

Hon. Peter L. Dearing (ret.) Interview

Recorded October 22, 2021

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Interview Transcript

Judge Peter L. Dearing (Ret.): This is the first of several interviews that will take place about the history of your time on the bench — 50 years as a federal judge. I'd like to start this interview by asking you to tell us a little bit about your background as a litigator and as a state court judge.

Judge Gerald B. Tjoflat: Well, I came to Jacksonville in 1957 to practice law and did so for until June of 1968 when I joined the Fourth Judicial Circuit of Florida. I had a general litigation practice trying all kinds of cases because the law firm was a general practice firm. And so, that was by-and-large how I moved from the practice to the bench. But going to the bench was kind of an accident in a way. I never had thought about being a judge at all, ever. Well, that was something that you would think about later on in your career, I suppose. But at any rate, there were 11 judges on the Fourth Judicial Circuit of Florida, and one of them died of a gunshot wound, maybe self-inflicted. His name was Edwin L. Jones, and he was stricken in May of 1968 and laid in a coma for a while, and then he passed away.

I remember the Florida Bar had an annual meeting in the Americana Hotel in Miami Beach, and Earl Hadlow and I were greeting some people coming to a firm reception we were having, and somebody came in from Jacksonville and said, "Judge Jones died this afternoon." And on Monday---we had the first Republican governor since Reconstruction, Claude Kirk---somebody said, "You got to think about going down there on the bench." And well, one thing led to another, and then ultimately he appointed me to the unexpired term of Judge Jones, which was about four-and-a-half years of the six-year term. The problem was I would have to run in the general election in November 1968. Judges ran in party politics. So, I would run as a Republican and have an opponent from the Democratic side.

I told my partners, "I'll see you in January because there's no way in the world I was going to survive the election in November." Well, at any rate, I qualified to run in July and then waited for 30 days. That was the first day of qualification to see if somebody would qualify to run against me. I had no campaign, no campaign contributions, no campaign bank account, or anything. No, nothing. Nothing whatsoever. I was trying a case in August, the last day you could qualify. The deadline was noon this particular day. And I'm sitting on the bench and Morgan Slaughter, the clerk of the court, comes in through the doors in the back of the courtroom, and I know what he is going to do. He is going to come and tell me who qualified as a Democrat. I put the jury and the lawyers and everybody at ease, then he came to the sidebar. I knew he was going to tell me who my opponent was. He said, "Judge, you don't have an opponent."

Judge Peter L. Dearing (Ret.): Ah.

Judge Gerald B. Tjoflat: So, I went on the ballot in November, unopposed, and that was when Richard Nixon and Hubert Humphrey were running for president. In some precincts, the vote went this way: Humphrey - 850, Nixon - 2, and then if you went down the ballot, you'd see Tjoflat - 2.

Judge Peter L. Dearing (Ret.): A landslide victory.

Judge Gerald B. Tjoflat: Harry Nearing was the supervisor of elections. An old friend. About two weeks later, Harry came to my chambers with a print-out of all the precincts in the Fourth Circuit. And he says, "Just so you don't get a big head, here's how you did." Of course, it was pretty sad. Although there were some precincts where I got a lot of votes. So that's how I wound up on the circuit bench.

Judge Peter L. Dearing (Ret.): In your six years there, were you mostly in civil division, or did you have divisions? Did you have divisions on the circuit court bench?

Judge Gerald B. Tjoflat: I'm on the circuit court bench, and Congress created a judgeship for middle Florida. I was nominated in October and confirmed and sworn in October 1970. That's how I wound up on the district court. From there, I spent five years, and then I was appointed to the Fifth Circuit.

Judge Peter L. Dearing (Ret.): And sometime in your history, you found time to play professional baseball, if I remember.

Judge Gerald B. Tjoflat: Well, I worked out.

Judge Peter L. Dearing (Ret.): Oh, did you?

Judge Gerald B. Tjoflat: I played in the Virginia-Carolina League, which was a semi-pro league when I was 17, on the way to the University of Virginia. It was that summer. And the athletic director, who was also the baseball coach, put me with this team, with some Virginia guys in Franklin, Virginia. I worked for Leggett Department Store. They paid me \$500 a month — so I wouldn't lose amateur status. And the league had — I'd say — about 25% were college players. They had a few former major league players, and they had some minor league players who'd retired. I did that for a summer. And then once, I think a year or so later, I worked out with the Cincinnati Reds for a couple of weeks in the summer pitching batting practice. But that was the end of the of baseball, basically.

Judge Peter L. Dearing (Ret.): Well, let me ask you, was there anything in your litigation practice or in your two years on the Circuit Court bench in Florida that prepared you to handle this kind of high-profile case that we're about to talk about?

