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Tina de la Bruere, Clerk
Vermont Superior Court
Orleans Unit, Criminal Division
247 Main St.
Newport, VT 05855

Re: State v. Braithwaite, Docket No. _____

Dear Tina:

Enclosed for filing is a Motion to Dismiss under V.R.Cr.P. 48(b)(2). I will be representing Christopher Braithwaite. I have to be in Montpelier for a hearing in a matter at 9:30 am. If possible, I would ask that Chris's arraignment be moved back to 3:00 in the afternoon to allow me to be present. Otherwise, he will waive my presence at arraignment and enter a plea of not guilty.

As to bail, I would request that he not be ordered not to enter onto the subject property. Green Mountain Power has invited him back to the property and he has returned with their permission on at least one occasion.

Thank you for your consideration.

Sincerely,



Phil White

Encl.

Cc: Orleans County States Attorneys Office

STATE OF VERMONT
ORLEANS COUNTY, SS

STATE OF VERMONT

v.

VERMONT SUPERIOR COURT
ORLEANS UNIT, CRIMINAL DIVISION
DOCKET NO. _____

CHRISTOPHER BRAITHWAITE

Motion to Dismiss Under V.R.Cr.P. 48(b)(2)

NOW COMES Chris Braithwaite by and through his attorney, Philip H. White, Esq., and hereby moves to dismiss the Unlawful Trespass charge filed against him by the State of Vermont pursuant to V.R.Cr.P. 48(b)(2) because dismissal of this charge will serve the ends of justice and the effective administration of the court's business for all of the following reasons:

1. Chris Braithwaite is a member of the working press. He is an owner and employee of The Chronicle which has published a news weekly for decades regularly covering important and newsworthy stories regarding the actions of government in the Orleans and northern Essex County areas.
2. Even if it should be found that Mr. Braithwaite was trespassing, he was there solely to cover a protest under way and the government's response to it.
3. He did not aid, abet, encourage, or incite the protesters; nor did he in any other way participate as a "protester."
4. His presence as an additional person on the scene did not increase any damages caused by any trespass of the protesters, nor did it add to any damage that may have been caused to the property owner's interests by the protesters.
5. He told police he would leave the property immediately after the protesters were arrested, and withdrew to the furthest point, off the actual construction site, from which

he could observe and photograph the arrests. He could not have observed or photographed the arrests from the neighboring property.

6. Green Mountain Power has no desire to keep Braithwaite off the construction site or away from any future act of civil disobedience at the site. A week after his arrest, on December 12, Braithwaite was invited to the site by Green Mountain Power to observe such a protest, and driven to the site where a protest had taken place within the hour – and where, in fact, Braithwaite had been arrested on December 5.
7. Green Mountain Power has extended a standing invitation to Chris Braithwaite to visit the site in the future.

The members of the working press have enjoyed special protections and privileges in a number of areas of the law including libel law and the law related to prior restraint on publication. On the other hand, in the areas of access to public documents or information and access to public meetings, the press is often treated as having no special or exceptional rights, other than those enjoyed by the general public. Along those lines, the courts have generally ruled that the press has no more right than the public to trespass on private property.

Should this matter move forward, Chris Braithwaite, will assert the following defenses to this action:

1. That members of the working press should enjoy a special right and privilege under the First Amendment of the United States Constitution and Chapter I, Articles 6 and 13 of the Vermont Constitution to cover protests on private property and the governmental response to those protests provided that (a) they are indeed members of the working press (b) their presence on private property is essential for them to cover the protest and the government's response to the protest (c) they have not encouraged, incited,

aided or abetted the protest itself in any significant way and (d) their presence does not increase the harm to the private property owner or cause any additional damage to the property owner's interests.

2. When a property owner requests the assistance of government, inviting the government to enter on to private property to make arrests, the property owner implicitly waives any right to object to the presence of the press who are monitoring and reporting on the government's actions in making these arrests.
3. In the scheme of things, there are no governmental or private property interests that were adversely affected in this case in any tangible way by Chris Braithwaite's added presence in addition to the protesters. The public's right to know and the beneficial aspect of the press's ability to monitor the manner in which the government responded, how it effectuated the arrests, and the number of arrests actually made far outweighs any de minimis interests of the government or the property owner to prohibit Chris Braithwaite's presence during this act of civil disobedience by a number of protesters. This should be an open question under Vermont and federal jurisprudence which should be decided in favor of press access. See Attachment B.
4. The public's interest is substantial in having the press present to cover acts of civil disobedience, to report on the actions of the protesters themselves, and to cover the conduct of law enforcement and the government in response to acts of civil disobedience. 50 years ago, four black men trespassed by sitting at a lunch counter reserved for whites only at W.W. Woolworth. See, Attachment A. The presence of a UPI reporter covering the act of trespass and reporting photographs and stories of the continuation of this quiet civil disobedience and the escalating violence of the response

to it was one of the seminal moments of the modern civil rights movement. The photographs and stories went around the country and around the world.

