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The Supreme Court and Integration

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THE SUPREME COURT AND INTEGRATION

by

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PREFACE

Although a civil war was fought in the United States over the status of the Negro, a century later the problem is still one of a complex nature. Probably no other single decision of the Supreme Court of the United States has affected so large a segment of the American people as the 1954 decision outlawing segregation in the public schools.[1]

The Supreme Court and Integration was chosen as a subject for this study as a result of the present school integration crisis. It would not be practical to try to cover every Supreme Court decision involving school integration for the entire time covered. In this paper, only a few cases, beginning with the Negro and his rights as provided for under the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution of the United States, and leading to, and including, the present crisis at Gadsden, Alabama, will be considered. As far as possible, the major sections

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[1] Leon I. Salomon, The Supreme Court (New York: The H. W. Wilson Company, 1961, XXXIII, 107-108. (Hereinafter cited as Salomon, Supreme Court, XXXIII.)

of the nation were chosen based upon resource material available.

It is not the intention here to try to prove the Supreme Court decisions on school integration either right or wrong. The decisions have been made. Only time will tell what affect these decisions will have upon the educational system.

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CHAPTER I

INTEGRATION CASES PRIOR TO 1900

In order to better understand the decisions of both the Negro and the law, it is necessary to examine the constitutional provisions of the law as provided in the Constitution of the United States.[2] All three of these Amendments pertain to the Negro and his rights. The Thirteenth Amendment, adopted in 1865, prohibits slavery and involuntary servitude, except as a punishment for crime. The Fourteenth Amendment, ratified in 1868, provides that:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor to deny to any person within its jurisdiction the equal protection of the laws.[3]

The Fifteenth Amendment, passed in 1870, deals with the right of United States citizens to vote, regardless of race or color.

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[2] Bernard Schwartz, The Supreme Court (New York: The Ronald Press Company, 1957), p. 264. (Hereinafter cited as Schwartz, The Court.)

[3] Ibid.

These Amendments were all enacted after the Civil War to obtain some of the objectives for which the North had fought.[4] Though most of the southern states ratified them, such ratification was not approved by the free will of their citizens.[5]

Since most of the Supreme Court decisions dealing with segregation in the public schools have directly referred to the Fourteenth Amendment, a further study of that Amendment will be necessary. Of the ideas involved in the writing of the Fourteenth Amendment, one of the most persistent was "that the states defeated in war should be deprived constitutionally of their power to discriminate against the emancipated Negroes and their white protectors."[6] All the legislative formulations connected with the Fourteenth Amendment contained a clause emphasizing equal protection.[7] The advocates of the Amendment viewed the clause as an answer to those who seriously doubted the constitutionality of the Civil Rights Bill of

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[4]Schwartz, The Court, p. 264.

[5]Ralph McGill, The South and the Southerner (Boston: Little, Brown and Company, 1959), pp. 218-219.

[6]Alpheus Thomas Mason and William M. Beaney, The Supreme Court in a Free Society (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1959), p. 254. (Hereinafter cited as Mason and Beaney, Court in Society.)

[7]Ibid., pp. 254-255.

1866, including President Andrew Johnson.[8] The Bill of 1866, and its successors of 1870 and 1875, attempted to give the same protection of civil rights to Negroes and white persons alike.

> The acts of 1866 and 1870 guaranteed equality of legal status and voting rights against state action. The act of 1875 placed the right to equal enjoyment of public inns, conveyances, and amusements, regardless of race, within the protection of federal law.[9]

In reviewing the Civil Rights Bills, Congressman Stevens of New York, a Republican, declared:

> Whatever law punishes a white man for a crime, shall punish the black man precisely in the same way and to the same degree. Whatever law protects the white man shall afford "equal" protection to the black man.[10]

Soon after the Civil War, the attention of America was turned from slavery to the industrial revolution and expansion. The real business at hand was economic expansion, and old passions of war and reconstruction could only hinder this.[11] It was the Hayes-Tilden election crisis

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[8] Mason and Beaney, Court in Society, p. 255.

[9] Charles L. Black, Jr., The Occasions of Justice (New York: The Macmillan Company, 1963, pp. 62-63.

[10] Mason and Beaney, Court in Society, p. 255.

[11] Wallace Mendelson, Justices Black and Frankfurter: Conflict in the Court (Chicago: The University of Chicago Press, 1961), pp. 74-75. (Hereinafter cited as Mendelson, Black and Frankfurter.)

which gave the southern and northern Bourbons a chance to unite and conquer, and to call the tune of national politics.[12] This has been described as "reunion and reaction."[13]

It was not until 1896, in the Plessy V. Ferguson case, that the United States Supreme Court actually set the precedent doctrine of "separate but equal" facilities in approving segregation of the races as constitutional.[14] This case involved transportation in Louisiana, but it set the precedent in the field of education in the public schools until the 1954 decision of the Court.

Plessy was one-eighth Negro, but his skin was so light that he appeared to be white.[15] He purchased a ticket for a trip in Louisiana on a railway coach. When he entered the train, he occupied a vacant seat in a coach for white passengers. After refusing to move to a coach

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[12]M. Meyers, A. Kern, and J. C. Caweltl, Sources of The American Republic (Chicago: Scott, Foresman and Company, 1961), II, p. 11.

[13]Mendelson, Black and Frankfurter, p. 74.

[14]Milton R. Konvitz, Bill of Rights Reader (Ithaca New York: Cornell University Press, 1954), p. 547. (Hereinafter cited as Konvitz, Bill of Rights.

[15]The Staff, Social Science I, The College of the University of Chicago, The People Shall Judge (Chicago: The University of Chicago Press, 1949), I, p. 792. (Hereinafter cited as Staff, People Judge, I.)

for Negro passengers at the request of a conductor, he was ejected from the train. Plessy was tried under a Louisiana statute requiring "equal but separate" railway accommodations for white and colored people.[16] On the ground that there was no appeal from a conviction, he sought to test his rights by a petition for a writ to prohibit action by the trial court, addressed to the supreme court of Louisiana. The Louisiana supreme court denied his petition on the ground that the statute was constitutional. He appealed the decision to the United States Supreme Court which upheld the ruling of the lower courts.[17]

Justice Henry B. Brown, of Michigan, delivered the majority opinion of the Court.

> This case turns upon the constitutionality of an act of the General Assembly of the state of Louisiana, passed in 1890, providing for separate railway carriages for the white and colored races. . . .
>
> The constitutionality of this act is attacked upon the ground that it conflicts both with the Thirteenth Amendment of the Constitution, abolishing slavery, and the Fourteenth Amendment, which prohibits certain restrictive legislation on the part of the states.[18]

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[16] Staff, People Judge, I, p. 792.

[17] Ibid., p. 793.

[18] Ibid.

Justice Brown then took the Thirteenth Amendment and defended the Court's action concerning it.

> That it does not conflict with the Thirteenth Amendment, which abolished slavery and involuntary servitude, except as a punishment for crime, is too clear for argument. Slavery implies involuntary servitude--a state of bondage. . . .
>
> A statute which implies merely a legal distinction between the white and colored races--a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color--has no tendency to destroy the legal equality of the two races, or re-establish a state of involuntary servitude. Indeed, we do not understand that the Thirteenth Amendment is strenuously relied upon by the plaintiff in error in this connection.[19]

Justice Brown next stated the Court's decision as to why the Fourteenth Amendment has not been violated in this case.

> By the Fourteenth Amendment, all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are made citizens of the United States and of the state wherein they reside; and the states are forbidden from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States, or shall deprive any person of life, liberty, or property without due process of law, or deny to any person within their jurisdiction the equal protection of the laws. . . .
>
> The object of the Amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions

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[19] Staff, People Judge, I, p. 793.

> based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of states where the political rights of the colored race have been longest and most earnestly enforced. . . .[20]

Justice Brown, in stating the opinion of the Court concerning the Fourteenth Amendment, left the question of "reasonableness" to the discretion of the Louisiana legislature.

> In determining the question of reasonableness, it is at liberty to act with reference to the established usages, customs, and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order. Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable or more obnoxious to the Fourteenth Amendment than the acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures.[21]

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[20] Staff, People Judge, I, p. 793.

[21] Ibid.

Justice John M. Harlan, of Kentucky, cast the only dissenting vote in the Plessy V. Ferguson case. In his dissenting opinion, he pointed to the fact that every man had a certain pride of his race, and when the rights of others, under appropriate circumstances, were not to be affected, he had the privilege to express that pride in action which to him seemed proper.[22] Justice Harlan then referred to the Thirteenth and Fourteenth Amendments in defending his position.

> The Thirteenth Amendment does not permit the withholding or the deprivation of any right necessarily inhering in freedom. It not only struck down the institution of slavery as previously existing in the United States, but it prevents the imposition of any burdens or disabilities that constitute badges of slavery or servitude. It decreed universal civil freedom in this country. But that Amendment having been found inadequate to the protection of the rights of those who had been in slavery, it was followed by the Fourteenth Amendment, which added greatly to the dignity and glory of the American citizenship, and to the security of personal liberty. . .[23]

Harlan then quoted part of the Fourteenth Amendment dealing with personal liberty and the making of state laws which abridged the privileges of its citizens. In further defense of his opinion, he stated: "The two Amendments,

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[22] Staff, People Judge, I, pp. 794-795.

[23] Ibid., p. 795.

if enforced according to their true intent and meaning, will protect all the civil rights that pertain to freedom and citizenship."[24]

Justice Harlan attacked the statute of Louisiana as being inconsistent with the personal liberty of citizens. He admitted the white race to be the dominant race in the country, particularly in education, wealth, power, and prestige.[25]

> But in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here, our Constitution is color-blind and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law.[26]

With this statement Justice Harlan concluded his dissenting opinion: "For the reasons stated, I am constrained to withhold my assent from the opinion and judgement of the majority."[27]

The Supreme Court, in the Plessy V. Ferguson decision, actually set the precedent doctrine of "separate but equal" by ruling as constitutional segregation of the races. "Under the protection of this doctrine, 17 states

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[24] Staff, People Judge, I, p. 795.