Judge Gerald B. Tjoflat: I think just being a general litigator and sitting on the Fourth Circuit trial bench. As you well know, one of the things you have to be able to do when you go to the bench is forget that you're a lawyer. I think I was able to do that, which meant I could stay out of the case and let the lawyers do the litigating, as it were.

Judge Peter L. Dearing (Ret.): Uh-huh.

Judge Gerald B. Tjoflat: And I had learned a lot about the necessity for a fair hearing. We call that due process, which was a key factor in the school case.

Judge Peter L. Dearing (Ret.): What do you think was the essence of a fair hearing?

Judge Gerald B. Tjoflat: There wasn't any time for me to think about it. I would have been on the federal bench a little over six months when the school case came to my lap, as it were.

Judge Peter L. Dearing (Ret.): One new account that I read described you at age 45 as the youngest federal district court judge in the country. Was that accurate?

Judge Gerald B. Tjoflat: No. I was close to it. When I got to the bench, I just turned 41. There weren't very many judges at that age group. I suppose there were maybe three or four or five of us about that age.

Judge Peter L. Dearing (Ret.): This case that we're going to talk about, which later became known as *Mims*, this case had been around the US District Court for the Middle District for some time, had it not.

Judge Gerald B. Tjoflat: Yes, it had. I'm going to say I think it started in 1958 or nine, about 58, somewhere there.

Judge Peter L. Dearing (Ret.): And it had been through two other district court judges at some point.

Judge Gerald B. Tjoflat: Bryan Simpson had it until he went to the Fifth Circuit in 1967. And then William McRae, who was sitting in Jacksonville, inherited that case from him. And he had it a short period of time before I received it.

Judge Peter L. Dearing (Ret.): And when you did get the case, it was actually up on appeal from an order that Judge McRae had entered, is that right?

Judge Gerald B. Tjoflat: That's right. The Fifth Circuit had decided the *Singleton* case, which dealt with the desegregation of staff and faculty in the public school system. And when they did, they sat en banc. I think that was 1968. And so, he got the case at that point in time. He entered orders, desegregating faculty and staff in the school system, and did some pairing of elementary schools, basically in an effort to further desegregate the system. And so that was appealed to the Fifth Circuit. I think both the school board and the plaintiffs appealed that day.

Judge Peter L. Dearing (Ret.): So it was actually in the Fifth Circuit when the case was assigned to you as a district judge on Judge McRae taking a leave of absence, is that right?

Judge Gerald B. Tjoflat: Yeah, I think every case probably in the deep South — well, every school case in the Fourth Circuit and the Fifth Circuit, and of course, Arkansas was in the Eighth Circuit. They were all on appeal probably on the grounds that the systems were still not desegregated awaiting the Supreme Court's decision in *Swann v. Charlotte-Mecklenburg Board of Education*. So they were all just sitting there, as it were. And *Swann* came down on April 20, 1971, which was Charlotte. And thereafter, I wound up with the case.

Judge Peter L. Dearing (Ret.): And the *Swann* case was the one that approved busing as a mechanism for integration.

Judge Gerald B. Tjoflat: Yeah. The idea in *Swann* was that all prior techniques that had been used in the district courts to desegregate the schools had failed to do that. They had tried everything else except transportation in a massive sort of way. *Swann* said that all school systems have to be totally desegregated. There cannot be any one-race schools. If there are any one-race schools left, the court has to explain why they cannot be desegregated. That was the situation. And so, the case was sitting there in the Fifth Circuit. The judges were Griffin Bell, Robert Ainsworth, and John Godbold. I think that Griffin Bell was the judge in charge, by and large, of that case, because they had several cases from different school districts. And the first thing he did was summon the parties to Atlanta to see whether or not they could work out a consent decree.

Basically, that's what he was looking to see if they could do, settle the situation. And that failed. And the case was assigned to me before that, though I think it was the third of May. We were having a Fifth Circuit Judicial Conference meeting in San Antonio, Texas, and Judge McRae, who had the case at the time, had been in an automobile accident and was charged with a DUI. This was on Friday before that weekend. When I got to San Antonio on Sunday, I didn't know what had happened with Judge McRae because it hadn't been in the newspapers. And so when I checked in to the hotel, there was a message for me to report to the chief judge, John R. Brown. He wanted to see me in his room.

Upstairs I went to see Judge Brown. He said, "Come on in Gerry." And we had a nice cordial greet. He said, "I've got some news for you." He said, "Bill McRae has been in this accident, we're reassigning the school cases that he was presiding over." One was Daytona, and the other was Jacksonville. And it turned out later on there were some more. But at any rate, that was the news and it was made public that week. When I got back to Jacksonville on the 7th of May, it was publicly known through the media that I was now presiding over the school case, and that something would have to be done pursuant to the *Swann* case. Everybody realized that — the school board did, everybody. So that's the situation when I arrived in Jacksonville on the 7th or 8th of May.

