IN THE

Supreme Court of the United States

AUGUST SPECIAL TERM 1958

[redacted]. No. 1

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,

Petitioners,

—v.—

JOHN AARON, *et al.*,

Respondents.

BRIEF FOR RESPONDENTS

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Preliminary Statement

Briefs for petitioners and respondents being filed simultaneously we have not seen the "Statement of the Case" in petitioners' brief. We assume that such statement will be accurate and adequate. In any event, the Opinion of the Court of Appeals adequately sets forth the facts. We, however, call this Court's attention to one paragraph of the Opinion of the Court of Appeals which states as follows:

> It is not the province of this Court in this proceeding to advise the Board as to the means of implementing integration in the Little Rock Schools. We are directly concerned only with the legality of the order under

review. We do observe, however, that at no time did the Board seek injunctive relief against those who opposed by unlawful acts the lawful integration plan, which action apparently proved successful in the Clinton, Tennessee and Hoxie, Arkansas situations. See *Kasper* v. *Brittain,* 245 F. 2d 92 (6 Cir. 1957), *certiorari denied* 355 U. S. 834, rehearing denied 355 U. S. 886; *Hoxie School District* v. *Brewer* (E. D. Ark.), 137 F. Supp. 364, aff'd *Brewer* v. *Hoxie School District* (8 Cir. 1956), 238 F. 2d 91. The evidence also affords some basis for belief that if more rigid and strict disciplinary methods had been adopted and pursued in dealing with those comparatively few students who were ring leaders in the trouble making, much of the turmoil and strife within Central High School would have been eliminated.

Questions Presented

The questions presented by the Petition for Certiorari are:

(1) Whether a court of equity may postpone the enforcement of the respondents' constitutional rights if the continued enforcement thereof will result in an intolerable situation and great disruption of the educational process to the detriment of the public interest, the schools, and the students including the respondents.

(2) Whether a school district has a duty and obligation, by invoking extraordinary legal processes and otherwise, to quell violence, disorder and organized resistance to desegregation.

Summary of Argument

I

Neither overt public resistance, nor the possibility of it, constitutes sufficient cause to nullify the orders of the federal court directing petitioners to proceed with their desegregation plan. This Court and other courts have consistently held that the preservation of public peace may not be accomplished by interference with rights created by the Federal Constitution.

Applying this familiar rule, this Court held in the *School Segregation Cases,* that delay could not be predicated on opposition to desegregation.

The sustension of this principle is all the more imperative where, as here, the forces at work to frustrate the Constitution and the authority of the federal courts were deliberately set in motion by the Governor of a state whose school system is under mandate to achieve conformity with the Constitution. Here one state agency, the School Board, seeks to be relieved of its constitutional obligation by pleading the *force majeure* brought to bear by another facet of state power. To solve this problem by further delaying the constitutional rights of respondents is unthinkable.

II

Hardship to petitioners is no excuse for abrogating the Rule of Law, but even if it were, petitioners here cannot validly claim it.

Petitioners had at their disposal and still have available to them a legal remedy to prevent interference with the performance of their constitutional duties.

There is no ground for a presumption that the authorities charged with the duty of enforcing the law will refuse or be unable to perform this duty. In fact, the federal government stands ready to perform this duty.

Even if it be claimed that tension will result which will disturb the educational process, this is preferable to the complete breakdown of education which will result from teaching children that courts of law will bow to violence.

Argument

The decision of the Court of Appeals setting aside Judge Lemley's two and one-half years suspension of desegregation was correct and should be sustained. Indeed, the decision is so eminently sound, so clearly in harmony with decisions of this Court and other federal courts, that the questions presented by the Petition for Certiorari could hardly even be characterized as substantial, were it not for two factors:

First, the legal controversy over the obligation of the Little Rock School Board to proceed with the desegregation of Central High School, and other schools it manages, pursuant to the original, and judicially approved, schedule has now become a national test of the vitality of the principles enunciated in *Brown* v. *Board of Education.*

Second, the principal ground urged for overruling the Court of Appeals' decision is, in essence, that unless petitioners' obligation to proceed with desegregation of the Little Rock schools is suspended, ruffians with or without support from state officials will resume their attempts forcibly to block the execution of valid federal court orders. Acquiescence in any such argument would subvert our entire constitutional framework.

In short, this case involves not only vindication of the constitutional rights declared in *Brown,* but indeed the very survival of the Rule of Law. This case affords this Court the opportunity to restate in unmistakable terms both the urgency of proceeding with desegregation and the supremacy of all constitutional rights over bigots—big and small.

