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Richmond, Va.

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# Record No. 5233

## In the Supreme Court of Appeals of Virginia at Richmond

## RAYMOND B. RANDOLPH, JR.

v.

## COMMONWEALTH OF VIRGINIA

FROM THE HUSTINGS COURT OF THE CITY OF RICHMOND

### RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

**Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.**

IN THE

# Supreme Court of Appeals of Virginia

AT RICHMOND

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## Record No. 5233

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 5th day of October, 1960.

RAYMOND B. RANDOLPH, JR., Plaintiff in Error,

*against*

COMMONWEALTH OF VIRGINIA, Defendant in Error.

---

From the Hustings Court of the City of Richmond

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Upon the petition of Raymond B. Randolph, Jr., a writ of error and *supersedeas* is awarded him to a judgment rendered by the Hustings Court of the City of Richmond on the 26th day of May, 1960, in a prosecution by the Commonwealth against the said Raymond B. Randolph, Jr., for a misdemeanor; upon the petitioner, or some one for him, entering into bond with sufficient surety before the clerk of the said hustings court in the penalty of three hundred dollars, with condition as the law directs; but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

# RECORD

* * * * *

No. 47243.

Commonwealth of Virginia,
City of Richmond, to-wit:

TO ANY POLICE OFFICER:

WHEREAS, Ben Ames has this day made complaint and information on oath, before me, the undersigned, a Justice of the Peace of said city, that Raymond B. Randolph Jr. did on the 22nd day of Feb. 1960, Unlawfully violate Title 18-225 Code of Virginia 1950 as amended in that he did trespass on certain property of Thalhimer Bros. Inc.

These are, therefore, to command you, in the name of the Commonwealth, to apprehend and bring before the Police Court of the City of Richmond, the body of the above accused, to answer the said complaint and to be further dealt with according to law. And you are also directed to summon Ben Ames—Nick Fucella, Thalhimer Bros. Inc. as witnesses.

Given under my hand and seal, this 22nd day of Feb. 1960,

C. D. WILLIAMS (Seal)
Justice of the Peace.

(on back)

Docket No. 8613.

WARRANT OF ARREST.

Commonwealth,

*v.*

Raymond B. Randolph Jr., Va. Union University.

Executed this, the 22nd day of Feb., 1960 by arresting the within named party, and by summoning the within named witnesses to appear in Police Court, J. E. Fitzgerald.

Upon examination of the within charge, I find the accused Guilty, Fined $20.00 & $6.25 costs.

HAROLD C. MAURICE, Judge.

Mar. 22, 1960.

* * * * *

Virginia:

In the Hustings Court of the City of Richmond.

Pleas at the Courthouse in the City of Richmond, before the Hustings Court of the said City, on the 26th day of May, 1960.

Be it remembered that heretofore, to-wit; on the 16th day of May, the following orders were entered in the trials of the cases hereinafter listed on the charge in the foregoing warrants:

Commonwealth,

*v.* Appeal

Leroy B. Bray, Jr., Dft.

Commonwealth,

*v.* Appeal

Robert B. Dalton, Dft.

Commonwealth,

*v.* Appeal

Gordon Coleman, Dft.

Commonwealth,

*v.* Appeal

Gloria Collins, Dft.

Commonwealth,

*v.* Appeal

Joseph E. Ellison, Jr., Dft.

Commonwealth,

*v.* Appeal

Marise Ellison, Dft.

Commonwealth,

*v.* Appeal

Wendell T. Foster, Jr., Dft.

Commonwealth,

*v.* Appeal

A. Franklin, Dft.

Commonwealth,

*v.* Appeal

Donald V. Goode, Dft.

Commonwealth,

*v.* Appeal

Albert Van Graves, Jr., Dft.

Commonwealth,

*v.* Appeal

Woodrow Grant, Dft.

Commonwealth,

*v.* Appeal

George Wendall Harris, Jr., Dft.

Commonwealth,

*v.* Appeal

Yvonne Hickman, Dft.

Commonwealth,

*v.* Appeal

Joana Hinton, Dft.

Commonwealth,

*v.* Appeal

Carolyn Horne, Dft.

Commonwealth,

*v.* Appeal

Richard C. Jackson, Jr., Dft.

Commonwealth,

*v.* Appeal

Elizabeth Johnson, Dft.

Commonwealth,

*v.* Appeal

Ford T. Johnson, Jr., Dft.

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Commonwealth,

*v.* Appeal

Milton Johnson, Dft.

Commonwealth,

*v.* Appeal

Celia E. Jones, Dft.