Judge Peter L. Dearing (Ret.): I saw on the order from the Fifth Circuit that you were initially designated as a mediator which, seems like a strange title for a federal district Judge. What was the Fifth Circuit doing when they called you a mediator?

Judge Gerald B. Tjoflat: I think the first step would be I would simply be a mediator. While the case was still in the Fifth Circuit, it was the panel's idea — the Court of Appeals panel — to see if I could massage a settlement out of the parties. If I couldn't, then they'd remand the case. And of course, now I'm trying the case because they can't settle it. So, the case would be litigated then, and I'd have to come up with some kind of desegregation plan that would be satisfactory under the *Swann* standards.

Judge Peter L. Dearing (Ret.): This case, when it first was described in the media after it was assigned to you, was described as "the worst integration problem in the Fifth Circuit." Why was this perceived to be the biggest integration case in the Fifth Circuit?

Judge Gerald B. Tjoflat: Well, two things. Number one, in Florida, school systems are countywide. We didn't have any situations in Florida in which a large city — Miami or Jacksonville or Tampa, which in those days were the biggest cities — might have more than one school district. So, they were countywide and Jacksonville was 875 square miles. It was two-thirds the size of Rhode Island. It's covering a huge distance. And we had 136 schools, was my recollection — 136. Desegregating 136

schools in an area two-thirds the size of Rhode Island was going to require a lot of transportation by bus. That was the magnitude of the case basically. I think it was the 13th largest school district in the United States at the time in terms of enrollment.

Judge Peter L. Dearing (Ret.): Right. When they assign this case to you, I think it was in May, did they put you under any time constraints, like when you had to have a decision?

Judge Gerald B. Tjoflat: A remand order was issued on May 14th. The Court of appeals remanded the case to me with instructions to have a final judgment entered by June 24. In the remand order, they provided for the appeal period. They wanted to get the case. tried, a judgment entered, and the appeal disposed of before school started in August. That was the plan, the Court of Appeals' plan.

Judge Peter L. Dearing (Ret.): Did you feel like you had enough time?

Judge Gerald B. Tjoflat: Yeah. That left from May 14 to June 24 — 45 days or so, something like that, to dispose of this case.

Judge Peter L. Dearing (Ret.): You must have had some other work as a district court judge that you were supposed to be doing at that time, too.

Judge Gerald B. Tjoflat: Well, and that, yeah. All that [work] took the backseat, as you well know, because you were right there. I think the listener needs to know you were clerking for me at the time.

Judge Peter L. Dearing (Ret.): I was. I was your first law clerk, I think.

Judge Gerald B. Tjoflat: Yes.

Judge Peter L. Dearing (Ret.): So, everything else got put on the back burner, and this was given front-and-center attention.

Judge Gerald B. Tjoflat: Yes.

Judge Peter L. Dearing (Ret.): How long did you actually take to do what you were doing before you had entered the final judgment?

Judge Gerald B. Tjoflat: Well, we had to try the case. So the first thing was to have a status conference with the parties. I was blessed. We were, the city was, and the system was blessed with good lawyers on both sides of that case on the plaintiff side with Drew Days who was employed by the NAACP Legal Defense Fund in New York, which was led by Jack Greenberg. And they were providing counsel for lots of school cases and to other kinds of cases across the United States. Drew Days ultimately became President Carter's Assistant Attorney General in charge of the Civil Rights Division. So that gives you some idea of the quality of representation on that side. Now, he replaced Earl Johnson, who was the plaintiff's lawyer, but he was also a member of the Jacksonville City Council. The council was a party, and so Earl Johnson had to withdraw.

So it was Drew Days on one side. On the other [side] was the Jacksonville general counsel's office, and the lawyer assigned to the case was Yardley Buckman. He was a very accomplished lawyer. So, we had very good lawyers on both sides. And Jacksonville had just been reconstructed, as it were. We had a new

school board of nonpartisan members. There were seven of them, and an appointed superintendent. And they had appointed Cecil Hardesty a renowned educator from California. He either ran the California system — or San Diego's anyway — and he was highly thought about.

When I had this conference after the remand, I'm dealing with some highly skilled professionals, which made that very pleasant. We had to try this case, and we had to try it in a hurry.

