IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION

JACKSON, NATHANIEL, A MINOR, ET AL VS. MANSFIELD INDEPENDENT SCHOOL DISTRICT, A CORPORATION, ET AL	CIVIL ACTION NO. 3152

TO THE HONORABLE JUDGE OF SAID COURT:

Come now the defendants in the above entitled and numbered cause, and move the Court to abate and dismiss plaintiffs' complaint on the merits and to deny the injunction sought by plaintiffs and dismiss said complaint.

Plaintiffs' complaint and plea for injunction are to the effect that the Constitution and Laws of the State of Texas requiring segregation between white and colored people in the public school systems of the State of Texas are unconstitutional and that the Constitution and Statutes of the State of Texas requiring segregation are violative of the 14th Amendment to the Constitution of the United States.

Defendants would show that:

1. The Supreme Court of the United States in the case of Oliver Brown et al, 347 U. S. 483; 98 L. Ed. 873, decided May 17, 1954, struck down a prior decision of such court rendered in 1896 in the case of Plessy vs. Ferguson, and held that the 14th Amendment to the Constitution of the United States guaranteed non-segregation in public schools and in effect held that state laws and state constitutions which prescribed segregation were unconstitutional. The court itself, however, in handing down its decision on May 17, 1954, did not order immediate non-segregation, but, in its decree used the following language:

> "In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket and the parties are requested to present further argument on Questions 4 and 5 previously propounded by the court for re-argument this term."

(Questions 4 and 5 were as follows):

"4. (a) Would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or

(b) May this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

"5. On the assumption on which questions 4 (a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4 (b),

"(a) should this Court formulate detailed decrees in these cases;

"(b) if so, what specific issues should the decrees reach;

"(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

"(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

Thereafter, pursuant to the re-docketing of the case by the Supreme Court itself on its own motion, the cause came on to be heard for additional argument pertaining to Questions 4 and 5 above quoted in the October Term of the Supreme Court of the United States in the year 1954, and on May 31, 1955, the Supreme Court of the United States rendered its supplemental opinion reaffirming that "the fundamental principles of racial discrimination in public education is unconstitutional", but further held:

"Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts.

"In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility

for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.

"While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward 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. To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system. During this period of transition, the courts will retain jurisdiction of these cases."

Pursuant to the decision handed down by the Supreme Court on May 31, 1955, the defendants herein, after having received advice as to the action of the Supreme Court of the United States, and after discussion among themselves as to ways and means of compliance, but at the same time well knowing of the provisions of Section 7, Article VII, of the Constitution of the State of Texas, and of necessity being subservient to the provisions of said Section 7, Article VII, reading as follows:

"Separate schools shall be provided for white and colored children, and impartial provision shall be made for both."

and knowing that the above quoted statute had to be obeyed until same was declared unconstitutional, entered into the letter and the

spirit of the decision of the Supreme Court of May 31, 1955, and on July 26, 1955, met and adopted the following resolution:

> "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 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 school system during the 1955-56 school term. Also a letter be sent to T. M. Moody in answer to the petition stating the Board's action and decision in regard to de-segregation for the coming school term. Motion seconded by J. R. Lewis. Motion carried unanimously.
>
> "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 a survey has been made, and this to be determined by eligible students that are available to ride bus. Motion carried."

Again, on August 22, 1955, the School Board met in regular session and the minutes reflect the action taken by the Board of Trustees of the Mansfield Independent School District with respect to the matters under discussion:

> "A lengthy discussion was held in regard to the segregation question and the best possible things that might and could be worked out in the future in regard to the question."

Thereafter, in an attempt to work out the problem and to attempt to do the best possible thing under the circumstances, and after a discussion by a committee of the Board with the Negro High School students of the Mansfield Independent School District, and after said committee had discussed the problem with the parents and guardians of all affected Negro high school students, the Board of the Mansfield Independent School District in session on September

27, 1955, received a report from its committee theretofore appointed to study the segregation question, and the minutes of that meeting reflect the following:

> "A report from the Segregation Committee composed of Superintendent R. L. Huffman, O. M. Wilshire and Ira Gibson was given to the board in regard to their study and findings.
>
> "The recent negro bus added and the colored students riding same to Fort Worth was found to be highly accepted by all students and parents. Lawyer Stroud, colored bus driver reported that 100% of eligible students rode the bus most every day. Seldom ever a student miss catching the bus."

