

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF ALABAMA, EASTERN DIVISION

ANTHONY T. LEE and HENRY A. LEE, by)
Detroit Lee and Hattie M. Lee, their)
parents and next friends; PALMER)
SULLINS, JR., ALAN D. SULLINS and)
MARSHA MARIE SULLINS, by Palmer)
Sullins and Della D. Sullins, their)
parents and next friends; GERALD)
WARREN BILLES and HELOISE ELAINE)
BILLES, by I. V. Billes, their father)
and next friend; WILLIE M. JACKSON,)
JR., by Mabel H. Jackson, his mother)
and next friend; WILLIE B. WYATT, JR.,)
and BRENDA J. WYATT, by Willie B.)
Wyatt and Thelma A. Wyatt, their)
parents and next friends; NELSON N.)
BOGGAN, JR., by Nelson Boggan, Sr.,)
and Mamie Boggan, his parents and)
next friends; WILLIE C. JOHNSON, JR.,)
BRENDA FAYE JOHNSON and DWIGHT W.)
JOHNSON, by Willie C. Johnson and Ruth)
Johnson, their parents and next)
friends, and WILLIAM H. MOORE and)
EDWINA M. MOORE, by L. James Moore)
and Edna M. Moore, their parents and)
next friends,)

Plaintiffs,)

UNITED STATES OF AMERICA,)

Plaintiff and)
Amicus Curiae,)

vs.)

MACON COUNTY BOARD OF EDUCATION,)
HARRY D. RAYMON, Chairman, MADISON)
DAVIS, JOHN M. DAVIS, B. O. DUKES and)
F. E. GUTHRIE and C. A. PRUITT,)
Superintendent of Schools of Macon)
County, Alabama; ALABAMA STATE BOARD)
OF EDUCATION, Governor GEORGE C.)
WALLACE, President of Alabama State)
Board of Education; AUSTIN R. MEADOWS,)
Secretary and Executive Officer of)
Alabama State Board of Education;)
JAMES D. NETTLES, J. T. ALBRITTON,)
J. P. FAULK, JR., FRED L. MERRELL,)
W. M. BECK, VICTOR P. POOLE, W. C.)
DAVIS, CECIL WORD and HAROLD C. MARTIN,)
as Members of Alabama State Board)
of Education,)

Defendants.)

FILED

APR 28 1964

By..... R. C. DOBSON, CLERK
Deputy Clerk

CIVIL ACTION NO. 604-E

MEMORANDUM OPINION AND INJUNCTION

This Court on August 13 and 22, 1963, by orders made and entered
herein, enjoined the defendants Macon County Board of Education, Harry D. Raymon,
Chairman, Madison Davis, John M. Davis, B. O. Dukes and F. E. Guthrie, Members,

and C. A. Pruitt, Superintendent of Schools of Macon County, Alabama, from, among other things, failing to make an immediate start for the school term commencing in September 1963 in the desegregation of the schools of Macon County, Alabama, through the use of the Alabama School Placement Law, Title 52, Chapter 4A, 1940 Code of Alabama, without discrimination on the basis of race or color.

The history of this case reflects that, acting pursuant to the orders of this Court, the Macon County Board of Education assigned twelve Negro students to attend the Tuskegee Public High School in Tuskegee, Macon County, Alabama; that said students, pursuant to said assignment, attended the Tuskegee Public High School in Tuskegee, Macon County, Alabama, until January 31, 1964; that subsequent to the opening of the school year in September 1963, with the permission of the Macon County Board of Education, all white students attending the Tuskegee High School withdrew from that school, leaving in attendance only twelve Negro students; that a large number of white students, by authority of said Board of Education, were transferred to the Macon County High School at Notasulga, Alabama, and to the Shorter High School at Shorter, Alabama, both of said schools being an integral part of the public school system of Macon County, Alabama. On February 3, 1964, this Court, by order made and entered herein, extended the injunction originally issued after the State Board of Education and the Macon County Board of Education had acted to close the Tuskegee High School for "economic reasons." This Court did not restrain the closing of said school; however, it ordered that the twelve Negro students who had been in attendance at Tuskegee High School, be transferred to the other high schools in the Macon County school system in accordance with the same standards applied by the Board of Education when they transferred the white students from the Tuskegee High School. Applying the same standards, this Court ordered and directed that Anthony T. Lee, Robert Judkins, Jr., Willie B. Wyatt, Jr., Patricia Jones, Marsha Sullins, and Shelby Chambliss be transferred to the Macon County High School at Notasulga, Alabama, and the defendants and those acting in concert with them were restrained and enjoined from refusing to approve and permit the attendance of said students at the Macon County High School at Notasulga, Alabama, upon the same terms and conditions allowed

and extended to the high school students who had been previously transferred from the Tuskegee High School to the Macon County High School at Notasulga, Alabama.

