THE STRUGGLE TO IMPLEMENT THE DESEGREGATION DECISION IN THE SOUTH: A SPECIAL CASE STUDY OF KEMPER COUNTY, MISSISSIPPI

An Abstract of a Thesis

Presented to

the Faculty of the Graduate School

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In Partial Fulfillment

of the Requirements for the Degree

Master of Arts

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by

Bernard Cotton

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ABSTRACT

The Supreme Court of the United States declared in Brown v. Board of Education that racially separate educational facilities were unconstitutional violations of the Equal Protection Clause of the Fourteenth Amendment. The separate-but-equal doctrine which evolved from Plessy v. Ferguson had been the law of the land for sixty-eight years when the Brown decision was promulgated in 1954. Despite the Court's finding that separate-but-equal was unconstitutional, the implementation of the decision was delayed until 1955.

Brown v. Board of Education II (1955) did not call for the immediate end to desegregation but instead provided for desegregation "with all deliberate speed." This decision became the vehicle for the continuation of segregation in education for more than a decade. The Court permitted a gradual end to segregated education to allow for administrative adjustments. However, segregationists took advantage of this decision to win additional support in their efforts to prevent desegregation. State officials joined other segregationists in delaying school integration as long as possible.

Southern Politicians resorted to a variety of tactics such as pupil-placement, grade-a-year and "freedom of choice" plans. Mississippi was the most difficult state to desegregate. The first integration came to this state as late as 1964. This was only token and effected the larger cities in the state.

The most rural counties in Mississippi were even more reluctant to accept the Brown mandate. In the rural areas of Mississippi the first school integration came in 1967. However, separate school systems for blacks and whites were still in existence until after the Supreme Court decision in 1969, which required an immediate end to dual school systems for based on race. This part of Mississippi is characterized by several conditions that contributed to the slow desegregation process. Aside from being rural, this area is relatively isolated, has a high percentage of low income blacks, and little progressive black leadership. These conditions, combined with the nature of the 1955 Supreme Court decision, made it possible to avoid desegregation for more than a decade.

APPROVAL PAGE

This thesis has been read and approved.

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Chapter 1

INTRODUCTION

The basic thesis to be developed here is that as a result of the United States Supreme Court's moderation in 1965, the desegregation process in the South generally and especially Mississippi was delayed for a full decade.[1] One significant assumption here is that Mississippi and other deep Southern states had no intention of complying with the Court's decree. The 1955 decision was instrumental in providing an escape route for these states. This thesis will be based primarily on the period between 1955 and 1970. It will concentrate on the implementation decision of 1955 and its ramification in the South, especially in Mississippi.

This thesis will be supported by a review of some major Supreme Court cases beginning with the Brown decision of 1954.[2] The major emphasis, however, will be on the second Brown decision. The argument by the National Association for Advancement of Colored People and its supporters will be presented to show that there was evidence that the Court should have demanded immediate and complete desegregation in 1955. Sociological studies on ways and means of implementing desegregation policies will be investigated. The second chapter will be based on a survey conducted in Kemper County, Mississippi. This county will be taken as a typical "hard core" county of the South. It is basically a rural poor county with a large black population. This survey will be

a review of the developments on desegregation in the county between 1955 and 1970.

The survey was conducted through personal contacts and interviews along with questionnaires sent to black teachers in the county. The survey was limited due to the controversial nature of the subject in Kemper County. It included only black teachers because there was little chance of getting whites in this area to respond to such an inquiry. There was a considerable degree of reluctancy to respond to such a controversial subject as school desegregation in this area. Even among the blacks, this was quite evident. Many of them did not respond to the survey while others simply indicated that they had no information to give.

Chapter three will be a general review of some of the major desegregation cases between 1955 and 1969. Despite the fact that there were several cases dealing with desegregation during this period, Mississippi escaped their application completely. This was made possible in part by the Supreme Court's decision to return the responsibility for compliance to the lower Federal District Courts. Federal District Judges were basically sympathetic to the South; therefore, they were not enthusiastic about enforcing desegregation.[3]

The academic world would question the significance of any study on school desegregation because of the abundance of published material on this subject. However, this writer feels that the nature of the project will make it of vital significance. The vast majority of studies on school desegregation are done by persons not directly involved with the schools, but are academic observers from the outside. Also, most of the works are done on the South as a region and for that

reason they are limited to major events rather than to the intricate day-to-day events in one particular locality. The location selected for this study is basically a rural area and therefore it is not generally covered by professional writers. One basic assumption of this writer is that there is a difference in the desegregation process in Mississippi and in the South in general. Because Mississippi is rural, segregation is different. Except in the larger cities such as Jackson, the fight over bussing to achieve desegregation does not apply because of the housing patterns in rural areas. For example, Kemper County has traditionally operated two bussing systems—one for the whites and one for the blacks. Many times these busses would travel several miles along the same route to pick up one white or one black student.

There is also a difference in desegregation in the major municipalities of Mississippi and the rural areas of the state. It is for these reasons that this writer feels that this study will be unique in the vast array of materials on school desegregation.

The history of desegregation in public elementary and secondary education in the United States has been a long and complex one. G. Theodore Mitou, a student of school desegregation in his book Decade of Decision, argued that in order to make a complete historical study of desegregation, one would have to begin with Roberts v. City of Boston.[4] This is the first case in which the question of dual schools for blacks and whites entered the American Judicial System. Although most of the struggle with de jure segregation took place in the South, this case came in the State of Massachusetts.[5] It set a precedent for rationalizing segregation despite its obvious violation of constitutional guarantees. The precedent was later accepted by the United

States' Supreme Court. Here the state's distinguished Attorney General, Charles Sumner, argued that segregated schools were a violation of the "free and equal" clause of the state's Constitution. Despite this inequality, the state's Supreme Court could not see any violation of protected rights.

Although Roberts v. City of Boston was the first case to uphold segregated education, it has not been the most frequently cited precedent for segregation in the South. This distinction was given to Plessy v. Ferguson, a Southern case.[6] Out of the Plessy case evolved the doctrine of "separate-but-equal." The Supreme Court ruled that a Louisiana law providing for separate public facilities for blacks and whites was not unconstitutional. However, according to Albert Blaustein and Clarence Ferguson, Jr., there were no words in the Court's opinion which declared that segregation was permitted where equal facilities are provided. They contended that those words were actually formulated later by lower courts attempting to apply the Plessy principle. What the Court did in Plessy was to uphold what they considered to be a "reasonable" state law.[7] The state law in question actually dealt with separate transportation facilities. However, the principle was used to justify segregation in education for over half a century. The Supreme Court dispelled any doubt that the decision would be applied to the field of education in 1908. The point was made quite clear in Berea College v. Kentucky when the Court held that the state could forbid a college, even though it was a private institution, to teach whites and blacks at the same time and place.[8]

The doctrine of "separate-but-equal" was not challenged directly until 1951. However, there were several instances before this time

where black students had attempted to enter all white educational institutions. These early suits were usually based on the arguments that educational facilities were not equal. The early challenges were made against inequality rather than against separation. One of the earliest cases in this category was Cummings v. Board of Education.[9] The Court found no denial of equal protection in a Southern County that refused to provide a high school for its black students although one was provided for white students.

In several cases involving institutions of higher learning, the Court began to take a more critical look at separate facilities. The new attitude of the Court was exemplified in Missouri ex rel Gaines v. Canada when it ruled that Gaines was entitled to admission to the State University of Law in the absence of proper provisions for legal education within the state.[10] Missouri had adopted a policy for providing tuition grants to black students who wished to attend Law School in one of the neighboring states. The Court in Spiuel v. Oklahoma, reaffirmed the Gaines decision by stating, "The petitioner is entitled to secure legal education afforded by a state institution."[11]

McLaurin v. Oklahoma State Regents presented the Court with a different kind of problem. Involved here was the treatment of black students after admission to the University. The black student was assigned special separate facilities in the library, in the dining hall and in the classroom. The Court held that the University must provide the black student with the same treatment as the white student.[12] The case that came closest to directly challenging the "separate-but-equal" doctrine before 1951 without actually doing so was Sweat v. Painter.[13] For the first time in reviewing separate educational facilities, the

Court considered intangible factors such as prestige of the school as well as its alumni. In response to a black applicant's request for admission to the University of Texas Law School, a new law school was constructed for blacks. The Court concluded that the new school was not equal to the University of Texas; therefore, the plaintiff could not be denied admission to the latter. The Court's decision to examine intangible factors in the Sweat case led to a direct challenge to the doctrine of "separate-but-equal."

The first challenge to the "separate-but-equal" doctrine reached the Supreme Court in January, 1952.[14] By November, 1952, the Supreme Court had before it six cases challenging the Plessy doctrine. These cases were combined under the name of Brown v. Board of Education,[15] and Bolling v. Sharpe.[16] In May, 1954, the Court decided that "separate-but-equal" had no place in the field of education. However, the Court did not formulate procedures for desegregation of the schools until May, 1955.

Footnotes - Chapter 1

1. Brown v. Board of Education 349 U.S. 294 (1955).

2. Brown v. Board of Education 347 U.S. 483 (1954).

3. For a discussion of Southern district judges and school desegregation, see: Leon Friedman, Southern Justice (World Publishing Co., New York, 1967).

4. G. Theodore Mitou, Decade of Decision: The Supreme Court and the Constitutional Revolution 1954-1964, (Charles Scribner's Sons., New York, 1967), p. 51, 5 Cush (59), 198, (1849).

5. De Jure Segregation: That which is imposed by Law.
De Facto Segregation: That which is not imposed by Law but by circumvention of the Law.

6. 163 U.S., 537, (1896).

7. Albert P. Blaustein and Clarence Ferguson, Jr., Desegregation and the Law: The Meaning and Effect of the School Segregation Cases, (New York: Vintage Books, 1962), p. 98.

8. 211 U.S., 45, (1908).

9. 175 U.S., 528, (1899).

10. 305 U.S., 337, (1938).

11. 332 U.S., 631, (1948).

12. 339 U.S., 332, (1943).

13. 399 U.S., 629, (1950).

14. Briggs v. Elliot, 98 F. Supp., 529, (1951).

15. 344 U.S., 1, (1952).

16. 344 U.S., 873, (1952).

Chapter 2

SEPARATE-BUT-EQUAL, NO LONGER EQUAL

The first of the five original school segregation cases reached the Supreme Court in 1952.[1] This case originated in Clarendon County, South Carolina. A three-judge Federal District Court at Charleston, South Carolina, heard the case of ten-year-old Harry Briggs, Jr. and six other black children which challenged the county school board's segregation policy.[2] The black schools were found to be inferior to the white schools. The Court invoking Plessy v. Ferguson ordered the school board to equalize facilities promptly and report back in six months.[3] The Supreme Court refused to decide the case and remanded it to the three-judge panel. A majority of the Supreme Court's members wanted to review the findings of the panel on the county "progress report" on equalization. Justices Douglas and Black dissented, contending that the report on the District Court was "wholly irrelevant to the constitutional questions presented" and the Court should have taken the case for argument.[4] When the District Court received the Clarendon County report, it reaffirmed its earlier decision to deny abolition of segregated schools, because the board had "promptly" complied with the equalization mandate.

The second suit challenging "separate-but-equal" originated in Kansas. This case began in a District Federal Court in August, 1951.[5]

The District Court found that black schools were equal to those provided for whites; therefore, the plaintiff's plea for desegregation was denied. The National Association for Advancement of Colored People lawyers immediately began to prepare for appeals to the Supreme Court. This case was filed on behalf of Oliver Brown and the parents of twelve other black children.

Davis v. County School Board became the third suit filed against segregated educational facilities in the South.[6] This suit was filed against the Prince Edward County, Virginia School Board. A three-judge District Court cited Briggs v. Elliot in ordering the school board to pursue "with diligence and dispatch, its equalization program."[7] But the panel refused to order the schools to desegregate.