Therefore, it will be seen from the foregoing that the defendants herein are following the mandate of the Supreme Court of the United States in attempting to solve the problem along equitable principles and are giving full study to such problem to the end that an orderly nonsegregation in the public school system of the Mansfield Independent School District will be accomplished as quickly as possible.

In connection with the Negro school bus to Fort Worth, the defendants herein allege that said bus was placed in operation at the request of the plaintiffs in this cause and of plaintiffs' counsel in this cause.

2. Prior to the filing of the instant suit, Section 7 of Article VII of the Constitution of the State of Texas was, so far as these defendants were concerned, thelaw of the State of Texas, which law was mandatory that these defendants operate segregated schools for white and Negro students in their district. Also in existence and not theretofore declared unconstitutional was Article 2900, Revised Civil Statutes of the State of Texas and its various component parts, which were also the law of the land in so far as the Mansfield Independent School District was concerned, and their force and effect made mandatory that the public schools in the Mansfield Independent School District be operated on a segregated basis. However, the Supreme Court of Texas, on

October 12, 1955, and subsequent to the filing of this suit, handed down a decision in the case of McKinney vs. Blankenship which declared Section 7 of Article VII of the Constitution unconstitutional, and the first sentence of Article 2900, Revised Civil Statutes of Texas unconstitutional as well as the second sentence of the article, and also declared the first two sentences of Article 2922-13 should be given a construction consistent with the opinion of the court, citing as authority for this action the opinion of the Supreme Court of the United States in Oliver Brown et al, supra. But the Supreme Court of Texas in its opinion uses this very significant language:

> "The Supreme Court (of the United States) did not direct immediate and complete integration in all schools. To declare Section 7 of Article VII of the Constitution and Article 2900 of the statutes unconstitutional and void in their entirety would destroy the safeguards found therein which guarantee equal and impartial provision for students in schools not yet integrated. No judgment which would lead to that result should be rendered unless it is necessary, and we find it unnecessary."

Therefore, the Supreme Court of Texas in its opinion has been consistent with the opinion of the Supreme Court of the United States to the effect that: "These cases call for the exercise of these traditional attributes of equity power and during this period of transition the courts will retain jurisdiction of these cases."

3. The defendants herein affirmatively state that the problem of de-segregation of the public school system of the Mansfield Independent School District is under intensive study and that so far it has not had time to adjust itself to the transition; that it is making every effort to make such adjustment and will make such adjustment as soon as time and circumstances will permit.

4. The defendants specifically deny that the plaintiffs have been forced and compelled to travel an unreasonable distance from their respective homes to attend school, and further allege

that the plaintiffs suffer no hardships either as to early rising, late returning or distance traveled to school, not common with a great number of white students who attend the public schools in the Mansfield Independent School District.

WHEREFORE, premises considered, the defendants pray that the injunctive relief prayed for herein be denied, and that the case be dismissed.

R. L. Huffman

R. L. Huffman

THE STATE OF TEXAS,
COUNTY OF TARRANT.

Before me, the undersigned authority, on this day personally appeared R. L. HUFFMAN, Superintendent of the Mansfield Independent School District, who on oath deposes and says that the matters set forth in the above and foregoing motion to dismiss are true and correct.

R. L. Huffman

R. L. Huffman

Subscribed and sworn to before me this the 31st day of October, A. D. 1955.

J. A. Gooch

Notary Public in and for
Tarrant County, Texas.

Respectfully submitted,

CANTEY, HANGER, JOHNSON,
SCARBOROUGH & GOOCH

By

1500 Sinclair Building
Fort Worth 2, Texas

Attorneys for Defendants.

Now come the defendants in the above entitled and numbered cause, subject to their foregoing motion to dismiss, and make and file this their answer to plaintiffs' complaint, and as grounds therefor would show to the Court as follows, to-wit:

1.

Subparagraph (a) of Paragraph I of plaintiffs' complaint is denied.

Subparagraph (b) of Paragraph I of plaintiffs' complaint is admitted.

2.

The allegations contained in Paragraph II of plaintiffs' complaint are denied, for the reason that the plaintiffs in this suit are not entitled to injunctive relief at this time, and their plea therefor is premature.

3.

The allegations made and the relief sought in Paragraph III of plaintiffs' complaint are denied and are immaterial.

4.

(1) The allegations contained in Subsection 1 of Paragraph IV of plaintiffs' complaint are admitted.

(2) The allegations contained in Subsection 2 of Paragraph IV of plaintiffs' complaint are denied.

(3) The allegations contained in Subsection 3 of Paragraph IV of plaintiffs' complaint are admitted.

