EXHIBIT A

A F F I D A V I T

STATE OF ALABAMA)
) SS
JEFFERSON COUNTY)

Constance Baker Motley, being first duly sworn according to law deposes and says:

1. That she is one of the attorneys for the plaintiffs herein.

2. That she has read the attached motion for issuance of an order to show cause and motion for temporary restraining order and knows the contents thereof and that the same are true.

3. That pursuant to the order of this Court of August 12, 1963 the minor children of the Negro plaintiffs were to be admitted to public schools in Huntsville, Alabama formerly restricted to white students.

4. On information and belief, the opening of the public schools on September 3, 1963, was postponed to September 6, 1963, by the defendant Board of Education of Huntsville, Alabama.

5. That on September 6, 1963 at approximately 11:00 o'clock a.m., I was informed by two of the adult plaintiffs by telegram that they had taken their children to the public school they were scheduled to attend and were barred from entering by state troopers. The troopers claimed they had closed the schools pursuant to order from the Governor of Alabama, George C. Wallace. (See attached copy of telegrams from plaintiffs Connie W. Hereford, III and Sidney A. Brewton.)

Constance Baker Motley
CONSTANCE BAKER MOTLEY

Sworn to and subscribed before
me this 6th day of September, 1963.

NOTARY PUBLIC

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

SONNIE WELLINGTON HEREFORD, IV. A MINOR, ETC., ET AL.,

PLAINTIFFS,

v.

HUNTSVILLE BOARD OF EDUCATION, ET AL.,

DEFENDANTS.

CIVIL ACTION NO. 63-109

ORDER TO SHOW CAUSE

UPON THE ANNEXED MOTION AND AFFIDAVIT OF CONSTANCE BAKER MOTLEY, ATTORNEY FOR THE PLAINTIFFS, IT IS ORDERED THAT GEORGE C. WALLACE AS GOVERNOR OF ALABAMA, SHOW CAUSE AT THE UNITED STATES COURT HOUSE, BIRMINGHAM, ALABAMA, IN ROOM , ON THE DAY OF SEPTEMBER, 1963 AT O'CLOCK IN THE FORENOON OF THAT DAY OR AS SOON THEREAFTER AS COUNSEL CAN BE HEARD WHY AN ORDER SHOULD NOT BE MADE HEREIN, ADDING THE SAID GEORGE C. WALLACE AS A PARTY DEFENDANT, AND ENJOINING HIM FROM OBSTRUCTING OR PREVENTING COMPLIANCE WITH THE ORDER OF THIS COURT REQUIRING RACIAL DESEGREGATION OF THE PUBLIC SCHOOLS OF HUNTSVILLE, ALABAMA TO COMMENCE ON SEPTEMBER 3, 1963.

IT IS FURTHER ORDERED THAT SERVICE OF A COPY OF THIS ORDER, AND OF THE PAPERS UPON WHICH THE SAME IS GRANTED ON THE SAID GEORGE C. WALLACE ON OR BEFORE SEPTEMBER , 1963, SHALL BE SUFFICIENT SERVICE OF THIS ORDER.

DATED:_____

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, NORTHEASTERN DIVISION

SONNIE WELLINGTON HEREFORD, IV., a minor, etc., et al., Plaintiffs	)	
vs.	)	CIVIL ACTION
HUNTSVILLE BOARD OF EDUCATION, et al., Defendants	)	NO. 63 - 109

This cause came on for hearing upon the plaintiffs' motion for a preliminary injunction. Having heard the evidence and argument of counsel:

It is ORDERED, ADJUDGED and DECREED by the Court that the defendants, Huntsville Board of Education, Arnold V. Sneed, Chairman of the Huntsville Board of Education, Raymond Christian, Superintendent of City Board of Education of Huntsville, Alabama, L. A. Davis, Melton Frank Jarmon McKinney, Jr., and Marvin Drake, as Members of the Huntsville Board of Education, and their agents, servants, employees, successors in office, and those persons in active concert or participation with them who shall receive actual notice of this order, be and they are hereby restrained and enjoined from discriminating against the plaintiffs, Sonnie Wellington Hereford, IV., John Anthony Brewton, Veronica Terrell Pearson, and David C. Piggie, because of their race or color, in seeking assignment, transfer or admission to the public schools of the City of Huntsville, Alabama, or subjecting them to criteria, requirements, and prerequisites not required of white children seeking assignment, transfer, or admission to said schools; and they are hereby restrained and enjoined from requiring segregation of the races in any school under their supervision, from and after such time as may be necessary to make arrangements for admission of children to such schools on a racially nondiscriminatory basis with all deliberate speed as required by the

supreme Court in Brown v. Board of Education of Topeka, 349 U.S. 294.

It is further ORDERED, ADJUDGED and DECREED that, in keeping with the decision in Armstrong et al v. Board of Education of the City of Birmingham, et al., 5 Cir., July 12, 1963, said persons are hereby required to submit to this Court not later than January 1, 1964, a plan under which the defendants propose to make an immediate start in the desegregation of the schools of the City of Huntsville, which plan shall effectively provide for the carrying into effect not later than the beginning of the mid-year school term commencing January 17, 1964, and thereafter, of the Alabama Pupil Placement Law as to all school grades without racial discrimination, including "the admission of new pupils entering the first grade, or coming into the [City] for the first time, on a nonracial basis." Augustus v. Board of Public Education, 5 Cir., 1962, 306 F. 2d 862, 869.

Nothing herein shall prohibit the Huntsville Board of Education from admitting, transferring or assigning on a nondiscriminatory basis Negro students, other than the four plaintiffs, to any school in the City of Huntsville. Nothing contained herein is intended to mean that voluntary segregation is unlawful, or that the same is not legally permissible.

Pursuant to Rule 52(a), a Findings of Fact and Conclusions of Law will in due course be entered herein.

Done, this the 13th day of August, 1963.

H. H. Grooms
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE

DISTRICT OF ALABAMA, EASTERN DIVISION

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

Plaintiffs,

UNITED STATES OF AMERICA,

Plaintiff and Amicus Curiae,

vs.

MACON COUNTY BOARD OF EDUCATION (Harry D. Raymon, Chairman, Madison Davis, John M. Davis, B. O. Dukes and F. E. Guthrie) and C. A. PRUITT, Superintendent of Schools of Macon County, Alabama,

Defendants.

FILED

AUG 22 1963

H. C. DODSON
Clerk

By .....
Deputy Clerk

CIVIL ACTION NO. 604-E

MEMORANDUM OPINION AND ORDER

This cause is now submitted upon the plaintiffs' motion for a preliminary injunction. Upon consideration of the evidence, consisting of requests for admissions and responses thereto, the deposition of the Macon County, Alabama, school superintendent and the exhibits thereto, and the oral testimony of the various witnesses, together with the several exhibits to that testimony, this Court now makes the appropriate findings of fact and conclusions of law, embodying the same in this memorandum opinion. 1/

1/ This written memorandum is intended to supplement and not necessarily supplant the oral findings, conclusions and judgment made by this Court in open court in the presence of each of the defendants at Opelika, Alabama, on August 13, 1963.