The fourth desegregation case differed considerably from the first three. This case originated in the state court of Delaware rather than the Federal District Court. Black parents challenged a state statute which required separate educational facilities for black and white children. Just as in the Briggs case, there was proof of inequality in school facilities. However, instead of ordering the state to equalize black and white facilities, the highest state court ordered immediate admission of black students to previously all-white schools.[8]

Among the original desegregation suits was Boling v. Sharpe. This suit was filed on behalf of Spottswood Boling and other black parents. Since this action came against the school system of Washington, D.C., it was filed in the United States Court of Appeals for the District of Columbia. The appeals court rejected the plaintiffs' plea.[9]

The Brown case of Kansas and the Briggs case of South Carolina were on the Supreme Court's docket at the beginning of the October term in 1952. But the court delayed action on the Kansas and South Carolina

cases in order to review all five cases together. The cases from Kansas, South Carolina, and Virginia came to the Court through the appeals route. But the Delaware and the District of Columbia cases came by writ of certiorari.[10] On November 24, 1952, all five cases had reached the Supreme Court. The Court adopted the name of the Kansas case since they were all basically the same; therefore, the five cases became one under the name of Brown v. Board of Education.[11]

The oral arguments before the Court began during the October term of 1952. The first significant statement from the Court came June 8, 1953, when it ordered the case reassigned for the argument the following term. Attorneys were asked to be prepared to discuss five basic questions in the upcoming term. The questions asked by the Court were: First, what evidence is there that the congress which proposed the Fourteenth Amendment or the state legislatures which ratified it, contemplated or understood that it would abolish segregated public education? Second, if neither of these bodies which proposed the Amendment nor those which ratified it understood it to require immediate desegregation of public schools, was it the understanding of the framers of the Amendment that future Congress might, in exercising its power under the Amendment, abolish such segregation? Would it be within the judicial powers to construe the Amendment as abolishing segregation of its own force? Third, if the answer to the second question does not resolve the issue, then is it within the judicial powers, in interpreting the Amendment, to abolish segregated public schools? Fourth, if it is decided that segregated public schools violate the Fourteenth Amendment, should black children be admitted immediately to schools of their choice or may the Court in exercise of its equity powers, permit

gradual desegregation? And finally, if the Court should use its equity powers to end segregation, should the Court formulate detailed plans? What specific issues should be covered? Should a special master be appointed to recommend terms for desegregatoin? Should the Court remove these cases to courts of first instances and if so, with what general directions or guidelines?[12]

The Court answered three of the five questions on May 17, 1954. After long discussions by both sides in this case, they agreed that the intentions of the framers of the Fourteenth Amendment were "at best inconclusive." So the Court gave its own interpretation of the Amendment.[13] The decision of 1954 declared that "separate-but-equal" was inherently unequal and in violation of the Equal Protection Clause of the Fourteenth Amendment of the Constitution. In a unanimous opinion written by Chief Justice Earl Warren, the Court ruled that "separate-but-equal" had no place in education.[14]

The last three questions posed by the Court were not answered in the decision of 1954, instead, they were the basis for the second Brown decision in 1955.[15] The Attorney General of the United States and attorneys for the National Association for the Advancement of Colored People, were invited to assist in the formulation of answers to those questions. In addition, the Court invited the Attorneys General of the Southern states to appear as Amicus Curiae (friends of advisors to the Court) rather than as litigants. Six other Southern states joined the four original defendants by filing Amicus Curiae briefs.[16] However, in attempting to avoid the implications of the decision, Mississippi, Alabama, and Georgia refused to participate. Oral arguments were presented from April 11th through the 14th, 1955.

The attorneys for the National Association for the Advancement of Colored People argued that desegregation should be immediate and complete, making only reasonable allowances for administration and mechanical procedures. They held that because this involved "immediate and personal" rights, a delay would have resulted in serious injury. Their brief stated that "no relevant precedent can be found where the Court has refused to postpone injunctive relief even in the face of the gravest of public considerations suggested as justification thereof." The brief stated that empirical data voided the assumption that gradual desegregation was a more effective mode of transition.[17]

The position of the National Association for the Advancement of Colored People was supported by some prominent social scholars as well as by outstanding lawyers for the labor unions. Dr. Kenneth B. Clark, an eminent psychologist, made a strong case for immediate desegregation when he testified in the original arguments.[18] Dr. Clark presented detailed studies which substantiated the position of the National Association for the Advancement of Colored People. He emphasized some significant conditions that were necessary to accomplish efficient desegregation with minimum disturbance. A very important condition was that authorities present a clear and unequivocal statement of policy, that firm enforcement of the policy be executed once it is established, that authorities refuse to engage in or allow the use of devices for delay or evasion, and most importantly, express a willingness to deal firmly with violators.[19]

One of the strongest arguments before the Court for immediate desegregation was presented by attorneys for the Congress of Industrial Organizations. Arthur Goldburg, Thomas E. Harris, and David Feller,

counsels for the Congress of Industrial Organizations, presented Amicus Curiae briefs before the October, 1953, term of the Court in Genhart v. Belton. This distinguished core of attorneys cited experiences of the union and employers in the implementation of desegregation policies. They pointed out that their experiences had shown that success depended upon the manner in which the policy was executed and enforced.[20]

When the policy was implemented with firmness and without equivocation, people generally accepted it and their attitudes came to reflect it. On the other hand, gradual adjustment usually resulted in a hardening of social divisions.[21]

Although the Attorney General of the United States entered the original Brown litigation on the side of the National Association for the Advancement of Colored People, there was a substantial difference in their positions on implementation. He was willing to support the position of the National Association for the Advancement of Colored People in the second Brown litigation only in calling on the Court to reaffirm the unconstitutionality of segregation in public schools. He argued that because of the differences in the nature and extent of the problem in various locations, desegregation should be implemented on a gradual basis.[22]

The Government's brief, in the second Brown case, was more in harmony with the Southern states than with the National Association for the Advancement of Colored People. The Southern states also presented briefs calling for gradual desegregation. Their briefs would have placed a considerable number of obstacles in the way of the desegregation progress. Included in the South's briefs was a long list of prerequisites

for petitioners seeking to enter a formerly segregated school. Petitioners would have been required to show that request for admission was made at a reasonable time before the beginning of the school term and that they resided within normal limits of geographic school district. They would also have to show that all administrative remedies were exhausted before resorting to court relief. The Southern states did not include in their briefs that the Court should reaffirm the fact that segregation was unconstitutional. This was the one substantial difference between their briefs and those from the Government.[23]

The Supreme Court finally reached a decision on implementation May 31, 1955. In the final decision, the Court accepted most of the arguments presented by the Government. This meant that the Southern states were much more successful than the National Association for the Advancement of Colored People was in this case. The Court remanded the case to lower federal courts with orders to facilitate desegregation with "all deliberate speed," taking into consideration some community conditions. There was no specific timetable for desegregation in the court order. It was left entirely up to school administrations and District Courts to determine if reasonable compliance was achieved.[24]

In light of the fact that the Court relied so heavily on sociological evidence to decide the original Brown case, the question has been raised as to why it ignored this vital source of information in deciding on a formula for desegregation.

Dr. Kenneth Clark stated that "the Court, which appeared to have relied on the findings of social scientists in the 1954 decision, rejected these same findings in handing down the 1955 decision."[25] He pointed out that empirical studies on various forms and techniques of

desegregation suggested that gradualism had not increased the chances of success. On the contrary, gradualism, or any form of ambiguity, had actually encouraged resistance. Any degree of equivocation on the part of those with the power of decision was generally interpreted by segregationists as indecision. This may have been the basis for increased resistance, and it also gave segregationists time to organize their opposition.[26]

Dr. Clark agreed that there may have been some justification for the Court's gradualistic approach to achieving orderly desegregation. But there are many who disagree with the contention that this was the most effective method. Among those who disagree with the "all deliberate speed" formula was Justice Hugo L. Black who took part in the decision. In a 1968 interview, Justice Black revealed that he disagreed with the decision when it was formulated but he went along with it because he believed that the Court should be unanimous on such a fundamental issue.[27] The late Justice Robert Jackson, also a member of the Court in 1954, commented on the decision by predicting that it would usher in "a generation of litigation."[28]

Other outstanding studies have supported the argument that immediate desegregation is more effective than gradualism. Dr. James V. Zanden, a sociologist and student of racial attitudes, has done several studies on desegregation and resistance. He contends that the degree of resistance to school desegregation tended to vary, within certain limits, inversely with three factors. They are:

1. The degree of unequivocalness and firmness with which the desegregation policy and procedure is communicated to the population;

2. The degree of firmness and resoluteness with which the program is initiated and exacted by authorities in the force of resistance;
3. The degree to which authorities make clear their readiness to employ legal sanctions and penalties against lawbreakers.[29]

Dr. Zanden supported the thesis that sternness and steadfastness have been interpreted as signs of strength, whereas indecision and wavering have been taken as an indication of weakness. When desegregation was implemented with firmness, it was accepted as being legitimate.[30]

Dr. Zanden enumerated several factors that led segregationists to believe it was still possible to avoid integration despite the Court's ruling. One of his contentions was that the nature of the implementation decree gave the appearance of being very lenient. The absence of a rigid timetable or formula encouraged this feeling in the South. The delay of desegregation in places like Milford, Delaware, in the wake of violence also encouraged this belief among southerners. As a result, segregationists were convinced that the risk for defiance was minor and that they had everything to gain and nothing to lose by violent resistance. Moreover, since the segregationists had control of the state's government, and since the federal government failed to express any desire to enforce the Court's decree, they were in fact operating from a position of strength. Finally, according to Dr. Zanden, the politicians found it expedient to take the segregationist's course because it meant more votes.[31]

Reaction to the implementation decision by southern officials indicates that they believed that the decree was a victory for them. William H. MacDonald, a correspondent for Southern School News in Montgomery, stated, for example, that "official reaction in Alabama to

the Supreme Court's order delegating local segregation questions to the lower courts, was restrained rejoicing. Most legislatures seemed to regard it as a "victory for the south." Governor Jim Folsom felt that there was no need to turn the schools over to private sources. State Superintendent of Education, Austin A. Meadows, stated his belief that segregated schools could still be worked out on a voluntary basis.[32]

Correspondent Thomas Davis reported from Little Rock, Arkansas, that educational, racial, and political leaders there were generally pleased with the Court's ruling. Governor Faubus was quoted as saying:

> We are pleased that the Supreme Court recognized the local nature of the problem. Of course, in announcing its ruling the Court did not solve the problem of integration . . . . It has been my stand for some time that the best solution can be worked out on the local level according to the peculiar circumstances of each school district.[33]

Even in Mississippi, reporter Kenneth Toler detected a feeling of relief among state officials. They too interpreted the decree as favorable to Mississippi and to the South. Toler related that the basis for relief in Mississippi was the Court's failure to set a timetable for desegregation and its decision to leave the issues to the Federal District Courts. He quoted Governor Hugh White as saying:

> It is more than we expected because we thought the Court would set a deadline for integration. However, from reading news reports, they don't seem to say anything in the world about how it will be enforced . . . . It looks like the document goes all the way around the world as to what can or can't be done. As to the feasibility, they may not be possible in Mississippi for ten more years.[34]

Even the Governor of Mississippi did not realize how long he and his successors would be able to avoid the Court's mandate. They certainly got more than the ten years as Governor White had predicted.

The fact that the Supreme Court deliberated for a full year on means to implement its desegregation decision, combined with the modest

decree in 1955, encouraged widespread defiance although there was resistance from the very beginning. The history of the desegregation process indicated quite clearly as time passed without a timetable for achieving this constitutional requirement, resistance became more pronounced and more organized. Southern politicians and newspaper editors soon changed from a modest stance on the issue to one of outright defiance.

One good example of a politician initially taking a moderate and responsible position on the issue then moving to a position of outright resistance was Governor William B. Stanley of Virginia. Addressing the people of Virginia immediately after the 1954 decision, Governor Stanley stated:

> I am confident the people of Virginia will receive the opinion of the Supreme Court calmly and take time to carefully and dispassionately consider the situation before coming to a conclusion on steps which should be taken. It had been noted that the provisions of our state's constitution and previous decisions of the Court would be upheld but the Court has come to a different conclusion. I contemplate no precipitate action, but I shall call together as quickly as possible representatives of both state and local governments to consider the matter and work toward a plan which will be acceptable to our citizens and in keeping with the edict of the Court. Views of leaders of both races will be invited in the course of these studies.[35]

The Attorney General of Virginia, J. Lindsay Almond, took a moderate stand on the Court's decision soon after it was announced. Commenting on the decree in 1954, he said, "Virginia will approach the question realistically and endeavor to work out some rational adjustment."[36] Stanley and Almond were officials of the state who later became the leaders of the "Massive Resistance" movement in the South.[37] This was also the state that allowed its schools to close rather than integrate them.[38] Governor Stanley was later quoted as saying: "I will

use every legal means at my command to continue segregated schools."[39] However, later as Governor, he declared that he would never submit to desegregation.[40]

Like Virginia, Arkansas initially took a moderate stand on desegregation, but later became violently resistant. State officials generally decided to study the situation before acting. Governor Cherry was quoted the day after the decision as saying, "Arkansas will obey the law. It always has."[41] Although Southern elections are often characterized by emotional appeals to racism, the desegregation decision did not become an issue in the Arkansas Democratic primary of 1954. When Orval Faubus charged that it would be the most important campaign issue, he was criticized by the Arkansas press. The decision was not mentioned again throughout the entire campaign.[42]

After his election, Governor Faubus did not comment on the decision in public. Even in his inaugural address, the Governor did not refer to the decision. It was not mentioned in the first two weeks of the legislative session of 1955.[43] Moreover when the legislature enacted equalization legislation attempting to delay desegregation, the Governor still remained silent on the issue.[44]

The Governor made his first statement on the Court's decision in January, 1956. He then pointed out that eighty-five per cent of the people in the state opposed integration and that it would be a slow process if it ever came to the state.[45] It had become general knowledge at this time that James D. Johnson, the director of the White Citizens Council, was preparing to oppose Governor Faubus in the following election. The threat of Johnson's challenge forced the

Governor to resort to the race issue. Later in January the Governor said:

> It should be obvious that century-old customs cannot be changed over night even by Court edict. I cannot be party to any attempt to force acceptance of a change which people so overwhelmingly opposed.[46]

Throughout the remainder of Governor Faubus' political career, he became more and more militant in denouncing school desegregation. This was characteristic of most Southern politicians.