I

Overt public resistance including mob protests is not sufficient cause to nullify federal court orders requiring gradual desegregation of public schools.

The Petition for Certiorari herein filed seeks a reversal of the decision of the Court of Appeals for the Eighth Circuit complaining:

> The Circuit Court of Appeals for the Eighth Circuit agreed with the findings of the District Court that the evidence is appalling but that great additional expense, disruption of normal educational procedures, tension and nervous collapse of the school personnel, turmoil, bedlam, and chaos, are not a legal basis for suspension of the plan since this would be an accession to the demands of insurrectionists.

The Court of Appeals defined the issue in the case as: "whether overt public resistance, including mob protest, constitutes sufficient cause to nullify an order of the federal court directing the Board to proceed with its integration plan." There has never been a suggestion that the rule is other than as stated in *Buchanan* v. *Warley,* 245 U. S. 60, 81:

> It is urged that this proposed segregation will promote the public peace by preventing race conflicts. Desirable as this is, and important as is the preserva-

> tion of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal Constitution.

This principle has been reiterated in connection with housing in the City of Birmingham which faced threats of bombing because Negroes had purchased in a zone forbidden to their race, *City of Birmingham* v. *Monk,* 185 F. 2d 859 (5th Cir. 1950), cert. denied 341 U. S. 940; in reversing an order of the United States District Court for the Eastern District of Arkansas which dismissed a writ of habeas corpus submitted by petitioners who had been convicted of murder after a promise of "leading officials" to a lynch mob "that, if the mob would refrain . . . they would execute those found guilty in the form of law . . .," *Moore* v. *Dempsey,* 261 U. S. 86, 88-89; in holding a governor forbidden to close a factory beset by rioters during a strike, *Strutwear Knitting Co.* v. *Olson,* 13 F. Supp. 384 (D. Minn. 1936); in rejecting a claim of the government that an American citizen of Japanese ancestry should have been confined because "community hostility towards the evacuees . . . has not disappeared," *Ex parte Endo,* 323 U. S. 283, 297; and in holding, that notwithstanding a national military emergency the constitutional rights of steel producers could not be abridged by presidential seizure. *Youngstown Sheet & Tube Co.* v. *Sawyer,* 343 U. S. 579.

The imperviousness of the Rule of Law to arguments of this sort is, after all, the underlying foundation of equal justice under law. For if criminal defendants, home owners, manufacturers, and others can be routed from their lawful rights by a transient emergency, then we have returned to a state prior to civil society, when there was the Hobbesian state of "a war of all men against all men."[1]

[1] Hobbes, De Cive I, 12 (1651).

This Court reaffirmed this premise of lawful government in *Brown* v. *Board of Education,* 349 U. S. 294, 300:

> . . . it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.

The federal judiciary (with the exception of Judge Lemley whom the Court of Appeals reversed herein) has uniformly followed this rule. See *Jackson* v. *Rawdon,* 235 F. 2d 93, 96 (5th Cir., 1956), cert. denied 352 U. S. 925; *School Board of Charlottesville, Va.* v. *Allen,* 240 F. 2d 59, 64 (4th Cir., 1956), cert. denied 353 U. S. 910; *Orleans Parish School Board* v. *Bush,* 242 F. 2d 156, 163-164 (5th Cir., 1957), cert. denied 354 U. S. 921; *Allen* v. *County School Board of Prince Edward County,* 249 F. 2d 462, 465 (4th Cir., 1957); *Mitchell* v. *Pollack,* 1 Race Rel. L. Rep. 1038 (D. C. Ky., 1956).[2]

Therefore, the court below acted in consonance with all lawful precedent and the best traditions of constitutional government when it said:

> The issue plainly comes down to the question of whether overt public resistance, including mob protest, constitutes sufficient cause to nullify an order of the federal court directing the Board to proceed with its integration plan. *We say the time has not yet come in these United States when an order of a Federal Court must be whittled away, watered down, or shamefully withdrawn in the face of violent and unlawful acts of individual citizens in opposition thereto.*

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[2] A like rule was long ago recognized at English common law. *Beatty* v. *Gillbanks,* L. R. 9 Q. B. Div. 314, 51 L. J. Mag. Cas. N. S., 117, 47 L. T. N. S. 194, 31 Week Rep. 275, 15 Cox, C. C. 138, 46 J. P. 789.

II

Any suspension of petitioners' original plan of gradual desegregation would subvert rather than preserve the fundamental objective of public education.

Throughout, petitioners' argument is that education at Central High School has been seriously impaired by lawless acts and the only solution is to revert to segregated education as terms for peace with the lawless elements. This plea is predicated on the argument that unless this is done the total educational system at Central High School will be seriously impaired or destroyed.