This is a proceeding authorized by 28 U.S.C.A. § 1343 and 42 U.S.C.A. § 1983, brought by the several plaintiffs, who are Negro children suing through their parents as next friends, against the Board of Education of Macon County, Alabama, its individual members, agents, representatives, employees and successors in office, and against the superintendent of schools of Macon County, Alabama. Plaintiffs ask this Court to enjoin the defendants and each of them from continuing their policy, practice, custom and usage of maintaining and operating a compulsory biracial school system in Macon County, Alabama, and from the assignment of students, teachers and other school personnel on the basis of race. This case is a typical class action, seeking the desegregation of the public school system maintained and operated by these defendants in Macon County, Alabama.

This Court finds that these plaintiffs are Negro children, living and residing in various areas of Macon County, Alabama, that said plaintiffs are authorized by law to bring and maintain this action, and that the plaintiffs represent a class and are authorized to sue in behalf of other members of their class, since there are common questions of fact and law arising out of circumstances that are common to these plaintiffs and other members of their class. Potts v. Flax, 313 F. 2d 284 (5th Cir., Feb. 1963).

This Court further finds that these plaintiffs and other members of their class who are similarly situated have been and are currently attending the public schools in Macon County, Alabama, or expect to commence the attendance in said public school system during the 1963-64 school year; that the defendants Harry D. Raymon as Chairman, Madison Davis, John M. Davis, F. E. Guthrie and B. O. Dukes are the members composing the Macon County Board of Education, and C. A. Pruitt is the Superintendent of Schools for the Macon County school system; these individuals actively manage, control and operate the public school system throughout Macon County, Alabama. In this school system there are no attendance areas; there are no city school districts, and there is no city Board of Education. There is only one school district, with the county Board of Education and the superintendent of schools, who is appointed by said Board, exercising complete control thereof. In this school system for the school year 1962-63, there were in attendance 970 white students and 5,317 Negro students. There were 17 schools for Negroes and 3 schools for

whites. There were 178 Negro teachers and 43 white teachers. There were 17 buses for white students and 44 buses for Negro students.

From the evidence in this case, this Court finds that through policy, custom, practice and usage, the Macon County Board of Education, functioning at the present time through the named defendants, operates a dual school system based upon race and color; that is to say, through policy, practice, custom and usage, these officials operate one set of schools to be attended exclusively by Negro students and one set of schools to be attended exclusively by white students. The evidence further reflects that the teachers are assigned according to race. For example, the minutes of the school Board for the August 30, 1962 meeting reflect the assignment of teachers to schools strictly according to the race of the students and teachers; in other words, Negro teachers are assigned only to schools attended by Negro students and white teachers are assigned only to schools attended by white students. This Court further finds that the students using the transportation facilities, that is, the school buses, are segregated according to race. Transportation is furnished by the defendants for Negroes only to schools attended solely by Negro students, and for white students only to schools for whites. For the school year 1962-63, the average daily number of white pupils transported by buses in the Macon County school system was 522; the average daily number of Negro pupils transported by school buses was 3,797. In many instances, so that Negro students could be deposited at schools designated solely for their race, they were transported for some distance from near schools that were and are designated for and used solely by white students. Thus, there are overlappings in the geographical areas involved where there are schools for white students in closer proximity to the homes of Negro students than are the schools for the Negro students. The reverse is true with reference to white students.

This Court now specifically finds that because of the designation of certain schools to be used solely by Negro students and the designation of other schools to be used solely by white students, that because of the assignment of teachers and the manner in which the teachers are assigned, and that because of the transportation facilities that are made available to the students and the manner in which said facilities are made available, the operation of the Macon County school system by these defendants is on a compulsory biracial

basis. The operation of this school system on a compulsory biracial basis by these defendants is in their official capacity; thus such an operation is action under color of the laws of the State of Alabama. The operation of the Macon County school system in such a manner is, under the law, discriminatory as to these plaintiffs and other members of their race and class who are similarly situated. This Court specifically finds that the operation of the Macon County school system by and through these defendants, and the manner in which it has been and is being operated, is in violation of the law of the United States. Brown v. Board of Education, 347 U.S. 483 (1954); Brown v. Board of Education, 349 U.S. 294 (1955); McNeese v. Board of Education, etc., 373 U.S. 668 (June 3, 1963); Goss v. The Board of Education of the City of Knoxville, Tennessee, 373 U.S. 683 (June 1963); Watson v. City of Memphis, 373 U.S. 526 (May 1963); Gibson v. Board of Pub. Inst. of Dade County, 246 F. 2d 913 (5th Cir. 1957) and 272 F. 2d 763; Holland v. Board of Pub. Inst. of Palm Beach County, Florida, 258 F. 2d 730 (5th Cir. 1958); Mannings v. Board of Pub. Inst., 277 F. 2d 370 (5th Cir. 1960); Augustus v. Board of Pub. Inst., 306 F. 2d 862 (5th Cir. 1962); Bush v. Orleans Parish School Board, 308 F. 2d 491 (5th Cir. 1962); and Armstrong, et al. v. The Board of Education of the City of Birmingham, Alabama, ___F. 2d___(5th Cir., July 1963).

This Court further finds that there have been no steps taken by the Macon County Board of Education to desegregate its public school system. However, this Court is assured by the chairman of the Board in his testimony given in open court upon this hearing and by the superintendent for the Board in his testimony given in open court on this hearing that the school officials of Macon County, Alabama, recognize and candidly acknowledge that under the law they have the primary responsibility of taking the initiative in bringing to an end the operation of a school system that violates the constitutional rights of a large majority of the citizens in Macon County.[2/] The Court is further assured by said defendants that a complete plan for the general desegregation of the Macon County school system, including the abolition of the

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2/ Brown v. Board of Education, 349 U.S. 294, 299 (1955); Rippy v. Borders, 250 F. 2d 690, 693 (5th Cir. 1957); Calhoun v. Latimer, ___F. 2d___(5th Cir., June 1963); and Davis v. Board of School Commissioners of Mobile County, Alabama, ___F. 2d___(July 1963).

operation of the dual school system based upon color, will be prepared by said officials and submitted to this Court on or before December 12, 1963. From the testimony given by the chairman of the Board and by the superintendent of schools of Macon County, Alabama, in open court in the presence of the other defendants, it appears that the defendants are at the present time ready and willing to start immediately in the desegregation of the schools of Macon County, Alabama, by putting into effect for the school year commencing in September 1963, the Alabama School Placement Law, without any racial discrimination.[3/]

This Court is now prepared to accept the assurances of the members of the Macon County Board, and it is recognized by both the Court and the defendants that an honest and fair application of the Alabama School Placement Law--which law was approved in Shuttlesworth v. Birmingham Board of Education, 162 F. Supp. 372, affirmed by the Supreme Court, 358 U.S. 101--will result in the immediate admission of a number of qualified Negro students for the school term commencing September 1963, in certain schools heretofore maintained and operated exclusively for white students. Needless to say, the failure on the part of the Board to administer the Alabama School Placement Law without regard to race or color will result in the law's being struck down on the basis of unconstitutionality. As the Court said in the Shuttlesworth case, supra:

> "We must presume that it will be so administered. If not, in some future proceeding it is possible that it may be declared unconstitutional in its application. The responsibility rests primarily upon the local school boards, but ultimately upon all of the people of the State."

