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In the

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 15,927

NATHANIEL JACKSON, a minor, by his Father and Next Friend, W. D. JACKSON, *et al.*,

Appellants,

v.

O. C. RAWDON, as President of the Board of Trustees, MANSFIELD INDEPENDENT SCHOOL DISTRICT, *et al.*,

Appellees.

Appeal from the United States District Court for the Northern District of Texas

APPELLANTS' BRIEF

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APPELLANTS' BRIEF

The appellants, all of whom are Negro minors, filed this action on the 7th day of October, 1955, in the United States District Court for the Northern District of Texas, at Fort Worth, by their respective parents and next friends, to temporarily and permanently enjoin the appellees, who are public school officials, from continuing to discriminate against appellants, and other Negro minors of public school age, who are similarly situated because of their

race and color, by providing public education for them on a segregated basis. (R. 1.)

In their prayer, they pray for a declaratory judgment that certain statutes and constitutional provisions of Texas be declared unconstitutional under the Fourteenth Amendment of the Constitution of the United States in so far as they may require or sanction the unlawful practice of racial segregation in the public schools of the state. For this purpose a statutory three-judge court was requested under appropriate sections of 28 United States Code. (R. 13.)

Appellees filed responsive pleadings on the 2nd day of November, 1955. They rely principally upon their Motion to Dismiss on the Merits, contending that while the Supreme Court of the United States has declared that racial segregation in public education is unlawful[1] it did not order immediate desegregation. (R. 17, 18.)

In further support of this contention, appellees refer to the May 31, 1955, decision of the Supreme Court in the *Brown* case,[2] and quote portions of this decree. (R. 19-21.)

But, they contend, they are caught in a dilemma between obedience to the constitutional principles laid down in the *Brown* case, supra, and the laws of Texas which require racial segregation in the public schools of the state, "* * *

[1] *Brown, et al. v. Board of Education, et al., 347 U. S. 483, 74 S. Ct. 686 (1954).*

[2] *Ibid, 349 U. S. 294, 75 S. Ct. 753 (1955).*

knowing that the above quoted statute had to be obeyed until same was declared unconstitutional * * *." (R. 21.)

Being aware of this, appellees said, they "entered into the letter and the spirit of the decision of the Supreme Court of May 31, 1955," by meeting and adopting a resolution[3] to continue the practice of racial segregation in the schools under their control during the 1955-56 school term. (R. 22.) Appellees rely upon this, and other alleged acts of good faith to stay the hand of equity and deny plaintiffs relief.

Subject to their motion to dismiss appellants' complaint on the merits, appellees filed their answer in which, consistent with their motion to dismiss, they admit all material allegations in appellants' complaint. (R. 27.)

The cause was heard by the trial court without a jury on the 7th day of November, 1955, on appellants' motion for temporary injunction and appellees' motion to dismiss on the merits, and the trial court, having heard and considered the pleadings, evidence and argument of counsel then and there rendered judgment denying appellants any relief and dismissed the cause without prejudice to appellants. (R. 139.) It is from this judgment entered on the 23rd day of November, 1955, that this appeal is taken.

[3]After a lengthy discussion and much consideration as to the problems that would be encountered at this time due to such a short notice in making the change from a dual school system to a single school system, Ira Gibson made a motion that a further study be made by the Board and administration of the school in regard to the request of the petitioners and that segregation be continued throughout the entire system during the 1955-56 school term.

SPECIFICATION OF ERRORS RELIED UPON

1. The Trial Court Erred in Dismissing the Cause on Its Merits.

2. The Trial Court Erred in Concluding that as a Matter of Law the School Board is Making a Good Faith Effort Towards Integration.

ARGUMENT AND AUTHORITIES

1. THE TRIAL COURT ERRED IN DISMISSING THE CAUSE ON ITS MERITS.

In the *Brown* case, supra, the Supreme Court of the United States specifically directed in its May 31, 1955, decree that during the period of transition, district courts in which these cases rest, will retain jurisdiction.