The groundwork laid at this first meeting was, first of all, a recognition that the school board had the Constitutional responsibility to operate the system in a Constitutional way. It wasn't the court's job to run the school system, the school staff. They had to come up with a desegregation plan, and the plan would have to satisfy the demands of the *Swann* case. That's first. The second was the plaintiffs wanted some expert witnesses appointed, which was satisfactory, to study the system basically. On that day, we selected two days for a trial June 15th and 16.

June 16th would be one week before we'd have to issue a final judgment. So, the case was cried from eight o'clock in the morning till 5:30 in the evening on the 15th, and again on the 16th. And we heard a lot of witnesses and a lot of different plans from a lot of different people. The school board had a plan. The teacher's union had a plan, and there were other groups who had plans. They had to be heard from, which stretched the hearing out very broadly. They were all heard.

I did one other thing beforehand. We had a lot of school buildings that were of doubtful use as schools. I mean, they were in terrible physical condition or located in bad situations. It was known that the school board was going to recommend the closing of some schools, and that was going to have a significant impact in terms of the whole overall plan. It was agreed that I would visit every school in the system — all 136 schools. I would go with the man named Nathan Wilson, who was the chairman of the Jacksonville Commission on Civil Rights or Community Relations Commission, I guess it was called. He and I and two federal marshals over a two-day period — or maybe three days — visited all the schools in the system so that when we first started taking testimony on June 15, we had a pretty good idea of what the system looked like.

Judge Peter L. Dearing (Ret.): And I assumed you made a record of having visited all those schools and the parties were okay with you doing that.

Judge Gerald B. Tjoflat: Yes.

Judge Peter L. Dearing (Ret.): In the course of this two-day hearing, did you have other lawyers appearing as amicus curiae, friends of the court?

Judge Gerald B. Tjoflat: Yeah, Bill Shepherd's firm appeared as amicus. They had a plan, and there were a couple other law firms or lawyers appearing as amicus. They were all taking off on the school board plan as it were. The school board had had a plan. And so the focus really was on that plan. Should it be adopted, then? If not, how should it be changed? And so the competing plans, as it were, were basically comments on the school board plan.

Judge Peter L. Dearing (Ret.): The school board plan involved a lot of new busing. Did it not?

Judge Gerald B. Tjoflat: It went all the way from the beaches, Jacksonville beach, Atlantic Beach to the other side of Jacksonville. We're talking about 30 miles anyway, and it would have to go over the St. John's River. And the St. John's River, which was downtown, had toll bridges. So it had to go through toll bridges, and it would take an hour each way for some students in the best of times. Whenever you time

the transportation, it shrunk to about an hour — an hour in the morning and an hour in the afternoon. That's two hours out of school day. And that wouldn't work, but it was equitable in the sense that everybody would be riding a bus.

Judge Peter L. Dearing (Ret.): I recall now reading the opinion that you decided that sending people from the beach to the north side and vice versa was not a good plan.

Judge Gerald B. Tjoflat: Yeah. But I had them run buses from the beaches all the way to the other side of town and into the core city. I told the school board run buses at 6:45 in the morning, and every 15 minutes thereafter until eight o'clock, and see how long it took for the bus to travel that route, given those different starting times. Then [run the] same thing in the afternoons.

Judge Peter L. Dearing (Ret.): Did you ultimately decide that bringing people in from the beaches was not necessary?

Judge Gerald B. Tjoflat: The thing to do was to cut out the beaches altogether. As a matter of fact, the racial makeup of the beaches was just about what the racial makeup of Jacksonville was, which was about 72-28 or 70-30, roughly. And the beaches were roughly the same. So by pairing and clustering schools at the beaches, all of those could be desegregated, and nobody would have to be transported out to the beaches or in from the beaches. That would cut out a lot of transportation.

Judge Peter L. Dearing (Ret.): On the subject of your final order, how else did you modify what the school board had planned in the terms of closing schools and leaving some schools as single color schools, so to speak?

Judge Gerald B. Tjoflat: I think we didn't close everything that the school board wanted to close, but perhaps closed some that, that they didn't. And I think it wound up with nine schools that were closed. I think the plaintiff's experts agreed that four or five of those had to be closed.

Judge Peter L. Dearing (Ret.): And these were all black schools, were they not?

Judge Gerald B. Tjoflat: They were all-Black schools. I think Darnell-Cookman had been constructed — if you can believe it — over a garbage dump or a waste disposal area. It was percolating gases, as it were. There was a grade school that was next to a chicken slaughterhouse. [It was] just run down and should have been closed earlier but wasn't. And perhaps giving the school board its due, one reason why they weren't [closed] is they knew that a desegregation plan that ultimately would be entered would probably require the abolition of some of those schools.

Judge Peter L. Dearing (Ret.): In your final order, did you primarily approve the school board order with a few changes?