Commonwealth,

*v.* Appeal

Clarence A. Jones, Jr., Dft

Commonwealth,

*v.* Appeal

John Jones McCall, Dft.

Commonwealth,

*v.* Appeal

Frank G. Pinkston, Dft.

Commonwealth,

*v.* Appeal

Larry Pridgen, Dft.

Commonwealth,

*v.* Appeal

Ceotis L. Pryor, Dft.

Commonwealth,

*v.* Appeal

Raymond B. Randolph, Jr., Dft.

Commonwealth,

*v.* Appeal

Samuel Shaw, Dft.

Commonwealth,

*v.* Appeal

Charles M. Sherrod, Dft.

Commonwealth,

*v.* Appeal

Virginia Simms, Dft.

Commonwealth,

*v.* Appeal

Ronald Smith, Dft.

Commonwealth,

*v.* Appeal

Barbara Thornton, Dft.

Commonwealth,

*v.* Appeal

Randolph Allen Tobias, Dft.

Commonwealth,

*v.* Appeal

Patricia Washington, Dft.

Commonwealth,

*v.* Appeal

Lois B. White, Dft.

The said defendants this day appeared and were set to the bar in the custody of the Sergeant of this City and were represented by Martin A. Martin, et als. as counsel, and each being arraigned separately, each pleaded not guilty of violating title 18, section 225 of the Code of Virginia, in that he or she did trespass on the property of Thalhimer Brothers, Inc., as charged in their respective warrants. And with the consent of the accused, given in person in each case, and the concurrence of the Court and the Attorney for the Commonwealth, the Court proceeded to hear and determine these cases jointly and without a jury, and having heard the evidence

and arguments of counsel, doth continue these cases until May 26, 1960 at 9:30 A. M. and being on bail, the said defendants are directed to appear again on said May 26, 1960.

* * * * *

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* * * * *

In the Hustings Court of the City of Richmond, May 26, 1960 (2nd sheet).

* * * * *

The said defendants this day again appeared and were set to the bar in the custody of the Sergeant of this City and these cases having been submitted to this Court on the stenographic record of the evidence heard in the Police Court of this City and the Court, after careful perusal of the said records and the briefs submitted by counsel for both sides, doth find each of the said defendants guilty of violating Title 18, Section 225 of the Code in that they did trespass on the property of Thalhmier Brothers, Inc., and assess a fine against each of twenty dollars.

Whereupon it is considered by the Court that the said Leroy M. Bray, Jr., Dft., Gordon Coleman, Gloria Collins, Joseph E. Ellison, Jr., Marise Ellison, Albert Van Graves, Jr., Frank G. Pinkston and Charles M. Sherrod each pay and satisfy a fine of twenty dollars and costs.

And thereupon the said defendants moved the Court to suspend the execution of the sentence in order that they may apply to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas,* which motion the Court doth grant and the execution of the sentence in each case is suspended to September 16, 1960.

And thereupon each of the said defendants entered into a recognizance in the sum of one hundred dollars, with Felix J. and Lillian G. B. Brown, 2103 Miller Avenue, as sureties, conditioned that if the said Leroy M. Bray, Jr., Gordon Coleman, Gloria Collins, Joseph E. Ellison, Jr., Marise Ellison, Albert Van Graves, Jr., Frank G. Pinkston and Charles M. Sherrod shall appear before this Court September 16, 1960, to abide by and perform the judgment of this Court entered this day in the event the Supreme Court of Appeals should affirm same or refuse to grant a writ of error or if granted to be afterwards dismissed, and in the meantime keep the

peace and be of good behavior and violate none of the laws of this Commonwealth, then this recognizance to become null and void, else to remain in full force and virtue

And thereupon the said defendants are released.

* * * * *

page 4 }

* * * * *

And at the same Hustings Court held for the City of Richmond, at the Courthouse, on the 26th day of May, 1960, the following orders were entered;

* * * * *

The said defendants this day again appeared and were set to the bar in the custody of the Sergeant of this City and these cases having been submitted to this Court on the stenographic record of the evidence heard in the Police Court of this City and the Court, after careful perusal of the said records and the briefs submitted by counsel for both sides, doth find each of the said defendants guilty of violating Title 18, Section 225 of the Code in that they did trespass on the property of Thalhimer Brothers, Inc., and assess a fine against each of twenty dollars.

Whereupon it is considered by the Court that the said Robert B. Dalton, Wendell T. Foster, Jr., A. Franklin, Donald V. Goode, Richard C. Jackson, Jr., and Ceotis L. Pryor each pay and satisfy a fine of twenty dollars and costs.

