INDEX

TABLE OF CASES CITED

STATUTES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. ——

B. ELTON COX,

Appellant,

against

STATE OF LOUISIANA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Supreme Court of Louisiana entered in the above-entitled case on June 28, 1963, which affirmed the verdict of conviction rendered by the District Court for the Nineteenth 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. 4a. The opinion of the Supreme Court of Louisiana denying the application for writs of mandamus, certiorari and prohibition, and affirming the judgment of the District Court, reported in — La. —, 156 So. 2d 448 (1963), is printed in the Appendix at p. 10a.

JURISDICTION

Appellant was convicted under the Louisiana breach of the peace statute, L. S. A.-R. S. 14:103.1, and the Louisiana 14:100.1, set out in the Appendix at pp. 1a and 2a. The judgment of the Supreme Court of Louisiana affirming the conviction was entered on June 28, 1963, and rehearing was denied by that Court on October 9, 1963. The jurisdiction of the Supreme 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); *Saia* v. *New York,* 334 U. S. 558 (1948).

QUESTIONS PRESENTED

Whether the Louisiana breach of the peace statute, Louisiana Statutes Annotated, R. S. 14:103.1, by reason of its vagueness and uncertainty is repugnant to the due process clause of the Fourteenth Amendment to the Constitution.

Whether the Louisiana breach of the peace statute, Louisiana Statutes Annotated, R. S. 14:103.1, as applied to appellant, by infringing his right of free speech and free assembly, and to petition for redress of grievances, denied him due process of law and equal protection of the laws under the Fourteenth Amendment to the Constitution.

Whether the Louisiana statute against obstructing the sidewalk, Louisiana Statutes Annotated, R. S. 14:100.1, as applied to appellant, by infringing his right of free speech

and free assembly, and to petition for redress of grievances, denied him due process of law and 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 courtroom that was segregated due to state action.

STATUTES INVOLVED

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

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

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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 record before the Louisiana Supreme Court. To supplement the record, referred to herein by the symbol "R-", the transcript of trial is submitted with this petition and referred to by the symbol "T-".

** While the immediate facts of this case are as stated here, the events were part of a continuous course of conduct in Baton Rouge on December 15, 1961. Petitions for certiorari have been filed with this Court in two other cases arising out of these events. *Moore* v. *Louisiana* (conviction for use of a sound truck) and *Clemmons* v. *CORE,* where the Court of Appeals for the Fifth Circuit vacated an injunction against CORE granted by the U. S. District Court in Baton Rouge, La., 323 F. 2d 54 (5 Cir. 1963).

old Capitol Building in Baton Rouge (T. 251, 437, 510-512). 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 "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).

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 curious group of 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 (arrested the previous day) began to sing (T. 467). Hearing the prisoners sing, 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 crowd, which 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 obstructing justice. The trial took place in the District Court at Baton Rouge, the very building before which the demonstrators had gathered, on January 29 through 31, 1962, without a jury. The criminal conspiracy charge was dismissed, but Cox was convicted on the other three counts.

In the course of his opinion in regard to breach of the peace, the trial judge stated:

> "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 * * *". (T. 545; Appendix at pp. 8a-9a)

Cox was sentenced* to serve four months in jail and pay a fine of $200.00, or in default thereof to serve four months additional for breach of the peace, and for obstructing the sidewalk he was sentenced to serve five months in jail and pay a fine of $500.00, or in default thereto to serve five months additional. For obstructing justice he was sentenced to serve one year in jail and to pay a fine of $5000.00, or in default thereof to serve one year additional. The obstructing justice charge has been reviewed in the Louisiana Supreme Court by way of appeal.** The Supreme Court of Louisiana reviewed the convictions for obstructing the sidewalk and breach of the peace by way of applications

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* The Supreme Court of Louisiana reviewed the sentencing procedures in the convictions in these cases for breach of the peace and obstructing the sidewalk, and found them to be invalid, *Cox* v. *Clemmons*, 243 La. 264, 142 So. 2d 794 (1962). The appellant was subsequently resentenced.

** The decision in that case was affirmed by the Supreme Court of Louisiana on November 12, 1963, and petitioner has sought a rehearing in that court.

for supervisory writs of mandamus, certiorari and prohibition,* and it is the denial of these applications for which review is sought in this Court.