Judge Gerald B. Tjoflat: Yes, and we had one problem under *Swann*. *Swann* said, "If you have a one-race school left, you have to show that it cannot be segregated." And there were two. There was Sandalwood, which was a new school between downtown and the beaches. That, and the population there was all-white, the student population. And there was another school Northwestern, in the northwest part of Jacksonville, which was all-Black. And there was just no way in the world to desegregate either of those without upsetting the whole apple cart.

Judge Peter L. Dearing (Ret.): Those are both junior high schools, were they not?

Judge Gerald B. Tjoflat: Yeah.

Judge Peter L. Dearing (Ret.): So, your final plan then started busing people in the sixth grade, or it bused people throughout their career in school.

Judge Gerald B. Tjoflat: Yes.

Judge Peter L. Dearing (Ret.): And you created sixth grade centers, which I think were new to Duval County at that time.

Judge Gerald B. Tjoflat: Yeah, sixth grade centers, seventh grade centers, and ninth grade centers were created. The elementary schools were paired or clustered so that you'd have a couple grades in this school, the next two grades in this other school. And if you had three of them together, you'd have separated them out. That way, they would be close together geographically. That was the idea. And there were two high schools — Raines and Ribault — which had been built in the early '50s and were fairly new. Ribault was predominantly white and Raines was overwhelmingly Black, and they were not very far apart. I told somebody you could probably hit a three wood between them. So the obvious thing to do would be to have two grades — like I said — 9 and 10 in one school and 11 and 12 in the other. So they were hooked together, as it were. And the Black-white ratio was between 60-40 and 55-45, something like that. I've forgotten all that, but as close as you could get to an evening out of the races.

Judge Peter L. Dearing (Ret.): I seem to remember sometime during this period of time, spread out on a table in your chambers was a big map of Duval County with little push pins in it and strings attaching the push pins. Was that connecting busing routes?

Judge Gerald B. Tjoflat: Those were busing routes between the schools and the residential areas.

Judge Peter L. Dearing (Ret.): And that was essentially the Duval County School Board's plan.

Judge Gerald B. Tjoflat: Yes.

Judge Peter L. Dearing (Ret.): With some of your modifications.

Judge Gerald B. Tjoflat: Yeah, that's right.

Judge Peter L. Dearing (Ret.): And this actually became known at some point in the press as the school busing case, did it not?

Judge Gerald B. Tjoflat: Yes, it did.

Judge Peter L. Dearing (Ret.): How many additional school buses were going to be required by your order?

Judge Gerald B. Tjoflat: A lot. A lot of school buses. And there was a manufacturer of school buses called Bluebird up in North Carolina. But at any rate, I told the school board, "You have to find every

manufacturer of school buses, and we need all that information.” And while the case was on appeal, the case was decided on June 23, and the next day was the plaintiff’s appeal in Fifth Circuit to that three-judge panel. And during that period of time, it became apparent that there would not be enough buses to do the whole desegregation plan. So, the question arose as to whether to have a second phase, in other words, desegregate some of the schools and maybe the others for the next year.

The schools were clustered and grouped together with that in mind, so that there could be a kind of a cleavage between the first phase and the second phase. And so, at any rate, the problem became would the parties agree to that — especially the plaintiffs — and they did. They agreed to the two phases. And I credit that to Drew Days immensely, in that regard, because it reflected his view that the case was being handled fairly, that everybody was being heard, and it was proceeding the way it ought to. So we divided the case into two phases.

Judge Peter L. Dearing (Ret.): I guess with every other school district in the South being desegregated through busing, there was a great shortage of school buses at the time.

Judge Gerald B. Tjoflat: It was a good time to be in the bus-building business.

Judge Peter L. Dearing (Ret.): You allowed them an extra year to buy the additional 150 buses that they needed.

Judge Gerald B. Tjoflat: Yeah, something like that.

Judge Peter L. Dearing (Ret.): That was a plan. Now what did the Fifth Circuit do with your order when it got there?

Judge Gerald B. Tjoflat: They affirmed on all grounds.

Judge Peter L. Dearing (Ret.): They didn’t change anything about it?

Judge Gerald B. Tjoflat: They affirmed on all grounds, including the school closing.

Judge Peter L. Dearing (Ret.): And they adopted your findings, did they not as a part of their order?

Judge Gerald B. Tjoflat: Yes.

Judge Peter L. Dearing (Ret.): The local paper called your order the “key” school integration case in the South. Do you think that was an accurate assessment of the importance of what you did?

Judge Gerald B. Tjoflat: I think given the size of the school system, as the 13th largest in the country, in terms of students, it was probably the largest in the South of any size. Miami was probably bigger, but smaller in geographic area, by far. So, it was a big case.