Plaintiffs in this case now move this Court for additional relief, and after due notice, the matter was submitted to the Court on this date upon said motion. Upon this submission, it now appears that pursuant to the order of this Court of February 3, 1964, the defendants approved the transfer of said students to attend the said Macon County High School at Notasulga, Alabama, and that said students have been in attendance at said school from that time through Friday, April 17, 1964. On April 17, 1964, or in the early morning of Saturday, April 18, 1964, the portion of the Macon County High School that was being used by the said Negro students was destroyed by fire. This Court takes judicial notice that it has been publicly announced through the Press that in all probability the fire was caused by arsonists. On April 24, 1964, plaintiffs were informed by the Macon County Board of Education, through the office of the Superintendent, that the Negro children who had been in attendance at the Macon County High School at Notasulga were reassigned and transferred to the Tuskegee Institute High School, a school designated by the Board for the attendance of Negroes only. The resolution authorizing and directing this transfer, as adopted by the County Board of Education on April 23, 1964, was as follows:

"WHEREAS, Macon County High School at Notasulga, Alabama, has been destroyed by fire and the students therein enrolled have applied for admission to Tuskegee High School, and,

"WHEREAS, Tuskegee High School has been closed because it was not economically feasible to operate with such a small student enrollment; it would, therefore, not be fiscally sound to re-open at this time for such a small number of students, and,

"WHEREAS, Tuskegee Institute High School, Shorter High School, D. C. Wolfe High School and Macon County Training School are the only remaining high schools in Macon County, all schools having a total Negro enrollment as all white students have withdrawn, and,

"WHEREAS, It is the belief of this Board that besides being economically unsound because of a transportation cost, that to assign these students to Shorter High School will further endanger property and life in Macon County,

"THEREFORE BE IT RESOLVED, Since it clearly cannot be discriminatory and because of the shortness of time before graduation and the importance of completing the school year

without any further interruptions, we assign these students to Tuskegee Institute High School for the remainder of this school year."

The plaintiffs now contend that the reassignment and transfer of said children to the Tuskegee Institute High School by said defendants is in violation of this Court's previous orders and has the effect of denying to these plaintiffs their constitutional rights as previously determined by this Court.

As this Court observed in its order of February 3, 1964, the standard for assigning white children to the schools in the Macon County school system is the standard which must now be applied to the Negro children, including the six Negro children heretofore assigned to attend the Macon County High School at Notasulga, Alabama. No different rule can now be adopted and applied. The damage by fire to that portion of the Macon County High School at Notasulga, Alabama, has not, according to the evidence in this case, rendered the Macon County Board incapable of complying with the prior orders of this Court. It appears that there is adequate school space available at the Macon County School at Notasulga, which space can be and must be used for the education of the six Negro children here involved. Their transfer to and attendance at Shorter or Tuskegee will, according to the resolution of the Board, involve just as much inconvenience and hazard as has their attendance at Notasulga. The defendants cannot be excused from complying with prior orders of this Court designed to secure to these plaintiffs, and other members of their race, their constitutional rights, just because of the destruction of or damage to the high school in Notasulga, which was, as reported by the Press, probably the result of criminal action intended to discourage the attendance of said Negro children at the Notasulga school. As was said by the United States Court of Appeals for the Eighth Circuit in Aaron v. Cooper, 257 F. 2d 33, 40:

". . . [T]he 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."

See also the expression of the Supreme Court of the United States on the appeal of the Eighth Circuit case in Cooper v. Aaron, 358 U.S. 1, and the more recent statement of the Supreme Court dealing with this problem in Watson v. Memphis, 373 U.S. 526.

NOW, THEREFORE, in consideration of the foregoing and for good cause, it is the ORDER, JUDGMENT and DECREE of this Court that the Macon County Board of Education and the individual members thereof, their agents, servants, employees, successors in office, and those acting or who may act in concert with them and who shall receive notice of this order, be and each is hereby restrained and enjoined from:

(1) Refusing and failing to provide for and approve the attendance at the existing Macon County School at Notasulga of Anthony T. Lee, Robert Judkins, Jr., Willie B. Wyatt, Jr., Patricia Jones, Marsha Sullins, and Shelby Chambliss; said attendance of said students to said school to commence not later than Thursday, April 30, 1964, and to continue each school day until the further order of this Court, and said attendance of said students to said school to be upon the same terms and conditions allowed and extended to the white students heretofore in attendance at the said Macon County School at Notasulga, Alabama; and

(2) Failing and refusing to transport the said Negro students to the Macon County School at Notasulga, Alabama, upon the same terms and conditions as allowed and extended to the white students heretofore transported to the said school at Notasulga, Alabama.

