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Cover Page Footnote

The following is one of three articles solicited by the University of Arkansas at Little Rock Law Review specifically to complement the Symposium essays that commemorate the 50th Anniversary of the Central High Crisis appearing also in this issue.

LITTLE BIG MAN—UNITED STATES DISTRICT JUDGE RONALD N. DAVIES

Honorable William R. Wilson, Jr.[*]

I. INTRODUCTION

When Judge Davies stepped off the train in Little Rock in late August of 1957, the North Dakota judge undoubtedly thought he would be handling routine cases in the Eastern District of Arkansas. Chief Judge Archibald Garner of the United States Court of Appeals for the Eighth Circuit had assigned him temporarily to the Eastern District to help clean up a backlog of cases caused by the retirement of United States District Judge Thomas C. Trimble.[1] We now know that, soon after he arrived, he took over the first Little Rock school case—*Aaron v. Cooper*[2]—which catapulted him onto the international stage. Let us look at a time line of the events that placed Judge Davies in the white-hot limelight:

May 18, 1896—In *Plessy v. Ferguson*,[3] "separate but equal" was held constitutional by the United States Supreme Court.

May 17, 1954—In *Brown v. Board of Education*,[4] the High Court held that separate is neither equal nor constitutional.

May 31, 1955—In *Brown v. Board of Education*,[5] the Supreme Court ordered local public schools in the United States to proceed with desegregation "with all deliberate speed."

February 8, 1956—In *John Aaron, et al v. William G. Cooper, et al*,[6] thirty-three public school children, with Thurgood Marshall as one of their

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1. *See* Colleen A. Warner, *From Fargo to Little Rock: Federal Judge Ronald N. Davies and the Public School Desegregation Crisis of 1957*, 17 W. LEGAL HIST. 1, 17 (2004).
2. Civ. A. No. 3113 (E.D. Ark. Feb. 8, 1956).
3. 163 U.S. 537 (1896).
4. 347 U.S. 483 (1954) ("*Brown I*").
5. 349 U.S. 294 (1955) ("*Brown II*").
6. Civ. A. No. 3113 (E.D. Ark. Feb. 8, 1956).

lawyers, filed a class action suit asking that the Little Rock School Board be ordered to admit African American students to "white schools" in Little Rock.

August 27, 1956—United States District Judge John Elvis Miller of the Western District of Arkansas (sitting by assignment to the Eastern District) ruled in favor of the defendants, holding that their plan for gradual integration to commence in the 1957–58 school year complied with the Constitution and the Supreme Court mandate.[7] This was affirmed by the Eighth Circuit[8] with the proviso that as the plan began to operate "a showing could be made . . . that more time was being taken than was necessary . . . ."[9]

August 22, 1957—The firebrand segregationist governor of Georgia, Marvin Griffin, made a speech in Little Rock to the Capital Citizens' Council, a white supremacist organization, urging all "legal" means to avoid integration,[10] pouring kerosene on the smoldering embers of racial bigotry.

August 24, 1957—Chief Judge Garner assigned Judge Ronald N. Davies to the Eastern District of Arkansas to help clear up a backlog of cases.[11] The Little Rock desegregation case, however, was not among the cases assigned to him, because Judge Miller was presiding over it.

August 27, 1957—*Mrs. Clyde Thomason v. Dr. William Cooper* was filed in Chancery Court in Little Rock seeking an injunction against integration.[12] Arkansas Governor Orval E. Faubus testified in support of the request for the injunction, averring that Governor Griffin's speech had greatly increased the risk of violence.[13]

August 29, 1957—Chancellor Murray O. Reed entered a temporary restraining order prohibiting integration for the time being.[14]

When Judge Miller learned of the temporary restraining order, he called Chief Judge Gardner, asking that he be removed from the case and that Judge Davies be assigned to it. The request was granted[15] and history was soon to be made.

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7. Aaron v. Cooper, 143 F. Supp. 855 (E.D. Ark. 1956).

8. Aaron v. Cooper, 243 F.2d 361 (8th Cir. 1957).

9. *Id.* at 364.

10. *See* ROY REED, FAUBUS: THE LIFE AND TIMES OF AN AMERICAN PRODIGAL 196–97 (1997).

11. Jeffrey B. Morris, *Ronald Norwood Davies (1904–1996)*, *in* ENCYCLOPEDIA OF ARKANSAS, *available at* http://encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=418.

12. *See* Thomason v. Cooper, No. 108377, Chancery Court, Pulaski County, Ark. (August 29, 1957) ("*Thomason I*").

13. *See* REED, *supra* note 10, at 197–98.

14. *See* Thomason v. Cooper, 254 F.2d 808 (8th Cir. 1958) ("*Thomason II*") (containing much of the language of the restraining order).