Upon consideration of the foregoing findings and conclusions, it is the ORDER, JUDGMENT and DECREE of this Court:

(1) That the defendants, the Macon County Board of Education, Madison Davis, John M. Davis, F. E. Guthrie, B. O. Dukes, Harry D. Raymon as Chairman, and C. A. Pruitt as Superintendent of Schools of Macon County, Alabama, their agents, servants, employees, successors in office, and those acting or who may act in concert with them and who shall receive notice of this order, be and each is hereby restrained and enjoined from failing to make

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3/ Act No. 201, Regular Session 1955 (effective August 3, 1955), as amended by Act 367, Regular Session 1957 (effective August 26, 1957); codified in Title 52, Chapter 4A, Code of Alabama 1940.

an immediate start, to be effective for the school term commencing September 1963, in the desegregation of the schools of Macon County, Alabama, through the use of the Alabama School Placement Law, without discrimination on the basis of race or color. Augustus v. Board of Public Instruction, 306 F. 2d 862, 869 (5th Cir. 1962), and Armstrong, et al. v. Board of Education, Birmingham, ___F. 2d___(5th Cir., July 12, 1963).

(2) That the defendants, the Macon County Board of Education, Madison Davis, John M. Davis, F. E. Guthrie, B. O. Dukes, Harry D. Raymon as Chairman, and C. A. Pruitt as Superintendent of Schools of Macon County, Alabama, and their successors in office, submit to this Court not later than December 12, 1963, a plan under which the said defendants propose to desegregate the schools and the school system of Macon County, Alabama, which plan shall provide for carrying into effect a general application of the Alabama School Placement Law without regard to race or color, as to each and every school and school grade, not later than the school term commencing January 1964 and thereafter; in addition, said plan is to include detailed provisions for abolishing the dual school system as it is presently maintained and operated in Macon County, Alabama.

(3) That the chairman of the Board and the superintendent of schools of Macon County, Alabama, report to this Court on or before 9 a. m., September 3, 1963, the action taken by the Board of Education on each application for admission and/or transfer under the Alabama School Placement Law filed with the said Board.

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

Done, this the 22nd day of August, 1963.

/s/ Frank M. Johnson, Jr.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE

DISTRICT OF ALABAMA, EASTERN DIVISION

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

Plaintiffs,

UNITED STATES OF AMERICA,

Plaintiff and Amicus Curiae,

vs.

MACON COUNTY BOARD OF EDUCATION (Harry D. Raymon, Chairman, Madison Davis, John M. Davis, B. O. Dukes and F. E. Guthrie) and C. A. PRUITT, Superintendent of Schools of Macon County, Alabama,

Defendants.

CIVIL ACTION NO. 604-E

WRIT OF INJUNCTION

To the above-named defendants and each of them:

TAKE NOTICE that you and each of you, your successors in office, agents, servants, employees, and those acting or who may act in active concert on your behalf, be and you are hereby enjoined as more particularly set out in the Memorandum Opinion and Order of this Court made and entered herein on this date, a copy of which is attached.

This writ of injunction is issued pursuant to the Memorandum Opinion and Order of this Court made and filed with the Clerk of this Court on this

the 22nd day of August, 1963.

Done, this the 22nd day of August, 1963.

R. C. Dobson

Clerk of the District Court of the
United States for the Middle District
of Alabama

T. 8/19/63

Director
Federal Bureau of Investigation

Burke Marshall
Assistant Attorney General
Civil Rights Division

BM:SJB:11h 14,032
144-100-2-1

AUG 21 1963

RECORD

Macon County, Alabama, School Desegregation Case.

On August 13, 1963, United States District Judge Frank M. Johnson, Jr., of the Middle District of Alabama, entered an order in the case of Lee v. Macon County Board of Education requiring that the Macon County Board of Education process applications on behalf of Negro children for placement in particular schools for this fall semester without regard to their race. It is possible that under the terms of this order Negro children will enroll for the first time in schools formerly attended only by whites with the beginning of this fall semester, September 4, 1963.

8/19

Judge Johnson has designated the United States as amicus curiae in this case to advise and assist the court with respect to the enforcement of its orders.

8/20

It is requested that your Bureau obtain through such sources as may be available and promptly transmit to this Division any information regarding the existence, activities and plans of any racist or segregationist groups in the vicinity of the City of Tuskegee, Macon County, Alabama, insofar as such plans or activities may bear upon possible interference with the carrying out of the court's order.

Records ✓
Chrono
USA, Montgomery
Mr. Barrett

SENT BY MESSENGER
COMMUNICATIONS SECT.
AUG 21 1963 UH

Aug. 21, 1963

John Doar
First Assistant
Civil Rights Division

SJB:11h 14,032
144-100-2-1

St. John Barrett
Second Assistant

Lee v. Macon County Board of Education
(Macon County, Alabama)

Attached is the trial file in the Macon County, Alabama, school case. I have not as yet seen Judge Johnson's draft of his findings, conclusions and decree. You will note from Dave Norman's memo that the Judge wanted our help in putting them in final form.

Except insofar as we may help the Judge informally in drafting his orders, I think our function as amicus is twofold: (1) to advise and assist with respect to enforcement of the order against the school authorities, and (2) to anticipate and take such steps as may be necessary both through legal proceedings and direct action to prevent obstruction to the carrying out of the order.

A. Enforcement. Through study of the trial record in Montgomery (we don't have a copy of the depositions or of the trial transcript) and through conversations with Negro parents of school children it would be well to obtain full details regarding the procedures being followed by the local school authorities. These details should distinguish between the handling of initial assignments of children to particular schools and the handling of transfer cases. I assume that the school authorities will make initial assignments for this fall semester on the basis of race and then will apply the various pupil placement criteria only to students who request transfer. If the Judge orders a large number of Negroes assigned to formerly white schools he should so frame his decree as to require that initial assignments be made without regard to race. There is no question but that the 14th Amendment, and indeed Alabama law itself, requires nonracial initial assignments. Having made initial assignments without

Records
Chrono
Mr.Barrett
Mr.Norman
Trial File

regard to race the school board could then of course freely allow both whites and Negroes to transfer back to their old schools. This is the procedure being followed in Santa Rosa and Okaloosa Counties, Florida, as a result of our negotiations with the school boards in those counties.