Regardless of whether the arguments outlined above find resonance with the court under constitutional grounds, they should resonate to support a motion to dismiss under the interests of justice on the facts of the present case.

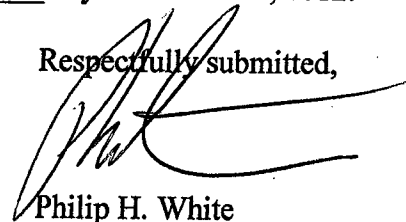
Green Mountain Power's behavior since the arrest makes it clear that it desires and supports press access to allow coverage of any acts of civil disobedience on its construction site. Even if there was a technical violation of the law – which Braithwaite does not concede – the victim's subsequent actions make it clear that, not only did the putative trespass do no harm to the victim, but it in fact served the victim's interests as well as the general public's. Dismissal, in these circumstances, would clearly be in the interests of justice.

If the State objects to this motion, Defendant requests an additional 10 days to brief these issues.

WHEREFORE, at this initial stage of these proceedings, Defendant Chris Braithwaite and his employer The Chronicle move for dismissal, in the court's discretion, under V.R.Cr.P. 48(b)(2).

DATED at Newport, Vermont this 19th day of December, 2012.

Respectfully submitted,



Philip H. White

cc: Orleans County State's Attorney

AP020204-2/2/60-GREENSBORO, N.C.: A group of Negro students from North Carolina A&T College, who were refused service at a luncheon counter reserved for white customers, staged a sit-down strike at the F.W. Woolworth store in Greensboro 2/2. Ronald Martin, Robert Patterson and Mark Martin are shown as they stayed seated throughout the day. The white woman at left came to the counter for lunch but decided not to sit down. UPI TELEPHOTO 1wb



The Faculty Lounge

Conversations about law, culture, and academia

February 04, 2010

The Sit-Ins, A View From The Other Side



These are the iconic pictures of the sit-ins we're commemorating this week. Above are the four students who started the movement on February 1, 1960, when they sat down at a Whites-only lunch counter at Woolworth's in Greensboro, North Carolina. They are, from left to right, Joseph McNeil, Franklin McCain, Ezell Blair, Jr. and David Richmond.



Here are three additional students who carried on the protests over the next several days, along with a White woman who is apparently fine being served by Black people, just not sitting next to them.

The pictures below capture the backlash. They're of a 1963 sit-in in Jackson, Mississippi. By one account, members of the all-White Jackson police force stood guard outside, while several FBI agents (the guys in back wearing shades) "observed" from inside. That White guy at the counter, that's Tougaloo professor and community activist Hunter Gray

(John R. Salter) who helped organize the Jackson sit-ins. And that's blood on his shirt. All of the protesters had been covered in slop, and some were beaten with brass knuckles and broken bottles.

I don't know how many other photos like this exist; a colleague sent me the one to the right some time ago and it's the first time I had ever seen it. So I wonder whether others are out there, others that we've collectively chosen not to remember because it's the part of the story we want to forget.

Some of the sit-ins were less explosive than others, but even then, the response from White business owners was hardly all that it could have been. In Greensboro, Woolworth's store manager decided to ignore the Black



students at the White counter. He didn't serve them, but he didn't call the police either for fear of provoking violence from the growing assembly of White hecklers. But he wasn't struggling with closeted racial consciousness; he just didn't want to frighten away the rest of his White customers.

This, unfortunately, is part of the hidden narrative behind too many civil rights milestones, when attitudes began to soften, not because segregationists came to see the light, but because they simply wanted to make a buck.

-Kathleen Bergin



Posted by firstamendmentblogger at 05:40 PM in [Constitutional Law](#), [Politics](#), [Race](#) | [Permalink](#)
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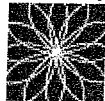
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"Hunter Gray (John R. Salter)"

Why did the guy have 2 names?

Posted by: [Paul A'Barge](#) | [February 09, 2010 at 10:45 AM](#)



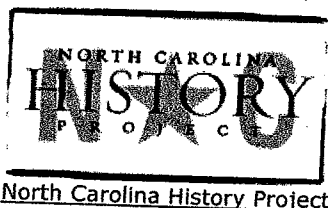
Great pics. thanks for the read. <http://www.filepasswords.com>

Posted by: [Fred](#) | [July 08, 2010 at 06:41 AM](#)



Yeah agreed awesome pictres. <http://www.hotfilemediafire.com>

Posted by: [Lance](#) | [August 31, 2010 at 03:33 AM](#)



Greensboro Sit-In

On February 1, 1960, four African-American students of North Carolina Agricultural and Technical State University sat at a white-only lunch counter inside a Greensboro, North Carolina Woolworth's store. While sit-ins had been held elsewhere in the United States, the Greensboro sit-in catalyzed a wave of nonviolent protest against private-sector segregation in the United States.