And thereupon the said defendants moved the Court to suspend the execution of the sentence in order that they may apply to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas,* which motion the Court doth grant and the execution of the sentence in each case is suspended to September 16, 1960.

And thereupon each of the said defendants entered into a recognizance in the sum of one hundred dollars, with Theodore T. and Gertrude T. Duncan, as sureties, conditioned that if the said Robert B. Dalton, Wendell T. Foster, Jr., A. Franklin, Donald V. Goode, Richard C. Jackson, Jr., and Ceotis L. Pryor shall appear before this Court September 16, 1960, to abide by and perform the judgment of this Court entered this day in the event the Supreme Court of Appeals should affirm same or refuse to grant a writ of error or if granted to be afterwards dismissed, and in the meantime keep the

peace and be of good behavior and violate none of the laws of this Commonwealth, then this recognizance to become null and void, else to remain in full force and virtue.

And thereupon the said defendants are released.

* * * * *

page 5 } Virginia:

In the Hustings Court of the City of Richmond, May 26, 1960 (3rd sheet).

* * * * *

The said defendants this day again appeared and page 6 } were set to the bar in the custody of the Sergeant of this City and these cases having been submitted to this Court on the stenographic record of the evidence heard in the Police Court of this City and the Court, after careful perusal of the said records and the briefs submitted by counsel for both sides, doth find each of the said defendants guilty of violating Title 18, Section 225 of the Code in that they did trespass on the property of Thalhimer Brothers, Inc., and assess a fine against each of twenty dollars.

Whereupon it is considered by the Court that the said Woodrow Grant, George Wendell Harris, Yvonne Hickman, Joana Hinton, Carolyn Horne, Elizabeth Johnson, Milton Johnson, Ford T. Johnson, Jr., Celia E. Jones, Clarence A. Jones, Jr., John Jones McCall, Larry Pridgen, Raymond B. Randolph, Jr., Samuel Shaw, Virginia Simms, Ronald Smith, Barbara Thornton, Randolph Allen Tobias, Patricia Washington and Lois B. White each pay and satisfy a fine of twenty dollars and costs.

And thereupon the said defendants moved the Court to suspend the execution of the sentence in order that they may apply to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas,* which motion the Court doth grant and the execution of the sentence in each case is suspended to September 16, 1960.

And thereupon each of the said defendants entered into a recognizance in the sum of one hundred dollars, with Neverett A. Eggleston, 600 Edgehill Road, as surety, conditioned that if the said Woodrow Grant, George Wendell Harris, Yvonne Hickman, Joana Hinton, Carolyn Horne, Elizabeth Johnson, Milton Johnson, Ford T. Johnson, Jr., Celia E. Jones, Clarence A. Jones, Jr., John Jones McCall, Larry Pridgen, Raymond B. Randolph, Jr., Samuel Shaw, Virginia Simms, Ronald

Smith, Barbara Thornton, Randolph Allen Tobias, Patricia Washington and Lois B. White shall appear before this Court September 16, 1960, to abide by and perform the judgment of this Court entered this day in the event the Supreme Court of Appeals should affirm same or refuse to grant a writ of error or if granted to be afterwards dismissed, and in the meantime keep the peace and be of good behavior and violate none of the laws of this Commonwealth, then this recognizance to become null and void, else to remain in full force and virtue.

And thereupon the said defendants are released.

* * * * *

page 7 }

* * * * *

And at another Hustings Court held for the City of Richmond at the Courthouse, on the 5th day of July, 1960, the following order was entered:

Commonwealth,

*v.*

Frank G. Pinkston, et als., Dfts.

APPEALS.

The transcripts of the evidence, objections to evidence and other incidents in the trials were this day signed and sealed by the Court and delivered to the Clerk of this Court and hereby made a *a* part of the record in these cases.

* * * * *

page 8 }

* * * * *

OPINION.

The defendant, on February 22nd, 1960, and a number of other students, entered Thalhimer's Department Store, a private corporation, located in the City of Richmond, Virginia, and attempted to obtain service at its eating facilities reserved

for white patrons. Each was refused service, and each was requested to leave the premises, after being informed they would be arrested for trespassing should they fail to do so. Upon their failure to leave, and after being further advised that they would be arrested should they fail to do so, warrants were obtained and he and thirty-three other negroes were arrested.

There was a sale in progress at Thalhimers on the day of the arrest, and there were a large number of people in the store, so many in fact, it became necessary to call upon the Richmond Fire Department to keep the aisles open for traffic. One student (see Transcript—Ronald Smith, page 11) was requested by a representative of the fire department to ask his group "to move back and keep enough room because of fire rules—."