The validity of the statutes here involved was called into question because of their repugnance to the Constitution of the United States, and other federal questions were raised in the District Court by a motion to quash prior to trial (R. 16), and by motions in arrest of judgment and for a new trial (R. 30, 35). Each of these motions was denied (R. 42, 48, 56) and together with the opinions of the District Court they appear in the Appendix at pp. 27a, 31a, 36a. In appellant's application to the Louisiana Supreme Court for writs of certiorari, mandamus and prohibition in these cases, the validity of the statutes was again questioned on the ground of repugnancy to the Constitution of the United States. The decision 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 espe-

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* Under Article VII, Sec. 10, Louisiana Constitution, the Supreme Court of Louisiana has general supervisory powers over inferior courts, but no appeal is available in criminal cases unless a sentence of more than six months or a fine of more than $300.00 has been imposed. Despite the fact that the fine imposed under the obstructing the sidewalk charge was $500.00 the Supreme Court of Louisiana reviewed the case by application for supervisory writs.

> cially 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. 40a-41a)

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. 42a-45a. 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 Statutes.

The demonstration which occurred in this case is a classic example of a peaceful assembly for the redress of grievances, see *Edwards* v. *South Carolina,* 372 U. S. 229 (1963), and as such it is within the protected area of "free trade in ideas" under the First Amendment. When the legislature or the courts establish a rule of law which may infringe upon the expression of ideas, the law must be "narrowly drawn 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), quoted by Harlan, J., concurring in *Garner* v. *Louisiana,* 368 U. S. 157, 202 (1961). Under this standard, as applied in decisions of this court, the breach of the peace statute under which Mr. Cox was convicted, Louisiana Statutes Annotated, R. S. 14:103.1, Appendix at p. 2a, is

invalid by reason of its repugnancy to the right of freedom of speech as embodied in the Due Process Clause of the Fourteenth Amendment to the Constitution. The statute is drawn so as to punish the acts of congregating on a sidewalk and failing to "move on, when ordered so to do by any law enforcement officer * * *", when these acts are done "* * * under circumstances such that a breach of the peace *may be occasioned* thereby * * *" (Emphasis added). The emphasized phrase plainly may be used to punish more than conduct which presents a clear and present danger to the interest of the state, and logically draws within its ambit that free expression of ideas which is protected by the First Amendment. The dangers of such a phrase are clearly evident in this case, where the statute has been used to punish protected speech. A similar phrase was used by the Supreme Court of South Carolina in defining the common-law offense of breach of the peace,* and in *Edwards* v. *South Carolina,* 372 U. S. 229 (1963), this interpretation of the meaning of breach of the peace was held to infringe the rights of demonstrators to freedom of speech and freedom to petition for redress of grievances. See also *Winters* v. *New York,* 333 U. S. 507 (1948).

The clause in the breach of the peace statute which punishes a failure to "* * * move on, when ordered to do by any law enforcement officers * * *" is also repugnant to freedom of speech, since it puts in the hands of law enforcement officers the power to control street demonstrations, while

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* "* * * It is not necessary that the peace be actually broken to lay the foundation for a prosecution for this offense. If what is done is unjustifiable and unlawful, tending with sufficient directness to break the peace, no more is required. * * *". 239 S. C. at 343-344, 123 S. E. 2d at 49, quoted in 372 U. S. at 234.

providing no standards for the protection of the peaceful expression of ideas. *Winters* v. *New York,* 333 U. S. 507 (1948).

The vague phraseology of the Louisiana breach of the peace statute thus permits the officers of the state to punish speech even when it is peaceful, on the ground that it may produce disturbance and unrest, exactly as they have done in this case, and it is just this official interference with speech that the First Amendment is intended to prevent. This phraseology further permits spectators who disagree with opinions in a speech to bring it to an end by creating, or even threatening a disturbance. It is clear that the right of freedom of speech may not be limited because of the opposition of spectators. *Terminiello* v. *Chicago,* 337 U. S. 1 (1948).

The interpretation of the breach of the peace statute by the Supreme Court of Louisiana and the Baton Rouge District Court in this case have only served to increase the repugnancy of the statute to the right of freedom of speech. The Supreme Court of Louisiana in 156 So. 2d at 454, in the Appendix at pp. 19a-20a, attempted to distinguish the *Edwards* case, *supra,* on the ground that the conviction in the present case was obtained under a precisely drawn regulatory statute, similar to a traffic law, a situation specifically left open in the *Edwards* case, 372 U. S. 229, 236. In fact, however the Louisiana Supreme Court failed to define the breach of the peace statute as a narrowly drawn regulatory statute, for that court commented upon the statute as follows:

> "LSA—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 distubance 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)'' — La. at —, 156 So. 2d at 448, Appendix at p. 22a.