[25] Ibid., pp. 795-796.

[26] Ibid., p. 796.

[27] Ibid., p. 797.

maintained segregated schools under the compulsion of state legislation;" Congress enacted a school segregation act for the District of Columbia; in addition four states adopted laws that permitted segregation on a local option basis. "In the remaining states, 16 prohibited segregation, and in 11 there was no specific legislation."[28]

The Supreme Court is influenced by a degree by public opinion. Thus after a customary judicial lag, the Plessy V. Ferguson decision reflected the idea that "no court can long withstand the morals of its era."[29]

The next case to come before the Court, concerning segregation, was in 1899. In Cummings V. County Board of Education, an injunction was sought by a group of Negroes whose school had burned. They asked the Court to close the white school until theirs was rebuilt. The Court held only that an injunction which would force the discontinuance of white schools until the operation of a Negro school was resumed was not the proper remedy to aid the Negro children denied adequate educational facilities.[30] This finding did not test the validity of school segregation since the ruling was basically one that two legal wrongs did not make a right.[31]

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[28] Knovitz, Bill of Rights, p. 547.

[29] Mendelson, Black and Frankfurter, pp. 74-75.

[30] Schwartz, The Court, p. 270.

[31] Ibid.

CHAPTER II

GRADUATE LEVEL CASES

After 1896, it was not until the late 1930's that the Supreme Court gave serious consideration to the "equality" requirement.[32] In the case of Gaines V. Canada, in 1938, Lloyd Gaines, a Negro applicant, sought admission to the School of Law of the State University of Missouri, since there was no Negro law school in that State. He was refused admission and carried his case through the lower courts to the Supreme Court.[33] The state of Missouri had made funds available to Gaines and all other qualified Negro applicants to finance their education in schools of adjoining states where educational facilities were not segregated.[34] The State, in arguing its case, pointed to the fact that by making funds available it had met the "separate but equal" requirement.[35]

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[32] Mason and Beaney, Court in Society, p. 257.

[33] Ibid.

[34] Paul A. Freund, "The Constitutionality of Legal Desegregation," The Making of American Democracy, II (1962), p. 456.

[35] Mason and Beaney, Court in Society, p. 258.

The Supreme Court rejected this idea. It ruled that the state of Missouri must offer equal educational facilities to Negroes and whites alike, and they must do so within the state.[36] In the Court's ruling, it stated that: "a state must accord all citizens within its jurisdiction equality of privileges regardless of race."[37] The decision further stated that:

> The question here is not of a duty of the State to supply legal training, or of the quality of the training which it does supply, but of its duty when it provides such training to furnish it to the residents of the State upon the basis of an equality of right.[38]

The decision went on to show how the laws of Missouri had created for the white law students certain privileges and denied the Negroes the same privileges by reason of their race. It pointed to the fact that the Negro resident must go outside the state to get the education the white person could obtain within the state, and this was a denial of the "equality of legal right."[39]

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[36] Marian D. Irish and James W. Prothro, The Politics of American Democracy (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1959), p. 248. (Hereinafter cited as Irish and Prothro, American Democracy.)

[37] Ibid.

[38] Mason and Beaney, Court in Society, p. 258.

[39] Ibid.

By 1950, other cases on educational facilities came before the Supreme Court at the graduate level. In one of these cases, McLaurin V. Oklahoma State Regents, the Court nullified state efforts to segregate the scholastic activities of a Negro student who, as a result of a federal court order, had been admitted to the graduate school of the University of Oklahoma.[40] The Court upheld the contention of McLaurin that he had been denied equal protection. Although the Negro had been allowed to attend the university, as directed by the federal court order, he had been required to sit apart from the white students in the classrooms, the library, and the cafeteria.[41] The Court, in its decision, maintained this was a handicap to the student in performing his graduate work, since much of education is acquired by association with other students, the Negro pupil was being deprived of this association.[42]

It was becoming more evident that the "separate but equal" doctrine would be very difficult to apply in practice.[43] At the time of the McLaurin V. Oklahoma State Regents case, the Governor of Oklahoma estimated "it would cost $10 million initially and $500,000 a year to provide

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[40] Mason and Beaney, Court in Society, p. 259.

[41] Irish and Prothro, American Democracy, p. 248.

[42] Ibid., pp. 248-249.

[43] Mason and Beaney, Court in Society, p. 259.

equal separate facilities for McLaurin and other Negro graduate students."[44]

In 1950, another case, involving a new segregated law school for Negroes in Texas, came before the Supreme Court. In this case, Sweatt V. Painter, the Court ruled that a separate law school for Negroes in Texas did not provide "equal protection," since the new law school for Negroes and the University of Texas Law School were not "substantially equal."[45] Sweatt, the Negro applicant, supported by a committee of outstanding law teachers and school administrators, was able to convince the Court that "the quality of a student body and various other intangible characteristics of a law school were at least as important as physical facilities."[46] In judging the Negro school inferior to the University of Texas Law School, the Court considered such criteria as the prestige of the faculty and the position and influence of the alumni.[47] In a unanimous decision the Court ordered Sweatt be admitted to the University of Texas Law School. In part the decision stated: "The University of Texas Law School possesses to a far greater degree those qualities which

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[44] Mason and Beaney, Court in Society, p. 259.

[45] Irish and Prothro, American Democracy, p. 249.

[46] Mason and Beaney, Court in Society, p. 259.

[47] Irish and Prothro, American Democracy, p. 249.

are incapable of objective measurement but which make for greatness in a law school."[48]

In the Sweatt V. Painter decision, the Supreme Court, by its emphasis placed upon the intangible factors, made it clear that no two schools could be considered exactly equal in every respect. If the Court was to employ this type of criteria, then the "separate but equal" doctrine was soon to disappear when tested in a specific case.[49] The National Association for the Advancement of Colored People used this decision as a basis for filing a series of cases designed to eliminate segregation at the public school level.[50]

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[48] Mason and Beaney, Court in Society, p. 259.

[49] Irish and Prothro, American Democracy, p. 249.

[50] "Civil Rights," Encyclopedia Americana, Vol. XX, 1962 ed., p. 74.

CHAPTER III

THE 1954 DECISION OF THE SUPREME COURT

From 1937 to 1954, all the education cases to come before the Supreme Court concerned the graduate level. The decisions of the Court on these cases were that separate facilities for the Negro were inherently unequal and violative of the equal protection clause.[51] So then, since the Court had found the facilities to be unequal, they did not have to consider the validity of Plessy V. Ferguson in the field of Education and on the doctrine of separate but equal.[52] This question was to be presented directly in Brown V. Board of Education of Education of Topeka, in 1954.

The case, Brown V. Board of Education of Topeka, gets its name from an eleven-year-old Negro girl named Linda Brown, living in Topeka, Kansas.[53] This case, along with four others, involving segregation in public

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[51] Schwartz, The Court, p. 270.

[52] Ibid., pp. 270-271.

[53] Jerre S. Williams, The Supreme Court Speaks (Austin, Texas: University of Texas Press, 1957), p. 416. (Hereinafter cited as Williams, Court Speaks.)

schools below the college level, was heard by the Supreme Court in 1952. The plaintiffs in this case were Negroes of public school age who had gone through the courts for aid in obtaining admission to public schools in their community on a nonsegregated basis.[54] The lower courts had found the Negro and white schools involved were either equal or being equalized, with respect to teachers and teachers' salaries, curricula, buildings, and other tangible factors.[55] The Negroes argued this made no difference. They asked the Court to rule on one word--separate.[56] No contention was made by the Negroes that the facilities were unequal.[57]

After hearing argument on the five segregation cases pertaining to public schools during the 1952 term of the Court, the Justices could not reach a decision.[58] The cases were set for reargument during the 1953 term of the Court. Realizing the affect any ruling would have on public schools were segregation found unconstitutional, the Court took a cautious and unusual procedure by requesting counsel to find answers to several questions.[59]

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[54] Schwartz, The Court, p. 271.

[55] Ibid.

[56] Irish and Prothro, American Democracy, p. 249.

[57] Ibid.

[58] Mason and Beaney, Court in Society, p. 260.

[59] Ibid.

These questions were:

1. What evidence is there that the Congress which submitted and the state legislatures and conventions which ratified the Fourteenth Amendment contemplated. . . that it would abolish segregation in public schools?

2. If neither the Congress in submitting nor the States in ratifying the Fourteenth Amendment understood that compliance with it would require the immediate abolition of segregation in public schools, was it nevertheless the understanding of the framers of the Amendment
   (a) that future Congresses might, in the exercise of their power under section 5 of the Amendment, abolish such segregation, or
   (b) that it would be within the judicial power. . .to construe the Amendment as abolishing such segregation of its own force?

3. On the assumption that the answers to questions 2 (a) and (b) do not dispose of the issue, is it within the judicial power, in construing the Amendment, to abolish segregation in public schools?

4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment
   (a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or
   (b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

5. On the assumption on which questions 4 (a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4 (b),
   (a) should this Court formulate detailed decrees in these cases;
   (b) if so what specific issues should the decrees reach;
   (c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;
   (d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?[60]

Reargument was heard again on this case during the 1953 term of the Court. Thurgood Marshall was the Negro spokesman who urged the Supreme Court to reject the separate but equal doctrine as "a faulty conception of an era dominated by provincialism."[61] John W. Davis headed the counsel for the States who cited historical data to show that segregated school systems were in existence when the Fourteenth Amendment was adopted in 1868, and the advocates of the Amendment had not questioned their constitutionality.[62]

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[60] Mason and Beaney, Court in Society, pp. 260-261.
[61] Ibid., p. 261.
[62] Ibid.

The Court, in seeking counsel on this case, realized that were segregation in public schools found unconstitutional, it would affect forty per cent of the nation's public school enrollment--two million five hundred thousand colored and eight million white students--in seventeen states and the District of Columbia.[63] From these figures it is understandable why the Court's cautious procedure was taken.