15. *See* REED, *supra* note 10, at 199–200.

II. JUDGE DAVIES

The Judge from North Dakota who walked into this maelstrom was 5'1" tall and weighed about 145 pounds, but he had excelled as an athlete at North Dakota University in the mid 1920s—he ran the 100 yard dash in 10 flat, setting a school record.[16] In 1957 he was still wiry and proved to be as sound of moral resolve as he was of body.

In 1930, Judge Davies graduated from the Georgetown University School of Law. He practiced law in Grand Forks, North Dakota from 1930–1955 (as part-time Municipal Court Judge in Grand Forks from 1932–1940), when he was appointed to the federal bench by President Eisenhower.[17] During his two year tenure on the bench, before he arrived in Little Rock, Judge Davies had not presided over an integration case—so, it was new territory for him. In fact, this was "new territory" for judges throughout the United States. *Brown I* and *II* had changed the landscape dramatically, and this was especially true in the South.

III. GENERAL DISCUSSION

On August 30, 1957, six days after he was assigned to the case, Judge Davies heard arguments on a request by the Little Rock School District Superintendent Virgil T. Blossom[18] that the Chancery Court's temporary restraining order of August 29, 1957, be declared void.[19] Judge Davies held that the Chancery Court did not have the authority to block the School District's integration plan, *and* he enjoined all persons from interfering with the plan.

On September 2, 1957, Governor Faubus, claiming a fear of violence, called out the Arkansas National Guard to ensure that "the schools in Pulaski County, for the time being . . . be operated on the same basis as they have operated in the past," that is on a segregated basis.

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16. *I'm Just One of a Couple Hundred*, TIME, Sept. 30, 1957, *available at* http://www.time.com/time/magazine/article/0,9171,891332,00.html.

17. RONALD NORWOOD DAVIES, The Federal Judicial Center, *available at* http://www.fjc.gov/servlet/tGetInfo?jid=568.

18. Most of those who knew him at the time thought that Blossom wanted to do the right thing. Some later commentators have faulted him, but on the whole, it is my view that he acted commendably, in light of the extreme circumstances, not the least of which was the Governor's last-minute crossing over to the segregationist side. I realize that my conclusion is from a white person's vantage point.

19. *See Thomason II*, 254 F.2d at 808.

The Guard surrounded Central High School to "maintain or restore the peace and good order of this community,"[20] according to Governor Faubus, a position he carried with him to the grave.

This development put the school officials in a quandary—they had a federal court order opposed by an order of the Governor. What to do? They petitioned Judge Davies for direction.[21] Late on September 3, 1957, after a short hearing, Judge Davies ruled that he was accepting the Governor's statement that he was using the Guard to "keep the peace"; therefore, the integration plan was to be implemented "forthwith."[22]

On September 4, 1957—a signal day in the saga—nine black students, now known as the "Little Rock Nine," attempted to enter Central High. In spite of Governor Faubus's protestations that the Guard was at the school to preserve the peace, guardsmen instead physically blocked the Nine from entering the building. One of the Nine, Elizabeth Eckford, then fifteen years of age, was photographed as she was being harassed by a horde of enraged white protestors. These photos were shown around the world.[23]

School officials, citing a fear of riots, asked Judge Davies to modify his September 3 Order, to permit a delay in integrating.[24]

On September 7, Judge Davies held another hearing during which he discounted the threats of violence and ruled that the petition for delay was "in all things denied." He set a hearing for Friday, September 20, 1957—destined to be another signal day.

On Monday, September 9, 1957, the Guard continued to deny entry to the black students. Based upon a report by the Eastern District United States Attorney Osro Cobb, Judge Davies asked the United States Attorney to enter the case.[25]

On Friday, September 20, 1957, at 10:00 a.m., court convened. (The Arkansas National Guard was still in place at Central High, blocking entry of the Little Rock Nine).

For some reason the historic hearing of September 21, 1957, still spawns questions. The transcript of the hearing reveals no basis for any such speculation. For example, one author quotes one of Faubus's longtime lawyers and patrons: "I have seen some despicable actions by judges in my day, but I've never seen anything like Davies . . . . It wasn't a trial, it was a star

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20. *Making a Crisis in Arkansas*, TIME, Sept. 16, 1957, *available at* http://www.time.com/time/magazine/article/0,9171,809859,00.html.

21. *See* Cooper v. Aaron, 358 U.S. 1, 10–11 (1958).

22. *See* Warner, *supra* note 1, at 20–21.

23. *See* REED, *supra* note 10, at 210–11.

24. *See* Cooper v. Aaron, 358 U.S. 1, 11 (1958).

25. *See* Aaron v. Cooper, 156 F. Supp. 220 (E.D. Ark. 1957).

chambers proceedings [sic] . . . ."[26] The record, however, reveals just the opposite.