This statute, as interpreted by the highest court of the state, thus punishes speech protected by the First Amendment, under the decision in *Terminiello* v. *Chicago,* 337 U. S. 1 (1948). The terms used by the state court in defining the statute held invalid in that case were similar to the terms used by the Louisiana Supreme Court here, and the rationale used by this Court in deciding that case is equally applicable to the present case:

> ''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 unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, Chaplinsky v. New Hampshire, supra (315 US pp. 571, 572, 86 L. ed. 1034, 1035, 62 S. Ct. 766), 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 definition of disturbing the peace used in this case by the judge of the District Court (T. 545, quoted *supra,* p. 6), is even more objectionable under the standard of the *Terminiello* case. The judge there took the position that a mass demonstration against segregation was an "inherent breach of the peace." This rule deliberately restricts and discriminates against speech, however peaceful, which tends to arouse a complacent public from its acceptance of segregation, and such a standard is condemned by *Terminiello.*

The statute against obstructing the sidewalk, Louisiana Statutes Annotated, R. S. 14:100.1, in the Appendix at p. 1a, and the breach of the peace statute as well, were administered by the state and city authorities so as to discriminate against active campaigning for integration of the races. The demonstration in this case was not violent and did not advocate violence, as the officers knew (T. 299, 363, discussed *supra,* p. 5), and it was not on account of violence that the demonstration was broken up. The city and state authorities were willing to permit and did permit the demonstration in this case until the Mr. Cox advocated a sit-in; only then did the demonstration seem to them a disturbance of the peace (T. 364, 376, discussed *supra,* p. 5).* Under the decisions of this Court, to permit a demonstration until it advocates something with which the authorities or the general public disagrees, however emphatically, is a discriminatory application of the law which constitutes both an unwarranted interference with freedom of speech and a denial of equal protection of the laws under

* The judge of the District Court agreed with them in ruling that demonstrating against segregation by singing a song with the lines, "black and white together", and urging a sit-in is an "inherent breach of the peace" (T. 545, quoted *supra,* p. 6).

the Fourteenth Amendment. See *Niemotko* v. *Maryland*, 340 U. S. 276, 273 (1951), *Terminiello* v. *Chicago*, 337 U. S. 1 (1948).

The question of the repugnancy to the Constitution of the Louisiana statutes involved in this case is a most important and pressing problem. As this Court noted in *Garner* v. *Louisiana*, 368 U. S. 157, 168 (1961), which involved an earlier Louisiana breach of the peace statute, the statutes involved here were passed in the attempt to punish sit-ins and other forms of protest against segregation. The peaceful protest against segregation is surely one of the most important forms of political expression of our time, and the question whether a statute may validly be drawn or administered in such a way as to kill that form of expression is one of the most important problems presented to this Court in this or any other time. Until this question is decided, the Louisiana statutes cast a pall over peaceful protest in the state.*

2. Segregated courtroom.

The segregation in the courtroom at the trial of this case does not present an appealable issue under the rules of this Court, but it 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 segre-

* Two other prosecutions arose out of the events in Baton Rouge on December 15, 1961, in the effort to stifle protest against segregation. *Clemmons* v. *CORE*, 323 F. 2d 54 (5 Cir. 1963); *Moore* v. *Louisiana*. They are discussed above, footnote to p. 3.

gation of a courtroom by state action is a denial of equal protection of the laws.

It is perfectly clear on the record in this case that the courtroom was segregated by action of the judge (T. 5; *supra,* p. 7). 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 at 456, Appendix at p. 25a.

Left open is the question as to whether the defendant had a fair trial, or could have had one, in a courtroom blatantly administered in an unconstitutional way. 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 a substantial interest of the state, *Cantwell* v. *Connecticut,* 310 U. S. 296, 307 (1940), 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, the effect must be still stronger. If the unconstitutional administration of the court affects its decisions upon the law and the facts, it must be 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. 42a-45a). 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 witnesses. 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 a fair and public trial to try a case, involving freedom of speech about segregation, 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 unconsitutional segregation has upon the state administration of criminal justice. It is perfectly clear that 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 statutes here involved are 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 these statutes is in error. It is further submitted that these statutes have been applied and 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,

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