On May 17, 1954, the Supreme Court, in a unanimous decision, outlawed segregation in the public schools.[64] Mr. Earl Warren, of California, the thirteenth Chief Justice, gave the opinion of the Court.[65] Even though the Court sought outside help through counsel and briefs, it apparently had little influence on the Court's final decision.[66] Mr. Warren stated:

> In approaching this problem, we cannot turn the clock back to 1868, . . . or even to 1896, when Plessy V. Ferguson was written. We must consider public education in the light of its full development and its present place in American life throughout the nation.[67]

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[63] Mason and Beaney, Court in Society, p. 261.

[64] Salomon, Supreme Court, XXXIII, pp. 107-108.

[65] Williams, Court Speaks, p. 417.

[66] Mason and Beaney, Court in Society, p. 262.

[67] Ibid.

Mr. Warren gives some of the reasons why reargument was heard.

> Reargument was largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then existing practices in racial segregation, and the views of proponents and opponents of the Amendment. This discussion and our own investigation convince us that, although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best, they are inconclusive. . . . What others in Congress and the state legislature had in mind cannot be determined with any degree of certainty.[68]

In conclusion the Chief Justice stated: "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."[69]

In the Brown V. Board of Education of Topeka case, the Supreme Court based its ruling primarily on the fact that segregation in public schools violated the equal protection laws as guaranteed by the Fourteenth Amendment of the Constitution.[70]

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[68] Konvitz, Bill of Rights, p. 548.

[69] Williams, Court Speaks, pp. 421-422.

[70] B. E. Mays, "The Case for Integration," Contemporary Civilization, I (1959), p. 174.

Realizing the effect the ruling was going to have upon education, the Court restored the cases to the docket for further hearing, in order to give the parties concerned further time for rehearing and to make plans for carrying out the orders of the Court.[71]

The Court on May 31, 1955, implemented their previous ruling in another unanimous decision. In this decision, the Court directed lower courts to consider the locale and problems involved in a transition to a school system which is racially nondiscriminatory. The lower courts were to consider such things as transportation, personnel, the physical condition of the school plant, and other pertinent factors.[72] But all this was to take place as soon as possible and without delay. This is best shown in part of the decision which stated:

> While giving weight to the public and private considerations, the courts will require that the defendents make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner.[73]

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[71] Williams, Court Speaks, pp. 422-423.

[72] Ibid., p. 423.

[73] Ibid.

By 1956, approximately one year after the implementation decrees were handed down by the Supreme Court, seventeen southern and border states had taken steps toward complying with the Court ruling.[74] However, most of these were border states. There were seven southern states which announced their intentions of fighting the Court order. These were: Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina, and Virginia.[75] The District of Columbia was completely integrated. But crime and juvenile delinquency increased in such proportions there that Congress, as a result of nationwide publicity, began an investigation to determine if these conditions were a result of integration.[76]

The Supreme Court had made its decision. Whether the decision was right or wrong, was a subject of much discussion. The crisis which followed was an indication of the problems involved in implementing the decision.[77]

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[74] Irish and Prothro, American Democracy, p. 250.

[75] Ibid.

[76] Ibid.

[77] Ibid.

CHAPTER IV

THE LITTLE ROCK CRISIS

The first major crisis to develop after the 1954 and 1955 decisions of the Supreme Court occurred in Little Rock, Arkansas. On May 18, 1954, only one day after the Supreme Court of the United States had ruled that segregation of the races in the public schools was unconstitutional, Virgil T. Blossom, Superintendent of Little Rock School District, met with the six-member School Board to discuss the procedure they would take.[78] After a few days planning, they formulated a statement to be released on May 22, 1954. But before the statement was released, Mr. Blossom, with the approval of the Board, asked three prominent Negro leaders to arrange a meeting with representative Negro groups so they might know the position of the board before the public statement was released.[79] Mr. Blossom opened the meeting by reading the following statement of the Board:

> The Board of Education of Little Rock School District has been working for a number

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[78] Virgil T. Blossom, It Has Happened Here (New York: Harper and Brothers, 1959), p. 10. (Hereinafter cited as Blossom, Happened Here.)

[79] Ibid., p. 11.

> of years at the job of providing a program of separate but equal educational opportunities for all children of this city. During this period the problems of school finance, facilities, personnel, instructional supplies, and other lesser items in our budgets have called for increased financial support, . . . The response of our citizens has made it possible to have and maintain our school program in its present form. To date this program has been in harmony with the Federal Constitutional requirements, and the statutory requirements of the state of Arkansas.
>
> On May 17, 1954, the Supreme Court of the United States declared that the segregation of the races in the public schools is in violation of the Federal Constitution. At the same time the Supreme Court deferred judgment on the questions of time and methods for the accomplishment of integration. Until the Supreme Court of the United States makes its decision. . .more specific, Little Rock School District will continue with its present program.
>
> It is our responsibility to comply with Federal Constitutional Requirements and we intend to do so when the Supreme Court of the United States outlines the method to be followed.[80]

The statement thus enumerated specific steps which would be taken during the interim period until the Court made its decision more specific. These steps were:

1. Develop school attendance areas consistent with the location of white and colored pupils with respect to present and future physical facilities in Little Rock School District.

2. Make the necessary revisions in all types of pupil records in order that the transition to an integrated school system may serve the

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[80] Blossom, Happened Here, pp. 11-12.

best interests of the entire school district.

3. Make research studies needed for the implementation of a sound school program on an integrated basis.[81]

Superintendent Blossom concluded his message with an appeal for the support of the Negro leaders as he said: "Little Rock citizens have always been cooperative, we solicit your same help and understanding in the creation of an integrated school program required as a result of the Supreme Court Decision."[82]

By the time Superintendent Blossom had finished reading the statement of the Little Rock Board of Education, the audience had lost much of its enthusiasm.[83] There were some Negroes in the audience who thought the schools should be desegregated immediately. One of these was L. C. Bates, editor of a local Negro newspaper the State Press. He was also the husband of Mrs. Daisy Bates, the state president of the National Association for the Advancement of Colored People.[84] When Superintendent Blossom had finished reading his message, L. C. Bates asked him if the Little Rock School Board intended to

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[81] Blossom, Happened Here, p. 12.

[82] Ibid.

[83] Ibid.

[84] Ibid.

integrate the schools in 1954.[85] Blossom's reply was: "No, it must be done slowly. For instance, we must complete the additional school buildings that are now being started."[86] Bates immediately walked out of the meeting. Later his newspaper was very critical of the Board's statement.[87]

Some Negro leaders demanded greater speed in integrating the schools, but in the long struggle ahead the school board had the cooperation of probably "ninety-five per cent of the Negro citizens."[88]

In the months which followed, the Little Rock School Board and Superintendent Blossom listened to various groups to see what the people were thinking about the possible integration of Little Rock schools in the near future. There were the determined segregationists of the Capital Citizens' Council and the White Citizens' Council. Those who favored immediate integration were the Urban League, the Council on Human Relations, and the National Association for the Advancement of Colored People.[89]

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[85] Blossom, Happened Here, p. 12.

[86] Ibid.

[87] Ibid., p. 13.

[88] Ibid.

[89] Ibid., pp. 13-14.

The general opinion of most citizens--both white and colored--was somewhere in between these extreme groups.[90] These were the people who agreed in principle with the School Board's go-slow policy.

Originally, Mr. Blossom intended to start integration of the Little Rock schools in the first grade. The Superintendent thought that six-year-old children would be the least concerned about the color of the skin of classmates.[91] It appears this would have been the logical grade to start integration since they had not had as much time to develop prejudices. Also, integration would have come about slowly and been more acceptable.[92]

The Little Rock School Board and Superintendent Blossom were soon to change their minds about this plan. As a result of meetings with the Parent Teacher Association and other conservative groups, Mr. Blossom found that the parents who had young children in the lower grades at school were the ones who were most opposed to integration in the Little Rock Schools.[93]

On June 10, 1955, only ten days after the Supreme

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[90] Blossom, Happened Here, p. 14.

[91] Ibid., pp. 15-16.

[92] Ibid., p. 16.

[93] Ibid.

Court had implemented its 1954 ruling, the Little Rock School Board announced a plan for desegregating its public schools.[94] The plan called for a gradual desegregation in three phases as follows:

> First phase: Integration should begin at the senior high school level (Grades 10-12).
>
> Second phase: Following successful integration at the senior high school level, it should then be started in the junior high schools (Grades 7-9).
>
> Third phase: After successful integration in junior and senior high schools, it should be started in elementary schools (Grades 1-6).[95]

The first phase of this plan was to become effective in the school year 1957-58.[96] This plan was announced two years before it was to go into effect with the hope that the pupils, parents, and the public would be prepared for it. However, the National Association for the Advancement of Colored People had other ideas.[97] They were not willing to wait

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[94] Daisy Bates, The Long Shadow of Little Rock (New York: David McKay Company, Inc., 1962), p. 49. (Hereinafter cited as Bates, The Shadow.) It should be remembered that Daisy Bates was president of the Arkansas Chapter of the National Association for the Advancement of Colored People during the Little Rock crisis. Therefore, her opinions as expressed in this book may be biased.

[95] Ibid.

[96] Ibid.

[97] Ibid., p. 52.

in good faith.

> In the spring of 1956 State Chairman of the NAACP Legal Defense Committee, Wiley Branton, and U. Simpson Tate, regional attorney for the NAACP, filed suit in Federal Court against the Little Rock School District on behalf of thirty-three Negro parents for immediate integration to start in grades one to twelve.[98]

Federal Judge John E. Miller ruled in favor of the Little Rock School Board. His decision was that the school board, in scheduling its plan to begin integration in 1957, had acted in good faith.[99]

The attorneys for the National Association for the Advancement of Colored People immediately appealed the decision to the Eighth Circuit Court of Appeals. The Court of Appeals upheld the lower court ruling but it also ordered the school board to put its plan into effect as of September, 1957.[100] The action taken by the National Association for the Advancement of Colored People accomplished nothing and did much harm to public relations at the time.[101]

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[98] Bates, The Shadow, p. 52.

[99] Ibid.

[100] Ibid.

[101] Blossom, Happened Here, p. 29.

