LEXSEE 358 US 1

COOPER ET AL., MEMBERS OF THE BOARD OF DIRECTORS OF THE LITTLE ROCK, ARKANSAS, INDEPENDENT SCHOOL DISTRICT, ET AL. v. AARON ET AL.

No. 1

SUPREME COURT OF THE UNITED STATES

358 U.S. 1; 78 S. Ct. 1401; 3 L. Ed. 2d 19; 1958 U.S. LEXIS 1939; 79 Ohio L. Abs. 462

September 11, 1958, Argued
September 12, 1958, Decided

SUBSEQUENT HISTORY:

Opinion announced September 29, 1958.

PRIOR HISTORY: CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT. +

+ NOTE: The per curiam opinion announced on September 12, 1958, and printed in a footnote, post, p. 5, applies not only to this case but also to No. 1, Misc., August Special Term, 1958, Aaron et al. v. Cooper et al., on application for vacation of order of the United States Court of Appeals for the Eighth Circuit staying issuance of its mandate, for stay of order of the United States District Court for the Eastern District of Arkansas, and for such other orders as petitioners may be entitled to, argued August 28, 1958.

DISPOSITION:

Concurring opinion.

SUMMARY:

The School Board and the Superintendent of Schools of Little Rock, Arkansas, filed the present petition in the United States District Court for the Eastern District of Arkansas seeking a postponement of a plan for desegregation of public schools which had been adopted by the Board and approved by the appropriate federal courts. The petition was rested, in essence, on the ground that because of extreme public hostility, engendered largely by the official attitudes and actions of the governor and the legislature of the state, the maintenance of a sound educational program at the high school affected, with Negro students in attendance, would be impossible. The District Court granted the relief requested by the *Board (163 F. Supp. 13).* Upon appeal the United States Court of Appeals for the Eighth Circuit reversed the *District Court (257 F.2d 33).*

On certiorari, the United States Supreme Court affirmed the judgment of the Court of Appeals. In an opinion announced by Warren, Ch. J., as written by all the justices, the Supreme Court refused to suspend the integration plan of the school board until state laws and efforts to upset and nullify the Court's holding in *Brown v Board of Education, 347 U.S. 483, 98 L. Ed 873, 74 S. Ct. 686, 38 ALR2d 1180* (that the Fourteenth Amendment forbids states to use their governmental powers to bar children on racial grounds from attending public schools) had been further challenged and tested in the courts. It was pointed out that the constitutional right not to be discriminated against in schools maintained by or with the aid of a state cannot be nullified openly and directly by state legislators or state executive or judicial officers nor indirectly by them through evasive schemes for segregation whether attempted ingeniously or ingenuously; and that the ruling of the Brown Case was the supreme law of the land and of binding effect on all state legislators and officials.

SYLLABUS: Under a plan of gradual desegregation of the races in the public schools of Little Rock, Arkansas, adopted by petitioners and approved by the courts below, respondents, Negro children, were ordered admitted to a previously all-white high school at the beginning of the 1957-1958 school year. Due to actions by the Legislature and Governor of the State opposing desegregation, and to threats of mob violence resulting therefrom, respondents were unable to attend the school until troops were sent and maintained there by the Federal Government for their protection; but they attended the school for the remainder of that school year. Finding that these events had resulted in tensions, bedlam, chaos and turmoil in the school, which disrupted the educational process, the District Court, in June 1958, granted petitioners' request that operation of their plan of desegregation be suspended for two and one-half years, and that respondents be sent back to segregated schools. The Court of Appeals re-

versed. *Held*: The judgment of the Court of Appeals is affirmed, and the orders of the District Court enforcing petitioners' plan of desegregation are reinstated, effective immediately. Pp. 4–20.

1. This Court cannot countenance a claim by the Governor and Legislature of a State that there is no duty on state officials to obey federal court orders resting on this Court's considered interpretation of the United States Constitution in *Brown v. Board of Education, 347 U.S. 483, 98 L. Ed. 873, 74 S. Ct. 686.* P. 4.

2. This Court rejects the contention that it should uphold a suspension of the Little Rock School Board's plan to do away with segregated public schools in Little Rock until state laws and efforts to upset and nullify its holding in the *Brown* case have been further challenged and tested in the courts. P. 4.

3. In many locations, obedience to the duty of desegregation will require the immediate general admission of Negro children, otherwise qualified as students for their appropriate classes, at particular schools. P. 7.