Since all of the defendants refused and chose not to leave the premises Mr. Newman Hamblett, Vice-President and Director of Operations for Thalhimers and other authorized store officials caused warrants to be issued for their arrest.

The thirty-four cases are before this Court on appeal from Police Court where each defendant was tried and found guilty of trespassing. By agreement of counsel the transcripts of the evidence taken in Police Court are to be taken and read as the evidence before this Court in these cases. The issues are the same in each case. Oral arguments have been made and briefs have been submitted.

Since the briefs filed in these proceedings fully cover the law on the subject the Court does not deem it necessary to review the many cases cited therein in this opinion.

Section 18.225 of the Code of Virginia, and I shall quote only the pertinent part thereof, prior to its amendment by the 1960 session of the General Assembly of Virginia, provided:

page 9 } "If any person shall without authority go upon or remain upon the lands of another, after having been forbidden to do so by the owner, lessee, custodian or other person lawfully in charge of such land * * * he shall be deemed guilty of a misdemeanor * * *"

The evidence in this case unequivocally establishes that the defendants were requested to leave the proprty of Thalhimer's by a duly authorized employee; but chose instead to remain upon the premises.

The record further establishes that Thalhimers is a private corporation, and was operated by private owners and with private capital. It is under no duty to serve everyone who

enters its store. It may accept some customers and reject others on purely personal grounds.

The most recent case on the subject supporting this right is that of *Wilmington Parking Authority* v. *Butler,* 157 A 2nd 894, (Delaware 1960), and is an action based on a declaratory judgment. It was contended that Eagle Coffee Shop, Inc., the lessee of Wilmington Parking Authority, could not operate its restaurant business in the parking structure at Ninth and Shipley Streets, Wilmington, in a racially discriminatory manner. The action was commenced by a negro who was denied service by Eagle solely because of his race, color, or ancestry; this he argued abridged his rights guaranteed by the Fourteenth Amendment to the Constitution of the United States.

The Court reviewed the many recent decisions of Federal courts dealing with racial matters beginning with *Brown* v. *Board of Education of Topeka,* 347 U. S. 483; *Nash* v. *Air Terminal Service Inc.,* 85 F. Supp. 545; *Derrington* v. *Plummer,* 240 F. 2nd 922 (5 cir.) and others.

Judge Wolcott, speaking for the Court, on page 899, said:

"It thus seems apparent to us from the cited authorities that the Fourteenth Amendment is applicable to the operation of a facility, either public or quasi-public in nature, if either the facility has been erected and is maintained with public money, or if the operation of such facility is conducted under public auspices or control."

And again on pages 901 and 902 paragraphs (3), (4), (5) and (6) the Court said:

"We neither condemn nor approve such private discriminatory practices for the courts are not keepers of the morals of the public. We apply the law, whether or not that law follows the current fashion of social philosophy.

page 10 } "Particularly is this true of a state court which is called upon in this field to apply rules made for us by the Supreme Court of the United States which, in the case of this state, have resulted in the discard of a large portion of our local law dealings with the emotional subject of racial relations. We are, of course, bound to follow Federal decisions, but we think we are equally bound, when they erode our local law, not to extend them to a point beyond which they have not as yet come.

"It follows, therefore, that Eagle, in the conduct of its

business, is acting in a purely private capacity. It acts as a restaurant keeper and, as such, is not required to serve any and all persons entering its place of business, any more than the operator of a book store, barber shop, or other retail business is required to sell its product to everyone. This is the common law, and the law of Delaware as restated in 24 Del. C. paragraph 1501 with respect to restaurant keepers. 10 Am. Jur., Civil Rights, paragraphs 21; 22; 52 Am. Jur. Theatres paragraph 9; *Williams* v. *Howard Johnson's Restaurant,* 4 Cir. 268 F 2nd 845."

After reviewing the briefs submitted by counsel this Court is of the opinion that no constitutional rights of the defendants' have been violated, and that Thalhimer's was fully within its rights in denying service to the defendants. The Court is of the further opinion that the failure of the defendants to leave the premises when requested by an official of Thalhimers constituted trespass under Section 18.225 of the Code of Virginia.

MOSCOE HUNTLEY.