During this time several school boards in Arkansas announced plans for desegregation of their schools. In 1955, the Arkansas State Board of Education announced that, beginning in the fall, its seven state colleges would be opened to Negro undergraduate students.[102]

In January, 1955, Orval Faubus assumed the office as Governor of Arkansas as a result of his election in November, 1954. Governor Faubus' record had favored integration in various categories prior to September, 1957.[103] As he had once pointed out in an address:

> All transportation systems had been integrated under his administration and six of the seven state colleges had Negro students. (In Little Rock, hospitals, libraries and certain other public facilities were integrated.) He was the first Democratic governor in the South to put Negroes on a Democratic state committee and he recommended to the Democratic state convention that the so-called 'white primary' be abolished. During his administration, Negroes had been appointed to administrative positions never before held by members of their race. His son attended a state-supported integrated college, and eight public schools in other Arkansas towns had been 'peaceably integrated' during his tenure in office.[104]

Apparently Governor Faubus suddenly changed his policy.[105] In the spring of 1957, during the legislative

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[102] Bates, The Shadow, p. 49.

[103] Blossom, Happened Here, p. 68.

[104] Ibid.

[105] Ibid.

session, four pro-segregation bills were introduced with his support. These bills were:

> House Bill No. 322 which provided for the creation of a State Sovereignty Commission. . .to perform any and all acts and things deemed necessary to protect the sovereignty of Arkansas and other states from encroachments by the Federal Government. . . .
>
> House Bill No. 323 which made attendance not compulsory in integrated schools.
>
> House Bill No. 324 required persons and organizations. . .to register with the state and make regular reports of their income and expenses.
>
> House Bill No. 325 which allowed school boards to use school funds to hire lawyers for integration suits.[106]

The Little Rock schools were scheduled to open on Tuesday, September 3, 1957. On Monday, September 2, newspapers, radio stations, and television stations all commented on the opening of school on Tuesday.[107] Segregationist leaders sent telegrams of encouragement to Governor Faubus. The United States Department of Justice issued a statement that its forces, including United States Marshals and the Federal Bureau of Investigation, stood ready in case of interference with federal court orders.[108]

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[106] Bates, The Shadow, p. 53.

[107] Blossom, Happened Here, p. 69.

[108] Ibid.

As the opening day of school drew closer eight of the seventeen Negro students who had enrolled and had been accepted at Central High School, withdrew.[109] Nine others and approximately two thousand white children prepared to start the school term on Tuesday, September 3, 1957. On Monday, Little Rock Police Chief Potts, Superintendent Blossom, and the Little Rock Board of Education tried to find out from Governor Faubus if the National Guard would be available if needed.[110] The Governor did not answer their question until he later gave his reasons for calling out the National Guard. As Superintendent Blossom said: "I think Governor Faubus himself is behind this program of intimidation."[111]

By eight-thirty Monday evening, the National Guard had reached the Central High School grounds and still no word from Governor Faubus as to why, or what, his intentions were.[112]

At ten-fifteen on Monday evening, Governor Faubus made a television speech. He reported that large numbers of persons from other parts of the state were coming into

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[109] Blossom, Happened Here, p. 70.

[110] Ibid.

[111] Ibid., pp. 70-71.

[112] Ibid., p. 72.

the city and that there had been an unusually large sale of weapons in the Little Rock area.[113] These two statements were later proven to be inaccurate.[114] The Governor argued for a delay in the integration orders "on the grounds that litigation over validity of state segregation laws had not been concluded."[115]

He continued his speech by stating his reasons for calling out the National Guard.

> Units of the National Guard have been, or are now being mobilized with the mission to maintain or restore the peace and good order of this community. Advance units are already on duty on the grounds of Central High School . . . .
>
> This is a decision I have reached prayerfully. It has been made after conferences with dozens of people and after the checking and verification of as many of the reports as possible.
>
> The mission of the State Militia is to maintain or restore order and to protect the lives and property of citizens. They will act not as segregationists or integrationists, but as soldiers called to active duty to carry out their assigned tasks.
>
> But, I must state here in all sincerity, that it is my opinion--yes, even a conviction, that it will not be possible to restore or to

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[113] Blossom, Happened Here, p. 74.

[114] Ibid.

[115] Ibid.

> maintain order and protect the lives and property of the citizens if forcible integration is carried out tomorrow in the schools of this community. The inevitable conclusion therefore, must be that the schools in Pulaski County, for the time being, must be operated on the same basis as they have been operated in the past.[116]

The Little Rock School Board went back into session after the Governor had finished his speech. The Board stated that although the federal court had ordered integration to proceed, Governor Faubus said that the schools should continue as they had in the past and had stationed troops at Central High School to maintain order. In view of this situation, the board asked that "no Negro students attend Central or any other white school until the dilemma was legally resolved."[117]

As a result, no Negroes appeared at Central High School on Tuesday morning as students returned to classes for the beginning of the school year.[118]

The School Board decided it must return to Federal Judge Davies for relief. Attorney House, representing the School Board, filed a petition that the Board should not be held in contempt of the Court.[119] Judge Davies

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[116] Blossom, Happened Here, p. 75.

[117] Ibid.

[118] Ibid., p. 77.

[119] Ibid., p. 78.

ordered the Board to put into effect immediately its plan of integration.[120] That evening the School Board issued a statement that Central High School would accept the Negro students the following morning.

The first Negro student to appear at Central High School on Wednesday, September 4, 1957, was Elizabeth Eckford, a fifteen-year-old girl.[121] She was turned back by the National Guard. The next Negro student to appear was Terrance Roberts, a fifteen-year-old boy. He, too, was turned back. Later the other seven Negroes appeared with Harry Bass, a Negro leader in Little Rock, who asked the commander of the troops why the students were not permitted to enter the school. The commander stated that they were being turned back on orders from Governor Faubus.[122]

The days which followed at Central High made an atmosphere conducive to proper education impossible.[123]

Units of the National Guard of Arkansas were at Central High School from September 2 until September 20, 1957.[124] On September 20, 1957, an injunction was obtained

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[120] Blossom, Happened Here, p. 79.

[121] Ibid., p. 80.

[122] Ibid., p. 81.

[123] Ibid., p. 86.

[124] Wilson Record and Jane Cassels Record, Little Rock, U.S.A. (San Francisco: Chandler Publishing Company, 1960), p. 56. (Hereinafter cited as Record, Little Rock.

through the Federal Court which instructed the National Guard not to interfere with or prevent integration at the Central High School of Little Rock.[125] After the injunction was issued by the Federal Court, Governor Faubus announced he was ordering the troops away from Little Rock Central High School. He said he "would comply for the time being with the Federal Court injunction and would do everything in my power to keep the peace at the school."[126]

On Monday, September 23, 1957, which has been called "Black Monday", the events at Central High were no better.[127] It was on this day that President Dwight Eisenhower issued his Emergency Proclamation in which he

> .....denounced the disgraceful occurences at Little Rock, threatened to use whatever force may be necessary to enforce the law and the court's order and issued a proclamation commanding all persons obstructing justice to cease and desist and disperse.[128]

On September 24, 1957, President Eisenhower, informed that a mob had gathered in defiance of his cease and desist proclamation, ordered Federal troops into Little Rock and federalizied the Arkansas National Guard, thus

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[125] Record, Little Rock, p. 53.

[126] Ibid., p. 56.

[127] Ibid., p. 59.

[128] Ibid., p. 64.

removing it from Governor Faubus' command.[129] Immediately about one thousand soldiers from the famous 327th Airborne Battle Group of the 101st Airborne Division were flown from Fort Campbell, Kentucky, to Little Rock.[130]

These Federal troops stayed in Little Rock until after graduation on May 27, 1958. Little Rock Central High School graduated 602 seniors on May 27--one of them a Negro--after eight months and six days of integration by force with the use of Federal troops.[131]

On May 8, 1958, the White House issued a statement on the removal of troops from Little Rock. The statement was released by James C. Hagerty, Press Secretary to the President, and stated in part:

> Since last September the federal government has stationed soldiers at the Little Rock Central High School to prevent obstruction of the orders of the United States District Court.
>
> Since the summer recess starts at Central High School on May 28 and since there will be no further present need for the Guardsmen, I have directed they be released May 29.
>
> Following that date I trust that state and local officials and citizens will assume their . . .duty for seeing that the orders of the

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[129] Record, Little Rock, p. 64.

[130] Ibid.

[131] Ibid., p. 95.

federal court are not obstructed.

> The faithful execution. . .will make it unnecessary for the federal government to preserve the integrity of our judicial processes.[132]

Of the nine Negro students who entered Central High School in September, 1957, eight finished the school year, and one was expelled. Minnijean Brown, a sixteen-year-old junior, was first suspended in December, 1957, for nine days for throwing a bowl of chili on a white boy.[133] After other incidents, she was expelled February 17, 1958.[134] The remaining eight Negro students all made passing grades and one of them, Carlotta Walls, a sophomore, made the honor roll.[135]

By February 20, 1958, events at Little Rock Central High School were of such a nature that the school board asked the federal district court for a postponement of the desegregation order.[136] On June 20, 1958, the federal district court issued its decision which permitted postponement of integration for two and one-half years.[137]

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[132] Record, Little Rock, p. 94.

[133] Ibid., p. 88.

[134] Ibid., p. 89.

[135] Ibid., p. 95.

[136] Ibid., p. 89.

[137] Ibid., p. 96.

The National Association for the Advancement of Colored People immediately appealed the ruling to the United States Circuit Court of Appeals, which, on August 18, 1958, reversed the previous ruling. At the School Board's request, the Court of Appeals granted a stay of its order until the Supreme Court could rule on the case.[138]

The decision of August 18, 1958 stated:

> We say the time has not yet come in these United States when an order of a federal court must be whittled away, watered down, or shamefully withdrawn in the face of violent and unlawful acts of individual citizens in opposition thereto. . . .
>
> . . .Accordingly, the order of the district court is reversed, with directions to dismiss the appellees' petition.[139]

On August 26, 1958, only a few weeks before the schools were to resume classes after the summer holidays, Governor Faubus called the legislature into a special session to deal with the school situation.[140] During this session, the legislature passed sixteen different laws designed to maintain segregation. One of the major provisions was: "Shut down schools faced with integration and provide an election within 30 days to determine whether

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[138] Record, Little Rock, p. 106.