In the first *Brown* opinion this Court, however, made the following declaration as to the position of education in our modern day life, 347 U. S. 483, 493:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.

Applying these principles to this case the Solicitor General effectively disposed of the School Board's contention in his argument before the Court on August 28:

> But when you talk about a deterioration of the educational process in this school, it seems to me that one

of the things that all educators, certainly teachers, would recognize, is that part of the educational process is the attitude and conduct of the teachers, the personnel of the school and the children themselves, and part of their responsibility is to get across to these teachers and for the teachers to get across to the children and those that are in the educational process, the responsibility to enforce the laws; that we do live in a country where we seek to maintain law and order for the benefit of all the people, that the Constitution and each of the rights that every citizen has under it, is precious to every one of us, not just the rights that I like and want for me, or that you like and want for you, but all of them for every man and woman.

And that if you teach these children in Little Rock or any other place in the country that as soon as you get some force and violence, the courts of law in this country are going to bow to it, they have no power to deal with it, they will give way to it, will change everything to accommodate that, I think that you destroy the whole educational process then and there. Transcript of Argument, Aug. 28, 1958, p. 107.

This Court recognized as much in *West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624, in which Justice Jackson wrote, at p. 637:

The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free

> mind at its source and teach youth to discount important principles of our government as mere platitudes.

Indeed, the Supreme Court of Arkansas has embraced the same principle in a case in which it upheld the right of a school board to expel a student who had disobeyed school regulations. While the board was upheld in its enforcement of the particular regulation (concerning the wearing of cosmetics) as reasonable, the language of the court may properly be quoted here: "It will be remembered also that respect for constituted authority, and obedience thereto, is an essential lesson to qualify one for the duties of citizenship, and that the schoolroom is an appropriate place to teach that lesson." *Pugsley* v. *Sellmeyer*, 158 Ark. 247, 253, 250 S. W. 538, 539 (1923).[3]

Petitioners have a duty to accord respondents the equal protection of law and should have sought injunctions against the unlawful interferences with their performance thereof.

Petitioners, in the second of the questions presented in their application for a writ of certiorari, ask whether they have "a duty and obligation, by invoking extraordinary legal processes and otherwise, to quell violence, disorder and organized resistance to desegregation."

Assuming the question is properly before the Court, it cannot be gainsaid that petitioners could have invoked

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[3] See Cremin, Lawrence A. and Borrowman, Merle L., Public Schools In Our Democracy 88-102, 204-216 (1956); Grieder, Calvin and Rosenstengel, William E., Public School Administration 89-98 (1954); Griffiths, Daniel E., Human Relations in School Administration 14-20, 152-161, 240, 307-309 (1956); Koopman, G. Robert; Miel, Alice; and Misner, Paul J., Democracy in School Administration 225-276 (1943); Newlon, Jessie H., Education for Democracy in Our Time 168-169 (1939); Richards, Edward A., Ed., Mid-century White House Conference on Children and Youth, Washington, D. C. 1950, *passim* (1951).

"extraordinary legal processes" to restrain interference with the performance of their duty to accord respondents nonsegregated public education. See *Thomason* v. *Cooper,* 254 F. 2d 808 (8th Cir., 1958); *Faubus* v. *United States,* 254 F. 2d 797 (8th Cir., 1958), pending on petition for a writ of certiorari, No. 212, Oct. Term, 1958.

In addition, petitioners certainly had and have a duty to preserve discipline and order in and about the premises. And where, as here, third parties seek to upset discipline and order in attempts "to deprive (among others) Negro pupils of their constitutional rights, then it would seem proper for [the School Board], so closely related as they were to victims in this case, to bring a restraining suit. They were officials of a great state and an omission by them would, in effect, be a deprivation of rights under the color of law." *Hoxie School Dist. No. 46 of Lawrence Co., Ark.* v. *Brewer,* 137 F. Supp. 364, 367 (E. D. Ark. 1956), *affirmed Brewer* v. *Hoxie School Dist. No. 46,* 238 F. 2d 91, 100 (8th Cir., 1956); *Kasper* v. *Brittain,* 245 F. 2d 92, 94 (6th Cir., 1957).

CONCLUSION

To prevent further disorder, petitioners have urged this Court to approve Judge Lemley's order, the purpose of which is not to repress the lawless violence, but to give the sanction of law to the motives which inspired it. The answer can only be: not "while this Court sits."

Wherefore, respondents respectfully urge this Court to affirm the judgment of the Court of Appeals, reinstate the prior order of Judge Davies and order its mandate to issue forthwith.

Respectfully submitted,

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