5/26/60.

page 11 } I, W. Moscoe Huntley, Judge of the Hustings Court of the City of Richmond, Virginia, who presided over the foregoing trials of the Commonwealth *v.* Leroy M. Bray, Jr., Robert B. Dalton, Gordon Coleman, Gloria Collins, Joseph E. Ellison, Jr., Marise Ellison, Wendell T. Foster, Jr., A. Franklin, Donald V. Goode, Albert Van Graves, Jr., Woodrow Grant, George Wendall Harris, Jr., Yvonne Hickman, Joana Hinton, Carolyn Horne, Richard C. Jackson, Jr., Elizabeth Johnson, Ford T. Johnson, Jr., Milton Johnson, Celia E. Jones, Clarence A. Jones, Jr., John Jones McCall, Frank G. Pinkston, Larry Pridgen, Ceotis L. Pryor, Raymond B. Randolph, Jr., Samuel Shaw, Charles M. Sherrod, Virginia Simms, Ronald Smith, Barbara Thornton, Randolph Allen Tobias, Patricia Washington, Lois B. White, in the said Court at Richmond, Virginia, on May 16, 1960 and May 26, 1960, do certify that the foregoing transcripts (each properly identified) are true and accurate transcripts of the evidence presented in each of the foregoing cases and were presented to me this 5th day of July, 1960, and signed and sealed by the Court and made a part of the record in said cases.

MOSCOE HUNTLEY.

I, L. A. Schumann, Deputy Clerk of the Hustings Court of the City of Richmond, Virginia, certify that the foregoing transcripts referred to in each of the above cases were delivered to me this 5th day of July, 1960, by the Judge of this Court and made a part of the record in each of the said cases.

Given under my hand this 5th day of July, 1960.

L. A. SCHUMANN.

* * * * *

## NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

### NOTICE OF APPEAL.

To the Clerk of the Hustings Court of the City of Richmond:

You are hereby notified that this defendant appeals his conviction in this case and will apply for a writ of error and *supersedeas* to the Supreme Court of Appeals of Virginia.

### ASSIGNMENTS OF ERROR.

The following are the errors assigned:

1. The Court erred in refusing to strike the evidence and dismiss this cause on the ground that the statute, as applied, abridges the right of the defendant to freedom of assembly under the First Amendment, as implemented by the Fourteenth Amendment, to the Constitution of the United States.

2. The Court erred in refusing to strike the evidence and dismiss this action on the ground that the statute, as applied, violates the rights of this defendant to freedom of speech and of association under the Constitution of the State of Virginia and the First Amendment, as implemented by the Fourteenth Amendment to the Constitution of the United States.

3. The Court erred in convicting this defendant of trespass since there is no evidence that the defendant knew
page 2 } that he was trespassing upon the property of Thalhimers' Store.

4. The Court erred in convicting this defendant of trespass, contrary to the due process clause of the Fourteenth Amendment to the Constitution of the United States and contrary to the laws of the State of Virginia which recognize that a conviction of trespass may not be obtained against one on the

premises under a claim of property right, since he was upon the premises in question under a claim of constitutional right.

5. The Court erred in convicting this defendant since there was no evidence to show that this defendant had any knowledge of the policy of Thalhimers' Store not to serve this defendant or persons of his race and color, and no reason was given this defendant as to why he was trespassing either at the lunch counter or in the store, nor did the employee of the store identify himself as such, nor did this defendant know of the official capacity of the employee, nor the reason for the demand to leave, thereby denying this defendant due process of law and the equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States.

6. This defendant was denied due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States by being convicted of a crime for having disobeyed the order to leave the premises of one allegedly in possession, without requiring that such person establish his identity or authority for making the demand
page 3 } and when no proof of this identity or authority was presented at the time of the demand.

7. This defendant was denied due process of law contrary to the Fourteenth Amendment to the Constitution of the United States in that he was arrested, prosecuted and convicted under a state law which deprived him of his liberty and authorized his ejection from a public place, solely on account of his race and color.

8. The statute, as applied, violated the rights of this defendant under the equal protection clause of the Fourteenth Amendment to the Constitution of the United States by his being singled out for ejection and arrest by reason of his race and color.

9. The statute, as applied, denied this defendant due process of law by making it a crime for him to disobey a rule or regulation of a private person, when the State enforced such rule by establishing magistrate's office in the store and arresting defendant.

10. The statute, as applied, denied this defendant due process and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States, in that it authorized or required the conviction of this defendant of a crime for failing or refusing to obey an order of a private person, based solely upon the race or color of the defendant.

11. This defendant was denied the equal protection of the laws guaranteed to him under the Fourteenth Amendment to

the Constitution of the United States when, after
page 4 } having been invited into the store, he was then
ordered out and discriminated against by the store on account of his race and color, and when the State enforced such discrimination by the arrest and conviction of this defendant.

12. The statute, as applied, violates the common law and statutory right of this defendant not to be excluded from the common market.

MARTIN A. MARTIN
Of Counsel for Defendant.