[139] Ibid., pp. 108-109.

[140] Ibid., p. 114.

voters want them to stay closed or reopened on a desegregated basis."[141]

The Little Rock Board of Education had delayed the opening of the high schools, pending a decision by the Supreme Court on their appeal for a two and one-half-year delay in integrating the schools. On September 12, 1958, the United States Supreme Court ruled that integration at Little Rock Central High School should proceed without the two and one-half-year delay granted by District Judge Harry J. Lemley.[142]

On the afternoon of September 12, the Little Rock Board of Education met and drew up a statement which said that the "high schools would open September 15 and that qualified Negroes would be admitted."[143] By 4:30 p.m. the same afternoon, Governor Faubus signed the proclamation closing the four Little Rock high schools. These schools did not re-open during the 1958 school year.[144]

During the 1958 school year many suits and countersuits were filed. Numerous attempts were made to have the schools re-opened, if necessary, on a desegregated basis

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[141] Record, Little Rock, p. 114.

[142] Ibid., p. 119.

[143] Ibid., p. 121.

[144] Ibid.

but to no avail. Some private schools were organized, some pupils went out of the state, apparently, others did not go to school at all.[145]

In December, 1958, a breakdown of the 3,698 white and Negro students who were enrolled in the four Little Rock schools when they were closed in September, reveal the following:

> 1,299 of the total 3,698 white and Negro pupils are in private schools full-time. . . .
>
> 527 pupils are getting part-time education by correspondence or in private schools.
>
> 1,168 are enrolled in public schools in other parts of the state.
>
> 100 (estimated) are enrolled in public schools outside the state.
>
> 604 apparently are getting no formal education.[146]

Some of the private schools formed after the close of the Little Rock schools were: J. T. Raney High School with a maximum enrollment of seven-hundred and sixty-seven students; a Baptist school sponsored by Ouchita College and held in the educational buildings at two large churches with an enrollment of three-hundred and seventy pupils;

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[145] Record, Little Rock, p. 132.

[146] Ibid.

and three other church related schools with enrollments of approximately forty pupils each.[147]

In 1959, there was a cry to re-open the schools. In August, 1959, the city's four high schools were re-opened under a new plan of integration. The Board used the state's pupil assignment laws for the first time.[148]

The Little Rock School Board pulled a big surprise on August 4, 1959, when it announced the four high schools would reopen on August 12, nearly a month early. "It seemed clear that the early date was a maneuver to foil any plans Governor Faubus might have had for a special legislative session such as he called the last week of August 1958."[149]

It is not easy to understand how the situation in Little Rock in 1957, could change from an atmosphere of anticipation to one of violence, hatred, and opposition in only a few short weeks. Superintendent Blossom had stated that Little Rock's newspapers had stood firmly for respect for the law, the city officials and civic leaders had worked for a peaceful solution, and the people generally had accepted the idea of minimum school integration. Little Rock was probably the least segregated in all categories

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[147] John C. Elkins, Where Little Rock Children Attended School, unpublished Masters Thesis, Arkansas State Teachers College, Conway, Arkansas.

[148] Record, Little Rock, p. 161.

[149] Ibid., p. 162.

of any border state city.[150]

There seems to have been several reasons for the Little Rock crisis. Yet, one main reason was very obvious.

> When the Supreme Court delivered its judgment. . .the federal government had no plan and no policy for carrying out the law, or even for assisting the Little Rock School Board in its efforts to obey it. . . .the Department of Justice did nothing constructive --and even two years later had done little except complain that it was hamstrung by weak provisions for enforcement of civil rights laws. . . .the federal government provided no leadership and no planned action that could lead to a solution or even to enforcement of the Court's orders except by the military.[151]

Another cause of the Little Rock crisis was the position taken by Governor Faubus.[152] Mayor Woodrow Mann of Little Rock, a moderate, attacked Governor Faubus for staging a political farce to prevent school integration. He defied both the Little Rock School Board and federal authority when he said that "the price is too high and the danger too great for him to permit integration to be forced on the school."[153] He went on to say there had been

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[150] Blossom, Happened Here, p. 86.

[151] Ibid.

[152] Harry S. Ashmore, An Epitaph For Dixie (New York: W. W. Norton and Company, 1958), p. 166.

[153] Blossom, Happened Here, p. 90.

no evidence which justified calling out the troops.[154]

A third reason for the Little Rock crisis was the National Association for the Advancement of Colored People.[155] Even though they failed in their attempts to speed up integration through legal action, they did attract undesirable attention to Little Rock when calm and intelligent cooperation was much needed.[156] The plan of the Little Rock School Board had called for gradual integration over a period of years and the courts had accepted this plan. The impatience of the National Association for the Advancement of Colored People is best shown by a statement made by Thurgood Marshall, chief counsel for the organization, when he said that it would have "been better if there had been complete integration at once."[157] He was later quoted as saying:

> There's strength in numbers, especially when you're having trouble. . . .Maybe we ought to take all those who are eligible to attend integrated schools in Little Rock and see it out.[158]

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[154] Blossom, Happened Here, p. 90.

[155] Ibid., p. 29.

[156] Ibid.

[157] Ibid., p. 91.

[158] Ibid.

This legal action brought to the courts by the National Association for the Advancement of Colored People brought adverse publicity to Little Rock and, also, caused tension to mount in the city of Little Rock. Some of the Negroes would not wait for the Board to put into effect the Court approved plan of integration.[159]

Another cause of the Little Rock crisis was the White Citizens' Council and the Capital Citizens' Council.[160] These two groups were strong segregationists and seemed to influence Governor Faubus and were accused of being behind the terror gangs and mob rule during the Little Rock crisis.[161] Although in the minority their influence was felt.

The fifth major cause of the Little Rock crisis consisted of a combination of several groups. Some of these groups were: National Association for the Advancement of Colored People chapters in other sections of Arkansas, White Citizens' Council groups from other states, a speech by Governor Griffin of Georgia, to a Capital Citizens Council meeting just prior to the opening of school in Little Rock in 1957, southern extremists, northern integrationists, the news media, and the complacency of

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[159] Blossom, Happened Here, p. 91.

[160] Ibid., p. 32.

[161] Ibid.

many who were willing to remain quiet and let the radicals take control.[162]

Another cause for tension after the troops arrived at Little Rock, was the use of bayonets on rifles carried by the soldiers.[163] The South's reaction to these troops at Little Rock has been best stated by a moderate member of Congress when he said:

> When the President sent the Army's toughest airborne troops with bayonets on their guns against unarmed white citizens he made a mistake for which he will never be forgiven. If the Army had used military police or even some ordinary outfit in the role of police they could have done the job--but you can't oppose even a minority of our citizens with bayonets as if you were fighting Nazi stormtroopers![164]

Another thought expressed in the North as well as the South was that if the use of armed force in the controversy over integration of Central High School proved anything, it was that "America's civil rights problem cannot be solved with bayonets."[165]

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[162] Blossom, Happened Here, pp. 32-56.

[163] Ibid., p. 125.

[164] Ibid.

[165] Ibid.

CHAPTER V

INTEGRATION OF ALABAMA SCHOOLS

Early in April, 1963, Negroes in Birmingham, Alabama, backed by the National Association for the Advancement of Colored People, began demonstrations against segregation in various areas of activity--including education.[166] As a result of these demonstrations there was considerable violence, numbers of arrests were made, and President John F. Kennedy deployed federal troops to areas near Birmingham. Among the demonstrators were more than one thousand Negro students of school age who stayed out of public schools to participate in the activities.[167] The students had been warned by Superintendent of City Schools of Birmingham, Theo. R. Wright, not to cut classes or stay away from school because final examinations were only a few weeks away. This warning was sent to all principals and teachers and published in the local newspapers

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[166] Race Relations Law Reporter, Vol. 8, No. 2 (Nashville: Vanderbilt University School of Law, Summer, 1963), p. 435. (Hereinafter cited as Law Reporter, Vol. 8, No. 2.)

[167] Ibid., p. 438.

for two days.[168] The Negro students continued to stay away from school and participate in the parades and other activities. As a result of the street marches, many of the students were arrested under a State Court Injunction obtained by the City of Birmingham on April 10, 1963.[169]

This injunction granted the City of Birmingham temporary relief against Negro leaders, forbidding them from

> . . .engaging in, sponsoring, inciting or encouraging mass street parades. . .without a permit, trespass on private property. . . , congregating on the streets or public places into mobs, and unlawfully picketing business establishments or public buildings. . .[170]

As a result of the Negro students being jailed, and, at a time when they were supposed to be in school, more than one thousand of them were suspended or expelled from school for the remainder of the school year.[171]

On May 20, 1963, Theo R. Wright, Superintendent of Education of the City of Birmingham, Alabama, wrote a letter to Wayman Matherson, Principal of the Washington Negro

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[168] Law Reporter, Vol. 8, No. 2, p. 444.

[169] New York Times, April 11, 1963, p. 5.

[170] Law Reporter, Vol. 8, No. 2, p. 436.

[171] Ibid., p. 444.

School, of that city, advising him as follows:

> Attached to this letter is a list of your pupils recently arrested for parading without a permit. As you know, the policy of the Board of Education has been immediate suspension or expulsion of students who have been arrested for any offense until proper hearings can be conducted for such pupils.
>
> Due to the fact that there is not enough time remaining during the present school session to have trials of all of these, the Board of Education, on Friday, voted to make an exception to its policy in these cases by following the procedure outlined below:
>
> Students whose names are on this list who are sixteen years old or older shall be immediately expelled for the balance of this term. Students whose names appear on the list who have not yet reached the age of sixteen shall be immediately suspended for the balance of the term. These expulsions and suspensions should be recorded on the pupil's permanent record or course card.[172]

Superintendent Wright then told how the pupil's might make up this lost time. He stated that the Board had voted to permit students to make application for summer school beginning on Monday, June 3, so they could make up the time lost and receive credit for the year's work. Those who did not enter summer school would be permitted to re-enter school in the Fall but would still have to complete the full grade or semester from which they were suspended or expelled.[173]

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[172] Law Reporter, Vol. 8, No. 2, p. 444.