In the South, the politicians were the slowest to accept desegregation, and they were the greatest influence in preventing its acceptance by the general public. This was due in no small part to the fact that the type of politician who controlled the South was elected on the basis of the race issue. He knew that his exploitation of the racial issue was responsible for his political security. James Dobbs, a South Carolina planter, author, and former President of the Southern Regional Council, summed up the plight of the Southern Politician when he stated:

> These politicians aren't playing the race issue merely as an instance of the state's rights issue. The race issue is central to their existance, for it keeps the South solid and they are the politicians of the solid South. If it should be resolved, the political forces of the South would realign themselves with the political forces of the nation, eyes alert to economic and other interests . . . . This would destroy the livelihood of the typical southern politician. He would have to become nationally cognizant and intelligent, and he might have to starve before he could do so . . . . He knows very well, deep down, which side his political bread is buttered on.[47]

It is readily apparent that Southern politicians were forced to take a defiant stand on the desegregation issue. W. D. Workman conducted a survey of eight states in the "Deep South" covering the period between 1954 and 1957. At the end of this three year period, he found

that there was a stronger pattern of legislation being passed to avert desegregation.[48]

There were other Southern politicians making moderate statements about the desegregation decision. Governor Barnes of South Carolina expressed shock that the Court had reversed itself but urged the people of his state to exercise "restraint and preserve order."[49] Senator Allen J. Ellender of Louisiana said, "I don't want to criticize the Court . . . . The ruling is found to have a very great effect until we readjust to it."[50]

Even in Mississippi, the most resistant of the hard core states, at least one Congressman called for moderation from the people. Admittedly, a typical Mississippi Congressman, Frank Smith said of the decision:

> I disapprove of the decision but as long as it has been made, the Court seemly followed the best course it could in seeking advice from all quarters on how to put it into effect. I am hopeful that there will be no incident of violence or anything to break down the good relationship that has developed between Negroes and Whites in my district.[51]

This moderation on desegregation could not survive the attacks of those who saw it as political betrayal. Segregation soon became the issue on which a Southern politician could win or lose a campaign. The politician who makes the most appealing speeches for continuance of the Southern way of life was generally successful. In Mississippi, Frank Smith, a self proclaimed moderate congressman, was defeated by Jamie Whitten, a more outspoken segregationist.[52] In Virginia, the Harry Byrd organization brought the issue of school desegregation into the mainstream of political campaigns. Any politician who did not conform to the policies of the organization had little chance of succeeding in Virginia politics.[53]

Moderate politicians were forced out of politics in most of the Southern states. It soon became a matter of conforming or losing a political position. Alabama is another example of this. "Big Jim" Folsom was elected Governor in 1954 with a strange coalition of labor, blacks, and "rednecks." This coalition had given him the largest plurality in the state's history of gubernatorial elections. But he lost in his bid to become a delegate to the Democratic National Convention in 1956 because of his refusal to take a strong segregationist position as Governor. He was beaten by a political unknown who made the Governor's position on the race issue his chief campaign target.[54] Two of three North Carolina Congressmen who failed to sign the Southern Manifesto were defeated in their bid for reelection the following term.[55]

Initially, Southern editors were as optimistic about the outcome of desegregation as were the political leaders. Most of the editors in the border states, for example, called for acceptance of the Court's decision and predicted that there would be little difficulty in achieving desegregation.[56] The editors of the "Deep South" were very cautious and called for a calm reaction to the decision. Some expressed the difficulty of compliance but did not call for defiance. Editorials in the South and border regions ranged from the call for pride and gratification in the decision by the Washington Post Times Herald to a prediction of turmoil by the New Orleans Times-Picayune. Another Washington paper, the Evening Star, called the decision a "wise and fair ruling." The Baltimore Sun probably summed up the atmosphere of many cities when it commented editorially that "the implications will be painful to many Marylanders, but segregation, however equal the facilities, does put the hand of inferiority upon the Negroes." Even in the deep South, editorial

reactions were generally moderate, as exemplified by the Atlanta Constitution when it declared that this was "no time for hasty action, our best minds must be put to work, not to destroy, but to arrive at constructive conclusions." The Birmingham News simply stated that the "decision is regretted," whereas the Birmingham Post-Herald pointed out that "acceptance of the decision does not mean that we are stopped from taking such honorable and legal steps as may be indicated to avoid the difficulties it presents to both races."[57]

The very newspapers that avoided the integration issue, or called caution in responding to the decision in 1954, soon followed the lead of politicians in calling for strong resistance. Hodding Carter, the moderate editor of the Greenville, Mississippi, Delta Democratic Times said after the May, 1955, decision: "There is no solid South in the wake of this decision."[58] In a later editorial, Carter stated:

> Three years have passed since the original decision. A close reading of the newspapers of the region will show that in the first year, at least, there was a tendency to play down the story either for fear of offending readers, or for lack of interest in the issue—or for both reasons.[59] Today, the volume of press coverage is great and growing.

By 1956, the politicians were joined by leading newspaper editors in denouncing desegregation. Their combined efforts were quite successful in convincing the general public that desegregation could be avoided. Just as the politicians were of the "solid south," so were most of the leading newspapers.[60]

The Supreme Court made a very important move toward guaranteeing Constitutional rights to black Americans in 1954. But the Court converted this guarantee into a promise in its 1955 decision. Although members of the Court may have seriously believed that they were taking the most logical and practical route achieving school desegregation,

they certainly ignored some important findings in reaching their conclusion. The sociological findings relied on by the Court in 1954 could well have been used in 1955. The Court saw fit to ignore this information. Of even more importance, is the fact that this is one of the few times the Court has agreed that plaintiffs' Constitutional rights were being denied and yet allowed the defendant indefinite time to end unconstitutional action.

This is the grandfather of the late Justice John M. Harlan's dissent in Plessy v. Ferguson. This could very well have applied to the 1955 decision. In that unfortunate decision, he said:

> In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the Dred Scott case . . . . The present decisions, it may well be apprehended, will not only stimulate aggressions, more or less brutal and irritating, upon the admitted rights of colored citizens, but will encourage the belief that it is possible by means of state enactment, to defeat the beneficient purpose which the people of the United States had in view when they adopted the recent amendments of the Constitution, by one of which the blacks of this country were made citizens of the United States and of the states in which they respectfully reside and whose privileges and immunities, as citizens, the states are forbidden to abridge.[61]

If Justice Harlan had been speaking of Brown II in his famous dissent, his predictions would have been borne out many times. The decision certainly encouraged the belief that the intentions of the Federal Government could be defeated by state action.

Footnotes - Chapter 2

1. Briggs v. Elliot, 342 U.S., 350.

2. Ibid., 98 F. Supplement 529 (E.D.S.C. 1951).

3. 163 U.S., 537 (1896).

4. Supra Note 1.

5. Brown v. Board of Education of Topeka, 98 F. Supplement 797 (Kansas, 1951).

6. Davis v. County School Board, 103 F. Supp. 337 (E.D.Va., 1952).

7. 98 F. Supp. 529 (E.D.S.C., 1951).

8. 32 Del. Ch. 343, 87 A. 2d 862 (1952).
33 Del. Ch. 144, 91A 2d 137 (1952).

9. 334 U.S., 873 (1952).

10. Writ of Certiorari: a decree by the Supreme Court ordering a lower court to send the records a case to the high court. The Delaware case could only come by writ of certiorari since it originated in the state court.

11. 344 U.S., 1 (1952).

12. Ibid., 347 U.S., 483 (1954).

13. Albert P. Blaustein and Clarence C. Ferguson, Jr., Desegregation and the Law: The Meaning and Effect of the School Segregation Cases, (New York, Random House, 1962), p. 67.

14. Brown v. Board of Education (Supra Note 14).

15. For questions Supra page 5.

16. The Southern states joining the original four were Florida, North Carolina, Arkansas, Oklahoma, Maryland and Texas.

17. Brown v. Board of Education (Supra Note 10).

18. Ibid.

19. Ibid.

20. 344 U.S., 891 (1952). Hereafter referred to as Goldberg briefs.

21. Ibid., Goldberg briefs.

22. Government briefs in Brown v. Board of Education, 349 U.S., 294 (1955). Hereafter referred to as Brown II.

23. Florida briefs in Brown II (Supra Note 25).

24. Brown II.

25. Ibid.

26. Saturday Review, September 20, 1969, p. 69: Adapted from Dr. Kenneth Clark's introduction to the book, Argument.

27. Ibid.

28. St. Louis Post-Dispatch, February 26, 1968, p. 4.

29. James W. Vander Zanden, Race Relations in Transition: The Segregation Crisis in the South, (New York, Random House, 1965), p. 74.

30. Other studies supporting this argument:
John P. Dean and Alex Rosen, A Manual of Intergroup Relations, (Chicago, University of Chicago Press, 1965), p. 70.
Edward A. Suchmor et. al., Desegregation: Some Proposition and Research Suggestions, (New York, Anti Defamation League of B' nai B' rth 1958), p. 60.
Margaret W. Ryan and Robin M. Williams, Jr., Schools in Transition, (Chapel Hill, N.C., University of North Carolina Press, 1954).
James Tipton, Community in Crisis, (New York, Bureau of Publications, Columbia University Teachers College, 1953), Chapter 6.

31. James W. Vander Zanden, "Accommodation to Undesired Change: The Case of the South," Journal of Negro Education, pp. 31-32.

32. Southern School News, June 8, 1955, p. 2.

33. Ibid., p. 3.

34. Ibid., p. 4.

35. Benjamin Muse, Ten Years of Prelude: The Story of Integration Since the Supreme Court's 1954 Decision, (New York, Viking Press, 1964), p. 20.

36. Ibid., p. 183.

37. Massive Resistance was the concept of bringing all the resources of the state to prevent and desegregate in the state. For a detailed discussion see Muse, Ten Years of Prelude, Virginia's Massive Resistance and Robin Gates' The Making of Massive Resistance, (Chapel Hill, N.C., University of North Carolina Press).

38. Muse, p. 24.

39. Ibid., p. 183.

40. Ibid.

41. Lewis W. Jones, "Desegregation of Public Education in Alabama," Journal of Negro Education, Vol. 24, Winter, 1955, p. 177.

42. Ibid.

43. Southern School News, Feb. 3, 1955, p. 2.

44. Equalization Legislation was a program adopted in many Southern legislatures to make black schools equal to those used by whites. In many instances attempts had been made before to equalize the schools although they were operating under that constitutional principle.

45. Southern School News, Feb., 1956, p. 2.

46. William Peters, The Southern Temper, (Garden City, N.Y., Doubleday and Company, 1954), p. 146.

47. "Deep South:" Ala., Ark., Ga., La., Miss., Fla., Ky., Tenn., Texas.

48. W. D. Workman, Jr., "The Deep South," With All Deliberate Speed, (ed.) by Don Shoemaker, (New York, Harper & Rowe, 1957), p. 109.

49. Southern School News, September 3, 1954, p. 12.

50. Muse, p. 20.

51. "Mississippi Representative Hopes for Calm, But Eastland Sees Strife," New York Times, May 18, 1955, p. 19.

52. According to former Congressman Smith, "It was decided after a number of conferences among Citizens Council leaders and Barnett's legislative henchmen, that the simplist plan that could be sold to the Legislature and at the same time ensure my defeat was a straight combination of the Second and Third Districts." Frank Smith, Congressman from Mississippi: An Autobiography, (New York, Capricorn Books, 1967). The state was to lose one Congressman that year, and Smith felt that this merger of his District with that of Jamie Whitten was a plan to eliminate him.

53. For a detailed discussion of the Byrd Organization, see V. O. Key, Southern Politics in State and Nation, (New York, Vintage Books, Chapter 2).

54. James W. Vander Zanden, Race Relations in Transition: The Segregation Crisis in the South, (Random House, Inc., New York, 1967), p. 89.

55. Southern Manifesto: Declaration of Constitutional Principles: A document signed by Southern Congressmen expressing their objection to the Brown decision. It stated: "We pledge ourselves to use all lawful means to bring about a reversal of this decision which is contrary to the Constitution and to prevent the use of force in its implementation."
William Peters, The Southern Temper, (Garden City, N.Y., Doubleday and Company, 1959), p. 146.

56. New York Times, May 18, 1954, p. 19.

57. Southern editorials from New York Times, (Supra Note 56).

58. Weldon James, "The South's Own Civil War," With All Deliberate Speed, (ed.) by Don Shoemaker, (Supra Note 48), p. 31.

59. Ibid., p. 31.

60. For a discussion on politicians of the "Solid South," Supra Note 46. For editors see Frank Smith Supra Note 52.

61. Mr. Justice Harlan's dissent in Plessy v. Ferguson, 163 (U.S.) 537 (1896).

Chapter 3

ESCAPE, EVASION AND DELAY IN THE SOUTH

Although some of the Southern states had hopes of avoiding the Brown decision when it was announced in 1954, they were provided an avenue of escape in the implementation decision of 1955. This was clear from their refusal to take part in the implementation arguments.[1] After the 1955 decision, they wasted little time formulating their program of resistance. The first and most prominent resistance movement taken by the Southern governments was to pass interposition resolutions.[2] The doctrine of interposition had a very early introduction into American politics. This doctrine was first introduced by Thomas Jefferson and James Madison. It held that the central government is nothing more than a compact between and among the several sovereign states, and that each state had the right to determine the constitutionality of acts passed by the central government.[3]

The doctrine of interposition had been declared unconstitutional long before the school desegregation cases. Chief Justice Marshall had declared in 1803 that the Supreme Court had the ultimate power of determining the constitutionality of Federal acts.[4] Again in 1809, Chief Justice Marshall declared interposition unconstitutional. In this case, the Chief Justice wrote:

> If the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery; and the nation is deprived of the means of enforcing its laws by the instrumentality of its own tribunals.[5]

These decisions by Chief Justice were later supported by Justice Story in 1816. He held that a ruling of constitutionality by the Supreme Court overrule any contrary ruling of unconstitutionality made by a state.[6] Chief Justice Chase put another nail in the coffin of the interposition doctrine in Texas v. White (1869). He asserted that the act that admitted Texas into the union was more than a compact which made "Texas an undestructible unit of an undestructible union."[7]

Despite the fact that interposition had been buried by a series of court decisions, the South persisted in reviving it. But the contemporary attempts of interposition met a similar fate before the courts. A Federal District Court held that "interposition is not a constitutional doctrine. If taken seriously, it is an illegal defiance of constitutional authority."[8] In most recent cases, the federal courts have felt that the doctrine did not have legal validity to warrant discussion.[9] One district judge called it "an escape valve through which the legislators blew off steam to relieve their tensions."[10] The Supreme Court gave the interposition doctrine a final blow in Cooper v. Aaron (1958) when it ruled that the Constitution is the "Supreme Law of the Land," and that the Supreme Court has the established right to interpret the Constitution so as to make the Brown decision the "Supreme Law . . . anything in the Constitution or laws of any state to the contrary notwithstanding."[11]

Virginia took the lead in passing these meaningless interposition resolutions. In a joint resolution, the General Assembly of Virginia

interposed, "the sovereignty of Virginia against the encroachment upon the reserve powers of this state."[12] But the Attorney General of Virginia admitted that in fact these statutes were little more than expressions of dissent. In response to questions, he agreed that it was not in the powers of the General Assembly of Virginia by resolution or by the people of Virginia in convention to legally nullify, in whole or in part, the Brown decision, or to suspend for any time its enforcement in Virginia.[13] Several Southern state legislatures followed this pattern that was set by Virginia.

