

re-written

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FMD:TFL:mhs

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DJ 169-3-6
#1-105-13

U.S. v. Perry County Board of Education and
Marion City Board of Education, Perry County,
Marion, Alabama

We are ready to file suit to desegregate the public schools of Perry County, Alabama.

LAW

Compulsory racial segregation in public education violates the Fourteenth Amendment. Section 407(a) of the Civil Rights Act of 1964 authorizes the Attorney General to institute suit upon a written complaint of denial of equal protection if he certifies that the complainant is unable to maintain legal proceedings, if the school board has had a reasonable time to act on the complaint, and if the Attorney General certifies that in his judgment the institution of the suit will contribute to the orderly achievement of desegregation.

FACTS

On October 17, 1965, a Negro parent of school-age children in Perry County signed and forwarded to the Attorney General a complaint alleging her daughter was required to withdraw from a white high school (Suttles) in the county system because bus transportation was not available. The child had attended that school for two weeks. The Negro parent's request for her child to attend another white high school (Uniontown) in the county system was denied.

The County Superintendent of Education indicated that the County School Board was enjoined by a State Circuit Judge to re-route the bus the complainant's child had been riding. This suit required the county to transport residents of the county to schools in

cc: ~~Green~~
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Trial File (Rm. 1132)

Marion. Bus routes furnished by the FBI indicate a bus to Suttles school travels several miles east of the complainant's residence. The Superintendent also stated that the Board refused the application to the other white school because such transfer would have meant a second period of orientation which would cause her to have difficulty in keeping up with her work. The Negro child was given the choice of attending two Negro schools in the county system - Robert C. Hatch in Uniontown or Baptist Academy in Marion. The latter was chosen.

The FBI investigation discloses that the Negro complainant has a sixth grade education, her husband is a day laborer. They have 12 children and live in a rural area. This family owns 92 acres of land, a 1965 Ford truck and have debts amounting to about \$6000. The complainant advised the FBI that she was unable to bring suit to have her daughter readmitted to the white Suttle high school.

BACKGROUND

The Perry County school system for the school year 1964-1965 had 4175 Negro students attending 19 Negro schools and 1244 white students attending five white schools. On January 7, 1965, the City Council of Marion approved a resolution that requested the State Department of Education to transfer four schools in Marion to a new City Board of Education. The four schools were: 1/

<u>Name</u>	<u>Race</u>	<u>Grades</u>	<u>Students</u>	<u>Teachers</u>
Perry County High School	W	7-12	349	16
Marion Elementary School	W	1-6	366	12
Marion Public School	N	1-6	385	11
Lincoln School	N	7-12	595	22

Alabama law allows for the creation of a separate city school system when the city population is over 2,500. In

1/ This chart is based on statistics included in the Marion City plan submitted to HEW. The attendance figures are anticipated enrollment based on school enrollment for 1964-1965.

an advertisement published in the Marion Times-Standard the following were listed as the reasons for the new system:

1. City schools have suffered because too many schools are operated in Perry County.
2. More local support for schools run by city board.
3. Remove superintendent's office from politics.^{2/}
4. Foster better schools.

The county board opposed the creation of the new system and refused to provide bus transportation for students who lived outside the city. Indeed, the complaining Negro parent was told that her daughter would receive transportation if she applied for the nearest county school but would not if she returned to the Negro Lincoln school in the city. In a letter dated April 14, 1965 and published as an advertisement in the Marion Times on May 6, the chairman of the Marion Board of Education alleged that the county had officially refused to provide transportation for county students to the city schools. The May 6 issue of the Marion Times also printed a letter from the State Superintendent of Education dated April 30 who recommended that the county board continue to transport pupils to the city schools. The transportation question was resolved by an injunction issued by State Circuit Judge L. S. Moore which required the county to transport students to the city schools.

COUNTY SYSTEM

For the school year 1965-1966, the Perry County school system was composed of 17 Negro and three white schools; 3169 students attend the Negro schools and 652 students attend the white schools.

The plan to desegregate grades 9-12 under which Perry County is presently operating was submitted to HBW for approval. By a letter dated September 20, 1965, HBW rejected the plan because of deficiencies in

- a) the notice to parents
- b) method by which choice is exercised
- c) publication of the plan
- d) provision for overcrowding
- 3) availability of school transportation

^{2/} City superintendent appointed by Mayor.