Judge Peter L. Dearing (Ret.): From reading the press accounts, they were all favorable to your decision. Did you get any pushback from the public in general?

Judge Gerald B. Tjoflat: Yeah, of course. The public reaction, of course, it was of great, great anxiety. When the case came down from the Fifth Circuit, in the public sector — I’m talking about Black and

white sectors of the community — Black kids were going to go to someplace. They didn't know about it. They were going out in the suburbs, and kids in the suburbs are going to be transported to the inner city. Of course, they knew where it was. Both sides knew Jacksonville, of course, but you didn't know what it would be like going to school there. There was a lot of anxiety in that sense. The anxiety was a defense mechanism. The Department of Justice, through the marshal service, gave us protection from the start. Once I was assigned to the case, and there was a lot of rumbling, as it were, as you would imagine the Department of Justice said, "You're going to have marshals for yourself, your wife, and your two children." And so they descended, as it were, and took over the security of the family. They put my telephone lines from the pole, the street, and the power lines underground. They dug a trench in the front yard and buried the lines. They anticipated the worst, I'll put it that way. We had children in public school at the time. My daughter, Beth, was in the fourth grade. She was going into the fifth grade, and Bard was going from the sixth to the seventh. They were two years apart.

My son had been assaulted in school by students shortly after I was assigned to the case. You can imagine. The school system said that we think it's better if you put him in private school for the seventh grade. We were an Episcopalian family, and so I wanted him to go to an Episcopal high school, but that was too difficult, assuming he would be taken there by a marshal, for example. If it came to that, the route was too scattered. And the Bolles school was within two or three blocks. He was enrolled in the Bolles school, and Beth was assigned to Pine Forest, which was a formerly a Black school, totally black, which I desegregated in the order. So she spent the fifth grade there, and she went. As it turned out, talking about the public's general reaction before the decision on June 23, 1971, before that, in the mail each morning would be an enormous amount of letters. One organization had put a letter in the Florida Times Union, the morning newspaper. You could cut it out. It was a nasty letter to me. It wasn't too nasty, or they wouldn't print it. But anyway, it was like a paid advertisement. The Marshals would bring the mail up in the morning, bags of letters. And I would say that starting with the day after the decision was made on June 23, I don't think I got more than two letters to this very day. They just dried up. And the Marshals, who thought they were going to be here for several months, as it turned out, left in about three weeks after the decision was made. My daughter Beth went to school at Pine Forest in a school bus that year to a former all-Black school. It gives you some idea of the calming down in the community, I'll put it that way.

Judge Peter L. Dearing (Ret.): Why do you think community opinion about you changed so much after that order was entered?

Judge Gerald B. Tjoflat: Well, I have a theory, and this comes from being on the bench a long time and trying jury trials. The American public has a deep understanding or feeling for right and wrong, just generally speaking. And, I think everybody knew that the separate school systems were not right. They may not have said anything about it and protested against it and acquiesced in the, in the dual school system. But I think at heart, they knew that ending segregation was the right thing to do. So they may not have liked it. They had been heard. They had received due process. They had been treated fairly throughout the proceeding, which was very truncated, but still, they were fairly heard.

Nobody could complain they weren't heard. The most onerous parts of the school board's plan were trimmed down, meaning the best parts of competing plans were incorporated. Given this deep feeling that I have about the American people and their sense of justice or the right and wrong, and by the way, I've experienced that as a trial judge watching juries. I never saw a jury in a criminal case, for example, find an innocent person guilty. I have seen juries acquit a guilty person, but never found an innocent person guilty. And the media played a great role. The media were very fair. You'll remember that as we approached the deadline of June 23, which was the mandate because they wanted the case appealed on

the 24th of June. As we approached the deadline, the media wanted to know, “Judges is there any way you can tell us when you’re going to decide this case?” I said, “It would be decided by the 23rd of June.” They said, “Is there any way you can tell us when during the day you’re going to decide this case?” We had two daily newspapers — an evening paper and a morning paper. The Times Union wanted to be able to print the whole decision in the morning paper. So they needed time to map it out in the paper, and the television stations wanted to be able to have two or three hour programs that night and wanted to be able to digest what we were doing in time to have these programs. Because people will be wondering, where the hell is my kid going to go to school in August?