The first Greensboro sit-in was not spontaneous. The four students who staged the protest, all of them male freshmen, had read about nonviolent protest, and one of them, Ezell Blair, had seen a documentary on the life of Mohandas Gandhi. Another of the four, Joseph McNeil, worked part-time in the university library with Eula Hudgens, an alumna of the school who had participated in freedom rides; McNeil and Hudgens regularly discussed nonviolent protest. All four of the students befriended white businessman, philanthropist, and social activist Ralph Johns, a benefactor of both the NAACP and North Carolina Agricultural and Technical.

The first sit-in was meticulously planned and executed. While all four students had considered different means of nonviolent protest, McNeil suggested the tactic of the sit-in to the other three. To him, discipline in executing the protest was paramount. Months before the sit-in, he attended a concert at which other African-American students behaved tactlessly, leaving him determined not to repeat their error. The plan for the protest was simple. The students would first stop at Ralph Johns' store so that Johns could contact a newspaper reporter. They would then go to the Woolworth's five-and-dime store to purchase items, saving their receipts. After finishing their shopping, they would sit down at the lunch counter and courteously request service, and they would wait until service was provided.

The protest occurred as planned on Monday, February 1, 1960. Despite urbanely requesting service, the students were refused it, and the manager of the Woolworth's store requested that they leave the premises. After leaving the store, the students told campus leaders at Agricultural and Technical what had happened.

The next morning twenty-nine neatly dressed male and female North Carolina Agricultural and Technical students sat at the Woolworth's lunch counter. The protest grew the following day, and on Thursday, white students from a nearby women's college took part in the protests, which expanded to other stores. Soon crowds of students were mobbing local lunch counters. As the protests grew, opposition grew vociferous. Crowds of white men began appearing at lunch counters to harass the protesters, often by spitting, uttering abusive language, and throwing eggs. In one case, a protester's coat was set on fire, and the assailant was arrested.

The protests continued each day that week. On Saturday, fourteen hundred students arrived at the Greensboro Woolworth's store. Those who could not sit at the lunch counter formed picket lines outside the store. A phoned-in bomb threat cut the protest short, but the following week sit-ins began at Woolworth's stores in Charlotte, Winston-Salem, and Durham. Soon other five-and-dime and department stores with segregated lunch counters became targets of these protests.

The reaction of police departments in the region was, by and large, muted. In the case of the Greensboro Woolworth's sit-ins, protesters were left alone by the police department while those reactionaries who became violent were prosecuted. Statewide no protesters were arrested until forty-one black students in a picket line at the Cameron Village Woolworth's in Raleigh were charged with trespassing.

Despite these arrests, progress was swift. At many stores, African-Americans were soon eating at the same lunch counters as whites. For instance, at the Greensboro S.H. Kress store, blacks and whites were eating together at the lunch counter by the end of February 1960. Some stores in Raleigh closed their lunch counters altogether to preclude protests. Though most stores did not immediately desegregate their lunch counters, the sit-ins were successful both in forcing partial integration and in increasing national awareness of the indignities suffered by African-Americans in the southern United States.

The 1960 sit-ins began without the assistance of any organization, and they effected partial desegregation in less than a month without legal action. They proved one of the simplest and most efficacious protests of the civil rights movement.

Sources:

Google images

Website for this image

On the second day of the Greensboro sit-in,
Joseph A. McNeil and Franklin E. ...
americanhistory.si.edu

Full-size image

481 × 374 (Same size), 58KB

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BALANCING PRIVACY INTERESTS AGAINST PUBLIC ACCESS

By: Philip H. White
WILSON & WHITE, P.C.

That all power being originally inherent in and co[n]sequently derived from the people, therefore, all officers of government, whether legislative or executive, are their trustees and servants; and at all times, in a legal way, *accountable* to them.

Chapter I, Article 6 of the Vermont Constitution

That the people have a right to freedom of speech, and of writing and publishing their sentiments, *concerning the transactions of government*, and therefore the freedom of the press ought not to be restrained.

Chapter I Article 13 of the Vermont Constitution

It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions *even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits*, which ought to be protected *unless specific information is needed to review the action of a governmental officer*. Consistent with these principles, the general assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of this subchapter shall be liberally construed with the view towards carrying out the above declaration of public policy.

1 VSA § 315 (of the Vermont Public Records Act)

The Legislature's statement of policy, however, provides that it must balance the right of persons "to privacy in their personal . . . pursuits" against the need for "specific information . . . to review the action of a governmental officer." 1 V.S.A. § 315.

Trombley v. Bellows Falls Union High Sch. Dist. No. 27, 160 Vt. 101, 109-110 (Vt. 1993)

Article 13 is largely undeveloped in our cases. [T]he Vermont provision focuses on speech "*concerning the transactions of government*." Following an Alaska decision, *Wickwire v. State*, 725 P.2d 695, 703 (Alaska 1986), we reserved judgment whether this language would give greater protection in some matters of public concern....

Shields v. Gerhart, 163 Vt. 219, 226-227 (Vt. 1995)