- f) facilities and activities on a non-discriminatory basis
- g) desegregation of faculty
- h) transfers of pupils into and out of the school district, and
- i) grades to be desegregated.

All but a few of the students and all of the faculty and staff members at the three formerly all-white schools in the county are white persons. All students, faculty, and staff at the other schools are Negro. According to the Superintendent, the procedure for registration of first grade students, and anyone entering the school system for the first time, is that such students merely present themselves at the school they wish to attend and are registered. He stated that no applications are involved and no assignments are made by school officials.

Prior to the beginning of school in the fall of 1965, 122 Negro students made applications to previously all-white county schools. Ten of these applications were accepted at the formerly white Suttles high school but only two attended. Both of these students have withdrawn. One was the complainant and the other left, according to the superintendent, because he had not been accepted by the other students. Eight Negroes were accepted at the formerly all-white Uniontown high school and one withdrew allegedly because he did not believe he would be able to graduate.

The County Superintendent of Education indicated that each of the 104 rejected Negroes' applications had been considered separately utilizing the following standards:

- (1) Achievement Test Results
- (2) Scholastic Records
- (3) Attendance Records
- (4) Personal knowledge of school officials

A copy of the minutes of the Board meeting that decided the Negro applications reveals only the action taken on each student.

As a result, the county system of 20 schools with 3821 students has one school with seven Negroes attending of an enrollment of 319.

The following chart illustrates the disparity of facilities in white and Negro schools in the county system.^{3/}

<u>Negro Schools</u>				
<u>School</u>	<u>Grades</u>	<u>Attendance</u>	<u>Class Rooms</u>	<u>Teachers</u>
Baptist Academy	1-10	624	11	12
Cross Roads	1-8	50	3	2
East Perry	1-10	189	6	6
Hanna	1-8	75	2	2
Hinton	1-7	81	2	2
Hopewell	1-9	137	3	3
Morningstar	1-9	75	3	3
Oak Grove Jr. High	1-9	126	3	3
<i>Powell</i>	1-8	86	3	2
Reynold's Chapel	1-8	89	2	2
Whitehill	1-6	601	3	3

<u>White Schools</u>				
Heilberger Jr. High	1-9	111	7	5
Suttles	1-12	222	12	14
Uniontown High	1-12	319	13	13

The county superintendent informed the FBI that a new school was to be constructed west of Marion and was to incorporate the elementary grades of five rural Negro schools, one of which is not in Perry County.

The State of Alabama made a survey in 1965 of the Perry County school system but it is not yet available.

The three high schools in the county system -- Suttles, Uniontown and Robert C. Hatch -- have been accredited by the State as well as the Southern Association of Secondary Schools.

^{3/} The attendance figures, grades and number of teachers are for the school year 1965-1966.

The only available information for number of classrooms are figures for 1965-1965.

The following chart illustrates the disparity in two categories for those high schools for the school year 1964-1965:

	<u>Suttles</u> (White)	<u>Uniontown</u> (Integrated)	<u>Robert C. Hatch</u> (Negro)
Enrollment	102	287	371
Pupil-Teacher Ratio	13:1	19:1	25.1:1
Book-Pupil Ratio	12.26:1	2.71:1	7.48:1

City Schools

The newly established city school system received the properties of four schools in Marion on July 1, 1965. The statistics for those schools for the school year 1965-1966 are as follows:

<u>School</u>	<u>Grades</u>	<u>Attendance</u>	<u>Classrooms</u>	<u>Teachers</u>
Marion Public (Negro)	1-6	101	14	9
Lincoln High (Negro)	7-12	189	18	19
Marion Elementary (White)	1-6	290	11	12
Marion High (White)	7-12	304	18	17

A comparison of opportunities offered in the city system's high schools follows, based upon 1964-1965 statistics:

	<u>Perry County (W)</u>	<u>Lincoln (N)</u>
Enrollment	346	621
Pupil-Teacher Ratio	21.62:1	28.2:1
Book-Pupil Ratio	16.41:1	3.53:1

The following courses are offered only at the white high school; Latin, Spanish, Advanced Math, History, Social Science Democracy and Business Law. Biology, Physics and Chemistry were taught only at the Negro high school. Both schools are accredited by the State and the Southern Association of Secondary Schools.