* * * * *

page 3 } The Court: Raymond B. Randolph, Jr. charged
that he did violate Title 18-225 of the Code of Virginia of 1950, as amended, in that he did trespass on certain property of Thalhimer Brothers, Incorporated.

What is your plea, guilty or not guilty?

The Defendant: Not guilty.

BEN AMES,

a witness introduced on behalf of the Commonwealth, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Wilkinson:

Q. Please state your name and address.

A. Ben Ames, 513 Danray Drive.

Q. By whom are you employed?

A. Thalhimer Brothers, Incorporated.

Q. By whom were you employed on February 22, 1960?

A. Thalhimer Brothers.

Q. In what capacity were you employed in on that day and what capacity are you employed in today?

A. I was employed as personnel manager and still employed
in that capacity.

page 4 } Q. Is Thalhimer Brothers, Incorporated a private
corporation?

A. It is.

Q. Is their department store located in the City of Richmond, Virginia?

A. It is.

*Ben Ames.*

Q. At what address, sir?
A. At 6th and Broad Streets.
Q. Did you on February 22, 1960 have an occasion to talk to the defendant in this case?
A. I did.
Q. Where was this?
A. This was on the 4th floor of our store.
Q. Approximately what time of day was it?
A. In the vicinity of 1 o'clock.
Q. What, if anything, did you say to the defendant?
A. I asked him to leave our store and explained to him, if he did not, that I would authorize the issuance of a warrant for his arrest.
Q. Did he leave the store?
A. He did not.
Q. Did he make any reply to you or just stayed there?
A. I do not recall any reply.
page 5 } Q. He just stood there when you told him to leave?
A. (Nodding head in affirmative).
Q. Did you advise him of the consequences that would happen to him if he did not leave the store?
A. I did.
Q. And he refused to leave?
A. (Nodding head in affirmative.)
Q. By what authority did you ask the defendant to leave the store and when he refused to do so have him arrested?
A. By the authority given to me by Mr. Newman Hamblett, our vice-president and director of operations.
Q. When did Mr. Hamblett give you this authority?
A. Earlier in the day.
Q. Was it written or oral?
A. It was oral.
Q. What are some of Mr. Hamblett's duties as director of operations?
A. Well, he is in charge of all the operating departments, maintenance, security, and personnel.

## CROSS EXAMINATION.

By Mr. Martin:
Q. Mr. Ames, you say you are the personnel manager of Thalhimers?

*Ben Ames.*

A. Yes.

page 6 } Q. Were you the personnel manager of Thalhimers on the 22nd day of February of this year?

A. I was.

Q. At the time you had this defendant arrested?

A. I was.

Q. What are your duties as personnel manager?

A. They include employment, training, employment benefits in the store, and other duties delegated to me by Mr. Hamblett.

Q. Which part of your duties relating to employment were you performing when you asked this man to leave?

Mr. Wilkinson: If Your Honor please, I object to this. He testified his authority was received by Mr. Hamblett who is vice-president of Thalhimer Brothers, Incorporated and in charge of operations.

The Court: Objection sustained.

Q. What did Mr. Hamblett tell you in that conversation? Just tell us the words that were passed between you and Mr. Hamblett as close as you can recall.

A. To the best of my knowledge he directed me to assist him in asking people—

Q. What people?

A. People that were in this area to leave our store; that if they did not leave to authorize the issuance of a

page 7 } warrant.

Q. What area was that?

A. This was on the 4th floor outside of our restaurant.

Q. Did you order all of the people in that area on the 4th floor to leave the store?

Mr. Wilkinson: I object to this, Your Honor. This is a particular defendant here charged in this warrant.

The Court: Objection sustained.

Q. This defendant here has all of the appearance of being a person of the negro race, does he not?

A. To the best of my knowledge, yes.

Q. Were all of the people you asked to leave similarly of the negro race?

Mr. Wilkinson: I object, Your Honor.

The Court: Objection sustained.

*Ben Ames.*

Q. Did you ask any white persons to leave?

Mr. Wilkinson: I object.
The Court: Objection sustained.

Q. Why did you ask this defendant to leave?

Mr. Wilkinson: Objection.
The Court: Objection sustained.

Q. Was this defendant violating any rule or regulation at Thalhimers?

page 8 } Mr. Wilkinson: I object.
The Court: Objection sustained.

Q. Was he violating any law of the State of Virginia or ordinance of the City of Richmond to your knowledge?

Mr. Wilkinson: I object to this question on the additional grounds that the witness is being asked to testify on a question of law.
The Court: Objection sustained.