I made an arrangement that we would have the decision up in their hands at three o’clock in the afternoon. At three o’clock in the afternoon, they all got a copy of the decision, which was some 36 typewritten pages. That enabled the Times Union to print it on the front page of the newspaper the next morning. They cut out — the last part of the opinion was a roadmap almost, which showed where the kids would be going to school. It showed that children living here would be going to school there, and so forth. So that was put in the front page of the newspaper. Then on the next two pages, they printed the entire decision. And so it worked out fine in the sense of communicating to the public. And the decision was written in a way, we tried to write it in a way that the average person on the street could understand it. We tried to avoid any legalese and fancy terms and things of that sort. We just explained it so that they could understand it. And, and so you write it in a way where the news media can explain it because they have to. They’re the communicators, really, of the decision. That’s the way it was handled. I think that had something to do with the aftermath, the fact that we did not have a bunch of riots and one thing or another. Great disturbance.

Judge Peter L. Dearing (Ret.): You probably thought when you entered that order that that would be the end of it, although you retained jurisdiction to enforce the order, as we all do in our orders, thinking that that was just going to be boilerplate. But in your case, it wasn’t boilerplate at all because you weren’t finished with that case, were you?

Judge Gerald B. Tjoflat: No, it wasn’t finished at all.

Judge Peter L. Dearing (Ret.): What happened at was it Ribault? I think it might have been Ribault. What happened at Ribault that caused you to have to get back involved?

Judge Gerald B. Tjoflat: Well, three things happened. The first thing that happened is that somebody got enough petitions signed to put on the ballot in November a referendum prohibiting the city council from using the government money to buy school buses. And it was put on the ballot. And it was passed by a majority. They voted that the city charter would be amended to preclude using the money to buy school buses. And Harry Nearing, the supervisor of elections who had given me those precincts when I went on the state bench, announced to the parties who were waiting down there in the courthouse at about 10:30 in the evening, “Here are the returns.” They have passed this referendum to amend the charter by a vote of 4 to 1. And, and one minute later, I entered an injunction striking it down.

Judge Peter L. Dearing (Ret.): So, you enjoined the city from amending its charter?

Judge Gerald B. Tjoflat: I enjoined the enforcement of that provision. That, of course, you would imagine some people got awful hot-headed, but that blew over within a matter of three or four days. It was like a fog, which dissipated.

Judge Peter L. Dearing (Ret.): And then you had a problem with some people congregating at a school that you had to do something about as well.

Judge Gerald B. Tjoflat: Yeah. We had two schools where we had some problems. One, one was Ocean Way, an elementary school in the northeast part of Jacksonville, kind of almost in the country and also at Ribault High School. That's one of those two that I put together. What happened was — now I'll do Oceanway first — the people associated with the Ku Klux Klan had built a tent across the street from the Oceanway school. They were cooking food over there. They had a barbecue, and they had a regular crowd. They would harass the school buses that came to Oceanway in the morning to bring the students. They would harass the hell out of the students and the buses. This caused a raucous. The sheriff and the school board and counsel for both of the parties came to me with a motion for the entry of an injunction against these non-parties from doing anything to interfere with the transportation delivering these students to the school.

And so I entered it, and they blew the order up big, and they pasted it all over on the outside of the school premises, and personally delivered it to 30 or 40 of these people in the tent waiting there for the next buses to arrive, for example. I'll never forget coming in from lunch that day. The order was delivered early in the morning. After lunch, seated in my secretary's office were two ladies dressed up like they were going to church and sobbing. And they were wives of two of the guys that had put this arrangement together. I took them into my chambers, and they were afraid they were going to jail, and they had been used, I'll put it that way. And so that stopped right away, and about a month later a lawyer filed a motion to dissolve the injunction. And the lawyer representing the enjoined parties — the people who were demonstrating — was J.B. Stoner. And J.B. Stoner was a Ku Klux Klan lawyer. And a few years after this episode, he was indicted, convicted, and sentenced for participating in a bombing of Churches in Birmingham, Alabama in 1958. And so, Stoner files this motion to dissolve the injunction, and we had a hearing. I refused to dissolve it. That was the end of that.

The other episode was at Ribault High School. There were some agitators who were getting the students — Black students in particular — to agitate against white students. And the same thing happened. The sheriff and the parties came to court with a motion to enter an injunction against these non-parties. The injunction was entered. They blew order up and put it on the front door of the school and had it read over the public address system in the school, one thing or another. A day or two later, one of the ring leaders, a guy named Eric Hall, by a deputy US Marshal and taken into custody.

When they booked him, they discovered that he was a fugitive. He had escaped from prison. And I cited Eric Hall for criminal contempt and instructed the United States attorney to prosecute him. I announced that if I found him guilty, I would not sentence him to more than six months in prison. That eliminated the need for a jury trial. A civil rights lawyer in New York by the name of Kunstler called the US Attorney's Office and said he was coming down to represent Eric Hall. As it turned out, he didn't appear. Somebody else did. And the case was tried, and I found Eric Hall guilty. And he appealed to the Fifth Circuit. One of the grounds being, of course, that he hadn't been a party to the school case. Then the Fifth Circuit affirmed. And that was the end of it. Those two episodes, Oceanway and Ribault, are the only real problems that arose. And that was in 1972. So that's the next year.