(4) Subsection 4 of Paragraph IV of plaintiffs' complaint is denied.

(5) Subsection 5 of Paragraph IV of plaintiffs' complaint is admitted.

(6) Subsection 6 of Paragraph IV of plaintiffs' complaint is admitted.

(7) Subsection 7 of Paragraph IV of plaintiffs' complaint is admitted.

(8) Subsection 8 of Paragraph IV of plaintiffs' complaint is admitted.

(9) Subsection 9 of Paragraph IV of plaintiffs' complaint is admitted.

(10) Subsection 10 of Paragraph IV of plaintiffs' complaint is admitted.

(11) Subsection 11 of Paragraph IV of plaintiffs' complaint is admitted.

(12) Subsection 12 of Paragraph IV of plaintiffs' complaint is answered as follows: That said plaintiffs did apply for admission to the Mansfield Independent School District, but after a conference pertaining to admission, agreeably and without question accepted the substitute plan of free transportation by bus to the I. M. Terrell High School in the Fort Worth Independent School District and availed themselves of that opportunity.

(13) The allegations contained in Subsection 13 of Paragraph IV of plaintiffs' complaint are denied.

(14) As of the date of the filing of this pleading, Section 7 of Article VII of the Constitution of the State of Texas read as alleged by plaintiffs.

(15) With respect to subsection 15 of Paragraph IV of plaintiffs' complaint, as of the date of the filing of this petition, the articles of the statutes of the State of Texas quoted therein are in full force and effect.

(16) With respect to subsection 16 of Paragraph IV of plaintiffs' complaint, as of the date of the filing of this pleading, the plaintiffs have correctly set forth the statutes of the State of Texas quoted therein.

(17) Subsection 17 of Paragraph IV of plaintiffs' complaint is denied.

(18) With respect to Subsection 18 of Paragraph IV of plaintiffs' complaint, defendants say that the Act was not unconstitutional at the beginning of the school term nor at the time of the filing of the complaint herein.

(19) With respect to Subsection 19 of Paragraph IV of plaintiffs' complaint, these defendants admit that they promulgated rules and regulations in accordance with the applicable constitutional and statutory provisions of the State of Texas, but further state that, in accordance with the mandate of the Supreme Court of the United States and of the Supreme Court of the State of Texas, they are making the necessary study and preparation to the end that the law of the land will be obeyed.

(20) The allegations contained in Section 20 of Paragraph IV of plaintifs' complaint are denied, and the defendants allege that in promulgating the rules and regulations of their district, they were doing so under the law of the State of Texas as it existed at the time the matters in controversy arose.

(21) The allegations contained in Subsection 21 of Paragraph IV of plaintiffs' complaint are denied, and these defendants further state that the remedy sought by plaintiffs herein is premature, in that the defendants are obeying the mandate of the Supreme Court of the United States and of the Supreme Court of the State of Texas in attempting to solve the problem alleged in plaintiffs' complaint in an equitable manner.

5.

These defendants deny that the plaintiffs are entitled to the relief sought in the prayer as set forth therein.

6.

For further answer herein, if same be necessary, these defendants adopt as an answer to the merits in this cause, as if same were copied verbatim, all matters set forth in their motion to dismiss and in their motion to deny the injunctive

relief sought by plaintiffs.

WHEREFORE, premises considered, these defendants pray that on final hearing hereof this cause be dismissed, and that the defendants go hence without day and recover all costs in their behalf expended.

CANTEY, HANGER, JOHNSON,
SCARBOROUGH & GOOCH

By _____

1500 Sinclair Building
Fort Worth 2, Texas

Attorneys for Defendants.

Copies of the foregoing motions and answer are being forwarded by regular mail to L. Clifford Davis, 401½ East 9th Street, Fort Worth, Texas, and to U. Simpson Tate, 2600 Flora Street, Dallas, Texas, Attorneys for Plaintiffs, this the 2nd day of December, A. D. 1955.

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IN THE DISTRICT COURT OF THE
UNITED STATES FOR THE NORTHERN
DISTRICT OF TEXAS, FORT WORTH
DIVISION.

JACKSON, NATHANIEL, A MINOR, ET AL

VS.

MANSFIELD INDEPENDENT SCHOOL
DISTRICT, A CORPORATION, ET AL

DEFENDANTS' MOTION TO DISMISS AND
ANSWER

Filed 2 day of November
1955 at ____ o'clock ____ m.
GEO. W. PARKER, Clerk
By Ruth Buckley, Deputy