Q. Then why did you ask him to leave?

Mr. Wilkinson: I object to that, Your Honor.
The Court: Objection sustained.

Q. Was this man a customer in your store?
A. I don't know.
Q. Did Mr. Hamblett authorize you specifically to eject this man from the store, and if he didn't leave to have him arrested?
A. I believe I stated earlier he asked me, he directed me to ask the people in this area to leave.
Q. Customers?
A. He said the people in this area.
Q. Regardless of whether they were customers or not?
A. He didn't say.
page 9 } Q. And you didn't ask him whether he was a customer or not?
A. No.
Q. Did you tell him your official capacity with Thalhimers?

*Ben Ames.*

A. I asked him to leave our restaurant. I did not give my title.

Q. You don't own the store, do you?

A. No, I own stock in it.

Q. But the head man, the one I have been trying to get for 2 or 3 days is in Egypt, Mr. William B. Thalhimer, Sr.?

A. I don't know.

Q. You don't know? Don't you know I have been trying to summons this man here for a week?

A. I don't know.

Mr. Wilkinson: I object to that.

The Court: Objection sustained.

Q. Did Mr. Hamblett in your conversation with him when he requested that you have these people leave the store, did he give you any reason as to why he wanted you to have them leave the store?

Mr. Wilkinson: Judge, I object to this question, too.

The Court: Objection sustained.

page 10 } Q. The store was open for business at that time?

A. Yes.

Q. And there were other customers in the store?

A. Yes.

Q. You didn't ask all of the customers to leave, did you?

Mr. Wilkinson: Judge, that brings it back to one of my original objections. There is only one defendant in question here.

Mr. Martin: But he charged this defendant with trespassing.

The Court: Objection sustained.

Mr. Martin: That is all.

RE-DIRECT EXAMINATION.

By Mr. Wilkinson:

Q. I believe you have testified that you asked the defendant to leave our store?

A. Yes.

Q. You said, "our store"?

A. Yes.

*Ben Ames.*

Q. Did the defendant make any demand or request of you as to who you were?
A. No.

RE-CROSS EXAMINATION.

By Mr. Martin:

page 11 } Q. The only reference that you made, as I understand it, as to your connection with the store to this defendant was you asked him to leave "our store"?
A. That is right.
Q. And you are a stockholder in the store?
A. (Nodding head in affirmative.)
Q. You are not telling this Court that every stockholder has the right to order customers out of the store?
A. No, you asked me was I an owner of the store, and I said, "No, but I do own stock in it."
Q. But you never told this defendant here that you were an officer of the store?
A. No, I am not an officer of the store.
Q. Or that you were an employee of the store?
A. No.
Q. You didn't tell him that you had authority to order him to leave the store, did you?
A. No.

Witness stood aside.

Mr. Wilkinson: That is the Commonwealth's

page 12 } case.

Mr. Martin: If Your Honor please, we move to strike the evidence of the Commonwealth, and in order to save time, it is understood that the motion I made in the first case will be printed in the record at this point, rather than have to read it all over again.
Mr. Wilkinson: That is agreeable, Your Honor.
Mr. Martin: The defendant moves to strike the evidence of the Commonwealth in this case on the following grounds:

A conviction under this warrant and the evidence presented would:

1. Violate the right of this defendant of freedom of assembly under State law and the United States Constitution.
2. Violate the right of this defendant of freedom of speech

and of association under State law and the United States Constitution.

3. Deny this defendant due process of law in that he was arrested and prosecuted under a State law and deprived of his liberty and ejected from a public place solely on account of his race and color.

4. Violate the rights of this defendant under
page 13 } the equal protection clause of the Fourteenth Amendment of the Constitution by being singled out for ejection and arrested by reason of his race and color.

5. Deny him due process of law by making it a crime for him to obey a private rule or regulation and the statute, even if constitutional on its face, is being unconstitutionally applied.

6. Make it a crime, at the whim of a private person, for the defendant to be on property upon which the general public has a right to be, and thereby denies him due process and the equal protection of the law, regardless of race.

7. Authorize and permit private persons to discriminate against this defendant on account of race, and when such discrimination is enforced by the conviction of this defendant by the State would constitute a denial of the equal protection of the laws and due process of law quaranteed by the United States Constitution.

8. Deny this defendant the equal protection of the laws since, after having been invited into the store, he was then ordered out and discriminated against by the store on account of his race, and when, as in this case, such discrimination is enforced by State legal process.

page 14 } 9. Violate defendant's common law and statutory right not to be excluded from the common market.

The Court: That motion is overruled.

Mr. Martin: If Your Honor please, I would like to put the defendant on.