Southern states resisting desegregation received more moral support from their congressmen in Washington. In March, 1956, ninety-six senators and representatives joined in signing "The Southern Manifesto: Declaration of Constitutional Principles." This document, supposedly predicated upon legal argument, though not intended as law, described the Brown decision as "an abuse of judicial powers" and pledged "all lawful means to avoid desegregation."[14]

Southern reaction to the Brown decision did not end with mere adoption of interposition laws and the Southern Manifesto. Numerous other resolutions, declarations and constitutional revisions were made. According to Southern School News, nearly three hundred laws, resolutions and state constitutional amendments were passed between 1954 and 1961. Over this seven year period, the amount of legislations was so numerous that Southern legislators felt that there was no need for new laws after 1961. They were generally resigned to rely on existing laws and wait to see the outcome. Some admitted that they had legislated to the limit of feasibility and that they were experiencing difficulty in finding new ideas.[15]

Resolutions in Southern states ranged from repeal of state compulsory attendance laws to calls for constitutional amendments to the federal Constitution. The Georgia legislature requested in 1955 that the federal Constitution be amended to give sole control over public education to the states. In 1956 the Georgia Legislature called for the impeachment of six justices of the Supreme Court. All the Southern states attacked the federal government. The Mississippi state legislature got into the act by demanding that Congress limit the jurisdiction of the Supreme Court. While other states were seeking outside restriction on the Court, Alabama's legislature appealed to the Court requesting a modification of the decision, by urging the Court to reverse its tendencies and restore the rule of law. They further proposed the limiting of the terms of justices and urged the President to respect the state's rights.[16]

One of the most drastic measures taken by Southern states to prevent the operation of integrated schools was the plan by the state legislatures that gave the state officials the power to close public schools. Again, Virginia took the lead in resistance.[17] Virginia's school-closing laws were declared unconstitutional in both federal and state courts. A Federal District Court in James v. Almond reasoned:

> Virginia, having accepted and assumed the responsibility of maintaining and operating public schools, cannot act through one of its officers to close one or more public schools . . . (because of the enrollment of Negroes) . . . and at the same time, keep other public schools throughout the state open on a segregated basis.[18]

There was little doubt about the fact that Virginia had taken complete control over its schools through the "massive resistance" legislation.[19] The court based its reasoning upon this fact. The Virginia Supreme Court of Appeal also declared the school-closing laws

to be in violation of the state's constitution.[20] The state's constitution required the maintenance of "an efficient system of public free schools throughout the state."[21]

The most publicized cases involving the struggle over school desegregation concerned itself with the right of a state to close its public schools to avoid compliance with the court's mandate. This case involved Prince Edward County, Virginia. The county school authorities closed its public schools in the wake of desegregation orders and provided tuition grants for students attending private schools or public schools outside the county.[22]

In Griffin v. Prince Edward County School Board, the Supreme Court handed down a very important decision. It was not only significant to the desegregation process but to the whole concept of public education.[23] There were two basic points to be ruled on by the Court. First, it was asked to decide on the matter of using public funds to aid private institutions. Second, it was asked to rule on the authority of the state to abolish public schools in one county while operating such schools in other counties. The state could not give aid to private schools to avoid integration which would constitute a denial of equal protection of black students since no schools were in operation for them. On the second point, the Court held that as long as the state maintained public schools in some of its counties, it could not abolish its public schools in one county to avoid integration.[24]

Speaking for a unanimous Court, Justice Hugo Black stated:

> A state, of course, has wide discretion in deciding what laws shall operate state wide or shall operate only in certain counties. But the record in the present case could not be clearer than Prince Edward's public schools operated in their place with state and county assistance, for one reason, and one reason only: to ensure, through measures taken by the county and state, that white and

> colored children in Prince Edward County would not, under any circumstances, go to the same schools. Whatever non-racial grounds might support a state's allowing a county to abandon public schools, the object must be a constitutional one, and grounds of race and opposition to desegregation do not qualify as constitutional.[25]

The Court also upheld the District Court's order enjoining county officials from paying tuition grants or giving tax exemption as long as the county's public schools remained closed. With Justices Tom Clark and John Harlan dissenting, the Court ruled further that the District Court could, if necessary, require county supervisors to perform their duties by raising funds in order to reopen, and operate a public school system like those operated in other counties.[26]

The Griffin case was a serious obstacle for segregation forces because like Virginia, several Southern states had provided for closing public schools as a last resort to avoid desegregation. But this was not the end of resistance in Virginia nor the other states of the South. In an attempt to avoid the doctrine adopted in James v. Almond, Prince Edward school authorities argued that the school board was an autonomous body, thus not a functionary of the state. Had the Court accepted this argument, the school authorities would have been successful in maneuvering around the Almond ruling which was based on state control over the school system.[27] The District Court refused to accept this argument in Allen v. County School Board.[28] The reasoning of the District Court here was based on such factors as: partial appropriation from the general assembly, state constitutional provisions for appointment and duties of a superintendent of public education and a state board of education, and also other factors such as state control over textbooks, teachers' salaries, and other school activities governed by the state.

Essentially, these cases show that in order for a state to close a school system to avoid desegregation, it must either close all the schools in the state or completely divorce itself from the operation of those closed school districts in virtually every respect. These actions would seem unlikely in even the most violently pro-segregationist areas. First of all, there is the strong desire on the part of states to exercise some degree of control over its school system; and second, the majority of such districts could not economically afford to operate a school system without state support.[29]

Five other Southern states, at one time or another, adopted legislation which permitted or directed the closing of public schools to avoid desegregation.[30]

One of the most extreme cases of such legislation was adopted by Mississippi. In 1954, by a two to one vote margin, an amendment to the constitution was adopted which authorized the legislature or the local school authorities to close public schools with a majority vote in both houses of the state legislature.[31] In 1958, the state legislature gave the Governor the power to close any state institution of higher education, and all schools of any school district if he thought it "to be in the best interest of a majority of the educable children of any public school of the district."[32]

Louisiana was not to be outdone by her neighbor to the northeast. In 1960, the state legislature passed a series of drastic laws. These laws provided that any school under orders to desegregate was to be closed immediately, after which the school board ceased to exist; state police were given additional powers and placed directly under the control of the state legislature.[33] These measures were declared unconstitutional

by a Federal District Court.[34] The state legislature in effect reenacted the laws previously invalidated by the Court and they were again declared unconstitutional.[35]

The Georgia legislature passed school-closing laws in 1956.[36] The Governor was given powers to close public schools whenever they became ineligible for public funds. Previous state laws prohibited state or local funds to operate desegregated schools.[37] In 1959, the legislature passed another law that provided for preserving order and peace in cases resulting in disorders because of pupil transfer or assignment. In the event of such conditions, the Governor could close the school which the pupil had attended as well as the school to which he had been assigned.[38]

Another scheme by Southern states was to give local option to the voters of a locality on school closing. Local boards of education were given authority to call an election of the question of closing one or more of the schools. Louisiana's statute was challenged and declared unconstitutional in 1961.[39] A district court in Hall v. St. Helena Parish School Board ruled that the statute was a device formulated to deny plaintiffs their constitutional right to attend desegregated public schools and also discriminating in application against all parish residents, regardless of race, since the state would provide public schools in other parishes. The referendum did not change the constitutional requirement. "One of the purposes of the constitution . . . was to protect minorities from the occasional tyranny of majorities. No plebiscite can legalize an unjust discrimination."[40]

South Carolina, Alabama, Arkansas, Florida, North Carolina, and Texas also resorted to some version of school-closing laws. By 1959,

it had become obvious that the Southern states would have to resort to measures other than school-closing laws because they were vulnerable to constitutional attack.[41]

Most of the Southern states repealed their compulsory attendance laws in response to the School Segregation Cases.[42] Compulsory attendance laws were first introduced in the mid-eighteen hundreds to reduce the mass movement of youngsters into factories during a period of rapid industrial growth. By 1900, thirty-two of the forty-five states including two Southern states had compulsory attendance laws.[43] With the adoption of such laws by Mississippi in 1918, until 1955 every normal youngster in America was legally required to spend a certain number of years in school.[44]

In conjunction with school-closing laws, several states of the South provided state tuition grants for students attending private schools.[45] Virginia's laws were declared unconstitutional in Griffin v. Prince Edward County.[46] Tuition grants were also attacked in Cooper v. Aaron in which the Court declared that:

> State support of segregated schools through any arrangement, management, funds, or property cannot be squared with the amendment's (14th) command that no state shall deny to any person within its jurisdiction the equal protection of the laws.[47]

States found it very difficult to prove complete detachment from private schools; therefore, tuition grants were not very successful in averting desegretation.

Some Southern states attempted to disqualify potential litigants. The National Association for the Advancement of Colored People was the most prominent organization seeking judicial relief in the desegregation process.[48] The Brown decision of 1955 made judicial litigation the most

effective means of achieving desegregation. Therefore, the National Association for the Advancement of Colored People became the object of heavy Southern legislation. Because of the fact that very few Southern blacks could afford litigation expenses and because no governmental agency had taken the initiative, the burden was assumed by the National Association for the Advancement of Colored People.

The device used by Southern state officials was to enjoin the National Assooiation for the Advancement of Colored People from practicing in their states. They charged that the National Association for the Advancement of Colored People, having its headquarters in New York, was a foreign corporation and should be required to register as such.

The National Association for the Advancement of Colored People had avoided registering as a foreign corporation in Southern states for several reasons. First of all, to encourage local autonomy in Southern states and seoond to avoid having its membership list and contributors exposed thereby, exposing them to economic reprisals. The National Association for the Advancement of Colored People has maintained that the state groups were separate and unincorporated associations.[49]

The first court action in the battle between the Southern states and the National Association for the Advancement of Colored People came in 1956. This action was between Alabama and the National Association for the Advancement of Colored People in a state court where the state was upheld by the state's court.[50] Alabama then proceeded to prohibit the organization from registering in the state.

Another method used by Alabama and the South to undermine the National Association for the Advancement of Colored People was through its members. South Carolina was the first state to employ this tactic.[51]

South Carolina passed a law prohibiting the employment of any National Association for the Advancement of Colored People member by a state agency. It provided for a fine against any person hiring a National Association for the Advancement of Colored People member for a public post.[52]

Alabama also required disclosure of the membership list.[53] The Attorney General of Alabama obtained an order in 1956 requiring the Association to produce its records, books, correspondences and its membership list.[54] But the Association appealed to the state Supreme Court and was refused a hearing on grounds that proper rules of procedure had not been observed.[55] The National Association for the Advancement of Colored People then appealed to the United States' Supreme Court. The High Court agreed to review the decision and concluded that the disclosure of membership lists was likely to expose members of the Association "to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility."[56]

The National Association for the Advancement of Colored People was still barred from transacting business in Alabama. The state courts had refused to hear the Association's appeal.[57] Finally, the National Association for the Advancement of Colored People went to the Federal District Court which also refused to hear its case on grounds that the route was through the state courts, while at the same time the courts were continuously blocking the way for the Association.[58] An appeals court agreed with the District Court's reasoning that federal judges should refrain from interpreting state laws until the state's courts had acted.[59] Finally in May, 1961, the Supreme Court directed

the District Court to hear the case unless "within a reasonable time, not later than January 2, 1962," the state gave the National Association for the Advancement of Colored People an opportunity to resolve the issue.[60]

The Association's argument was again rejected by the state's appeals court and the state Supreme Court again refused to hear the case on grounds of some procedural technicality.[61] The United States' Supreme Court stepped in again and insisted that there was no legal grounds for the state's court to refuse to hear the appeal.[62]

Finally in 1961, it was decided by the Supreme Court that exclusion from the state because of non-registration violated rights of the Association and its members "to associate for the collective advocacy of ideas."[63] It was not until October, 1964, that the National Association for the Advancement of Colored People resumed its activities in Alabama.[64]

Mississippi attacked the National Association for the Advancement of Colored People by use of criminal sanctions. A Mississippi law made it a crime for an organization to institute desegregation litigation in the state's courts. It provided punishment of imprisonment up to one year in the state penitentiary.[65]

Harassment by Southern states was not only directed toward the National Association for the Advancement of Colored People but toward any others who would assist potential plaintiffs as well as the potential plaintiffs themselves.[66] One outstanding example was a Virginia statute.[67] This law required each plaintiff in a state's court desegregation proceeding to prepare a complicated statement. This statement was to list all organizations and individuals who gave advice or contributed funds

in the suit. The plaintiff was subject to punishment for failure to comply with this requirement.[68] The idea here was to make the names of contributors and advisors in desegregation cases matters of public knowledge. Once this happened, they were subject to various kinds of community reprisals. The threat of reprisal coupled with the additional paper work brought on by this statute served to discourage potential advisors.[69]

Another Virginia statute had long outlawed solicitation of legal business in the state form of "running" or "copping." In 1956, this statute was amended to apply to the National Association for the Advancement of Colored People.[70] The amended version included in the definition of "runner or copper" an agent "for any organization . . . organizations or association which employs, retains or compensates any attorney at law in connection with any judicial proceeding in which it has no pecuniary right or liability."[71] The Supreme Court in NAACP v. Button ruled that the statute was unconstitutional as applied to the Association.[72] Justice William Brennan, speaking for a six-to-three majority, held that the state cannot foreclose the exercise of constitutional rights by mere labels such as "solicitation."[73]

School-closing laws, repeal of compulsory attendance laws and disqualification of potential litigants were examples of desperate action taken by the South to avoid any desegregation. After these measures were attacked by judicial proceedings, it became obvious that other tactics would be needed to avoid desegregation.

