IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1958

JOHN AARON, et al.,

Petitioners

V.

WILLIAM G. COOPER, et al., Members of the Board of Directors of the Little Rock, Arkansas, Independent School District, and Virgil T. BLOSSOM, Superintendent of Schools,

Respondents

Misc. No. 1

RESPONSE TO APPLICATION FOR VACATION OF ORDER OF COURT OF APPEALS FOR EIGHTH CIRCUIT STAYING ISSUANCE OF ITS MANDATE, FOR STAY OF ORDER OF DISTRICT COURT OF EASTERN DISTRICT OF ARKANSAS AND FOR SUCH OTHER ORDERS AS PETITIONERS MAY BE ENTITLED TO.

TO THE UNITED STATES SUPREME COURT:

The respondents state that the application of petitioners to vacate the stay granted by the Eighth Circuit Court of Appeals should be denied for the following considerations:

1. As is illustrated by the order entered in the case of Tureaud v. Board of Supervisors, 346 U.S. 881, cited by petitioners, preservation of the status quo is not the object of a stay. Rather, it is a question of preserving appellate jurisdiction and balancing the competing equities of the parties together with the possible injury to the public interest. This court has recognized, by Rule 27, that the judges of the courts of appeals are familiar with the facts in their cases and are in a better position than this court to grant stays in appropriate circumstances. In the case cited by petitioners, Lucy v. Adams, 350 U.S. 1, there existed no substantial question of law, and

at the time no sound reasons for suspending the injunction. Here the respondents' case involves grave and as yet unsettled legal questions not fully reflected in the opinion of the Eighth Circuit Court of Appeals although obviously considered in granting respondents' application for a stay.

2. Judge Harry J. Lemley of the United States District Court for the Eastern and Western Districts of Arkansas, in an exhaustive memorandum opinion, made findings of fact which were accepted by the Eighth Circuit Court of Appeals and not seriously disputed by the petitioners. Judge Lemley found, among other things, that if Central High School were opened on an integrated basis this September, the emotional pitch of the community, resolved into action, would be such as to require troops or their equivalent to maintain order; that the school district is financially unable to hire an adequate number of persons to maintain order and protect the school from property damage; that the board has at all times acted in good faith in the face of overwhelming difficulties; that, with demoralization of students and faculty and destruction of the educational program the existing situation is intolerable; that without a reasonable postponement of the desegregation plan irreparable harm will be inflicted upon the school system and students of both races; that the petitioners will in fact be benefited by the stay because physical danger to them would thereby be removed and because the high school to which they would go is, according to the North Central Association of Colleges and Secondary Schools, equal to Central High School; that the school board has not been lax in its implementation of desegregation in that it does not have a duty to enforce criminal laws or the public peace generally. In connection with the last mentioned finding, it should be noted that the petitioners themselves have instituted no punitive or injunctive proceedings, even though they have a legal right and adequate resources to do so. In brief, from and after the unexpected events of September, 1957, the school board,

according to the findings of the district court, continued to operate the school as best it could under the injunction ordering desegregation but, in the emotional climate existing then and now, was subjected to unfettered harassment, interference and agitation which will lead inexorably toward destruction of the Little Rock school system--once the pride of the community.

3. The respondents submit that the Eighth Circuit Court of Appeals acted within the bounds of their sound discretion in granting the stay. This determination, made on the basis of the complete record and findings of fact as presented, should not be disturbed by this court. As was said in Mills v. Lowndes, 26 F. Supp. 792, 803 (D. Md. 1939): "The right to a stay is not absolute but lies in sound judicial discretion, and it may properly be withheld where it will do the plaintiff relatively little good and the defendant great harm. . . . The issuance of the injunction in this case would be futile for any direct legal benefit to the plaintiff, and it would be very detrimental to elementary school education. . . ." See also Cumming v. Board of Education, 175 U.S. 528, 544-545, where Justice Harlan denied an injunction because "the result would only be to take from white children educational privileges enjoyed by them, without giving colored children additional opportunities for the education furnished in high schools." In this situation, if the petitioners' application is denied then, regardless of result upon final disposition of the case, their high school education will not be interrupted and in fact they will be spared the predictable mental torment and physical danger that would accompany attendance at Central High School in September. On the other hand, if petitioners' application is granted, the school board for the reasons reflected in the findings of the district court will be unable to operate Central High School on an integrated basis under conditions as they now exist in Little Rock. Perhaps the matter of greatest importance will be the irreparable harm done to

the education of 2,000 students at Central High School and more than 21,000 students throughout the Little Rock School District. If this court vacates the stay it would indeed be the equivalent of affirmance of the Eighth Circuit Court of Appeals. The board requested and received from the district court a two and one-half year postponement on the basis of "declining necessity." That is, the situation is now an intolerable one but at the end of the two and one-half year period conditions should be clarified. Various elements entered into this time factor. It is reasonable to presume that by the end of the requested two and one-half year period a national policy will have been established. By then state laws purporting to override the Brown decisions will have been tested in the courts. The present highly emotional atmosphere, which has proven conducive to violence, should have subsided. And perhaps in the period of calm the people can and will find a better understanding of the nature of the problems confronting them and, consequently, the direction in which the solutions lie. Certainly irreparable harm will result if this court vacates the stay.

WHEREFORE, respondents pray that the petitioners' application to vacate the stay granted by the Eighth Circuit Court of Appeals pending the filing in this court of a petition for writ of certiorari be dismissed; and for all other proper relief.

Respectfully Submitted,

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