The Court: All right.

RAYMOND B. RANDOLPH, JR.,
the defendant, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Martin:

Q. Your name if Raymond B. Randolph, Jr.?

A. Yes, sir.

*Raymond B. Randolph, Jr.*

Q. You are a colored person? You are of the negro race, is that correct?
A. Yes, sir.
Q. You are a student at Virginia Union University?
A. Yes.
Q. You were in Thalhimer Brothers Department Store on the occasion when you were arrested, is that right?
A. That is right.
Q. What were you doing at the time?

page 15 } A. Well, at the time I had gone upstairs to try to purchase some lunch on the 4th floor in the Richmond Room, and I believe Mr. Newman Hamblett, while I was trying to go in there as everybody else was doing, he told me to go along on the side there and wait my turn and told everybody else.

Then after a while, I was standing there, which was about 45 minutes, he brought along this gentleman, which I don't recall his name, and his words were, "This looks like a good one," and then he had me arrested.
Q. Did he tell you who he was or anything like that?
A. No.
Q. Had you ever seen him before?
A. No, sir.
Q. You said Mr. Hamblett told you to stand up in line there along the wall or something first?
A. Yes.
Q. And you were just standing up there as you had been requested to do so by Mr. Hamblett?
A. Yes, sir.

CROSS EXAMINATION.

By Mr. Wilkinson:
Q. You remember talking to Mr. Ames there, don't you?
A. No, sir, I didn't say a word to him.

page 16 } Q. Did he talk to you?
A. Well, both of them, he did.
Q. Mr. Ames talked to you?
A. Yes, sir.
Q. Did he ask you to leave the store?
A. Yes.
Q. In your direct testimony you didn't say that, did you?
A. I believe I answered all of the questions that were asked me.

*Raymond B. Randolph, Jr.*

Q. But you didn't answer the question on direct examination that way, did you?

A. If you will read the question back to me.

Q. Did you reflect on the subject and now remember that Mr. Ames asked you to leave the store?

A. As far as that goes Mr. Newman brought him up to me. In other words, there were 3 of them arresting people, taking turns, I guess, and he brought him up to me. I believe he asked me, but I didn't answer anything.

Q. You remember Mr. Ames asked you to leave the store?

A. Yes.

Q. And you didn't leave, did you?

A. No, sir.

Witness stood aside.

page 17 } Mr. Martin: If Your Honor please, we move to dismiss the prosecution on the grounds mentioned in our motion to strike.

The Court: Your motion is overruled, Mr. Martin.

What is the recommendation of the Commonwealth on this case?

Mr. Wilkinson: $20.00 fine.

The Court: On the recommendation of the Commonwealth I find your guilty and fine you $20.00.

Mr. Martin: We note an appeal.

Hearing concluded.

page 18 } 5233.

Virginia:

In the Hustings Court of the City of Richmond.

The Commonwealth of Virginia,

*v.*

Raymond B. Randolph, Jr., Defendant.

STIPULATION.

The Commonwealth of Virginia and the defendant stipulate and agree that the following shall be read in conjunction

with the reporter's transcript of the hearing of this case in the Police Court of the City of Richmond and shall be considered a part of the evidence, subject, however, to all motions and objections as to admissibility heretofore made:

1. This defendant is a member of the Negro race.
2. This defendant was one of 34 Negroes arrested in Thalhimers Department Store on February 22, 1960.
3. This defendant, along with many other Negroes, including the other 33 arrested, came to Thalhimers Department Store on February 22, 1960, and while there, attempted to obtain service at eating facilities reserved for the use of white patrons of that store, these facilities consisting of lunch counters in the basement and on the first floor, a soup bar on the mezzanine and a restaurant (known as the Richmond Room) on the fourth floor. A lunch counter for Negro patrons also is maintained in the basement. This defendant as well as the other Negroes with him were refused service at the facilities reserved for the white patrons because they were Negroes.
4. On February 22, 1960, at the time of the arrests aforesaid, this defendant and the other Negroes were in the vicinity of the entrance to the restaurant (the Richmond Room) on the fourth floor and the first floor lunch counter. Representatives of the fire department were called to keep the aisles open, as these Negroes and some white persons were in the aisles.
5. That all motions and objections made in any of the other 33 cases shall be considered by the court as having been made in this case and the rulings on such motions and objections shall be considered as having been made in this case.

JAMES B. WILKINSON
Of Counsel for the Commonwealth of Virginia.

MARTIN A. MARTIN
Of Counsel for the Defendant.

A Copy—Teste:

H. G. TURNER, Clerk.

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