The trial court apparently was persuaded that it was faced with the single alternative of issuing an on the spot injunction or dismissing the cause on its merits.[4] Decisions on the question do not support this position.

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[4]It is impossible, however, simply to shut our eyes to the instant need for care and justice in effectuating integration. The directions of the United States Supreme Court allow time for achieving this end. While this does not mean that a long or unreasonable time shall expire before a plan is developed and put into use, it does not necessitate the heedless and hasty use of injunction which once issued must be enforced by officers of this Court, regardless of consequences to the students, the school authorities and the public. The school board has shown that it is making a good faith effort towards integration, and it should have a reasonable length of time to solve its problems and end segregation in the Mansfield Independent School District. At this time the suit is precipitate and without equitable jurisdiction. (R. 137.)

In the now widely heralded segregation cases, the Supreme Court said very clearly that:

> "While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start towards full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date."

In this case, the school board has adopted a resolution not to desegregate during the school year 1955-56 (R. 22, 104), and has shown by the testimony of three of its officers, R. L. Huffman, Superintendent of Schools,[5] Ira Gib-

---

[5]"Q. Yes, sir. What, Mr. Huffman, has your board done by way of official action with respect to the problem of segregation in your schools since the 12th day of October, 1955?

"A. Officially, it has done nothing. (R. 64.)

"Q. * * * if it had been your understanding that it was the desire of the negro people to send their children to the public school in Mansfield, would you have abided that desire?

"A. Not at that time. (R. 73.)

"Q. What do you *hope* to accomplish in connection with the determination of this problem, Mr. Huffman?

"A. We *hope* to work out some means whereby that these things can be handled in due process of time. (R. 83.)

"Q. It is an educational program?

"A. An educational process, it must be entered upon and brought to the enlightenment of the people there involved.

"Q. Yes, sir. How long do you think it is going to take you to complete this education?

"A. That I wouldn't know. (R. 93.)

"Q. But right now your board is not willing?

"A. That is right." (R. 94.)

son, Secretary of the Board[6] and O. M. Wilshire, a Board Member,[7] that it has no plans for desegregation.

Under those facts, even granting that the Board has all good intentions, it has not brought itself within the reaches of the protections of the "prompt and reasonable start" requirements of the Supreme Court, such as to entitle it to the broad graces of equity.

Willis v. Walker, 136 F. Supp. 181;
Clemons v. Board of Education, 228 F. 2d 853.

In the *Willis* case, supra, where the local school officials contended that they were impeded by overcrowding and wanted to complete a building program before entering

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[6]"Q. * * * Now, with all of this in mind, what, specifically, has your board done to date towards complying with the Court's decision?
"A. We haven't done anything.
"Q. You haven't done anything?
"A. Specific.
"Q. Whatever has been done has been done by your board members as individuals, the board has itself not taken any formal action on this matter?
"A. No. (R. 98, 99.)
"Q. Yes, sir. Has your board made any decision at all what it is going to do about the '56-'57 year?
"A. No.
"Q. You don't have any plan for that one?
"A. We are working on the present right at the present, we have had—
"Q. I mean, you don't have any plan beyond what you have already—
"A. No. (R. 114.)
"Q. So, at this moment you don't have any notion when you might begin to desegregate?
"A. I couldn't say, no, sir, I couldn't say." (R. 115.)

[7]"Q. What plan does your board have for conforming to the mandate of those two decisions?
"A. I believe if we were given sufficient time we could work the problem out.
"Q. At the present time you have no plan?
"A. No, sir." (R. 119.)

upon a proposed plan of desegregation, the United States District Court for the Western District of Kentucky said:

> "These plans are laudable and it is hoped they will eventually be carried out. It must be admitted, however, that such plans are vague and indefinite and depend for their ultimate success upon so many varied elements that they cannot be considered as lawful grounds for delay of the mandate laid down by the Supreme Court. The Court does not question the good faith of the defendants, but GOOD FAITH ALONE IS NOT THE TEST. There must be 'compliance at the earliest practicable date'."