4. If, after analysis of the relevant factors (which, of course, excludes hostility to racial desegregation), a District Court concludes that justification exists for not requiring the present nonsegregated admission of all qualified Negro children to public schools, it should scrutinize the program of the school authorities to make sure that they have developed arrangements pointed toward the earliest practicable completion of desegregation, and have taken appropriate steps to put their program into effective operation. P. 7.

5. The petitioners stand in this litigation as the agents of the State, and they cannot assert their good faith as an excuse for delay in implementing the respondents' constitutional rights, when vindication of those rights has been rendered difficult or impossible by the actions of other state officials. Pp. 15–16.

6. The constitutional rights of respondents are not to be sacrificed or yielded to the violence and disorder which have followed upon the actions of the Governor and Legislature, and law and order are not here to be preserved by depriving the Negro children of their constitutional rights. P. 16.

7. The constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the *Brown* case can neither be nullified openly and directly by state legislators or state executives or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted "ingeniously or ingenuously." Pp. 16–17.

8. The interpretation of the Fourteenth Amendment enunciated by this Court in the *Brown* case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." P. 18.

9. No state legislator or executive or judicial officer can war against the Constitution without violating his solemn oath to support it. P. 18.

10. State support of segregated schools through any arrangement, management, funds or property cannot be squared with the command of the Fourteenth Amendment that no State shall deny to any person within its jurisdiction the equal protection of the laws. P. 19.

COUNSEL: Richard C. Butler argued the cause for petitioners. With him on the brief were A. F. House and, by special leave of Court, John H. Haley, pro hac vice.

Thurgood Marshall argued the cause for respondents. With him on the brief were Wiley A. Branton, William Coleman, Jr., Jack Greenberg and Louis H. Pollak.

Solicitor General Rankin, at the invitation of the Court, post, p. 27, argued the cause for the United States, as amicus curiae, urging that the relief sought by respondents should be granted. With him on the brief were Oscar H. Davis, Philip Elman and Ralph S. Spritzer.

JUDGES: Warren, Black, Frankfurter, Douglas, Burton, Clark, Harlan, Brennan, Whittaker

OPINION: EDITOR'S NOTE: MAJORITY OPINION REPORTED AT: *358 U.S. 1, 3 L. Ed. 2d 5, 78 S. Ct. 1401, 1958 U.S. LEXIS 657, 79 Ohio L. Abs. 452.*

CONCURBY:

FRANKFURTER

CONCUR: [*20] [***19] [**1410]

Concurring opinion of MR. JUSTICE FRANKFURTER. *

* [NOTE: This opinion was filed October 6, 1958.]

While unreservedly participating with my brethren in

our joint opinion, I deem it appropriate also to deal individually with the great issue here at stake.

[**1411] By working together, by sharing in a common effort, men of different minds and tempers, even if they do not reach agreement, acquire understanding and thereby tolerance of their differences. This process was under way in Little Rock. The detailed plan formulated by the Little Rock School Board, in the light of local circumstances, had been approved by the United States District Court in Arkansas as satisfying the requirements of this Court's decree in *Brown v. Board of Education, 349 U.S. 294, 99 L. Ed. 1083, 75 S. Ct. 753, 57 Ohio Op. 253, 71 Ohio L. Abs. 584.* The Little Rock School Board had embarked on an educational effort "to obtain public acceptance" of its plan. Thus the process of the community's accommodation to new demands of law upon it, the development of habits of acceptance of the right of colored children to the equal protection of the laws guaranteed by the Constitution, had peacefully and promisingly begun. The condition in Little Rock before this process was forcibly impeded by those in control of the government of Arkansas was thus described by the District Court, and these findings of fact have not been controverted:

"14. Up to this time, no crowds had gathered about Central High School and no acts of violence or threats of violence in connection with the carrying out of the plan had occurred. Nevertheless, out of an abundance of caution, the school authorities had [*21] frequently conferred with the Mayor and Chief of Police of Little Rock about taking appropriate [***20] steps by the Little Rock police to prevent any possible disturbances or acts of violence in connection with the attendance of the 9 colored students at Central High School. The Mayor considered that the Little Rock police force could adequately cope with any incidents which might arise at the opening of school. The Mayor, the Chief of Police, and the school authorities made no request to the Governor or any representative of his for State assistance in maintaining peace and order at Central High School. Neither the Governor nor any other official of the State government consulted with the Little Rock authorities about whether the Little Rock police were prepared to cope with any incidents which might arise at the school, about any need for State assistance in maintaining peace and order, or about stationing the Arkansas National Guard at Central High School." *156 F. Supp. 220, 225.*