The anticipated enrollment of Negro schools was considerably reduced because a Negro organization persuaded Negroes not to attend. As a result, the enrollment at the Negro Baptist Academy was 213 in 1964-1965 and in 1965-1966 was 624. While this school is located within the Marion city limits, it was not included in the city school system. Attorney interviews indicate the Baptist Academy building is owned by the Baptist Church but the county supplies teachers and bus transportation.

On July 10, 1965 the Marion city Board of Education filed a plan to desegregate grades 1 through 4 for the 1965-1966 school year and 4 grades a year thereafter. This plan was revised on August 17 and September 10 and was finally accepted on September 16, 1965.

The accepted plan provides for students in the first four grades to receive a letter and a choice of school form the first day of school.

Six Negroes applied to enter a formerly all-white school presently within the city school system. Attorney interviews and HEW files indicate these applicants were rejected by what HEW termed "...a very vaguely worded letter from school officials citing Section 2.A.2 (presumably of the plan) with no further explanation." That section, as amended, stated that the city school system would not accept transfers from students enrolled in schools of another system [For full text, see Appendix A]. Each of the applicants had attended Baptist Academy the previous year which school was excluded from the city school system by the city council. No reason for this exclusion was articulated in the minutes of the council's meeting, ads taken in newspapers or the HEW plan.

Section 158 of Title 52, Alabama Code, vests the city Board of Education with management of the "free public schools within such city and adjacent territory ..." The Negroes who applied to enter the white schools pay \$2.50 per year to attend Baptist Academy. In a case where a matriculation fee of \$4 for junior high school and \$6 for senior high school students was charged, the court found such fees, authorized by Section 427 of Title 52, Alabama Code, did not prevent the school from remaining within the category of "free public schools." Shirley v. City Board of Education of Fort Payne, 266 Ala. 185, 94 So. (2d), 758.

Baptist Academy is located within the city limits and each of the applicants resides in the city. The city superintendent, Mr. Hubbard, did state to the FBI that, as of September 1965, 44 Negroes and 251 white students who live in the county school area were attending the city schools. Maps of bus routes indicate nine separate routes which buses follow in transporting children from the county school area to the Marion city schools. One route appears to begin in Dallas County and four other routes begin at or near the Perry County line. In his letter to the Chairman of the County Board published on May 6, Mr. Harrison, Chairman of the Marion Board of Education wrote:

"Though many of the students are county rather than city residents, it has always been our intention to provide in the city schools educational opportunities for all county residents from areas that have been traditionally served by these schools."

Presently, students who live in the county but attended city schools in the past may continue to attend those city schools and are transported by county buses. Negroes who have attended Baptist Academy and reside in the city are effectively barred from admittance to any white school in the city system. Thus, the 624 Negro students presently attending Baptist Academy have only the alternative of attempting to enter the formerly all-white Uniontown high school some 30 miles from Marion. The creation of the city system excluding the Baptist Academy has denied the Negroes who have attended that school an opportunity to educational opportunities equal to those offered white students who may attend any school in the county or continue attending the white schools in the city. No Negro presently attends a white school in the city.

The complainant's daughter here attended the Lincoln school for the school year 1964-1965. She was informed by the county superintendent she would receive transportation only if she attended the nearest county school. This she did until the county re-routed the buses to afford pupils living in the county transportation to the city schools. At this point, she was offered only a choice of two Negro schools in the county system. Since she had attended in 1964-1965 a Negro school now a part of the city system, she should have been eligible to transfer to a white city school even though her grade was not within the HEW desegregation plan. The complainant's daughter, therefore, was told she could not attend a white school in the county and was not eligible to transfer to the white school in the city. A white student living in her area, however, would have had an initial choice

APPENDIX A

This system will not accept non-resident students, nor will it make arrangements for resident students to attend schools in other systems when this would tend to preserve segregation or minimize desegregation. Any arrangements made for non-resident students to attend schools in this system will assure that such students will be assigned without regard to race, color, or national origin, and such arrangements are hereby outlined...

- A. The Marion City School System will accept only those students who previously attended the four (4) schools that now comprise the Marion City System and the first grade pupils in the following categories.
 1. Some of the students, both Negro and white, either reside nearer Marion City Schools than Perry County Schools or live along transportation routes easily accessible and provided for the students to the Marion City Schools. These students will be given the same freedom of choice as students attending the Marion City School System.
 2. The Marion City School System will not accept transfer applications from pupils enrolled in schools of another system nor will it make arrangement for students attending Marion City Schools to attend schools of another system.