And the Court in the *Willis* case fixed a definite date for the admission of the Negro children involved to the schools on a non-segregated basis.

In the *Clemons* case, supra, the district court found certain discriminations based on race, among them, that the school officials had gerrymandered the school district to set up separate parts, designed to embrace practically the entire colored population of the city in one school population area.

The district court denied relief to the petitioners upon the ground that "it would seriously disrupt the orderly procedure and administration of Washington and Webster Schools if an injunction were granted in the case."

This was reversed by the United States Court of Appeals for the Sixth Circuit, and remanded to the district court, "* * * with instructions to restate its conclusions of law in accordance with the majority opinion and to issue a permanent injunction as prayed for in the complaint * * *."

In the instant case, it is admitted that all Negro children of high school age now 12 in number are transferred out of their resident school district to attend the public schools of the City of Fort Worth, while more than one hundred white high school children are brought into Mansfield to attend its public high school.[8]

In the *Clemons* case, the appeals court said that where the district court had found gerrymandering as a subterfuge to continue segregation, the rights of the Negro children involved had been invaded, and they were entitled to injunctive relief. Judging by the same standards, it seems that the appellants in this case were entitled to relief and that the Court erred in dismissing their complaint.

2. THE TRIAL COURT ERRED IN CONCLUDING THAT AS A MATTER OF LAW THE SCHOOL BOARD IS MAKING A GOOD FAITH EFFORT TOWARDS INTEGRATION.

The trial court found that the school board in this case has shown that it is making a good faith effort towards integration * * *." (R. 137.)

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[8]"Q. Yes, sir. How many negro children, or do you know, Mr. Huffman, are transferred from your school district to Fort Worth?

"A. I believe it is approximately twelve.

"Q. Approximately twelve. And those twelve children are spread over the four high school grades?

"A. That is right. (R. 65.)

"Q. Yes, sir. And all in all, you receive some hundred-odd children from districts outside your school district?

"A. Receive a hundred or more, yes, sir, we receive more than a hundred.

"Q. And they are white children?

"A. That is right." (R. 90.)

The basis of that finding is that this board, "composed primarily of farmers, agents of the State of Texas (whose segregation laws were not voided by the State Supreme Court until the opinion of October 12, and mandate issued October 28, 1955, after the opening of school on September 2, 1955), struggling with breaking the tradition of generations; opening their meetings with prayer for solution; studying articles in magazines and papers; holding numerous meetings; passing resolutions and appointing a committee to work on a plan for integration—making a start towards 'obeying the law' which their abilities dictate." (R. 135.)

This finding is vulnerable to attack on two grounds: (1) it gives implied sanction, if not complete approval to appellees contention that in spite of the May 17, 1954 ruling of the Supreme Court of the United States, that state enforced racial segregation in the public schools of this nation is unconstitutional, and the May 31, 1955, decision that all provisions of federal, state, or local laws requiring or permitting such discrimination must yield to this constitutional principle, that the segregation laws of Texas must be "obeyed until the same was declared unconstitutional * * *" (R. 21), and (2) it gives undue credence and significance to the ultimate purpose and effect of the acts of the school board in "opening their meetings with prayer for solution; studying articles in magazines and papers; holding numerous meetings; passing resolutions and ap-

pointing a committee to work on a plan for integration * * * *."

On the first point of vulnerability, that point was disposed of by the Supreme Court of Texas in *McKinney, et al. v. Blankenship, et al., 282 S. W. 2d 691*, when the court said:

> "At the threshold of our consideration of the issues in this case we are met with the argument that since the constitution and statutory provisions requiring segregation in the Texas schools were not before the Supreme Court in the Brown case they were not condemned and we should hold them valid and enforceable. That proposition is so utterly without merit that we overrule it without further discussion, except to say that Section 2 of Article VII (sic) of the Constitution of the United States declares: 'This Constitution and the laws of the United States which shall be made in pursuance thereof, * * * shall be the supreme law of the land; and the judges in every state shall be bound thereby anything in the Constitutions or laws of any state to the contrary notwithstanding'."