All this was disrupted by the introduction of the state militia and by other obstructive measures taken by the State. The illegality of these interferences with the constitutional right of Negro children qualified to enter the Central High School is unaffected by whatever action or non-action the Federal Government had seen fit to take. Nor is it neutralized by the undoubted good faith of the Little Rock School Board in endeavoring to discharge its constitutional duty.

The use of force to further obedience to law is in any event a last resort and one not congenial to the spirit of our Nation. But the tragic aspect of this disruptive tactic was that the power of the State was used not to sustain law but as an instrument for thwarting law. The State of Arkansas is thus responsible for disabling one [*22] of its subordinate agencies, the Little Rock School Board, from peacefully carrying out the Board's and the State's constitutional duty. Accordingly, while Arkansas is not a formal party in these proceedings and a decree cannot go against the State, it is legally and morally before the Court.

We are now asked to hold that the illegal, forcible interference by the State of Arkansas with the continuance of what the Constitution commands, and the consequences in disorder that it entrained, should be recognized as justification for undoing what the School Board [**1412] had formulated, what the District Court in 1955 had directed to be carried out, and what was in process of obedience. No explanation that may be offered in support of such a request can obscure the inescapable meaning that law should bow to force. To yield to such a claim would be to enthrone official lawlessness, and lawlessness if not checked is the precursor of anarchy. On the few tragic occasions in the history of the Nation, North and South, when law was forcibly resisted or systematically evaded, it has signalled the breakdown of constitutional processes of government on which ultimately rest the liberties of all. Violent resistance to law cannot be made a legal reason for its suspension without loosening the fabric of our society. What could this mean but to acknowledge that disorder under the aegis of a State has moral superiority over the law of the Constitution? For those in authority thus to defy the law of the land is profoundly subversive not only of our constitutional system but of the presuppositions of a democratic society. The State "must . . . yield to an authority that is paramount to the State." This language of command to a State is Mr. Justice Holmes', speaking for the Court that comprised Mr. Justice Van Devanter, Mr. Justice McReynolds, [***21] Mr. Justice Brandeis, Mr. Justice Sutherland, [*23] Mr. Justice Butler, and Mr. Justice Stone. *Wisconsin v. Illinois, 281 U.S. 179, 197, 74 L. Ed. 799, 50 S. Ct. 266.*

When defiance of law judicially pronounced was last sought to be justified before this Court, views were expressed which are now especially relevant:

"The historic phrase 'a government of laws and not of men' epitomizes the distinguishing character of our political society. When John Adams put that phrase into

the Massachusetts Declaration of Rights he was not indulging in a rhetorical flourish. He was expressing the aim of those who, with him, framed the Declaration of Independence and founded the Republic. 'A government of laws and not of men' was the rejection in positive terms of rule by fiat, whether by the fiat of governmental or private power. Every act of government may be challenged by an appeal to law, as finally pronounced by this Court. Even this Court has the last say only for a time. Being composed of fallible men, it may err. But revision of its errors must be by orderly process of law. The Court may be asked to reconsider its decisions, and this has been done successfully again and again throughout our history. Or, what this Court has deemed its duty to decide may be changed by legislation, as it often has been, and, on occasion, by constitutional amendment.

"But from their own experience and their deep reading in history, the Founders knew that Law alone saves a society from being rent by internecine strife or ruled by mere brute power however disguised. 'Civilization involves subjection of force to reason, and the agency of this subjection is law.' (Pound, *The Future of Law (1937) 47 Yale L. J. 1, 13.)* The conception of a government by laws dominated the thoughts of those who founded this [*24] Nation and designed its Constitution, although they knew as well as the belittlers of the conception that laws have to be made, interpreted and enforced by men. To that end, they set apart a body of men, who were to be the depositories of law, who by their disciplined training and character and by withdrawal from the usual temptations of private interest may reasonably be expected to be 'as free, impartial, and independent as the lot of humanity will admit.' So strongly were the framers of the Constitution bent on securing a reign of law that they endowed the judicial office with extraordinary [**1413] safeguards and prestige. No one, no matter how exalted his public office or how righteous his private motive, can be judge in his own case. That is what courts are for." *United States v. United Mine Workers, 330 U.S. 258, 307-309, 91 L. Ed. 884, 67 S. Ct. 677* (concurring opinion).