[173] Ibid.

In the case of Woods V. Wright, Negro parents filed a class suit in the United States District Court, challenging the action of Birmingham school officials in suspending and expelling students who had been arrested for participating in the racial demonstrations in Birmingham.[174]

In the decision signed by Judge Clarence Allgood, he pointed out that the pupils had been warned not to cut classes or stay away from school and yet "some children undoubtedly of their own free will and accord refused to obey these instructions."[175]

In defense of his position, the Judge further stated that:

> This Court was shocked to see hundreds of school children ranging in age from six to sixteen running loose and wild without direction over the streets of Birmingham. . . It is due to the patience and good judgment of the people of Birmingham and the police officials particularly that no one was seriously injured on May 7, 1963, when the demonstrators were allowed. . .to parade within a certain designated area, and the hundreds of school children in the parade refused to stay within the boundaries of the parade area, broke through the police and for some forty-five minutes ran wild over the City of Birmingham.[176]

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[174] Law Reporter, Vol. 8, No. 2, p. 444.

[175] Ibid.

[176] Ibid., p. 445.

The Court went on to show why the plaintiff's motion should not be granted.

> This Court cannot conceive of a Federal Court saying to the Board of Education of the City of Birmingham. . .that the children who deliberately failed to attend school for some several days should not in any way be punished or penalized. White students in recent weeks have been suspended or expelled from the Birmingham high schools for similar or lesser offences.[177]

Judge Allgood further stated the problems of the School Board and declared that in the near future he could foresee their problems becoming almost overburdening.[178]

In his concluding statement, Judge Allgood gave the Courts decision as follows: "It is, therefore, at this time, ORDERED, ADJUDGED, AND DECREED that plaintiff's motion for a temporary restraining order be, and the same if hereby denied."[179]

However, later in the day the order was modified to the extent that the court agreed to take the plaintiff's request under consideration, and that a hearing would be set at the earliest possible date. However, no definite date was set for the hearing.[180]

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[177] Law Reporter, Vol. 8, No. 2, p. 445.

[178] Ibid.

[179] Ibid.

[180] Ibid., pp. 444-445.

The National Association for the Advancement of Colored People wasted no time in carrying this case further. On the same day, May 22, 1963, which the United States District Court denied relief to the plaintiffs' in the Woods V. Wright case, they appealed to the United States Court of Appeals.[181] The chief judge of the Court of Appeals for the Fifth Circuit was asked to grant an injunction against the continued suspension and expulsion of the school children pending an appeal on the merits from the district court's denial of relief.[182] This injunction was granted. Here Chief Judge Tuttle reversed the decision of the United States District Court and his point of view appeared to be just opposite that of the District Court.

In his decision granting the injunction Chief Judge Tuttle stated in part:

> Thus it seems plain that we have here a case of some 1,000 students who were engaging in legally permissible activities, illegally arrested for exercising this constitutional right. . . .
>
> These orders of suspension and expulsion, in my opinion, will not be permitted to stand when the case is reached on the merits in the Court of Appeals.[183]

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[181] Law Reporter, Vol. 8, No. 2, p. 445.

[182] Ibid.

[183] Ibid., p. 447.

Judge Tuttle further ordered Theo R. Wright, Superintendent of Schools of the City of Birmingham, to rescind his letter of May 20, 1963, which suspended or expelled the Negro students. The order stated that:

> The letter of direction of May 20, 1963, is rescinded and revoked and all students affected thereby are to be permitted to return to their respective classes as regular students immediately. Pending the actual rescission of said letter, appellee is ordered to make known in any way available to him to the said students that they are permitted to return to school on Thursday, May 23, 1963.[184]

This ruling by Chief Judge Tuttle was the basis of much criticism. The students deliberately stayed away from school for several days to participate in demonstrations and they were arrested and placed in jail. Yet Chief Judge Tuttle said these were "permissible activities."[185]

The question then asked by many, including the Attorney General of the State of Alabama, was "Has the time come when school boards and school officials can no longer discipline students, who deliberately disobey rules and regulations, without the federal government intervening?"[186]

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[184] Law Reporter, Vol. 8, No. 2, p. 447.

[185] Ibid., p. 448.

[186] Letter from State Attorney General Richmond M. Flowers, May 26, 1964.

In the case of Lee V. Macon County Board of Education, Negro children brought a class action in federal district court against the School Board of Macon County, Alabama, to require desegregation of the public school system.[187] In the Macon County School System for the school year 1962-63, there were in attendance 970 white students and 5,317 Negro students. There were seventeen schools for Negroes and three schools for whites. There were 178 Negro teachers and forty-three white teachers. There were seventeen buses for white students and forty-four buses for Negro students.[188]

The Court, in its decision, pointed out the fact that the Macon County School Board, in operating a dual school system based upon race and color, favored the white students in teacher-pupil ratio, in the number of buses, and the quality of schools.[189]

On August 22, 1963, the United States District Court issued a preliminary injunction ordering the defendents to:

> Begin nondiscriminatory application of the Alabama School Placement Law in September,

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[187] Race Relations Law Reporter, Vol. 8, No. 3 (Nashville: Vanderbilt University School of Law, Fall, 1963), p. 909. (Hereinafter cited as Law Reporter, Vol. 8, No. 3.)

[188] Ibid., p. 910.

[189] Ibid.

> 1963, and to submit by December 12, 1963, a plan for general desegregation which would abolish the dual school system and provide for general application of the placement law without regard to race or color, beginning with the January, 1964 term.[190]

Defendents were also ordered to report on September 3, 1963, the actions taken by the Board of Education on each application for admission or transfer under the Alabama School Placement Law filed with the Board.[191]

Between August 22, 1963, and the opening of school on September 2, 1963, thirteen applications for transfer by Negro students were approved by the Macon County Board of Education, and these Negro students were to enroll at previously all-white Tuskegee High School on September 2, 1963.[192] These thirteen Negro students were among the better students from the Negro schools, and they were enrolling at Tuskegee in grades eight through twelve.[193]

On September 2, 1963, the opening date for most schools in Alabama, Governor George C. Wallace issued an executive order to the Macon County Board of Education to

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[190] Law Reporter, Vol. 8, No. 3, p. 909.

[191] Ibid., p. 912.

[192] Letter from State Superintendent of Education A. R. Meadows, June 4, 1964.

[193] Ibid.

close the Tuskegee High School for one week. The reason Governor Wallace gave for delaying the opening of Tuskegee High until Monday, September 9, 1963, was:

> . . .for the sole and express purpose of allowing the Governor of the State of Alabama to preserve the peace, maintain domestic tranquility and to protect the lives and property of all citizens of the State of Alabama.[194]

The Tuskegee High School remained closed until September 9, 1963, as ordered by Governor Wallace. On that date he issued Executive Order Eleven which stated that "no student shall be permitted to integrate the public schools of Tuskegee."[195] He was saying that no Negro student would attend Tuskegee High School, and no white student would attend the Negro school.

Later on the same day, September 9, Governor Wallace issued Executive Order Thirteen in which he called the state's National Guard to active service to "preserve the peace in areas where desegregation was imminent."[196]

On September 9, the Governor wrote the Alabama Supreme Court requesting an advisory opinion on two decisions which he had already made and instructed to be

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[194] Law Reporter, Vol. 8, No. 3, p. 912.

[195] Ibid., p. 913.

[196] Ibid., p. 914.

carried out. The two questions which he asked the State Supreme Court were:

1. Am I constitutionally authorized, under and by virtue of Sections 35, 112, 113, 120 and 131 of the Constitution of Alabama 1901, or either of them, or under and by virtue of a combination of said sections of the Constitution, to send state law enforcement officers to the locale in question under the circumstances outlined above to preserve law and order?

2. Under the circumstances shown to exist above, would I be authorized, under the above-cited sections of the Constitution of Alabama, to suspend operation of the public schools in question?[197]

In answer to the first question, the State Supreme Court assured Governor Wallace that he was authorized to employ any forces that were available to keep the peace.[198]

In answer to his second question, the Court said the power to provide for the operation of schools was in the legislature, and in their opinion no act of the legislature gives the governor power to open or close schools.[199]

At the request of Robert Kennedy, the Attorney General of the United States, the federal district court at Birmingham issued a general temporary restraining order late in the day on September 9, 1963, against interference

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[197] Law Reporter, Vol. 8, No. 3, p. 915.

[198] Ibid.

[199] Ibid., p. 916.

in desegregation proceedings by the Governor or other state officials.[200]

In the temporary restraining order issued by United States District Judge Frank M. Johnson, Jr., he emphasized the fact that Governor Wallace was responsible for preventing the Macon County Board of Education from carrying out its orders.[201] He further stated that it appeared to:

> . . .the Court from the verified complaint of the United States that the Macon County Board of Education did assign 13 Negro children to the Tuskegee Public High School as students for the school year 1963-64; that the Macon County Board of Education ordered the opening of the Macon County School for the school year 1963-64 for September 2nd, 1963; that on September 2nd, 1963, George C. Wallce, Governor of the State of Alabama, issued an executive order wherein he purported to order and direct the Macon County Board of Education to postpone the opening at Tuskegee High School for a period of one week until September 9th, 1963; that this executive order was issued pursenant to a policy of George C. Wallace to keep Negro children from attending public schools in the State of Alabama with white children.[202]

On September 10, 1963, President Kennedy issued Presidential Proclamation 3554 which declared that an

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[200] Law Reporter, Vol. 8, No. 3, p. 916.

[201] Ibid.