As to the second point, the record reveals that the school board opened some of its meetings with prayer,[9] but it does not give the substance of the prayer.

The record also shows that a petition was received from T. M. Moody and others wherein request was made of the

[9] "Q. Will you read into the record the minutes of the board of trustees?

"A. July 26, 1955, Mansfield, Texas. Prayer was offered by J. R. Lewis. (R. 104.)

"August 22, 1955, Mansfield, Texas. * * * Meeting was called to order by the president and prayer was offered by Horace Howard. (R. 107.)

"September 27, 1955, Mansfield, Texas. * * * Prayer was offered by Horace Howard." (R. 108.)

school board to take immediate steps to end segregation in the Mansfield Public Schools. (R. 22.) Following receipt of the petition, the school board met on July 26, 1955, and passed a resolution to continue to operate the schools on a segregated basis during the school term 1955-56, and appointed a committee, "to make further study in regard to segregation problems." (R. 22.) It was this committee to which the trial court referred when it found that "numerous meetings" had been held. This is a wholly erroneous finding. There is not one scintilla of evidence in the record to support it. Quite to the contrary, R. L. Huffman, the Superintendent, testified that the committee had held no meetings[10]; Ira Gibson, Secretary of the School Board gave similar testimony,[11] and O. M. Wilshire, a Board Member,

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[10]"Q. How many times has your committee met?

"A. The committee has met at random, I don't know how many times. Then, I said no official meetings, though, within the building, other than the regular board meetings.

"Q. So, your committee, as such, has not met, is that true?

"A. Not as an individual committee at the regular meeting." (R. 60.)

[11]"Q. You are a member of that committee?

"A. I am.

"Q. Do you recall, sir, when that committee was appointed?

"A. I believe the records, I believe it was July, I don't recall the date.

"Q. Yes, sir. Since the committee has been appointed how many times has it met?

"A. Officially we have met at each meeting, and of course, in a small town you probably meet two or three times a day, if you happen to meet on the street, and working on a problem like this, a meeting can be held most any time; of course, I wouldn't say they were official, but they were meetings.

"Q. Yes, sir. But officially, how many meetings have you held?

"A. Well, each board meeting night.

"Q. In other words, you just met along with the board?

"A. That is right.

"Q. But, as a special committee, you have not met?

"A. That is right, not officially." (R. 96.)

also testified that the committee had not held any meetings.[12] These three men were the sole members of the Committee. (R. 22.)

The trial court also saw the school board "passing resolutions" as part of its good faith efforts directed to "obeying the law." (R. 135.)

The record shows that during the period in question the school board did pass certain resolutions. On July 26, 1955, it passed a resolution to the effect, "that segregation be continued throughout the entire school system during the 1955-56 school term,[13] and another on the same day to, "put a bus on for colored students to travel from Mansfield to Fort Worth for high school students." This action was taken by the school board after the final ruling of the Supreme Court of the United States on May 31, 1955, and after a substantial group of Negro citizens in the community had petitioned the board "to take immediate steps

[12]"Q. It was your problem. All right, sir, how many times has your board (committee) met?
"A. Officially?
"Q. Yes, sir.
"A. It has not met officially.
"Q. It has not met at all?
"A. No sir." (R. 117.)

[13]"A petition received from T. M. Moody and others wherein request was made to take immediate steps to end segregation in the Mansfield public school was presented to the board.
"After lengthy discussion and much consideration as to the problems that would be encountered at this time due to such a short notice in making the change from a dual school system to a single school system, Ira Gibson made motion that further study be made by the board and administration of the school in regard to the request of the petition and that segregation be continued throughout the entire school session during the 1955-56 school term." (R. 104.)

to end segregation in the Mansfield Public Schools." (R. 104.)