Next I think we should determine the identities of all Negroes who have requested assignment of their children to "white" schools. We should interview as many of these as possible and get details not only regarding how their requests have been handled by the school authorities but also as to school districts, the grades of the children, the comportment and health of the children, etc. Having such information will help us quickly evaluate the propriety of the placement decisions which the board makes.

It would be particularly helpful to get any information we can regarding crowding in the white schools. This should be obtained on a school by school and grade by grade basis if possible. Through white personnel at the Veterans Administration Hospital it may be possible to locate white children who have moved into the area since the last school year. If these children are put into white schools (as undoubtedly they will be) it will be difficult for the board to justify upon the grounds of crowded conditions the rejection of qualified Negroes to those same schools.

B. Obstruction. I don't have any ideas with respect to plans for meeting possible obstruction other than those that I am sure you would have anyway. I think it would be well for someone from the Department to confer with the Macon County Sheriff and possibly the Tuskegee Chief of Police to inquire whether they anticipate any trouble and to offer the assistance of the Department. It would also be well to check directly with the local FBI to find out what information they have on activity of segregationist groups in the area. We requested that they keep on top of such information in our memorandum of August , 1963.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,	)	
VS.	)	CIVIL ACTION
GEORGE C. WALLACE, ET AL., Defendants.	)	NO. 1976-N

MEMORANDUM BRIEF IN OPPOSITION TO MOTION FOR A PRELIMINARY INJUNCTION

The jurisdiction of United States District Courts, except for specific exceptions created by Congress, is territorial, and such jurisdiction must be limited by their territorial boundaries. The complaint in this cause affirmatively shows that each of the defendants resides in the Middle District of Alabama, and the issuance of an injunction by Judges Lynne, Grooms, Allgood and Thomas is without authority of law.

Robertson v. Railroad Labor Board, 1925, 268 U.S. 619

Georgia v. Pennsylvania R. Co., 1945, 324 U.S. 439, 467-468

Hanes Supply Co. v. Valley Evaporating Co. 261 F.2d 29 (5 Cir., 1958)

36 C.J.S., Federal Courts, Section 16(a), p. 94.

Relief sought nominally against any officer is in fact against the sovereign if the decree would operate against the latter, and a suit against the State of Alabama cannot be maintained, without its consent.

Hawaii v. Gordon, 1963, __ U.S. __, 10 L.ed. 2d 191

United States v. Alabama, 171 F. Supp. 720, affirmed 267 F.2d 808, rev. on other grounds 362 U.S. 602

Eleventh Amendment to the Constitution of the United States.

A federal court cannot entertain a suit for injunctive relief against a state without its consent by means of a supplemental or ancillary bill to enforce a federal court decree against the State of Alabama and its officials, and

considerations of convenience open no avenue of escape from the restriction.

State of Missouri v. Fiske, 290 U.S. 18

Hawks v. Hamill, 288 U.S. 52.

The United States of America has no authority to take over the maintenance and operation of the public school systems of the State of Alabama.

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579.

The responsibility for public education is primarily the concern of the States.

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

The federal judiciary cannot compel the State of Alabama or its officials to perform an act, where the act to be performed requires the exercise of discretion.

Louisiana v. Jumel, 107 U.S. 722

Morrill v. American Reserve Bond Co., 151 F. 305.

The motion for a preliminary injunction should be heard before a three-judge court.

Title 28, Section 2281, United States Code

Title 28, Section 2284, United States Code

Sterling v. Constantin, 287 U.S. 378

Faubus v. United States, 254 F.2d 797, cert. den. 358 U.S. 829.

A preliminary mandatory injunction should never issue, and is most improper in the case presently before the Court.

Pomeroy's Equity Jurisprudence, Vol. 4, 5th Ed., Section 1359a, p. 970

43 C.J.S., Injunctions, Section 5 (b), p. 412.

It was improper for this Court to issue a temporary restraining order based upon the sworn affidavits of counsel in the case.

Inglett & Co. v. Everglades Fertilizer Co., 255 F.2d 342.

The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.

Texas v. White, 7 Wall. 700.

The improper ratification of the Fourteenth Amendment is not a "political question" and should be inquired into by this Court.

Pennsylvania v. West Virginia, 262 U.S. 553

Baker v. Carr, 369 U.S. 186

Osborn v. Bank of the United States, 9 Wheat. 738

Nixon v. Herndon, 273 U.S. 536

The Dubious Origin of the Fourteenth Amendment, Vol. XXVIII Tulane Law Review, 22-44

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 272.

The United States of America seeks to take over the operation of the Schools in the State of Alabama by use of judicial process.

In the case of Cooper v. Aaron, 358 U.S. 1, the Supreme Court recognized the principle that the operation of public education is primarily a function of the States. The request for injunctive relief in this case does not merely seek to restrain the enforcement of an Executive Order, but also directs the manner and method whereby the schools will be operated. Not since the celebrated Steel Seizure Cases (Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579) has the Executive Branch of Government sought to expand its power to act independently of the will and direction of Congress.

The Congress of the United States has passed no law authorizing the United States of America to prosecute an action or to do any act which would interfere with the State of Alabama in the operation of its public school systems. The United States of America has not been authorized by any statute passed by the Congress to bring this action which seeks not to merely prevent the Defendants from obstructing a court order, but seeks to direct the manner in which the Defendants will exercise their discretion as law enforcement officers of the State of Alabama. Louisiana v. Jumel, 107 U.S. 720.

The All Writs Statute and Title 28, Section 1345, United States Code, cannot be considered as statutory authority for such a suit, since the suit is in the nature of an auxiliary proceeding to the desegregation suits, and the Congress has given to the United States no authority to prosecute desegregation suits. In fact, Congress has passed no law which gives to the United States any right to interfere with the operation of the public school systems in the State of Alabama. To grant the relief here sought by the United States is tantamount to saying that the United States can direct the manner in which the public schools of the State can be run. The solemn question must be asked, "When will the State of Alabama not be run by judicial decree?" Already certain Boards of Registrars have been enjoined; the Governor has been enjoined; the Alabama Public Service Commission has been enjoined; the City of Montgomery has been enjoined; the Highway Patrol has been enjoined; the Board of Trustees of the University of Alabama has been enjoined; and now the United States seeks to go one step further, and direct the manner and method by which the officials of this State will execute the laws of this State and preserve the peace.

