the judge himself maintains a segregated courtroom is a question which should be, we urge, decided by this Court.

It is evident, at the outset, that a denial of equal protection of laws in the administration of justice is a denial of equal protection of the laws to the defendant tried under such administration, see *Eubanks* v. *Louisiana,* 356 U. S. 584 (1958) (discrimination in selection of grand and petit jury). Moreover, in the cases of demonstrations against segregation, this unconstitutional administration of justice is a denial of due process of law for the reason that it affects the decision of the trial court. In a case such as this, where the trial judge is required to decide whether or not a demonstration against segregation constitutes a clear and present danger to the administration of justice, *Wood* v.

*Georgia,* 370 U. S. 375, 385 (1962), a question entailing a large area of discretion about the effects of segregation and integration upon the public mind, the presence of segregation in the courtroom must necessarily affect his decision. If he not only has the segregated courtroom before his eyes, but administers it as well, as he did here (T. 5, *supra,* p. 8), the effect is still stronger. If the unconstitutional administration of the court affects its decisions upon the law and the facts, it is a denial of a fair trial under the due process clause of the Fourteenth Amendment to the Constitution. Cf. *Irvin* v. *Dowd,* 366 U. S. 717 (1961).

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 on 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. 38a-41a). These people, had they been in the courtroom, might have influenced the witnesses who appeared toward greater veracity, and more important, they might have included among themselves some further wit-

nesses. 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).

The question whether it is a denial of equal protection of the laws and of a fair and public trial to try a case involving freedom of speech about racial discrimination in a courtroom segregated by state action, has not been squarely presented to this court before. It raises very basic questions as to what sanctions ought to be used by the federal government to prevent unconstitutional acts of segregation by the states and what effect such unconstitutional segregation has upon the state administration of criminal justice. This Court has the power to reverse a state conviction, because of the unconstitutional administration of justice, in the effort to impose effective sanctions for the violation of constitutional rights, *Mapp* v. *Ohio,* 367 U. S. 643 (1961), and in a case such as this, where the unconstitutional administration must influence both the decision of the judge and the publicity of the trial, it is essential that the power be used.

It is submitted that the statute here involved, L. S. A.-R. S. 14:401, like the statutes involved in the companion case arising out of the same demonstration, is repugnant to the right of freedom of speech under the Constitution of the United States, and that the decision of the Louisiana Supreme Court in favor of the validity of this statute is in error. It is further submitted that this statute has been administered in a manner which denied to appellant due process of law and equal protection of the laws. We believe

that the questions presented by this appeal are substantial and of the utmost public importance.

Respectfully submitted,

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

ROBERT COLLINS,
NILS DOUGLAS,
LOLIS ELIE,
2211 Dryades Street,
New Orleans, La.
*Attorneys for B. Elton Cox, Petitioner.*

*Of Counsel:*

PAUL G. CHEVIGNY,
One Wall Street,
New York, New York.

FLOYD MCKISSICK,
MURPHY BELL,
CHARLES OLDHAM,
WESTER SWEET,
ERNEST FINNEY.