[202] Ibid., p. 917.

obstruction of justice existed in Alabama and commanded persons engaged in such obstruction to desist.[203] Executive Order 11118, issued the same day, authorized the Secretary of Defense, Robert McNamara, to remove the obstruction and to use such military forces of the United States as might be necessary. At the same time, Alabama National Guard troops which had been called to active duty by the governor were ordered into federal service, and removed from the school premises.[204]

On September 24, 1963, in the case of the United States V. Wallace, a temporary injunction was issued by five of the federal district judges in Alabama forbidding the governor and all other state officers from enforcing "Executive Orders 10, 11 and 12, or to prevent, interfere with, or obstruct the desegregation of the schools in Tuskegee, Mobile, and Birmingham."[205]

Beginning on September 10, 1963, Tuskegee High School was the scene of violence and agitation, and white students boycotted the high school until it was closed.[206]

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[203] Atlanta Constitution, September 11, 1963, p. 1.

[204] Law Reporter, Vol. 8, No. 3, p. 919.

[205] Mobile Reporter, September 25, 1964, p. 1.

[206] Letter from State Attorney General Richmond M. Flowers, May 26, 1964.

After the first week of the 1963 school term, only thirteen pupils--all Negro--remained at the school, and one of these was expelled shortly thereafter. For the remainder of the first semester, which ended in January, 1964, Tuskegee High School consisted of twelve Negro students, thirteen teachers, and the principal.[207]

On Thursday, January 30, 1964, the State Board of Education ordered the school closed. On Friday, January 31, 1964, Macon County school officials agreed to obey the directive by the State Board to close Tuskegee High School by saying they "had no alternative but to lock the high school building."[208] In explaining the action by the State Board of Education, Attorney General Richmond Flowers said:

> The simple fact is that there are 13 teachers teaching 12 students. This is economically unsound under any reasoning . . . . It doesn't make any difference whether they are Negro or white or whatever, it is economically unfeasible.[209]

The Board of Education had said the per-pupil cost had risen to $450.00 a month, compared to the state-wide average of about $200.00 a year.[210]

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[207] Gadsden Times, January 31, 1964, p. 1.

[208] Huntsville Times, February 1, 1964, p. 2.

[209] Birmingham News, February 1, 1964, p. 1.

[210] Gadsden Times, February 21, 1964, p. 2.

The two hundred fifty white students who had left Tuskegee High after refusing to attend racially mixed classes, transferred to still-segregated schools at Notasulga and Shorter and to a new private academy in Tuskegee.[211]

Attorney General Richmond Flowers had said the twelve Negro students who were at Tuskegee High when it closed would be reassigned--under the state pupil placement act--to the Negro high school in Tuskegee. The Negro students rejected this and demanded admittance instead to the white schools at Shorter and Notasulga.[212]

On Monday, February 3, 1964, Negro attorneys in Montgomery for the twelve Negro pupils met in conferences through the day with United States District Judge Frank M. Johnson, Jr. and John Doar, one of the Justice Department's top civil rights lawyers.[213]

Late in the same day an order was issued by Justice Johnson to enroll the Negro students at Shorter and Notasulga schools, and also a sweeping injunction prohibiting state and county authorities from interfering.[214]

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[211] Birmingham Post-Herald, February 4, 1964, p. 2.

[212] Birmingham News, February 4, 1964, p. 1.

[213] Gadsden Times, February 4, 1964, p. 1.

[214] Birmingham Post-Herald, February 4, 1964, p. 2.

On Wednesday, February 5, 1964, six Negro students were enrolled at Shorter High School. There was some disturbances but the six Negroes were enrolled.[215]

At Notasulga, the only other white school in Macon County, the six Negro pupils who were to enroll were turned away. Mayor James Rea, of Notasulga, invoked a new city ordinance empowering him to limit enrollment at Notasulga High to "exactly its current figure."[216] Late that night fire broke out in the water filter system and the school was without water on Thursday. As a result, Principal D. W. Clements announced Thursday morning that the school would be closed until water was restored.[217]

It was beginning to appear that the Federal Government was getting ready to take action in the school situation. On Thursday, Infantry units at Fort Benning, Georgia, were placed on alert for movement into east Alabama within thirty minutes if needed. The units alerted employed helicopters almost exclusively.[218]

The boycott movement by white students at both Shorter and Notasulga gained momentum. On Monday, February

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[215] Gadsden Times, February 5, 1964, p. 1.

[216] Ibid.

[217] Birmingham Post-Herald, February 6, 1964, p. 1.

[218] Gadsden Times, February 6, 1964, p. 1.

10, when the Notasulga school re-opened, after the fire had closed it for two days, only one white student showed up for school.[219] One of the six Negro pupils assigned by a federal court order to Notasulga attempted to enter the school also, but was turned away.

At Shorter, the situation was no better. Only six white students appeared for school out of a student body of one hundred twenty-five. Six Negroes had been attending since Wednesday, February 5, 1964.[220]

By Wednesday, February 12, no white students were attending either Shorter or Notasulga, making the anti-integration boycott complete. More than two hundred of these students had registered at the Macon Academy at Tuskegee, a private school, which was just beginning its second semester.[221]

The six Negroes ordered admitted to Notasulga did not try again until February 14, when, under the protection of a new federal court order and a strong force of state troopers, three Negro boys and three Negro girls entered Notasulga for the first time.[222] There was still no actual

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[219] Gadsden Times, February 10, 1964, p. 1.

[220] Ibid.

[221] Gadsden Times, February 12, 1964, p. 1.

[222] Gadsden Times, February 14, 1964, p. 2.

integration since the white students were boycotting Notasulta and most of them had already entered private schools. The only students at Notasulga High were the six Negroes.[223]

The remainder of February, 1964, was a battle of legal maneuvers between the State and Negro Attorneys with the help of the federal government. Negro attorneys for the National Association for the Advancement of Colored People filed complaints with the federal district court in Montgomery requesting a statewide school integration order.[224] Also, they requested an injunction against state financed grants-in-aid to white students who have boycotted desegregated schools in favor of private segregated schools in Tuskegee. The State Board of Education, caught in a legal trap, revoked its order for closing Tuskegee High School, and insisted the city and county board's have complete authority over the schools.[225]

Negro attorney Fred Gray, with help from the federal justice department, tried to show that the State Board of Education has the final authority in closing the schools. He pointed to Tuskegee as the example, stating that the Macon County Board of Education had "no alternative

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[223] Gadsden Times, February 14, 1964, p. 1.

[224] Gadsden Times, February 22, 1964, p. 1.

[225] Mobile Press, February 23, 1964, p. 2.

after being told by the State Board to close Tuskegee High School."[226]

Around the last of February, 1964, Governor Wallace said that the two schools at Shorter and Notasulga might be closed if they continued to have only six students each.[227] However, the two schools continued to operate under court orders for the time being.

On April 18, 1964, fire destroyed most of the Notasulga High School where only six Negro students had been attending since February.[228] On April 28, a three-judge federal court in Montgomery issued an order that the six Negro pupils be returned to classes in the section of the school not damaged by the fire.[229]

One newspaper carried an article about the fire which destroyed most of the school by saying that federal authorities believed the "fire which destroyed the desegregated Notasulga High School in Macon County, Alabama, was the work of segregationists."[230] The Court, in noting these reports, said:

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[226] Montgomery Advertiser, February 22, 1964, p. 1.

[227] Birmingham Post-Herald, February 23, 1964, p. 1.

[228] Facts on File, Vol. XXIV, No. 1226 (New York: Facts on File, Inc., April 23-29, 1964), p. 136. (Hereinafter cited as Facts on File, Vol. XXIV, No. 1226.)

[229] Ibid.

[230] Atlanta Journal, April 20, 1964, p. 1.

> The county could not evade previous desegregation orders just because of the destruction of. . .(the school), which was, as reported by the press, probably the result of criminal actions intended to discharge the attendance of said Negro children.[231]

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[231] Facts on File, Vol. XXIV, No. 1226, p. 136.

CHAPTER VI

SCHOOL TROUBLES IN OTHER PARTS OF THE NATION

The South is not the only section of the United States which has race problems. Neither is the South the only section of the country where segregation in the schools is practiced. In 1963, the Pasadena, California, School District had its problems. Because a junior high school was destroyed by fire in Pasadena, it became necessary for the district school board to assign pupils to one of the two other schools in the area.[232] The nearest school for the pupils was one which had an enrollment predominantly of Negroes and other minority groups.[233]

The parents of the students who had been attending the school that burned became alarmed and demanded of the Pasadena School Board that their children be assigned to an all-white school, even though it was located almost twice as far away as the Negro school nearest them.[234] The parents threatened to withdraw their children from the

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[232] Law Reporter, Vol. 8, No. 3, p. 924.

[233] Ibid., p. 925.

[234] Ibid.

Pasadena School District and send them off to private schools if these demands were not met.[235] To meet this demand, the Pasadena School Board re-zoned the Linta Vista area to include the white students in the zone of the much further away all-white school.

In the case of Jackson V. Pasadena City School District, a Negro child brought an action in a California superior court to compel the Pasadena School Board to permit him to transfer from the Negro junior high school to the white school.[236] The plaintiff argued that the school attendance zones had been gerrymandered when a junior high school previously serving an all-white neighborhood was destroyed by fire and the neighborhood it served was added to the white school zone, "though the Negro neighborhood and school was much closer to that area."[237]

The trial court sustained a demurrer and the district court of appeals affirmed, ruling that "the board has broad discretion in the determination of school attendance areas."[238] The ruling concluded that "since the assignment of the new area to another school did not

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[235] Law Reporter, Vol. 8, No. 3, p. 925.

[236] Ibid., p. 924.

[237] Ibid.

[238] Ibid.

change the racial character of the student body in the plaintiff's school, he therefore had no basis for complaint."[239] He was denied the right to transfer to the all-white school.

His case was appealed to the higher courts and finally reached the Supreme Court. The Supreme Court ruled in favor of the plaintiff by contending that the board's demurrer should have been overruled in the lower courts. It charged the board with "arbitrarily gerrymandering school zones for the purpose of intensifying segregation."[240]

The integrated state of New York has not been exempt from the school integration crisis. In the case of Taylor V. Board of Education of City School District of City of New Rochelle, Negro children of the all-Negro Lincoln Elementary School brought a class action in federal district court against the city board of education, contending that the board had created and maintained a racially-segregated elementary school in violation of plaintiffs' Fourteenth Amendment rights.[241] The court

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[239] Law Reporter, Vol. 8, No. 3, p. 924.