In the same visionary vein of reasoning, the trial court saw the school board "appointing a committee to work on a plan of integration." (R. 135.)

The record does not support this finding.

The minutes of the board meeting of July 26, 1955, as read into the record at page 105, reveal that:

> "A committee was appointed by President Rawdon, consisting of Superintendent R. L. Huffman, O. M. Wilshire and Ira Gibson to make further study in regard to segregation problems.
>
> "Motion made by O. M. Wilshire and seconded by Hubert Beard to put a bus on for colored students from Mansfield to Fort Worth for high school students, this bus to be operated only in case such is deemed justifiable, after the survey had been made, and this to be determined by eligible students that are available to ride buses. Motion carried."

The president of the board did not make clear the purpose for which the committee was appointed. The resolution that followed immediately after the appointment throws some light on that question. But the purpose of the committee can best be determined by an examination of what it did.

When examined on this point, Superintendent Huffman testified that the committee visited the homes of Negroes to determine the number of high school students in the

community and whether they were willing to ride the bus to Fort Worth to attend high school.[14]

When examined on the same question, the board secretary Ira Gibson[15] and board member O. M. Wilshire,[16] gave substantially the same testimony.

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[14]"Q. Yes, sir. All right, you said in your motion that you also attempted to do the best possible thing under the circumstances. What did you decide was the best possible thing?

"A. To grant their request to put on a bus.

"Q. To grant their request to put on a bus. All right sir, you say a little further along in your motion that you discussed this matter with the negro children. When you discussed it with them, Mr. Huffman, what did you say to them?

"A. This was discussed in the presence of their parents, one or the other of their parents, or guardians.

"Q. Yes, sir.

"A. And the question was to find out if that was their desire.

"Q. In other words, you went to find whether or not they wanted to continue to go to a segregated school in Fort Worth?

"A. That is right.

"Q. That is what you did?

"A. And if they wanted to ride the bus, put it on.

"Q. Yes, sir. Which would mean they would continue to go to a segregated school. All right, sir. In your opinion that was the most equitable thing to do?

"A. Yes, sir, that is right." (R. 58.)

[15]"Q. Yes, sir, yes, sir. Now, Mr. Gibson, I believe you heard Mr. Huffman testify here that a special committee of the Mansfield Schools had been sent out to study the problem of segregation. Do you agree with him on that?

"A. That is right.

"Q. And were you one of the members of that committee?

"A. No, I was not. (R. 95.)

"Q. You were not a member of that committee?

"A. No, I was not a member of the group that went out that evening.

"Q. No.

"A. Wait a minute. Are you talking about (the committee) that went out to talk to the people, or that committee to study segregation?

"Q. The committee to study segregation.

"A. That is right, I am."

[16]"Q. * * * Mr. Wilshire, were you one of the people, one of the board members and members of this segregation committee who went out and talked with some of the negro parents?

"A. I was.

(Footnote 16 continued on p. 15.)

The trial court found further that a committee of the school board has "conferred with these plaintiffs in the presence of plaintiffs' parents and fulfilled the request made by plaintiffs with their attorney in August, 1955, for certain administrative steps as a solution for this period of transition, the school year 1955-56. These administrative steps consisted of making arrangements for these students to attend the I. M. Terrell School in the City of Fort Worth; * * *."

The clear inference in this finding is that the "request made by plaintiffs with their attorney in August, 1955," was made in August, 1955. But that is not the case and the record clearly reveals this fact. (R. 69-71.)

(Footnote 16 continued from p. 14.)