The duty to abstain from resistance to "the supreme Law of the Land," U.S. Const., Art. VI, para. 2, as declared by the organ of our Government for ascertaining it, does not require immediate approval of it nor does it deny the right of dissent. Criticism need not be stilled. Active obstruction or defiance is barred. Our kind of society cannot endure if the controlling authority of the Law as derived from the Constitution is not to be the tribunal specially charged with the duty of ascertaining and declaring what is "the supreme Law of the Land." (See President Andrew Jackson's Message to Congress of January 16, 1833, II Richardson, Messages and Papers of the Presidents (1896 ed.), 610, 623.) Particularly is this so where the declaration of what "the supreme Law" [***22] commands on an underlying moral issue is not the dubious pronouncement of a gravely divided Court but is the unanimous conclusion of a long-matured deliberative process. The Constitution is not the formulation of the [*25] merely personal views of the members of this Court, nor can its authority be reduced to the claim that state officials are its controlling interpreters. Local customs, however hardened by time, are not decreed in heaven. Habits and feelings they engender may be counteracted and moderated. Experience attests that such local habits and feelings will yield, gradually though this be, to law and education. And educational influences are exerted not only by explicit teaching. They vigorously flow from the fruitful exercise of the responsibility of those charged with political official power and from the almost unconsciously transforming actualities of living under law.

The process of ending unconstitutional exclusion of pupils from the common school system — "common" meaning shared alike — solely because of color is no doubt not an easy, overnight task in a few States where a drastic alteration in the ways of communities is involved. Deep emotions have, no doubt, been stirred. They will not be calmed by letting violence loose — violence and defiance employed and encouraged by those upon whom the duty of law observance should have the strongest claim — nor by submitting to it under whatever guise employed. Only the constructive use of time will achieve what an advanced civilization demands and the Constitution confirms.

For carrying out the decision that color alone cannot bar a child from a public school, this Court has recognized the diversity of circumstances in local school situations. But is it a reasonable hope that the necessary endeavors for such adjustment will be furthered, that racial frictions will be ameliorated, by a reversal of the process and interrupting effective measures toward the necessary goal? The progress that has been made in respecting the constitutional rights of the Negro children, according to the graduated plan sanctioned by the two [*26] lower courts, would have to be retraced, perhaps with even greater difficulty because of deference to forcible resistance. It would have to be retraced against the seemingly vindicated feeling of those who actively sought to block that progress. Is there not the strongest reason for concluding that to accede to the Board's request, on the basis of the circumstances that gave rise to it, for a suspension of the Board's non-segregation plan, would be but the beginning of a series of delays calculated to nullify this Court's adamant decisions in the *Brown* case that the Constitution precludes compulsory segregation based on color in state-supported schools?

That the responsibility of those who exercise power in a democratic government [**1414] is not to reflect inflamed public feeling but to help form its understanding, is especially true when they are confronted with a problem like a racially discriminating public school system. This is the lesson to be drawn from the heartening experience in ending enforced racial segregation in the public schools in cities with Negro populations of large proportions. Compliance with decisions of this Court, as the constitutional organ of the supreme Law of the Land, has often, throughout our history, depended on active support by state and local authorities. It presupposes such support. To withhold it, and indeed to use political power to try to paralyze [***23] the supreme Law, precludes the maintenance of our federal system as we have known and cherished it for one hundred and seventy years.

Lincoln's appeal to "the better angels of our nature" failed to avert a fratricidal war. But the compassionate wisdom of Lincoln's First and Second Inaugurals bequeathed to the Union, cemented with blood, a moral heritage which, when drawn upon in times of stress and strife, is sure to find specific ways and means to surmount difficulties that may appear to be insurmountable.

REFERENCES: Return To Full Text Opinion
Race discrimination

Annotation References:

1. Racial discrimination, 94 L ed 1121, 96 L ed 1291, 98 L ed 882, 100 L ed 488. See comment note in *38 ALR2d 1188.*

2. As of historic interest see annotation in *103 ALR 713,* dealing with equivalence of educational facilities extended by public school system to members of white and members of colored race.