When it became obvious that some desegregation was inevitable, the South resorted to various tactics to delay the process as much as possible. Originally these tactics were very effective because at that

stage of the desegregation battle, the Federal District Courts would accept any semblance of compliance as "good faith." In some cases, the establishment of citizens' committees to study the problem was accepted by the lower courts.[74]

One of the most effective means of placating the court but yet maintaining desegregation at a bare minimum at the most was the use of Pupil-Assignment or Pupil-Placement laws.[75] This procedure has proven so effective because of the almost impossible task faced by petitioners who wished to challenge such an act "on its face," as an unconstitutional device to prevent desegregation.[76] This difficulty was demonstrated in Shuttleworth v. Birmingham Board of Education (1958).[77] In this case, a three-judge Federal District Court established a rather difficult set of rules upon which such a challenge would have to be made. These requirements were:

1. The law must be the source of authority by virtue of which the petitioners are prevented from attending the schools of their choice.
2. There must be a showing that the denial of attendance was based upon race by application of such law and
3. There must be a showing that the entire act is unconstitutional, unless the petitioners can show the exact grounds upon which their denial was based.[78]

The act was found to be constitutional by the Federal District Court and upheld per curiam by the Supreme Court.[79]

Realizing the potential effectiveness of pupil-assignment laws, most Southern states adopted them. Most of the Southern states patterned their assignment laws after those of Alabama and North Carolina.[80] Both of these state's placement laws were upheld by court rulings.

Pupil-assignment plans generally involved two basic factors: standards of assignment and some method of review. Criteria used by Alabama law for admission and generally applied in Arkansas, Florida,

Tennessee and Texas, included available room; teaching capacity; transportation; effective of admission of new pupils on established or proposed academic programs; suitibility of established curricula for pupil seeking transfer; adequacy of academic preparation of potential transfer; scholastic aptitude and relative intelligence; psychological qualification; effect of admission of pupil on progress of others; effect on academic standards; possibility of threat of friction or disorders; morals, conduct, health and personal standards of pupil and a long list of other stipulations.[81]

The Court in 1958 upheld this Alabama statute on grounds that it was not unconstitutional "on its face." Technically, desegregation could be achieved in the framework of the statute.[82] The burden of proof was put on the state to show that desegregation could be accomplished under the language of the statute.

The North Carolina statute required assignments to be made to provide for orderly and efficient administration as well as for health, safety and the general welfare of pupils and other reasonable regulations.[83]

Although most of the Southern states' assignment laws were generally patterned after those of Alabama and North Carolina, there were some variations within the several states. Most of the states' statutes did not mention race. Arkansas and Texas specifically stated that race should not be a standard for admission.[84] While Louisiana had used "race" as a guidepost, Virginia used "efficiency" as a key test and then defined a mixed school as "inefficient."[85] Both the Louisiana and the Virginia statutes were declared unconstitutional because of these provisions.[86]

South Carolina's law provided for the reassignment of pupil from one school to another. The Governor of Texas advised the board in the Mansfield school district to transfer students whose presence threatened violence.[87]

Although most of the assignment laws did not mention race, they have generally been used to assign black students to black schools and white students to white schools.[88] Several outstanding examples can be cited in this connection. In Durham, North Carolina, of the one-hundred and sixty blacks making applications for transfer to white schools, none were found qualified for transfer.[89]

A Virginia assignment board found 500,000 blacks applying for transfer unqualified in 1959. Four applications were approved when a federal district judge threatened contempt charges. Then in 1960 sixteen applicants were granted permission to transfer.[90]

Alexandria, Virginia, presented one of the best examples of how placement laws were used to maintain segregated schools. If an applicant's IQ was below the norm, he was turned down because the work would be too difficult. If his IQ was above the norm, he was turned down on grounds that he could enjoy a position of outstanding leadership in the lower-norm black school. In case the applicant had an average IQ then other grounds were found on which denial could be based.[91]

Another striking example of official efforts to maintain segregation through use of placement laws occurred in Powhatan County, Virginia. The placement board formulated a rule that all transfer applications must have been made before June 1st, of the coming school year in order to be considered. In this case, there were no official forms available as late as May 29th. Therefore, some parents made

applications on other forms. They were turned down on grounds that official forms were not utilized. Others were denied admission because the particular school desired was not listed on the application form. There were only two schools in this county, one black and one white; therefore, there could have been no question as to what school the applicant was seeking admission.[92]

Most pupil-assignment laws provided a scheme of administrative remedies for those students who were not satisfied with their assignment to a school by the placement board. These administrative remedies were most effective in delaying and in some cases denying the transfer of black students to white schools. Some federal courts were willing to examine these remedies to determine jurisdiction of the courts.[93] But in others, the exhaustion of administrative remedies were a prerequisite for judicial relief. The North Carolina placement laws were protected by court action.[94]

These laws were upheld by the Fourth Circuit Court even though they were determined to have been used in a racial discriminatory manner.[95] The Court ruled that the entire administrative process established by the state must be exhausted. The North Carolina laws were very restrictive in that no class action suits could be filed.[96] The effect of the laws was to narrowly restrict relief by requiring individual action and the general problem of delay provided by any placement law.

Accordind to Hugh Fleischer, a University of Denver law student in 1964, pupil-placement laws and their requirements were the main instrument of segregationist forces even though some modification had made these laws more objective.[97]

When pupil-assignment was challenged in court, one of two kinds of relief was usually granted. First, the Court could enjoin school authorities from making assignments on the basis of race. Second, the Courts could order the suspension of pupil-placement laws and order the school board to submit a plan for desegregation.[98] The most effective action has been the ordering of school boards to prepare plans of desegregation. Louisiana is a case in point. A Federal Court ordered the East Baton Rouge Parish School Board to make assignment of students on a nondiscriminatory basis but no desegregation resulted.[99] This action came in 1960. In 1963, the District Court ordered the school board to prepare a desegregation plan for court approval.[100]

A Birmingham, Alabama, pupil-placement plan was approved by a Federal District Court despite the fact that no desegregation had been accomplished under the plans. The lower Court reasoned that since no blacks had sought transfers under the plans, they should have been given a chance as a desegregation device.[101] However, this decision was overturned by the Fifth Circuit Court. The District Court was instructed to order the submission of desegregation plans for the fall term.[102]

One of the major cases to reach the Supreme Court in connection with transfer provision was Gross v. Board of Education (1963).[103] This action was brought against two Tennessee counties. The county's provision allowed a student who was in the minority in his school to transfer to a school in which his race was in the majority. However, in order for a student to transfer from a school in which his race was in the majority to one in which his race was in the minority, board policy required that special cause be shown.[104] The provision was

challenged on grounds that they were serving to perpetuate segregation. The Court held that such transfer provision, based on race, was in violation of the Equal Protection Clause of the Fourteenth Amendment. The majority opinion stated:

> It is readily apparent that the transfer system proposed lends itself to perpetuation of segregation. Indeed, the provisions can work only toward that end . . . . Classifications based on race for purposes of transfer between public schools, as here, violate the Equal Protection Clause.[105]

When it became clear that pupil-placement laws were unacceptable as desegregation plans, other plans were submitted by Southern school boards. One of the most popular plans adopted in Southern states was the grade-a-year plan. This plan would allow for the integration of one grade each year starting with the first grade. These plans generally became popular in 1963. If carried out faithfully, this would mean complete desegregation in twelve years which meant that some school systems would become desegregated twenty-one years after the Brown decision.[106]

At first, the Federal District Courts generally accepted grade-a-year plans for desegregation and in some cases even suggested such plans. But by 1961, these plans were under critical examination by some courts. The rule soon developed was one which required that the later the start, the shorter the time allowed for desegregation. Some District Courts began to require desegregation of two or more grades per year.[107]

By 1963, those District Courts accepting the grade-a-year plans were generally those in the deep South. Such plans were approved in Birmingham, Mobile and Savannah.[108] Other school systems were not treated so leniently by District Courts. In Gross v. Board of Education

of Knoxville, the Sixth Circuit commented: "We do not think that the twelve-year plan of desegregation adopted at this late date meets either the spirit or specific requirements of the decision of the Supreme Court."[109] The Fourth Circuit Court refused to allow Lynchburg, Virginia, to operate a twelve-year grade-a-year plan in 1963.[110]

The Supreme Court agreed to evaluate the system of grade-a-year plans in 1965. Roger v. Paul involved a suit from Fort Smith, Arkansas.[111] Black plaintiffs challenged the grade-a-year plans on grounds that assignments were made on the basis of race and therefore in violation of the Brown decision. Additional challenges were made on grounds that black schools in the system did not offer the courses they desired to take, but the white schools did offer such courses. The plaintiffs argued that such plans would deny them the opportunity to take these courses since they were graduating before such plans would allow them to transfer. The Court granted immediate relief pointing out that delays in desegregation of schools were no longer permissible.[112]

An attempt to delay desegregation in Little Rock, Arkansas, because of public hostilities were overruled by the Supreme Court in 1958.[113] In this case, the board of education had established a desegregation plan but, because of the hostile reaction, the board requested a delay. The existence of hostilities was acknowledged by the Court. It was evident by the presence of federal troops and national guardsmen to maintain order. But the Court ruled that the existence of hostile conditions did not constitute grounds for delay in school desegregation. The Court noted that the hostile conditions resulted from actions by the governor and other state officials and pointed out that they could bring the situation under control if they so desired. The majority

opinion in this case stated:

> The constitutional rights of (the Negro children) are not to be sacrificed or yielded to the violence and disorder which have followed upon actions of the governor and legislature (Brown) can neither be nullified openly and direct by state legislators or state executives or judicial officers, nor nullified indirectly by them through evasive schemes.[114]

This case is an example of how the Court was eventually forced to stand firm in ordering desegregation. The decision was unanimous. In response to assertions by local officials that they were not bound by the Brown decision, the Court cited the supremacy clause of the Constitution and the decision in Marbury v. Madison.[115]

The Civil Rights Act of 1964 was the most important assistance given the judiciary by either of the two other branches of the government.[116] Title IV of the act authorized the Attorney General to initiate legal proceedings to facilitate desegregation in public education when he received a complaint, or to intervene in existing desegregation cases of general public importance.[117] Title IV prohibited racial discrimination under any federally funded program.[118] This was the most effective provision of the act. The burden of desegregation was shifted somewhat from the Courts to the Department of Health, Education and Welfare. The Department of Health, Education and Welfare was granted authority to cut off funds for any project not complying with the Court or with the guidelines of the Department of Health, Education and Welfare.[119]

The Court had finally decided in 1963 that the "all deliberate speed" standard adopted in Brown II was no longer sufficient.[120] After 1964, the Courts were often cast in the role of ruling on requirements of the Department of Health, Education and Welfare's guidelines or formulating plans for desegregation itself. The first Health, Education and Welfare guidelines were established in 1965.[121] In 1966 more

detailed guidelines were drawn up by the Department of Health, Education and Welfare.[122]

As a response to Health, Education and Welfare guidelines, many states adopted "freedom of choice" plans. "Freedom of choice"plans were generally accepted by the Department of Health, Education and Welfare.[123] The Civil Rights Commission reported in 1967 that the majority of those districts desegregating in the South, favor freedom of choice. All districts in Alabama, Mississippi, and South Carolina used freedom of choice while eighty-three per cent of Georgia's districts adopted this scheme.[124]

Very little desegregation was actually accomplished under "freedom of choice"plans in the deep South. According to the Civil Rights Commission in 1966, Alabama had only two and four-tenths per cent of its black students attending predominately white schools; Mississippi, three and six-tenths per cent; Louisiana, four and nine-tenths per cent; South Carolina, six and six-tenths per cent; Georgia twelve and eight-tenths per cent and North Carolina, fourteen and seven-tenths per cent. Comparable percentages ranged in the border states from fifteen per cent up to eighty-eight per cent in Delaware.[125]