[240] Ibid., p. 925.

[241] Race Relations Law Reporter, Vol. 8, No. 4 (Nashville: Vanderbilt University School of Law, Winter, 1963), p. 1427. (Hereinafter cited as Law Reporter, Vol. 8, No. 4.)

found that the board, having created a segregated school, was under a constitutionally-imposed duty to end segregation in good faith with all deliberate speed, "which obligation clearly had not been fulfilled."[242] The board was ordered to present a desegregation plan to start no later than the 1961-62 school year. The board appealed the case but was denied any relief.[243]

The board later submitted a plan, under protest, which provided for a system of permissive transfers to other schools in the district, if the transferring pupil's teacher recommended him as "able to perform in an academically satisfactory fashion for his grade level."[244] Other conditions relating to transfers provided that they must be granted on a yearly basis only. The court rejected this plan and the board then petitioned the United States Supreme Court for "a stay of the mandate pending application for certiorari."[245] The Supreme Court denied relief to the board and instructed them to abide by the lower court's decision and permit Negro students to transfer to other integrated schools in the New York City suburb.[246]

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[242] Law Reporter, Vol. 8, No. 4, p. 1427.

[243] Ibid.

[244] Ibid., p. 1428.

[245] Ibid.

[246] Ibid., p. 1429.

In the summer of 1963, the board applied to the district court again, this time asking permission to close the Lincoln School on the ground that its operation had been rendered "economically unfeasible by decreased enrollment resulting from transfers of pupils to other integrated schools."[247]

The court found that attendance at the Lincoln School had fallen from 483 to 210 and that the per capita cost of educating its pupils greatly exceeded the average in the city's schools.[248] On these grounds it granted the request of the board with one stipulation: "that the Board shall furnish transportation to pupils transferred to schools more than one and a half and less than ten miles from their residence."[249]

The Lincoln Elementary School was closed before the beginning of the 1963-64 school year and it's pupils were transferred to other integrated schools in the New York City system.[250]

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[247] Law Reporter, Vol. 8, No. 4, p. 1430.

[248] Ibid., p. 1431.

[249] Ibid., p. 1432.

[250] Ibid.

CHAPTER VII

INTEGRATION OF THE GADSDEN CITY SCHOOLS

After looking at some of the court decisions concerning the Negro and the schools, it is evident that every section of this great nation has been affected, in some way, by the school integration crisis. The community of Gadsden, Alabama, is no exception.[251]

On December 27, 1963, in the case Miller V. Board of Education of Gadsden, Alabama, the federal district court in Birmingham, was asked to rule on a class action suit brought by parents of Negro children in an effort to obtain desegregation of the public schools of Gadsden.[252]

In the findings of fact by the Court it stated that:

> There are 12,922 children, both white and Negro, now attending the public schools of Gadsden. There are three senior high schools, viz., Gadsden High and Emma Sansom, which are attended by white students, and Carver High, which is attended by Negro students. There are four junior high schools, viz., Disque,

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[251] Law Reporter, Vol. 8, No. 4, p. 1403.

[252] Ibid.

> Litchfield and Forrest, which are attended by white students, and Nancy Oden, which is attended by Negro students.
>
> There are eighteen elementary schools, thirteen of which are attended by white students and five by Negro students. All elementary schools are located in residential areas which they can most conveniently service. There are dual school zones with respect to elementary schools, but not as to senior and junior high schools, The latter are located to serve the school population on a functional basis.[253]

Other similarities of the white and Negro schools include the following:

> The schools of Gadsden are staffed with 344 white and 122 Negro teachers. There are 9,494 white and 3,428 Negro students. There is a single salary schedule applicable to both white and Negro teachers, and there is an identical curriculum at all levels, with an occasional exception being made at the request of the patrons of a particular school. Identical allotment of funds at all levels for teaching aids, library and other allotments is made without any distinction as to race. All high schools use the Murphree Stadium located on the grounds of Gadsden High for football games.[254]

Judge Grooms further noted how the students courses are assigned in September for the full nine months school year and teacher load assignments are made accordingly.

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[253] Law Reporter, Vol. 8, No. 4, p. 1405.

[254] Ibid.

Also, that the board has followed a policy of refusing or discouraging transfers during the school year from one school to another.[255] In his findings of fact, Judge Grooms stated that this policy has been applied consistently and vigorously to all students whether white or Negro and "to all schools and at all levels."[256]

In the ruling, the court found that the defendant board was unlawfully operating a segregated school system on a compulsory bi-racial basis.[257] It also found that no steps had been taken by the board since the 1954 School Segregation Decision toward reorganization of the school system into a single non-racial system. Because the Gadsden system had no mid-term break, it was ruled that in the best interest of the school system that planned desegregation not be required until the 1964-65 school year.[258]

An injunction was issued requiring the Gadsden Board of Education to submit, not later than April 1, 1964, a desegregation plan to become effective at the beginning of the 1964-65 school year, which must provide

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[255] Law Reporter, Vol. 8, No. 4, p. 1405.

[256] Ibid.

[257] Ibid., p. 1406.

[258] Ibid.

that the Alabama Pupil Placement Law will be administered without racial discrimination for all school grades.[259]

The Gadsden Board of Education submitted the desegregation plan as required and a hearing was later scheduled for June 25, 1964.[260]

On June 25, 1964, Gadsden City School Superintendent, I. J. Browder, met in Birmingham with United States District Judge, H. H. Grooms and Negro attorneys to discuss the case.[261] Judge Grooms rejected the plan presented by the Gadsden Board of Education which would have integrated classes in the city schools on a year-to-year, grade-by-grade basis, beginning with grade twelve and working down one grade each year.[262]

Judge Grooms told Gadsden City School Superintendent, I. J. Browder, that the city's plan should conform with a recent directive of the United States Fifth Circuit Court of Appeals which said that "school systems. . .must desegregate the first, tenth, eleventh, and twelfth grades this autumn and follow through with two grades each succeeding year until all grades are integrated."[263]

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259 Law Reporter, Vol. 8, No. 4, p. 1406.

260 Statement of I. J. Browder, Personal Interview.

261 Gadsden Times, June 25, 1964, p. 1.

262 Ibid.

263 Ibid.

Judge Grooms gave the Gadsden School Board until July 9 to submit a new plan of desegregation. Superintendent Browder conceded that Gadsden has been operating a dual education system on racial lines but that desegregation of the first grade at the present would create administrative problems which would be hard to handle this fall.[264]

Before the July 9 deadline, Superintendent Browder again met with Judge Grooms and this time was directed to permit Negro students to make application for transfer to all-white schools in grades one, ten, eleven and twelve.[265]

By Friday afternoon, September 4, 1964, a total of forty Negro students had applied for transfer or assignment to white schools in the Gadsden City system.[266] On Monday, September 8, the day before the 1964-65 school term began, twenty Negro students were notified that they had met requirements set up by the Board of Education for pupil transfer or assignment and would be placed in formerly white schools.[267] Of these twenty, fifteen qualified for Gadsden High School, four for Emma Sansom High

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[264] Gadsden Times, June 25, 1964, p. 1.

[265] Gadsden Times, July 10, 1964, p. 2.

[266] Gadsden Times, September 4, 1964, p. 1.

[267] Gadsden Times, September 8, 1964, p. 1.

and one for Walnut Park Elementary School.[268]

At the end of the first week of school, all twenty Negro students who were accepted by the board have been attending classes in the previously all-white schools with only minor incidents.[269]

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[268] Gadsden Times, September 8, 1964, p. 1.

[269] Gadsden Times, September 12, 1964, p. 2.

CHAPTER XIII

CONCLUSION

The Negro question has long been an explosive issue in the United States. Over a century ago emotional feelings had apparently reached the point of no compromise.[270] As a result a devastating war which freed the slaves ensued. As a journalist said a century later:

> The debate over segregation, in the schools or anywhere else, touches deep emotions. Advocates on both sides tend to argue their case in terms of principle rather than practice. . . .[271]

The Negro has gained much, in the way of civil rights, during the past century. The recent Civil Rights Law passed by Congress will do more for him. But to be accepted in the South, as well as other sections of the nation, the Negro must first help himself. There are some Negroes who do not want the Negro to help himself. These are the Negro functionaries who prefer segregation in that they have a guaranteed clientile so long as

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[270] Harry S. Ashmore, The Negro and the Schools (Chapel Hill: The University of North Carolina Press, 1954), p. 132.

[271] Ibid.

segregation exists.[272] The plight of the Negro has been described in the following manner:

> As the migration of the Negro out of the South continues, other parts of the nation . . .will grapple in their own fashion with the cultural and economic assimilation of the Negro. They will not find it easy, but they can rely upon this: The South will not intrude its views upon theirs. This is a big country, a great country, it remains the freest country on earth, and the Negro people are a part of it.[273]

The law has done much for Negroes as a whole; the law will do more in specific situations. The rest is up to time, and up to the Negroes themselves.[274]

In view of the present day situation as southern schools are being desegregated by federal court orders, it might be that the South should take the advice of one who said that the Southern State who puts reliance hereinafter in any law requiring racial separation is relying upon a vain and useless thing.

> We should be better off, as a matter of law, if Southern legislatures would go through

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[272] Howard Brutz, The Black Jews of Harlem (New York: The Free Press of Glencoe, 1964), p. 116.

[273] James Jackson Kilpatrick, The Southern Case for School Segregation (New York: The Crowell-Collier Press, 1962), p. 193. (Hereinafter cited as Kilpatrick, Southern Case.)

[274] Charles Wallace Collins, Whither Solid South (New Orleans: Pelican Publishing Company, 1947), p. 304.

their Codes with an art gun, erasing the word 'Negro' wherever it appears. Statutory defenses against segregation. . .are useless.[275]

[275] Kilpatrick, Southern Case, p. 184.

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Flowers, Richmond M. (State of Alabama Attorney General). Letter to Herston Bonner, dated May 26, 1964.

Meadows, A. R. (Superintendent of Education, State of Alabama). Letter to Herston Bonner, dated June 4, 1964.