It is further ORDERED that the orders of this Court made and entered herein on August 13 and 22, 1963, and February 3, 1964, remain in full force and effect except as herein specifically modified and amended.

It is further ORDERED that jurisdiction in this cause be and the same is hereby retained for all purposes.

Done, this the 28th day of April, 1964.

/s/ Richard T. Rives

UNITED STATES CIRCUIT JUDGE

/s/ H. H. Grooms

UNITED STATES DISTRICT JUDGE

/s/ Frank M. Johnson, Jr.

UNITED STATES DISTRICT JUDGE

Nettles, J. T. Albritton, J. P. Faulk, Jr., Fred L. Merrell, W. M. Beck, Victor P. Poole, W. C. Davis, Cecil Word, Harold C. Martin and Austin R. Meadows, together with their agents, servants, employees, successors in office, and all those who are or may hereafter be in active concert or participation with them, or any of them, be and they hereby are enjoined, pending the disposition of this case upon its merits, from:

- (1) Preventing or attempting to prevent, obstructing or interfering with the Macon County Board of Education, its individual members, and the Superintendent of Schools of Macon County in enrolling, admitting, educating or transferring any child in or to a school attended by children of another race;
- (2) Preventing or interfering with any student, teacher, or other person authorized by the Macon County Board of Education, from entering, leaving, attending or working in any public school in Macon County attended by children of both the white and Negro races;
- (3) Harassing or punishing, in any manner or by any means, any student, teacher or other person on account of his attending or working in any public school in Macon County attended by students of both the white and Negro races, or harassing or punishing any official, agent or employee of Macon County on account of his complying with the orders of this Court requiring the elimination of racial discrimination in the public schools of the county;
- (4) Interfering with, preventing or obstructing by any means, the elimination of racial discrimination by local school officials in any school district in the State of Alabama;
- (5) Approving, authorizing or paying any tuition grant or grant-in-aid under the provisions of Chapter 4B [Sections 61(13) through 61(21)] of Title 52 of the Alabama Code for the attendance of any person in a school in which enrollment or attendance is limited or restricted upon the basis of race or color;
- (6) Failing, in the exercise of its control and supervision over the public schools of the State, to use such control and supervision in such a manner as to promote and encourage the elimination of racial discrimination in the public schools, rather than to prevent and discourage the elimination of such discrimination.

It is the further ORDER of this Court that the Macon County Board of Education, Madison Davis, John M. Davis, B. O. Dukes, F. E. Guthrie, Frances (Mrs. J. R.) Rush, and C. A. Pruitt, together with their agents, servants and employees, successors in office, and all those who are or may be hereafter in active concert or participation with them, be and they hereby are enjoined, pending a final determination of this case, from:

(1) Failing to provide public school education for the plaintiffs and other members of their class in a school or schools that are not operated on a segregated basis and in which school or schools there shall be both space and teaching capacity for the re-enrollment of students who have withdrawn from attendance in the high school grades of the Macon County public schools since September 2, 1963;

(2) Failing to take such additional steps in the elimination of racial discrimination in the public schools of Macon County for the 1964-65 school year as may be required by any desegregation plan approved by this Court;

(3) Applying any different tests, procedures or requirements in processing applications for transfer by Negroes than are applied to similar applications by whites;

(4) Paying, authorizing or approving the payment of any grant-in-aid or tuition grant under the provisions of Chapter 4B [Sections 61(13) through 61(21)] of Title 52 of the Alabama Code to any child, parent or guardian in connection with the attendance of such child in the Macon Academy of Tuskegee, Alabama, or in any other school in which attendance is limited or restricted upon the basis of race or color.

It is the further ORDER of this Court that the Macon County Board of Education, Madison Davis, John M. Davis, B. O. Dukes, F. E. Guthrie, Frances (Mrs. J. R.) Rush, and C. A. Pruitt, or their successors in office, file with this Court on or before August 3, 1964, their detailed plan for the operation of the Macon County school system, commencing for the 1964-65 school year; such plan to include the desegregation of the ninth, tenth, eleventh and twelfth high school grades and at least one of the elementary school grades in each of the schools in the Macon County school system.

It is the further ORDER of this Court that the Macon Academy, Tuskegee, Alabama, be and it is hereby made a party to this action to the extent that said institution be allowed an opportunity to be heard on the contention of plaintiffs that it has become a public institution and a part of the Alabama school system.

It is further ORDERED that jurisdiction in this cause be and the same is hereby retained.

Done, this the 13 day of July, 1964.

/s/ Richard T. Rives

UNITED STATES CIRCUIT JUDGE

/s/ H. H. Grooms

UNITED STATES DISTRICT JUDGE

/s/ Frank M. Johnson, Jr.

UNITED STATES DISTRICT JUDGE