Despite the fact that "freedom of choice" plans have resulted in very little desegregation some district courts have refused to rule them unconstitutional per se.[126] In United States v. Jefferson County Board of Education, the Fifth Circuit Court held that the minimum requirement was the guidelines established by Health, Education and Welfare. Only if "freedom of choice" plans failed to bring about this result, was the school officials required to employ other methods. "Freedom of choice" plans were recognized as possible means to an end.[127]

The Fifth Circuit Court held in a case involving a Jackson, Mississippi, school system, that "freedom of choice" was to be considered as simply a means to an end rather than an end in itself. Here the Court only required that desegregation be in process.[128] It is interesting to note here that the first desegregation in Mississippi came after the establishment of the Health, Education and Welfare guidelines. These "freedom of choice" plans were maintained to propagate segregation until 1969.[129]

Affirming the policy that "freedom of choice" was only a means to an end, the Fourth Circuit Court stated in Bowman v. County School Board:

> Freedom of choice is not a sacred tailsman, it is only a means to a constitutionally required end--the abolition of the system of segregation and its effects. If the means prove effective, it is acceptable, but if it fails to undo segregation, other means must be used to achieve this end. The school officials have the continuing duty to take whatever action that may be necessary to create a unitary, nonracial system.[130]

The effect of "freedom of choice" plans was to place the responsibility for initiating desegregation upon students and parents rather than upon the board of education. This relieved the school board of the responsibility placed upon it by Brown II. It also had the effect of minimizing desegregation because parents and students realized that they did not actually have a free choice. The pressures that were brought upon parents utilizing "freedom of choice" plans to desegregate schools negated any freedom in the system.[131]

The Supreme Court agreed to examine "freedom of choice" plans in 1968.[132] In Raney v. Board of Education, the Court found that rather than dismantle the dual school system, "freedom of choice" plans had only operated to burden the children and their parents with the ini-

tiative in school desegregation. The Court held that at a late date, the school board should show that its plan promised meaningful progress toward desegregation. It was further held that "freedom of choice" plans were not to be used where more effective methods of conversion were possible. Here the Court had firmly established that any plan which shifted the burden of responsibility to the parents would not be acceptable.[133]

In another case, the Supreme Court reviewed a "freedom of choice" plan in 1968. Here again, the Court was reluctant to overrule freedom of choice per se. Speaking for the majority, Justice Brennan wrote:

> It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness. Where the Courts find the board to be acting in good faith and the proposed plan to have real prospects for dismantling the state-imposed dual system at the earliest practical date; then the plan may be said to provide effective relief. We do not hold that "Freedom of Choice" can have no place in such a plan . . . . All we decide today is that in desegregating a dual system, a plan utilizing "freedom of choice" is not an end in itself.[134]

An analysis of the school's authorities and subsequent Court decisions on "freedom of choice" point out the ineffectiveness of these plans. Indeed, "freedom of choice" has been responsibile for maintaining segregation.

Southern opposition to the Brown decision was quite strong when the decision was reached by the Court in 1954. But with the announcement of the implementation decision in 1955, the tempo of resistance was increased considerably. Legislative action against the desegregation decision can be divided into three general categories. The first was in the form of expression of objection as exemplified by the interposition resolutions. The second category of legislation consisted of

state laws passed in direct defiance of the Court's mandate. These laws put the state's authority on a collision course with the authority of the federal government. The third and final category of legislation took the form of laws which were not in direct conflict with federal authority. These laws were passed to comply with the letter of the federal law but at the same time provide for only the minimum of desegregation. Examples of such laws were pupil placement, grade-a-year, and transfer programs. The effect of all these legislative measures was to further delay the desegregation process. All these measures were made possible as a result of the implementation decision. Because of the nature of the 1955 decision, the Courts were constantly attempting to determine if a school board was in compliance with the mandate of the Court.

Footnotes - Chapter 3

1. Southern states refusing to participate were Alabama, Georgia and Mississippi.

2. Hugh Fleischer, "Study of Circumvention: The Enforcibility of Brown," Denver Law Center Journal, Vol. XLI (1964), p. 166.

3. Blaustein and Ferguson, p. 242.

4. Marbury v. Madison, Cranch 5 U.S. (1803).

5. United States v. Peters, 5 Cranch 9 U.S. (1809).

6. Martin v. Hunter's Lessee, 1 Wheat 304 (1816).

7. Wall 74 U.S. (1869).

8. Bush v. Orleans Parish School Board, 188 F. Supp. 916, 926.

9. Denver Law Center Journal, p. 166.

10. Shuttlesworth v. Birmingham Board of Education, 162 F. Supp., 372 381 (2d. Ala., 1958).

11. 358 U.S. 1 (1958).

12. Senate Joint Resolution No. 3, General Assembly of Virginia, Feb. 1, 1956, from 1 Race Relations Law Reporter 445, (1956).

13. Opinion of the Attorney General, State of Virginia, Feb. 14, 1956, from 1 Race Relations Law Reporter 462, 464 (1956).

14. U.S. Congressional Record 84th Congress, 2nd Session, March 12, 1956, pp. 446-61, 4515-16.

15. Tom Flak, "Few New School Laws Expected as Fourteen State Legislatures Convene," Southern School News, Jan., 1961.

16. Ibid.

17. Fleischer, p. 167.

18. 170, F. Supp. 331 (E.D. Va. 1959).

19. Massive Resistance entailed the full force of the state to prevent even token desegregation.

20. Harrison v. Day, 200 Va. 439, 106 S.E. 2d. 936 (1959).

21. Virginia Constitution, Art. IX, Sec. 129.

22. Fleischer, p. 168.

23. Ibid.

24. Griffin v. County School Board, 377, U.S. 218 (1964).

25. Ibid.

26. William B. Lockhart, Yale Kamisar, Jessee H. Choper, Constitutional Rights and Liberties: Cases and Materials, West Publishing Com. St. Paul, Minn., 1970, p. 849.

27. 170 F. Supp. 331 (E.D. Va. 1959).

28. 207 F. Supp. 349 (E.D. Va. 1962).

29. Fleischer, p. 169.

30. 1961 United States Commission on Civil Rights Report on Education, p. 80.

31. Southern School News, Jan. 6, 1955, p. 10.

32. Civil Rights Commission Report, p. 80.

33. Ibid., p. 83.

34. Bush v. Orleans Parish School Board, 188 F. Supp., 916, 926 (E.D. La. 1960).

35. Ibid., 927 (E.D. La. 1960).

36. Civil Rights Commission Report, 1961 Cited Ga. Acts 1956, Act No. 11, p. 6.

37. Race Relations Law Reporter, 421 (1956).

38. Civil Rights Commission Report, 1961, Cited Ga. Acts 1959, No. 7, p. 15.

39. Hall v. St. Henena Parish School Board, 197 F. Supp.

40. Ibid.

41. Civil Rights Commission Report, 1961, p. 85.

42. Civil Rights Commission Report, 1961, p. 87.

43. Ibid.

44. U.S. Department of Health, Education and Welfare: Office of Education, p. 13, cited in 1961 Rights Report on Education.

45. Civil Rights Commission Report, 1961, p. 87.

46. 377 U.S. 318 (1964).

47. 358 U.S. 1 (1958).

48. 349 U.S. (1955).

49. Blaustein and Ferguson, p. 248.

50. Race Relations Law Reporter, 707-709 (1956).

51. South Carolina Act, No. 920 (1956) cited Race Rel. L. Rep., 600 (1956).

52. Ibid.

53. Michael Meltsner, "Southern Appellate Courts: A Dead End" In Southern Justice (ed.) Leon Freidman, World Publishing Co., N.Y., 1965, p. 142.

54. Race Relations Law Reporter, 1956, pp. 917-18.

55. NAACP v. State of Alabama, ex. rel John Patterson, 265 Ala., 699, 91 so. 2d 21.

56. NAACP v. State of Alabama, ex. rel. Patterson, 357 U.S., 462 (1958).

57. Meltsner, p. 145.

58. NAACP v. Gallion, 190, F. Supp. 583 (M.D. Ala. 1960).

59. NAACP v. Gallion, 290, F. 2d 337 (5th Cir. 1961).

60. NAACP v. Gallion, 368 U.S. 19 (1961).

61. NAACP v. State, 274 Ala. 544, 150 So. wd. 677 (1963).

62. NAACP v. Alabama, ex. rel. Flowers, 377 U.S., 309.

63. Ibid.

64. Ibid.

65. Race Relations Law Reporter, 451 (1956), House Bill No. 33, 1956.

66. Blaustein and Ferguson, p. 249.

67. Acts 670 of 1956, 22 Va. Code. Sec. 22-101.

68. Ibid.

69. Blaustein and Ferguson, p. 249.

70. William B. Lockhart, Yale Kamisar and Jesse H. Choper, Cases and Materials on Constitutional Rights and Liberties, West Publishing, St. Paul, Minn., 1970, p. 607.

71. Ibid.

72. NAACP v. Button.

73. Ibid.

74. United States Civil Rights Commission Report on Education, 1959, p. 299.

75. Fleischer, p. 173.

76. Ibid., p. 174.

77. 162, F. Supp. 372 (N.D. Ala. 1958).

78. Ibid.

79. Shuttlesworth v. Birmingham Board of Education, 358, U.S. 101 (1958).

80. Miss. Code Ann. Sec. 6334-01 et. seg.; cited by Greenberg. Ala. Code. tit. 52 sex. 61 (4) et. seg. (1957) supp.; Ark. Stats. Ann. sec. 80-1519, et. seg. (1957 supp.); La. rev. stats. sec. 17:81.1 et. seg.; 17:331 (1957 supp.); N.C. Gen. stats. sec. 115-176 et. seg. (1957) supp. Fla. Stats. Ann. sec. 230-233 (1957 supp.); S.C. Code. sec. 21-230 (9) (1957 supp.; Texas Rev. Civ. Stats. Art. 2901a (4) (1957 supp.) Tenn. Code Ann. sec. 49-1741 et. seg. (1958 supp. All cited by Jack Greenberg in Race Relations and American Law. Shuttlesworth v. Birmingham, Supra Note 113. Carson v. Warlick, 238 F. 2d. 724 (4th Cir. 1956).

81. Jack Greenberg, Race Relations and American Law, Columbia University Press, New York, 1962, p. 233.

82. Ibid., p. 234.

83. Ibid.

84. Ibid.

85. Va. Code Sec. 22, 188.31 (1958) Supp. Cited by Greenberg.

86. Briggs v. Elliot, 132 F. Supp. 776 (E.D.S.C. 1955).

87. Race Relations Law Reporter, 885, (1956).

88. Ralph Lee Smith, "The South's Pupil Placement Laws, Newest Weapon Against Integration," Commentary, October, 1960, p. 10.

89. Ibid., p. 11.

90. Ibid., p. 12.

91. Ibid., p. 13.

92. United Commission on Civil Rights: Staff Report on Public Education (1963) "The Law of Desegregation, 1963," p. 47-48, cited Bell v. School Board, Cir. No. 8944 (4th Cir.) June 29, Richmond News Leader, June 19, 1963, p. 25.

93. Armstrong v. Board of Education of Birmingham, 323, F. 2d. 333 (5th Cir. 1963).

94. Farley v. Turner, 281 F. 131 (4th Cir. 1959).

95. Ibid.

96. N.C. Gen. Stats. Sec. 115-176 (1960) cited by Fleischer in Denver Law Center Journal.

97. Fleischer, p. 178.

98. Civil Rights Report, Supra Note 92.

99. Davis v. East Baton Rough Parish School Board, Cir. No. 1662 (E.D. La., 1960).

100. 373 U.S. 683 (1963).

101. Erwin N. Griswold, and others (ed.) Constitutional Law: Cases, Comments, Questions, West Publishing Co., St. Paul, Minn., 1967, p. 1231.

102. Gross v. Board, 373 U.S., 683 (1963).

103. Ibid. 214 F. Supp. 624 (E.D. La. 1963).

104. Supra Note 102, 220 F. Supp. 217 (N.D. Ala. 1963).

105. Ibid., Cir. No. 20595, (5th Cir. 1963).

106. Rights Report, Supra Note 92, p. 50.

107. Griswold, p. 1133.

108. Davis v. Board of Commissioners of Mobile, 318 F. 2d. 63, (5th Cir. 1963) Supra Note 176, Cir. No. 20595, (5th Cir. 1963).

109. 301 F. 2d. 164, 167, (5th Cir. 1963).

110. Jackson v. School Board of Lynchburg, Cir. No. 8722, (4th Cir. 1963).

111. 382, U.S. 198, 1965.

112. Ibid.

113. Cooper v. Aaron, 358 U.S. 1, 1958.

114. Ibid.

115. Supra Note 4.

116. 42 U.S. C. sec. 2000c-6, 2000d-4 (1964).

117. 42 U.S. C. sec. 2000c-6, sec. 2000h-2 (1964).

118. 42 U.S. C. sec. 2000d (1964).

119. "Civil Rights - Desegregation - Freedom-of-Choice Plans Are Not To Be Used When More Effective Means for Desegregation Are Available," Vanderbilt Law Review, Vol. 21, p. 1095, 1968.

120. See. Gross v. Board of Education, Watson v. City of Memphis 373 U.S. 526 (1963), Calhoun v. Latimer 377 U.S. 263 (1964), Griffin v. County School Board 377 U.S. 218, 234 (1964).

121. Vanderbilt Law Review, Supra Note 119, p. 1095.

122. Ibid., p. 1096.

123. U.S. Civil Rights Commission Report on Desegregation, p. 45-46.

124. Ibid., p. 101.

125. Jackson v. Marvell School District, 389 F. 2d. 740 (8th Cir. 1968), Kemp v. Beasley 389 F. 2d. 178 (8th Cir. 1968), Kelly v. Altheimer 378 F. 2d. 483 (8th Cir. 1967).