Sterling v. Constantin is distinguishable.

As authority for the issuance of injunctive relief against the Governor of a state, the United States frequently cites the case of Sterling v. Constantin, 287 U.S. 378. The facts of that case are materially different. There, the Court found that there was no necessity for the Governor's calling out the military, since there were no riots or disorders shown by the evidence. By issuing the temporary restraining order in this case, this Court has presumed that the officials of the State of Alabama have failed to do their duty. In fact, since a case for injunction must be one in which there is a clear necessity for its issuance, this Court had to find and presume that the state officials were not doing their duty. Such a finding ignores the language of the case of Hawks v. Hamill, 288 U.S. 52, which was decided during the same term that Sterling v. Constantin was decided.

Mandatory relief is improper.

Preliminary mandatory injunctions have been granted more freely in

English Courts than by the American. Some American decisions state that a mandatory interlocutory injunction would never be granted. Pomeroy's Equity Jurisprudence, Vol. 4, 5 ed. Section 1359a, p. 970. In Robinson v. Byron, 1 Brown Ch. (Eng.) 588, Lord Eldon granted a preliminary injunction restraining defendant "from using and maintaining certain dams, gates, etc. so as to prevent water from flowing to plaintiff's mill as it had done." This was done for the express purpose of compelling the defendant to remove the dams, gates, etc. which he had constructed.

In the instant case if the Court determines it has jurisdiction, then the only relief which can be given is by way of prohibitory relief, restraining the defendants from interference with the Court orders.

While a court of equity usually has power to award preliminary mandatory injunctions in a proper case, mandatory injunctions should rarely be granted except on final hearing. 43 C.J.S., Injunction, Section 5(b), p. 412.

It is submitted that this Court should not issue such a mandatory injunction to compel the defendants to do any act which requires an exercise of discretion on their part. Mandatory injunctive relief is never proper except in an extreme case and should be granted only in those cases where the Court seeks to maintain and restore the status quo. It will be noted that the mandatory aspects of the decree in Porter v. Warner Holding Company, 328 U.S. 395, was to compel the payment of money by way of restitution. That case is easily distinguishable from this case in that here the United States seeks to compel the State officials to perform a duty which rests within the discretion of the State officials. The mere fact that the decree would be framed in a prohibitory sense, it is nonetheless mandatory in its nature. While this Court has heretofore issued a similar decree in the case of United States v. U. S. Klans, et al., that case was never appealed and we contend that it should not be used as authority in this case. See Louisiana v. Jumel, 107 U.S. 722. This Court also in the case of United States v. State of Alabama, 192 F. Supp. 677, entered a decree compelling the registration of certain Negro voter applicants in Macon County, Alabama. We think that this Court recognizes that it should not substitute federal administration of

the law enforcement agencies for that of the State. In the voter registrar case, this Court said, "The entering and enforcement of such a decree will not have the effect of substituting federal administration of the registration process for that of the State." As this Court knows, the case of United States v. State of Alabama, supra, was affirmed by the Fifth Circuit Court of Appeals and by the United States Supreme Court. However, in that case the Court made a specific finding that the 54 Negro applicants, based upon their applications, were qualified for registration. The Court of Appeals in affirming seemed to stress also that the State of Alabama did not show any just reason why the said 54 applicants should not be registered. The administration of law enforcement has traditionally been left in the hands of State officials. The matter in which such law enforcement should be made is a matter which rests in the sound discretion of the State officials charged with the duty of executing the law. The mandatory injunctive relief is improper on the further ground that the relief sought is not specific. Maintenance of law and order is a broad term and would place State officials at the mercy of this Court on a contempt proceeding and in view of the present law might deprive them of the right to have their case heard by a jury of their peers.

Furthermore, in the voter registrar case there was specific statutory authority for the United States to seek injunctive relief against boards of registrars and the State of Alabama. No such statutory authority exists to allow the United States of America to file desegregation suits or to seek relief against State officials in matters pertaining to the desegregation of the schools involved. The United States initially seeks to bottom its request for relief on the principle that the orders of its Courts are being impeded. The only relief which should be granted under any circumstances would be the removal of the obstruction to the enforcement of the orders.

Counsel made the affidavits.

The relief sought should be denied on the further ground that in the instant case the complaint and several of the affidavits were made by either counsel for the United States or by counsel for the original Negro plaintiffs in the desegregation suits. Experience should prove that the adversary system functions

best when the role of judge, of counsel and witnesses is sharply separated, and it is inherently an unsound practice to have affidavits in support of this motion for preliminary injunction sworn to by Counsel. Inglett & Co. v. Everglades Fertilizer Co., 255 F.2d 342 (5 Cir., 1958).

Action against State of Alabama.

This Court lacks jurisdiction on the further ground that this action is one against the State of Alabama to which it has not given its consent. The general rule is that relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter. Hawaii v. Gordon, 1963, __ U.S. __, 10 L.ed.2d 191, 83 S. Ct.__. A Federal Court cannot entertain a suit against a state without its consent by means of a supplemental or ancillary bill to enforce a federal court decree. State of Missouri v. Fiske, 290 U.S. 18.

As a matter of fact, the Constitution of the United States guarantees to every State a Republican form of Government. Article IV, Section 4 provides that the United States shall guarantee to every State a Republican form of Government. Included in the term "United States" is the judiciary. This Court must frame any decree in recognition of this duty, not as an arm of the federal government to deprive States of their governmental functions (e.g., the right to operate its school systems without interference, disruption and destruction), but to guarantee to them the right to perform this function without interference from the National Government. The constitutional provisions are too clear to be misunderstood. The framers of the Constitution sought to provide that no central government should, by force, impose its will upon the affairs of the individual States, so long as the States were operating under a Rupublican form of Government.

Delicate Federal-State Balance is due to be maintained.