"Q. All right, sir, when you went out to see them what did you say?
"A. We asked them if they wanted to enroll in school.
"Q. Sir?
"A. We asked them if they were going to school.
"Q. Where?
"A. The students?
"Q. Yes, sir.
"A. Anywhere.
"Q. What else did you ask them?
"A. If they would be willing to ride the bus, if that is what they wanted.
"Q. Sir?
"A. If that is what they wanted.
"Q. If they would be willing to ride the bus?
"A. Yes, sir.
"Q. What bus are you talking about?
"A. The one going to Fort Worth.
"Q. In other words, you were asking them if they were willing to come to school in Fort Worth?
"A. Yes, sir.
"Q. What else did you ask them?
"A. That is practically all." (R. 118.)

The record shows that the request for bus transportation was made in April, 1955, and prior to the May 31, 1955, ruling of the Supreme Court.

After the final decree of the Supreme Court appellants filed a petition with the school board asking that "immediate steps" be taken to end segregation in the Mansfield Public Schools (R. 104); that on August 10, 1955, appellants wrote a letter to the board,[17] to "advise the school board that their opinion with reference to the school policy is clearly expressed in the petition filed with the board.

In Mr. Huffman's reply to Mr. Davis, dated August 15, 1955, he refers to an earlier letter "in April" by which a conference was sought,[18] and to a meeting in which the

[17]"August 10, 1955
Mr. R. L. Huffman, Superintendent of Schools
Mansfield, Texas

Dear Mr. Huffman: Patrons in the Mansfield School District with whom I held conferences on Monday and Tuesday and then again today have requested me to advise the school board that their opinion with reference to the school policy is clearly expressed in the petition filed with your office, and they request the board to comply with the law of the land, beginning in September, 1955. Please advise me immediately the position of the Board on this matter.

Yours very truly,
L. Clifford Davis" (R. 69-70.)

[18]"August 15, 1955
Mr. L. Clifford Davis

Dear Mr. Davis: In regard to your letter of August 10, 1955, may I call your attention to an earlier letter in April wherein you stated that patrons of the Mansfield School District had certain grievances that you wished to discuss with this office. A meeting was arranged, and you and a party of three met with me and made a certain—and made certain requests, one of which was in regard to a school owned and operated bus to transport colored high school students to Fort Worth. You were told that this matter would be presented to the school board for their action. The board did act upon it and agreed to institute a bus if such was justifiable, and such arrangements could be made through the County Superintendent's office.

Approval for such a bus route was promised through the County Superintendent's office. At least one of the patents (sic), guardians, or
(Footnote 18 continued on p. 17.)

request for a bus "to transport colored high school students to Fort Worth" was made. He contends further that since arrangements have been made to transport the Negro children to Fort Worth, and "since the laws of our state set up a dual school system, one for negroes and one for whites, and since we have no notice of any change in such state laws," his board will continue to operate the schools on a segregated basis for an indefinite period of time.

It is the position of appellants that all of this is incongruous with the findings of the trial court on this question.

The findings of the trial court are clearly erroneous, and the judgment of the court based on those "clearly erroneous" findings should be reversed.

Finally, appellants respectfully suggest to the Court that the testimony of the three public school officials who testified in this case clearly reveals an implicit undercurrent of opposition to integration in the public schools of Mansfield based on public sentiment in the community.

(Footnote 18 continued from p. 16.)

some adult member of the family of every colored high school student in Mansfield High School District has been contacted by board members. The desires of each of the above persons were obtained in regard to such a bus. After this information was received and found to be in favor of such a bus route arrangements have been made to start the bus as requested this September. Since arrangements have been made to grant the patrons' request, and at their more recent desires, that the bus be operated, and since the laws of our state set up a dual school system, one for negroes and one for whites, and since we have had no notice of any change in such state laws, my board feels that until these and other obstacles have been worked out the board passed a resolution to continue with the dual school system for the school term 1955-56, until further study—until further study of the problem can be made, the board feels that in the future after enough time has elapsed to work out some of the complications which arise in changing from a dual to a single school system, such request can be granted.

Sincerely, R. L. Huffman." (R. 70-72.)

The trial court made no findings relative to this testimony.