126. Kemp v. Beasley, Supra Note 125.

127. Singleton v. Munic-Separate School District, 355 F. 2d., 865 (5th Cir. 1966).

128. 382 F. 2d., 326, 333 (4th Cir. 1967).

129. M. Hayes Mizell, "The South Has Genuflected and Held on to Tokenism," Southern Education Report, January and February 1968, p. 19.

130. 391 U.S. 443 (1967).

131. Ibid.

132. Green v. County School Boards, 391 U.S. 430 (1968).

133. M. Hayes Mizell, p. 21.

134. Green v. County School Boards, 391 U.S. 430 (1968).

Chapter 4

AVOIDING DESEGREGATION IN KEMPER COUNTY

The State of Mississippi almost completely ignored the Brown decision for a full decade. While Mississippi went through the formality of passing resistance legislation and adopting the interposition resolution, no positive actions were taken by the state in the first decade of Court ordered desegregation. In fact, state and local officials along with the white citizens' council concentrated on maintaining conformity with the segregationists' views. Numan Bartley contends that segregationists started to insure a solid South united behind a state's rights and white supremacy program. He states this plan "left little place for tolerance, and efforts to silence internal dissent were a part of the quest for solidarity."[1] In their drive to prevent foreign ideas from infiltrating the Southern way of life, these groups attacked the National Association for the Advancement of Colored People, academic freedom and freedom of the press.[2]

State officials including the governor, legislators and local officials took part in the struggle to enforce conformity. Legislative committees, and a state sovereignty commissions were established in Mississippi and in other Southern states with broad powers to conduct investigations, hold hearings, issue subpoenas and perform other acti-

vities. The National Association for the Advancement of Colored People and the academio community were generally the subjects of these activities. According to Bartley, "Nowhere was academic freedom of white colleges in more peril than in Mississippi."[3] An elaborate screening process was established by the state legislature to prevent undesirable speakers from appearing at state institutions. The screening of textbooks was also a preoccupation of the state legislature.[4]

Kemper County is typical of a group of counties in which the task of preserving the Southern way of life was made easier than in others. The existing conditions in Kemper County that makes this possible are relative isolation, economic dependency, the ratio of black to white population and the lack of progressive black leadership.

Kemper County, a basically rural area, is located in the dandy-clay-hills region of Mississippi. A small portion of it extends into the southern tip of the flatwoods and the Tombigbee Prairie. Dekalb, the county seat and the largest town in the county, has a population of about 800. The only county newspaper is obviously sympathetic to the segregationist's view. One could also find both the Jackson Daily News and the Clarion Ledger of Jackson on the newsstand in Dekalb. The only out-of-state newspaper on local newsstands is the Commercial Appeal of Memphis, Tennessee. According to the County and City Data Book of 1967, published by the United States Census Bureau, Mississippi is the poorest state in the Nation.[5] Kemper County is one of the poorest counties in the state. In 1950, the per capita inoome in Mississippi was $755 compared to a nationwide figure of $1,496. This disparity was not changed significantly by 1960, when the per capita income of Mississippi had increased to $1,205 but this was well below a national per capita income

of $2,215. In 1965, Mississippi ranked fiftieth among the fifty states in per capita income. The per capita income of Mississippi for 1965 was only $1,608 while the national figure had reached $2,746.[6]

One can best realize the economic plight of Kemper County only after comparing its vital statistics with those of the state as a whole. The median income for the county was $1,515 in 1960, while the median income for the state was $2,884. More than seventy-three per cent of the county families earned less than $3,000 annually and only one and five-tenths per cent earned over $10,000. The state's statistics showed that fifty-one and six-tenths per cent of the families earned less than $3,000 while five and two-tenths per cent in the state earned $10,000 or above. These figures vividly indicate that Kemper County is one of the poorest counties located in one of the poorest states in the Nation.[7] The 1960 census also revealed that nineteen per cent of the state's population participated in the manufacturing occupation while only twelve per cent of Kemper County's population participated in manufacturing occupations. The majority of Kemper County's population is engaged in agriculture.[8]

Another factor that must be considered when analyzing the slow rate or lack of integration in Kemper County is the high percentage of blacks in the county.[9] The 1960 census showed that fifty-eight and seven-tenths per cent of the Kemper County population was black.[10] The 1970 population statistics showed the total county population to be 10,233. There were 5,612 blacks and 4,488 whites and 133 from other racial backgrounds. Of greater concern to segregationists was the ratio of black and white school-aged children. There were 1,313 black males compared to 667 white males between the ages of five and twenty-four in

1970. A similar situation existed in regards to females. There were 1,266 black females while there were only 615 white females between the ages of five and twenty-four according to the 1970 census.[11]

When the Supreme Court handed down its 1955 desegregation decision, some blacks in Kemper County were still attending a small one-room school. If the teacher in this school was aware of the decision, it was not discussed with the students. With the adoption of a policy of desegregation by the Court, integration became a kind of unmentionable subject in Mississippi. This was especially true in conversations between blacks and whites and in public institutions. It was especially taboo for school teachers to discuss this subject in the classroom for fear of losing job security.

The only immediate effect the 1954 decision had on the school system of Kemper County was to advance the timetable for consolidation of county schools but on a segregated basis. This consolidation was resorted to as a "short cut" to equalization of black and white schools.[12] The first step in this direction came in 1957 when the black students in this one-room school were "bussed" to a larger school farther removed from their homes at Preston, Mississippi. This meant that the students who formerly walked about five miles through the woods to attend the community school were now fortunate or unfortunate enough to ride about fifteen miles to a school housed in a more modern physical plant. Although this was a modern building, it was far from meeting the standards of quality education when considering such factors as faculty, library and laboratory facilities.

Black parents expressed strong opposition to sending their children to the larger school where the principal operated it as he saw fit within

the limits set by an all white school board. On the other hand, in the community school the parents felt that they had some degree of control through the Board of Trustees and the Parent-Teacher Association. These organizations lost any semblance of power once the community school was abandoned.[13] Although the students were riding to school, it became commonplace for them to miss half or in many cases all of the school day because of the poor transportation facilities. Most of the buses used by blacks had been discarded by the white school system. Therefore, they were in no condition for transportation when the blacks received them.

In 1959, the consolidation program resulted in the transfer of all black high school students to two schools in the county. These schools were Whesinton High School in Dekalb and Scooba High School in Scooba.[14] These schools were much more modern than the school located in Preston. It was much easier for school officials to construct two modern buildings for blacks in the county rather than several throughout the county. These buildings were pointed out to blacks as examples of how concerned the school officials were about improving black schools. They were hopeful that blacks would not insist on attending the all white schools in the county.

Even in Jackson and other major cities in the state there were no suits filed to desegregate the schools until 1963. The first suit, however, was brought against the Jackson school system in Federal District Court.[15] In this case, Judge Harold Cox ruled against the plaintiffs on the grounds that they had not exhausted all administrative remedies. Suits were subsequently brought against school authorities in Carthage and in Biloxi during that same year.[16] As in the Jackson case,

the court found that plaintiffs had failed to exhaust administrative remedies. Since Jackson was the largest city in the state, and it did not have a black majority as many of the rural counties had, it might have been expected to take the lead in desegregation. According to the 1970 census, of Jackson's total population of 258,906, 162,121 were white and 96,418 were black.[17] The first efforts to desegregate the schools were delayed by the federal district Judges Harold Cox and Sidney Mize until 1964 when they were reversed by the Fifth Circuit Court of Appeals.[18] Suits were later filed in Clarksdale where the first plans for desegregation were approved for that city in 1964 by the Fifth Circuit Court of Appeals.[19]

If desegregation was late reaching Jackson, Clarksdale, and Biloxi, it was much later coming to rural counties like Kemper. The cases of Evers v. Jackson Municipal Separate School District and Henry v. Clarksdale Municipal Separate School District has significant meanings for desegregation in Mississippi. Evers and Henry are well known civil rights leaders in Mississippi and in the Nation. As a result of their civil rights activities and public exposure, they could afford to get involved in desegregation controversy when most Mississippians could not. They were not representative of the general population in Mississippi. Their positions and influence gave them a certain degree of security and protection that the average black family did not have. The average black Mississippian could not afford to initiate desegregation suits because of fears of violence and economic coercion. Therefore, it is not by accident that desegregation had its beginning in cities like Jackson and Clarksdale.

However, Civil Rights leaders were by no means shielded from harrassment. In fact, they were resigned to suffer the consequences of their activism. Mr. Aaron Henry is a case in point. He is state president of the National Association for the Advancement of Colored People. His daughter was one of the plaintiffs in the Clarksdale suit. He has been the target of constant attacks by state officials. He was once brought into court and convicted on a morals charge for assaulting a white youth he had given a ride.[20] His wife was not re-employed to her teaching position because of the controversy in which he was involved. The Federal District Judge admitted that the case against him was weak, but held that since Mr. Henry had become so notorious in the community, she had become "tarred with the same brush" in the minds of the community. The Court found that she had not shown that her release was due to her activities.[21] On appeal, the decision was affirmed.[22]

There were no Charles Evers' or Aaron Henry's in Kemper County; therefore, there was no attempt to desegregate the schools until 1967. It was made a reality then primarily as a result of the guidelines established by the Department of Health, Education and Welfare under the 1964 Civil Rights Act.[23] The 1964 Act was the most effective force in achieving initial desegregation of the Kemper County schools. This Act provided that the Department of Health, Education and Welfare could withhold funds from school systems operated on a segregated basis.[24] It further allowed the Attorney General of the United States to file suits in federal court on behalf of those requesting desegregation assistance.[25] This shift of emphasis from judicial litigation to administrative coercion was a significant step in bringing token integration to Kemper County. One reason for this is that the judiciary had little power to

enforce compliance without support of the other branches of government. But more important was that the penalty in this case was more effective in securing the desired results. Being a poor county, Kemper depended heavily on federal support for its educational system.

As a minimum concession to Health, Education and Welfare's demands, the County School Board adopted a "freedom of choice" plan in 1967. Petitions were formulated by the Board of which parents could indicate their choice of school. Under this plan, school officials hoped to comply with Health, Education and Welfare's policy and yet avoid desegregation. They did not expect any blacks to apply for all-white schools and neither did they expect whites to apply to black schools. In fact black parents were unofficially encouraged to select all-black schools in some cases.[26] Although the Health, Education and Welfare guidelines had assumed some of the burden of initiating desegregation actions, the acceptance of "freedom of choice" all but negated the effects of the guidelines. "Freedom of choice" did not in fact give parents freedom to choose their school.

Since most blacks in Kemper County refused to become martyrs for desegregation, there was very little change in the dual school system under the "freedom of choice" plans. Aside from the fact that there were no blacks in Kemper County who were able to attract national attention, a large portion of the black population was dependent upon the white community for economic security. There was a considerable amount of sharecropping by blacks in the county which made them almost totally dependent upon the white landowners. Even among the semi-independent blacks who owned small farms or businesses, there was a certain amount of dependency upon the white leaders. Since this county is also pre-

dominately agricultural, small farmers were generally dependent upon the merchants' class for financial support until the harvesting season. Black farm owners found themselves depending upon the white business community for yearly loans to make their crops.[27]

In 1967, there was one black family in the county who was willing to run the risk of harrassment and economic coercion. The white community as well as the black was taken aback when they exercised their "free" choice to attend the all white school rather than the black school. So startled was the white community until they were convinced that this family had made a mistake in filling out their forms. When some whites inquired about their obvious mistake, they were assured that it was their intention to choose the all white school. This family was subjected to threats and insults as a result of their decision. Some of the local whites attempted to discredit them by suggesting that the mother of the children was insane. Despite all the pressures they did not budge and in the fall of 1967 their children were admitted to all white schools. There were five students involved. As a result, desegregation came to Lynville Elementary School at Lynville and Dekalb High School in Dekalb.[28]

From September, 1967, to January, 1970, there was no additional integration in the county. During this period the only developments on school desegregation was the submission of various plans to the district courts. Usually the Board of Education was reluctant to make any preparation for desegregation until the court ordered it to do so. For fear of being labelled as integrationists, board members refused to take any initiative even after they were notified that they had to desegregate. They went to great efforts to assure the community that they were being

forced to desegregate the schools.[29] State officials had actually abdicated their responsibilities back in 1965. The State Board of Education adopted a modified position of agreement to desegregate. This left it entirely up to local districts to formulate desegregation plans.[30] The governor also failed to give any leadership either to the State Board or to local districts. In reference to compliance plans, Governor Paul Johnson once remarked:

> As governor, I am not attempting to dictate the action to be taken by any school district, and I am pledging my support to each district in whatever decision it reaches. In like manner, I do not presume the direct action to be taken by the State Board of Education, but I assure the Board that the position which it takes will have my wholehearted support.[31]

The governor later commented on large scale supply of Federal funds received by the state. The governor's comments were interpreted by some to mean that the districts had no choice but to accept desegregation. On that occasion Governor Johnson said: "Federal money, for twenty-eight years has poured into every nook and cranny and niche of this state and its government and our people have come to depend on this money." When questioned about interpretations of this statement, the governor insisted that it was an assumption by reporters and pointed out that he would not sign the compliance forms himself.[32]