No injunction should issue on the further ground that here State officers are acting in their official capacity and an injunction should not issue. Hawks v. Hamill, 53 S. Ct. at page 243:

The case thus far has been considered from the viewpoint of the substantive law, the basic rights and duties contested by the litigants. There is another path of approach that brings us to the same goal, an approach along the line of the law of equitable remedies. Caution and reluctance there must be in any case where there is the threat of opposition, in respect of local controversies, between state and federal courts. Caution and reluctance there must be in special measure where relief, if granted, is an interference by the process of injunction with the activities of state officers discharging in good faith their supposed official duties. In such circumstances this court has said that an injunction ought not to issue 'unless in a case reasonably free from doubt.' Mass. State Grange v. Benton, 272 U.S. 525, 527, 47 S. Ct. 189, 190, 71 L.Ed. 387. The rule has been characterized as an 'important' one, to be 'very strictly observed.' 272 U.S. at pages 527, 529, 47 S. Ct. 189, 71 L.Ed. 387. Compare Gilchrist v. Interborough Rapid Transit Co., 279 U.S. 159, 49 S. Ct. 282, 73 L.Ed. 652; Cavanaugh v. Looney, 248 U.S. 453, 39 S. Ct. 142, 63 L.Ed. 354. It is such interference by the process of injunction with the activities of state officers that the respondents now seek. The members of the state highway commission believe it to be their official duty to take possession of the bridge, and propose to act accordingly. The Attorney General of the state is about to institute proceedings at law and in equity to vindicate the public rights or what he believes to be such rights. The county attorneys of McClain and Cleveland counties propose to sue for fines and penalties. All these activities the respondents ask us to enjoin. Indeed all have been enjoined by the decree under review. Only a case of manifest oppression will justify a federal court in laying such a check upon administrative officers acting colore officii in a conscientious endeavor to fulfill their duty to the state. A prudent self-restraint is called for at such times if state and national functions are to be maintained in stable equilibrium. Reluctance there has been to use the process of federal courts in restraint of state officials though the rights asserted by the complainants are strictly federal in origin. Mass. State Grange v. Benton, supra; Stratton v. St. Louis S. W. Ry. Co., 284 U.S. 530, 52 S. Ct. 222, 76 L.Ed. 465; Matthews v. Rodgers, 284 U.S. 521, 52 S. Ct. 217, 76 L.Ed. 447.

It is interesting to note that the case of Hawks v. Hamill, supra, was decided during the same term of the Supreme Court when Sterling v. Constantin, 287 U.S. 378, was decided. While Sterling v. Constantin on its face appears to be valid authority for the issuance of an injunction against a Governor, the facts in that case are materially different. Evidence in the case here will show that the statement in the Executive Orders of Governor Wallace were correct -- that forced integration of the schools has disrupted the schools involved and deprive numerous children of the "civil right" to obtain an education without being forced to submit to social experiments. The boycotts of the schools involved, the tensions caused by the placing of incendiary bombs in powder kegs are stark realities, and are in sharp contrast to the finding in Sterling v. Constantin that peace and quiet

prevailed in that case. In short, the defendants here have not exceeded any authority or duty vested in them, but on the contrary their actions were legal and proper and should not be restrained.

Court should inquire into improper ratification of the Fourteenth Amendment.

The orders in Lee v. Macon County Board of Education, No. 604-E, Armstrong v. Board of Education of the City of Birmingham, Civil Action No. 9678, and Davis v. Board of School Commissioners of Mobile County, Civil Action No. 3003-63, herein involved, were not issued in accordance with constitutional provisions. Each of said decisions is predicated upon the Fourteenth Amendment to the Constitution, which a court of equity should not use as constitutional authority upon which to predicate a decision in view of the dubious origin of the Fourteenth Amendment.

The Framers of the Constitution, in Article V, provided for a definite procedure to be used for amendment proposals and ratifications. Pertinent portions provide:

"The Congress, whenever two thirds of both houses shall deem it necessary, shall propose Amendments to this Constitution . . . which . . . shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the Several States." Congress acts first, then States must ratify. The States have the final function in the amending process. Let's examine what really happened in the proposal and adoption of the Fourteenth Amendment. In his article in Vol. XXVIII, Tulane Law Review 22-44, Professor Walter J. Suthon, Jr. points out:

> The Fourteenth Amendment was proposed by Congress to the States for adoption, through the enactment by Congress of Public Resolution No. 48, adopted by the Senate on June 8, 1866 and by the House of Representatives on June 13, 1866. That Congress deliberately submitted this amendment proposal to the then existing legislatures of the several States is shown by the initial paragraph of the resolution.
>
> This submission was by a two-thirds vote of the quorum present in each House of Congress, and in that sense it complied with Article V of the Constitution. However, the submission was by a "rump" Congress. Using the constitutional

provision that "Each House shall be the judge of the Elections, Returns and Qualifications of its own Members...." each House had excluded all persons appearing with credentials as Senators or Representatives from the ten Southern States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Texas. This exclusion, through the exercise of an unreviewable constitutional prerogative, constituted a gross violation of the essence of two other constitutional provisions, both intended to protect the rights of the States to representation in Congress.

Had these ten Southern States not been summarily denied their constitutional rights of representation in Congress, through the ruthless use of the power of each House to pass on the election and qualifications of its members, this amendment proposal would doubtless have died a-borning. It obviously would have been impossible to secure a two-thirds vote for the submission of the proposed Fourteenth Amendment, particularly in the Senate, if the excluded members had been permitted to enter and to vote. Of course, that was one of the motives and reasons for this policy of ruthless exclusion.

Assuming the validity of the submission of this amendment by a two-thirds vote of this "rump" Congress, there is no gainsaying the obvious proposition that whatever "contemplation" or "understanding" this "rump" Congress may have had, as to the intent, or the scope, or the effect, or the consequences of the amendment being submitted, was necessarily a "rump" contemplation or understanding. The ten Southern States, whose Senators and Representatives were all excluded from the deliberations of this "rump" Congress, could have had no possible part in the development or formation of any "contemplation" or "understanding" of what the consequences and effects of the proposed amendment were to be.

This Court and the other Alabama District Courts now seek to abolish school segregation in Alabama schools, when Alabama was deliberately and designedly excluded from any possible participation in these "rump" submission proceedings. When the Amendment was submitted to validly recognized State Legislatures it was rejected, but Congress passed the Reconstruction Act in March of 1867, which Act provided that no legal state government existed in the ten Southern States, including Alabama. Military Governments were set up in these States. "At the point of a bayonet" the "rebel states" were forced to ratify the Amendment. President Johnson vetoed the "Reconstruction Act and denounced it as a Bill of Attainder against nine million people at once". The Act was passed over his veto and military rule took over to condition the people to acceptance of the Fourteenth Amendment.

Attempts for judicial review were unsuccessful admittedly (Mississippi v. Johnson, 4 Wall. 475; Georgia v. Stanton, 6 Wall. 50), but it must be

remembered that these decisions clash sharply with the prior decision of Osborn v. Bank of the United States, 9 Wheat. 738, 838-859 and the recent case of Baker v. Carr, 369 U.S. 186. No longer should the Courts refuse to make a determination of these difficult and delicate issues on the ground that the question of the validity of the Fourteenth Amendment is a "political" one. Georgia v. Stanton, 6 Wall. 50 was no more "political" than a host of others the Supreme Court has entertained. e.g. Pennsylvania v. West Virginia, 262 U.S. 553; Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579; Alabama v. Texas, 347 U.S. 272.

In our more enlightened era, an objection that a suit seeks protection of a political right "is little more than a play on words". Nixon v. Herndon, 273 U.S. 536, 540.