Judge Peter L. Dearing (Ret.): As an aside and a postscript to the Eric Hall case — when I taught remedies in law school a few years back, one of the parts of the remedies class involved injunctions and violating injunctions. And in the textbook was your case, *United States vs. Hall*, and it explained that this was an extension of the use of injunctions against a non-party that had never been recognized in federal jurisprudence before. Did you realize at the time you did that, that this was a whole new area of injunctive relief?

Judge Gerald B. Tjoflat: I did. I did. There wasn't much precedent out there. But it was true that if an injunctive order is out there and it's been issued and people who know how it is supposed to be enforced are aware that certain parties are supposed to conduct themselves in the way ordered by the court. Then if they interfere with the operation of the court's injunctive order, they may be prosecuted for committing a crime. And so I thought, well, this injunction is entered under the All Writs Act because it aids the enforcement of the school desegregation order. That was the legal foundation for the injunction.

Judge Peter L. Dearing (Ret.): And the Fifth Circuit affirmed that conviction, too. Did they not?

Judge Gerald B. Tjoflat: Yes.

Judge Peter L. Dearing (Ret.): They really liked everything you did in this case, I gather.

Judge Gerald B. Tjoflat: I was lucky.

Judge Peter L. Dearing (Ret.): Now, you told us earlier that at the same time you were assigned a Duval County case, you were assigned a Volusia County case, Daytona Beach. Whatever happened with that one?

Judge Gerald B. Tjoflat: That resolved itself with not much problem.

Judge Peter L. Dearing (Ret.): Okay. That just went away.

Judge Gerald B. Tjoflat: Yes. And all the smaller counties, Judge Scott had Columbia County and two or three others over there adjoining our county. And those were resolved fairly well.

Judge Peter L. Dearing (Ret.): I think Judge Middlebrooks in the Northern District had a number of cases as well, and he got all of his taken care of.

Judge Peter L. Dearing (Ret.): Right. So, what else about this the *Mims* case did you want to talk about today?

Judge Gerald B. Tjoflat: What else did the *Mims* case? I think that covered it. In a nutshell, I was blessed and therefore the people of Jacksonville were blessed by the fact that there were very good lawyers on both sides of the case who practiced law in the highest professional standards. I couldn't say enough about them. Drew Days ultimately, after serving the Carter administration as the assistant Attorney General in charge of civil rights, became a tenured professor at Yale Law School. I happened to be at a Yale Law program after that and had a lovely time visiting with Drew Days. We became friends in sort of a long distance sort of a way in a professional sense. Yardley Buckman was a world-class lawyer who went with the Consolidated Government of the city of Jacksonville. He was 48 when the Consolidated Government was created and had a very good practice before that, well respected. He died in Switzerland of all places. He was young, must have passed away at age 50 or so. Then Cecil Hardesty was a superb superintendent of the schools, and we had a nonpartisan school board of seven who were very good people. So that had an awful lot to do with this case. Because with antagonistic lawyers, for example, trying to say the defense counsel wanted to perpetuate the desegregation by hook and crook, any way you could figure it out, or you had on, on the other side of the case, somebody bordering on

being a zealot wanting to use the case to establish something else other than the desegregation in the system, it would've been an entirely different case to handle. It would be more difficult.

But I think out of this case, from the standpoint of the public, one of the things the public understood was when the law is fairly enforced, an injunction that can be enforced is issued. That is a good thing. One of the tough things, as you well know from your own judging and issuing injunctions, is always to bear in mind that you have to enforce it at some point or another. And so it has to be narrowly tailored to provide the remedy you need to have to reach so that you can enforce it. Because if you write an injunction, if I had issued provisions in this school case in the terms of the injunction that could not be enforced, then comes the day for enforcement and it crumbles. That creates a disrespect for the rule of law in the public at large, not only the parties, also.

All those things kind of came together. Very good lawyering on both sides of the case, a very good party in terms of the school board because of the superintendent and the media being very balanced and fair in all the reporting up to the decision and afterwards. Getting ready for this interview, I've read the media accounts from the time that *Swann* was handed down on April the 20th and going forward, and it was very balanced reporting, very factual reporting, and the editorial part was fair.

Judge Peter L. Dearing (Ret.): All right, sir, can you think of anything else you'd like to share about this case that I haven't asked you about?

Judge Gerald B. Tjoflat: No, I think we've covered it.