According to a survey conducted in Kemper County, dual school systems were operated by the county until January, 1970. Although the school board had submitted compliance plans as early as 1967, the county somehow continued to operate a basically segregated school system. The local officials appeared to have great faith in their congressional leadership. Some black teachers responding to the lack of segregation pointed out that congressmen were expected to assist the county in

securing government funds without actually complying with desegregation requirements.[33] County officials came to expect last minute miracles by the congressional delegation. They always delayed any action on desegregation during the school break and, when the school year began, they would insist that time would not permit implementation of desegregation plans.[34]

Kemper County received its first direct order to desegregate its schools in October, 1969.[35] This case involved fourteen Mississippi school districts and nineteen districts in other Southern states. The Supreme Court unanimously called for an immediate end to all dual school systems. Prior to this decision, the courts had generally called for compliance with Health, Education and Welfare's guidelines.[36] But Alexander v. Holmes finally ordered the school officials in these districts to end the operation of segregated school facilities. According to some of those very closely involved with the schools, the schools were desegregated with almost no violent reactions. There were some charges that the school systems would be completely destroyed--claims that had been made from the time the Supreme Court ordered desegregation back in 1954. In January, 1970, all pupils in grades one through eight were ordered to attend one of two schools in the county. Those in grades nine through twelve were sent to two schools. Another school was operated for those pupils from the northwestern part of the county and served grades one through eight.[37]

Teachers and students alike were transferred in order to integrate the school system. The formerly all white school became the elementary and junior high school, while the formerly all black school became the high school. The black principal maintained his position over the high

school while the white principal took charge of the elementary school. According to one black teacher involved, there was a considerable amount of hostility over having a black principal in charge of white teachers. But the school's officials found themselves in a difficult position because the black principal had by far the best qualifications for the principal's position.[38] There was also a considerable amount of hostility between some of the white teachers and one of the young black teachers. There was one incident where a black teacher was released because of her challenge to some hostile white teachers. As of today this young lady is not working in the county's school system. This confrontation was limited to the exchange of hostile remarks between the black teacher and some whites involved.[39]

Initially, there was considerable friction between black and white teachers. When the schools were first integrated, one school operated on a segregated basis within the school buildings. This took place in the elementary school with the white principal. White teachers would hold classes with white students at a certain hour, and black teachers would preside over their classes with all black students at their appointed hour. This policy was soon abandoned. A majority of the black teachers responding to a questionnaire agreed that there was generally less friction among black and white students than among teachers.[40] This quote by one white student to his mother probably sums up the attitude and predicament of many white students in the county: "Mama, I don't care about going to school with niggers."

The most serious negative response to desegregation in the county was the mass movement to provide a private school. Considering either the aggregate or average income of Kemper County, it is difficult to

see how it could afford to build a private school.[41] However, there was widespread support for the private "Kemper County Academy," According to a prominent black teacher in the county system who has access to information from the Board of Education, about fifty per cent of the white students in the county enrolled in the private school the first year of its operation. Some were enrolled in private schools outside the county while others attended desegregated public schools outside the county. Few people felt that the Kemper County private school would succeed but some whites were determined to insure its success. Some families gave up luxuries as well as necessities, such as cars, trucks, and tractors to support the private schools. One extreme case was where the child of a welfare recepient walked four miles each way to attend the private academy.

In September, 1970, a special trade's school was opened for operation in Kemper. Since this school is funded primarily by federal money, it was required to operate on an integrated basis. At first, there was some feelings that it would be all black. According to one black instructor, many whites expected the school to serve a two-fold purpose in the county: first, it was hoped that the trade school would draw all of the black students from the regular public schools and, second, it was also looked upon as a source of jobs for whites. However, the school did not serve this purpose when it opened. It was composed of both black and white students who spent only a portion of their school time in the trade school. Some students who chose to learn a special trade, transferred from the regular public schools. Other students were high school dropouts who desired to learn a trade.[41] There is a two to

one black majority in the county's public schools. The ratio in the trade school is about the same as is the public school on a whole.[42]

Although the school is funded primarily by federal monies, the state was given considerable freedom in setting standards for instructors. The standards were established to allow for only a minimum of blacks on the staff. The state's requirement called for teachers to have at least two years of experience in their respective trades. This worked in favor of the white tradesmen who only had high school educations; therefore, the teaching staff is made up of predominately white tradesmen. A black college graduate was not considered for a teaching position because of a lack of job experience. There are many young blacks in the area who have completed the state's requirements for teaching the trades offered at the school, but because of the requirement for two years experience they did not qualify. Many whites in the area do not have college training but they have been working in special trades so they are considered qualified under this principle.[43]

The trade school's staff consists of seven white full-time instructors and one white director, one full-time black counselor, one white one black part-time instructor, one black full-time janitor and one black janitress. The lone black counselor was not allowed to counsel white students in the beginning, but this was changed after the students insisted on seeing him. The director felt that white students might be offended by being counseled by a black person.[44]

This survey of school desegregation in Kemper County, Mississippi, very vividly depicts the need for authoritative force in dealing with this issue. The fact that there was no integration in the county until the adoption of the "freedom-of-choice" plans in 1967 shows that there

was a need for a firm and direct application of force in such areas. Even under the limited pressure of the Health, Education and Welfare's guidelines, only five black children, and all of those from one family, were enrolled in formerly all white schools. With the adoption of direct court-ordered desegregation, the transfer was made with some disruption and expected criticisms, but no violent reactions. This struggle also says something for the ingenuity and the determination of the white South in resisting desegregation. This county was almost completely untouched by some major decisions on school desegregation between 1955 and 1969.

Footnotes - Chapter 4

1. Numan v. Bartley, The Rise of Massive Resistance; Race and Politics in the South During the 1950's (Baton Rouge, Louisiana State University Press, 1969), p. 190.

2. Ibid., p. 234.

3. Ibid., p. 223.

4. Ibid., p. 235.

5. Edwin D. Goldfield, County and City Data Book 1967: A Statistical Abstract Supplement, United States, Department of Commerce, Bureau of Census, p. 193.

6. Ibid., p. 189.

7. Ibid., p. 193.

8. Ibid., p. 194

9. For a discussion of black/white population and its relationship to acceptance of desegregation, see V. O. Key, Southern Politics in State and Nation: or Gates, The Making of Massive Resistance.

10. County and City Data Book (Supra Note 39, p. 194).

11. 1970 Census of Population; Mississippi General Population Characteristics, U.S. of Commerce, Bureau of Census. The age group of five to twenty-four is used to indicate school age ratio because this is the closest breakdown by the census.

12. Although Mississippi had maintained segregated school under the constitution principle of "separate-but-equal" (Plessy v. Ferguson, 1896), the first real effort to improve black schools did not come until 1948. This program was initiated ironically by one of the state's leading State's Righters, Fielding L. Wright. Wright was Vice Presidential candidate on the Dixicrat ticket in 1948.

13. This school was simply known as Preston High School for the community in which it was located. This community was noted for its large number of black sharecroppers working for one plantation owner for

the most part. It was also known for widespread bootlegging of liquor which was one of the basis for objections by parents whose children were being transferred there. But their objections were futile in light of the influence by the plantation owner. Preston is in the Western part of the county about ten miles from Philadelphia known for the death of three Civil Rights workers.

14. Dekalb, with a population of about 800, is the largest town in the county and the County Seat.

15. Evers, et. al. v. Jackson Municipal Separate School District, et. al.

16. Hudson, et. al. v. Leake County School Board, et. al., United States District Court, Southern District, Miss. Jackson Division, June 24 and July 25, 1963. No. 3382, Race Relations Law Reporter, Vol. 8, 1963, p. 970. Mason, et. al. v. Biloxi Municipal Separate School District, et. al., United States District Court, Southern District, Miss. Gulfport Division, July 5, 1963.

17. 1970 Census (Supra Note 11).

18. Evers, et. al. v. Jackson Municipal Separate School District, et. al., Fifth Circuit Court of Appeals, No. 20824, 1964. Hudson, et. al. v. Leake. County School Board, et. al., Fifth Circuit Court, No. 20825, 1964. Mason, et. al. v. Biloxi Municipal Separate School District, Fifth Circuit Court, No. 20826, 1964.

19. Henry, et. al. v. Clarksdale Municipal Separate School District, No. DC6428, July 27, 1964, and August 19, 1964, Race Relations Law Reporter, Vol. 9, 1964, p. 1253.

20. Harold H. Panke, "Civic Implications of Faculty Desegregation," The Alabama Lawyer, Vol. 30, p. 183.

21. Henry v. Coahoma County Board of Education, 246 F. Supp., 517 N.D. Miss., 1963.

22. United States v. Green County Board of Education, Miss., 332 F. 2d. 40 (CA. 5, 1964).

23. U.S.C. Sec. 2000c-6; 2000d to 2000d-4 (1964).

24. "Civil Rights-Desegregation-Freedom-of-Choice Plans Are Not to be Used When More Effective Means of Desegregation Are Available," Vanderbilt Law Review, Vol. 21, 1968, p. 1095.

25. 42 U.S.C. Sec. 2000c-6, Sec. 2000h-2 (1964).

26. Taken from interview with parents in the community. This discouragement came from law officers as well as community leaders.

27. Supra Note 5.

28. Interview with parents involved: There was no violence involved. Kemper County is known to be very quiet on racial issues. They are kept quiet in hopes of covering any unpleasant incidents. It might be pointed out that the children were as white as any in the schools, the only problem is that this family was considered black. Supposedly they had at least 1/8 black blood and were willing to admit it. Therefore, they were black. But you couldn't determine it by looking at the children.

29. This information was taken from a survey done among the black teachers in Kemper County. Hereafter referred to as "County Survey." Names cannot be mentioned in this study for obvious reasons that there is still some cause for caution in discussing desegregation in this area. Sources will be left intentionably vague in most cases.

30. "Board Adopts Modified Agreement," Southern School News, March, 1965, p. 1.

31. Ibid., p. 10.

32. Ibid., p. 11.

33. Dekalb is the home of Senator John Stennis.

34. County Survey (Supra Note 29).

35. Alexander v. Holmes County Board of Education 396, (U.S.) 632, (1969).

36. Supra Note 44, Chapter 3.

37. County Survey (Supra Note 29).

38. Ibid., conversation with black teachers involved.

39. Interview with lady involved.

40. County Survey (Supra Note 29).

41. Interview with a black teacher in county school.

42. Figures released by the Superintendent's office.

43. Interview with blacks seeking employment in the school.

44. County Survey (Supra Note 29).

Chapter 5

CONCLUSION

The Supreme Court's desegregation decision of 1954 was one of the most important and controversial issues in the Court's history. The Court had taken a bold step in the direction of assuring equal protection of the laws as granted by the Fourteenth Amendment to the Constitution in that decision. The Court had looked through the thin veil of separate-but-equal that grew out of its decision in Plessy v. Ferguson. Although the 1954 decision was a giant step toward equal rights for all Americans, the Court essentially destroyed its own efforts when it formulated the implementation decision in 1955. The 1955 decision called for desegregation with "all deliberate speed." It also returned the cases to the Federal District Courts. These two factors combined, allowed the Southern states to circumvent the desegregation for more than a decade.

The Southern states participating in the implementation arguments supported by the Attorney General of the United States had pleaded with the court for gradual desegregation. The National Association for the Advancement of Colored People sought immediate desegregation but the Court agreed to request for gradual adjustments. As a result of this allowance for gradual adjustment, the South was able to mobilize a

massive campaign to prevent desegregation. When it became obvious that desegregation would continue to be the law of the land, southern politicians sought to delay the realization of this decision as long as possible. They resorted to all types of plans for desegreation designed to placate the courts and yet provided for a minimum of desegregation. Among these plans, were grade-a-year plans, transfer provisions, closing public schools and providing tuition grants to private schools, and "freedom of choice" plans.

Some of the plans formulated by the Southern states were obviously designed to maintain segregation as long as possible; however, each plan had to be challenged in court before it could be nullified. The fact that each case originated in the Federal District Court and could be appealed to the Supreme Court, consumed time in itself. This was all made possible in the 1955 decision which made the Federal District Courts the guardians of desegregation. These courts had the difficult assignment of determining whether the various plans adopted by the South were in compliance with the vague principle of "all deliberate speed."

All of the Southern states took advantage of the 1955 decision but none was as successful as Mississippi in circumventing the Brown mandate. The Supreme Court began to examine more critically some of the plans for desegregation by 1963; therefore, more blacks were admitted to former all-white schools in these states. The first suit to desegregate the Mississippi schools did not reach the courts until 1963. Delays by District Judges Sidney Mize and Harold Cox prevented any desegregation until 1964. The first suit was brought by Mr. Evers against the Jackson school system. Subsequent suits were filed against the Clarksdale, Biloxi, and Carthage school districts.

Although token integration was achieved in some major cities of Mississippi in 1964, most of the rural counties were not affected by desegregation until 1967. Kemper County illustrates this point. There were no attempts to desegragate the schools in this county prior to 1967. This came about as a result of Health, Education and Welfare's guidelines for receiving federal funds. In order to comply with the guidelines, Kemper County adopted a "freedom of choice" plan for desegregation in 1965. Only token integrating was achieved under this plan.

Substantial integration was realized in Kemper County in 1970 after the Supreme Court's decision in Alexander v. Holmes County calling for complete and immediate desegregation. The uncompromising language of that decision left no room for deliberation and delay. As a result, a unitary school system was established without disturbance or disorder. The outcome of this decision seems to support the arguments of those who had called for immediate desegregation in 1955. The nature of the language of the decision had considerable influence on its acceptance.

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APPENDIX

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