Therefore, the ratification of the Fourteenth Amendment was compelled under similar conditions which prevail in our enlightened era, the military might of the United States, and any decision predicated upon the presumed validity of the Fourteenth Amendment should not stand.

Even if it be assumed that the validity of the Fourteenth Amendment cannot be called into question, the Civil Rights Acts passed by Congress to implement the same make no mention of desegregation in the school systems of the States. Furthermore, the Civil Rights Acts are not to be used to centralize power in the central government so as to upset the federal system. In Collins v. Hardyman, 341 U.S. 651, the Supreme Court, speaking of one of the Reconstruction Acts, said:

> *This statutory provision has long been dormant. It was introduced into the federal statutes by the Act of April 20, 1871, entitled, "An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other Purposes". The Act was among the last of the reconstruction legislation to be based on the "conquered province" theory which prevailed in Congress for a period following the Civil War. This statute, without separability provisions, established the civil liability with which we are here concerned as well as other civil liabilities, together with parallel criminal liabilities. It also provided that unlawful combinations and conspiracies named in the Act might be deemed rebellious, and authorized the President to employ the militia to suppress them. The President was also authorized to suspend the privilege of the writ of habeas*

corpus. It prohibited any person from being a federal grand or petit juror in any case arising under the Act unless he took and subscribed an oath in open court "that he has never, directly or indirectly, counselled, advised, or voluntarily aided any such combination or conspiracy". Heavy penalties and liabilities were laid upon any person who, with knowledge of such conspiracies, aided them or failed to do what he could to suppress them.

The Act, popularly known as the Ku Klux Act, was passed by a partisan vote in a highly inflamed atmosphere. It was preceded by spirited debate which pointed out its grave character and susceptibility to abuse, and its defects were soon realized when its execution brought about a severe reaction.

Therefore, this Court has no power to entertain this action to restrain the State officials from interfering with decrees which are predicated upon supposed authority of a void constitutional provision. If the Court determines that jurisdiction exists, it should refuse to grant the relief to the United States of America, since this government has "unclean hands" in that it allowed the Fourteenth Amendment to be ratified by improper means.

The judiciary certainly has the power to declare that the proclamation issued by Secretary of State Seward that the Fourteenth Amendment was ratified was not done in accordance with the procedure as set out in the Constitution. Marbury v. Madison, 1 Cranch 137.

The United States must guarantee to every State a Republican form of Government.

Political expediency which gave rise to the "adoption" of the Fourteenth Amendment in total disregard of the provisions of the Constitution pertaining to amendments and in clear disregard of the Constitutional provisions contained in Article IV, Section 4 of the Constitution which provides that the United States shall guarantee to every State a Republic Form of Government.

The United States, by use of judicial process, and without any authority from Congress, seeks to take over and run many aspects of the lives of the citizens within the State of Alabama. Such might in the hands of the Central Government was never envisioned, nor does it receive any constitutional justification. In his work, Powers of Government, Bernard Schwartz states in Vol. 1, at page 73:

What uncontrollable power in the political departments to enforce the guaranty of republican government can mean in practice is shown by the authority assumed by the Congress over the reconstruction of governments in the southern states after the Civil War. It has already been emphasized that the guaranty contained in Article IV, section 4, is in the form of an obligation by the Federal Government to the people of the states: it is the duty of the former to ensure to the latter that they will live under a republican form of government. If, however, enforcement of the guaranty is left in the absolute discretion of the Congress, there is no legal check to restrain that body from converting the obligation imposed upon them into a source of tremendous power. In writing about the constitutional provision in question in The Federalist, Madison acutely asked "whether it may not become a pretext for alteration in the State governments without the concurrence of the States themselves. The possibility referred to became an actuality at the end of the Civil War.

In Texas v. White, the highest Court construed the Guaranty Clause of Article IV, section 4, as authorizing the Congress to establish and maintain governments in those states which had attempted to secede. But the Congress did not limit itself to ensuring to the people of the southern states the establishment of republican governments responsible to themselves. Instead it assumed complete control over the reconstruction of government in those states. Governments were imposed and retained in power by military force during the entire reconstruction period; these governments the Congress termed republican in form, though they were instituted against the will of most of the citizens of the states concerned.

There may well have been justification for treating the post-bellum South as occupied territory to be ruled by military governments established by the occupying power. There was none for perverting the constitutional form and doing utter violence to the Guaranty Clause.

Federal statutes divide the United States into judicial districts and provide a District Court for each district. 28 U.S.C.A. 1. The Judge who is appointed for such District Court, except in those cases wherein additional judges are provided for, is the only Judge who has jurisdiction to handle cases in his district. In a district having more than one District Judge, of course, the Judges may agree upon the division of business and assignment of cases for trial in the district (28 U.S.C.A. 27), but no where in the statute is there any authority for more than one District Judge to hear any one particular case.

Unquestionably, there is authority for the assignment of District Judges to hold the courts in other districts but the contemplation of the statute (28 U.S.C.

292) is that such assignments are only made whenever any District Judge, by reason of any disability or necessary absence from his district or an accumulation or urgency of business, is unable to perform speedily the work of his district. See Am. Jur., United States Courts, Section 313, p. 944. Our research has turned up no case wherein the District Judge can use the assignment procedure to allow other district judges to sit on the trial of a case. The only provisions of the statute for the composition of a court of more than one judge is the statutory provisions which we contend should be invoked in this case, those provisions being for the impaneling of a three-judge court under Title 28, Sections 2281 and 2284, United States Code.

In conclusion, let it be stated that it is obvious that none of the parties to this action nor is the Court interested in the administration of policy, be it Federal or State or segregation or integration as far as this action is concerned; but we are all interested in the proper application of established principles of law. If this nation is to remain a nation of law and not of men, men who are in a position to interpret or construe the law must necessarily adhere to the long established principles of law unswerved by the passions of the hour. It is this principle that should and will be applied in this case.

It is submitted that this is not a question of the power of the Court, but of the duty of the Court under the facts in existence now and at the time this hearing to show cause takes place. There appears no evidence on the verified petition and the exhibits, and it is believed no evidence will be shown based on fact that could in any way impute to the Governor of this State and/or any of the respondents in this case, the intention to breach the peace or fail to maintain law and order at any of the three schools, - Tuskegee, Mobile or Birmingham. For no such evidence is before the Court on the petition and exhibits, nor is any expected, from any source at the trial on the order to show cause. On the contrary, not only is the Governor of this State (like all the officials) presumed to carry out the law and maintain law and order as a matter of law, but as each man, woman and child who reads knows, and no doubt this Court has judicial knowledge of the fact that

Governor Wallace habitually and repeatedly preached "law and order" and has done and is doing at this very minute this brief is being written - everything to maintain law and order. It is submitted that the Governor himself is symbolic in these trying times of law and order and that the full forces under his direction are available to maintain the peace and law and order at these three schools. It is a matter of public record that as of now, law enforcement officers of the State of Alabama in strength are present at Birmingham, Selma and perhaps other places to render assistance to local authorities in maintaining peace.