The Superintendent of Schools testified that he was faced with certain problems in approaching a plan of integration. (R. 54.) When questioned further along those lines, he testified as follows:

> "Q. * * * Now, what conditions would you have to bring about in order to be able to carry out the Supreme Court's mandate?
>
> "A. That would be hard to answer in a concise statement due to the fact that we have been in the twofold system so long in Texas that we undo something in sixty days, or thereabout, that had been running over a hundred years, and we just didn't have time to enter into the many details that would have had to be worked out in order to sell such a program in the local community.
>
> "Q. Yes, sir. Now, the many details is what I want to find out. What are some of those details? (R. 55.)
>
> "A. Well, it would be the breaking down of the old traditions that had been established, it would be getting two different types of people ready for something new, which the board deems will take time.
>
> "Q. It would be the breaking down of old traditions and getting the people to accept the change?
>
> "A. That is right.
>
> "Q. Is that right?
>
> "A. Getting both sides of the question is a position to accept.
>
> "Q. Yes, sir. So that was the barrier that you had, it was the thing that kept you from going ahead, is that correct?
>
> "A. That is one of the main barriers.

"Q. All right, sir, did you have any others?

"A. Well, not other than just the fact that we had details to work out in placing these students in classes where they have not been, with the whites and the colored, and this could not be done, we thought, just overnight." (R. 56.)

The Secretary of the School Board, Ira Gibson, testified that they were "trying to get the schools desegregated with a minimum of hard feelings, or a minimum of friction." (R. 97.)

In further testimony, he said:

"Q. You don't want to hurt anybody's feelings?

"A. That is exactly right, we don't feel it would be fair to either the colored or the white students if the colored students didn't want to come and the white students weren't any more anxious to have them than they were to come there.

"Q. in other words, it is your position that so long as the majority of the white children do not want any of the negro children to come to the Mansfield High School that you ought to keep them separated, is that right?

"A. I wouldn't say a majority, or any particular figure, but I think there should be some time elapse where every one has a chance to think it over and try to work it out. I feel we haven't had time for the people of the community to become accustomed to the idea. We are working on that but it isn't easy." (R. 97, 98.)

In relation to the same question, O. M. Wilshire, a board member, testified:

"Q. All right, sir, how much study have you given to the question?

"A. A whole lot.

"Q. Of segregation?

"A. That is right.

"Q. Have you reached any conclusion with respect to segregation?

"A. No, sir.

"Q. You have reached no conclusions?

"A. No, sir.

"Q. Have you run into any problems?

"A. We have.

"Q. What are your problems?

"A. Dissatisfaction among the community.

"Q. * * * When you say, 'dissatisfaction among the community,' what is the community dissatisfied about?

"A. Well, they are not satisfied with segregation and are not ready to enter into it right at the present time.

"Q. They are not satisfied with desegregation and they are not ready to enter into it at this time?

"A. That is right." (R. 117.)

It is clearly revealed by the testimony in the Record that the principal barrier to affirmative action by the school board was community disagreement with the concept of racially desegregated public schools. The testimony in the Record does not reveal one administrative problem encountered other than community disagreement on integration. Adverse community sentiment is not a valid ground

for failure to comply with the mandate of the Supreme Court with respect to racial segregation in our public schools.

CONCLUSION

WHEREFORE, appellants pray that the judgment below be reversed and the case remanded to the trial court with instructions to enter an order requiring the appellees to admit these Negro appellants to the Mansfield High School at the next regular admissions period.

Respectfully submitted,

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Certificate of Service

I do hereby certify that I, L. Clifford Davis, Attorney for Appellants herein, have this the 3rd day of May, 1956, placed two copies of this brief in the United States Mail, postage paid, addressed to Honorable J. A. Gooch of Cantey, Hanger, Johnson, Scarborough & Gooch, Attorneys for Appellees, 1500 Sinclair Building, Fort Worth 2, Texas.

L. Clifford Davis

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