Unless on the show cause hearing, specific, clear and convincing evidence is produced (if the Complainant is allowed to produce any evidence) that shows any contemplation on the part of any of these defendants to fail to maintain peace and law and order now and in the future, then the preliminary injunction should not issue, for the allegations in the Petition are now moot and the things complained of are now a part of the history of this State and this Nation.

In conclusion, let it be said that it is not a question of whether this Honorable Court has the power to issue a preliminary injunction, but a stronger question - Does it have the right under the facts and the law as applied to the particular facts of this case?; and further and just as important granting the Court has the power even should this Court decide under the present status of the law that the Court has the right - which is not admitted in this Brief - the next and a more serious question is - Is the issuance of the injunction necessary?, and if it is not necessary, it would be unwise and should not be issued. The United States (Complainant in this case) like any other Complainant, is subordinate to the law and it is respectfully submitted that a careful analysis of each aspect of this situation and the points raised by this Brief requires, and justice requires, that the temporary restraining order be allowed to "die a natural death" and the preliminary injunction be not issued.

Respectfully submitted, on this the 24th day of September, 1963.

JOHN P. KOHN
Attorney for the Defendants.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Memorandum Brief in Opposition to Motion for a Preliminary Injunction upon the Honorable Ben Hardeman, United States Attorney, by handing a copy of the same to him on this the 24th day of September, 1963.

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

UNITED STATES OF AMERICA, Plaintiff, vs. GEORGE C. WALLACE, et al. Defendants.	)	CIVIL ACTION NO. 1976-N

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

I.

The governor of a state has no authority, by "interposition" or otherwise, to obstruct or prevent the execution of the lawful orders of a court of the United States.

Sterling v. Constantine, 287 U.S. 378, 77 L.Ed. 375, 53 S.Ct. 190 ( )

Faubus v. United States, 254 F.2d 797, (C.A. 8, 1958), cert. den. 358 U.S. 829, 3 L.Ed. 2d 68, 79 S.Ct. 49

Bush v. Orleans Parish School Board, 188 F.Supp. 916 (3-judge decision, E.D. La. 1960), stay denied 364 U.S. 500, 5 L.Ed.2d 245, 81 S. Ct. 260, aff'd 365 U.S. 569, 5 L.Ed. 2d 806, 81 S. Ct. 754 (1961)

United States v. George C. Wallace, U.S. District Court, Northern District of Alabama, Civil Action 63-255.

II.

The courts of the United States have statutory authority under the all-writs statute (28 U.S.C. 1651) as well as inherent power to enter such orders as may be necessary to effectuate their lawful

decrees and to prevent interference with, and obstruction to, their implementation.

United States v. Mississippi
7 Race Relations Law Reporter 1105
(C.A. 5, 1962), cert. den. 372 U.S. 916 (1963)

Faubus v. United States, supra

Toledo Scale Co. v. Computing Scale Co., 267 U.S. 399, 67 L.Ed. 719, 43 S. Ct. 458 (1923)

Bullock v. United States, 265 F.2d 683, 691 (C.A. 6, 1959)

Bush v. Orleans Parish School Board, 188 F.Supp. 916 (E.D. La.), aff'd 365 U.S. 569, 5 L.Ed. 2d 806, 81 S.Ct. 754, and sub nom. New Orleans v. Bush, 366 U.S. 12, 6 L.Ed.2d 239, 81 S.Ct. 1091

Bush v. Orleans Parish School Board, 190 F.Supp. 861 (E.D.La.), aff'd 365 U.S. 569, 5 L.Ed.2d 806, 81 S.Ct. 754

Bush v. Orleans Parish School Board, 191 F.Supp. 871 (E.D.La.) aff'd sub. nom. Legislature of Louisiana v. United States, 367 U.S. 908, 6 L.Ed.2d 1249, 7 L.Ed.2d 71, 81 S.Ct. 1917, 82 S.Ct. 26

Bush v. Orleans Parish School Board, 194 F.Supp. 182 (E.D. La.), aff'd 368 U.S. 11, 7 L.Ed.2d 75 and 138, 82 S.Ct. 32 and 1245.

United States v. George C. Wallace, supra

III.

The United States is a proper party to seek an injunction against unlawful interference with or obstruction to the carrying out of the orders of its courts.

United States v. Louisiana, 188 F.Supp. 916 (E.D.La., 1960, stay denied 364 U.S. 500 (1960), aff'd sub nom. Orleans Parish School Board v. Bush, 365 U.S. 569 (1961), 5 L.Ed.2d 806, 81 S.Ct. 754.

Bush v. Orleans Parish School Board, 190 F.Supp. 861 (E.D.La. 1960), aff'd 365 U.S. 569, 5 L.Ed.2d 806, 81 S.Ct. 754

Bush v. Orleans Parish School Board, 191 F.Supp. 871 (E.D.La. 1961), aff'd sub. nom. Legislature of Louisiana v. United States, 367 U.S. 908 (1961), 6 L.Ed.2d 1250, 81 S.Ct. 1925.

United States v. Mississippi, supra

Faubus v. United States, supra

United States v. George C. Wallace, supra

Respectfully submitted,

BEN HARDEMAN
United States Attorney

JOHN DOAR
Attorney - Department of Justice

DEPARTMENT OF JUSTICE

CIVIL RIGHTS DIVISION

Enforcement of Court Desegregation Orders

ALABAMA SECONDARY SCHOOLS - FALL 1963

United States v. Wallace

Files of John Doar

Transcript

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

United States of America vs George C. Wallace, Albert J. Lingo, C. W. Russell, Joe Smelley, Walter L. Allen, Claude Sutton Prier, and T. L. Payne	Civil Action No. 1976-N.

Before: Hon. Frank M. Johnson, Jr.,
Hon. Seybourn H. Lynne,
Hon. Daniel H. Thomas,
Hon. H. H. Grooms, and
Hon. Clarence W. Allgood,
United States District Judges;

At: Montgomery, Alabama, September 24, 1963.

Glynn Henderson,
Official Court
Reporter.

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6 - Executive Order Number Ten, 9/9/63.

7 - Executive Order Number Eleven, 9/9/63.

8 - Executive Order Number Twelve, 9/9/63.

9 - Executive Order Number Thirteen, 9/9/63, 7:09 p.m.

10 - Telegram, 9/10/63.

11 - Second Telegram, 9/10/63.

Defendants' Exhibits

1 - Letter from Governor George C. Wallace to General Alfred Harrison, 9/23/63.