The Governor's lawyers presented a series of motions, all specious. Some of the Governor's arguments might have been considered weighty during the John C. Calhoun era, but they simply raised questions settled by the Civil War, if not by the Supreme Court. After each motion was argued orally, Judge Davies denied each one.

After the ruling on their last motion, the Governor's lawyers, disputing the authority of a federal court to entertain the case, asked to be excused. Judge Davies cautioned them that the hearing would continue, but granted their request. At that point, the Governor's lead counsel addressed the court: "May I express our appreciation for the Court's courtesy."[27] This was hardly the expression of an advocate who felt that he had been "Star Chambered."

The precipitous exit of the Governor's lawyers was a grandstand play, and it received full media attention, as it was designed to do.[28] The federal court was being snubbed because the Governor's forces contended there was no federal jurisdiction.

Another misperception that continues even today[29] is that Judge Davies ordered Governor Faubus to remove the National Guard from Little Rock Central. He did not. In fact, the Justice Department lawyers specifically noted, during the September 21 hearing, that removal was not requested:

> The issue today is not whether the Governor had a right to use the National Guard. *We concede* that the issue is not whether he had the right to use the National Guard for the preservation of peace and order. The *only* issue, I repeat, is whether he used the National Guard unlawfully and in violation of the Constitutional rights of these children.[30]

Apparently the Governor and his advisors claimed they thought the judge had ordered removal of the Guard.[31] If, in fact, they thought this, they would have to be considered among those who have "eyes to see, and see not; which have ears, and hear not."[32]

In concluding the hearing Judge Davies stated:

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26. ELIZABETH JACOWAY, TURN AWAY THY SON 157 (2007).

27. Transcript of Record at 59, Aaron v. Cooper, 156 F. Supp. 220 (E.D. Ark. 1957).

28. *See* Warner, *supra* note 1, at 29.

29. *See* Doug Smith, *The Crisis Turned Upside Down*, ARK. TIMES, May 10, 2007, *available at* http://www.arktimes.com/Articles/ArticleViewer.aspx?ArticleID=bf8b2630-49fb-486c-be3f-7bf044d48eac.

30. Transcript of Record at 121, Aaron v. Cooper, 156 F. Supp. 220 (E.D. Ark. 1957) (emphasis added).

31. *See* JACOWAY, *supra* note 26, at 158.

32. *Jeremiah* 5:21 (King James).

> The petition of the United States of America as amicus curiae for a preliminary injunction against Governor Faubus, General Clinger and Colonel Johnson, and all others named in the petition is granted; and such injunction shall issue without delay, enjoining those respondents from obstructing or preventing, by use of the National Guard or otherwise, the attendance of negro students at Little Rock Central High School under the plan of integration approved by this Court and from otherwise obstructing or interfering with orders of this Court in connection with the plan of integration.[33]

At about 6:30 p.m. that day (September 20), Governor Faubus called a press conference to announce that he was removing the National Guard from Central High as "ordered" by a federal judge. He did remove the Guard, but he surely knew he had *not* been ordered to do so by the federal judge.[34]

On Saturday, September 21, Judge Davies entered his formal order that had been submitted by the Government lawyers at his direction.[35] The formal order reads, in part:

> Provided that this order shall not be deemed to prevent Orval E. Faubus, as Governor of the State of Arkansas, from taking any and all action he may deem necessary or desirable for the preservation of peace and order, by means of the Arkansas National Guard, or otherwise, which does not hinder or interfere with the right of eligible Negro students to attend the Little Rock Central High School.[36]

If somehow Governor Faubus initially believed he had been ordered, on Friday, to remove the Guard, the plain language of the written order of Saturday, September 21, disabused him. At that point, if his goal had been to preserve the peace, he had time aplenty to recall the Guard before school was to open on Monday, September 23. There is no evidence that the Governor considered a recall. Likewise there is no evidence that the Guard could not have preserved the peace and assured the safe entry of the black students, if the Governor had left them in place or recalled them the following day.

It has been noted that there *might* have been bloodshed if the Guard had been left in place at Central High to "keep the peace" *and* ensure the entry of the students.[37] But if the nine teenagers had the courage to take the risk, should not the Governor have had the courage to help facilitate their safe passage? Is not keeping the peace and upholding the Constitution in a

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33. Transcript of Record at 125, Aaron v. Cooper, 156 F. Supp. 220 (E.D. Ark. 1957).

34. Aaron v. Cooper, 156 F. Supp. at 222.

35. It is commonplace for judges to direct the prevailing lawyers to prepare a draft of an order.

36. Aaron v. Cooper, 156 F. Supp at 222.

37. *See* JACOWAY, *supra* note 26, at 162.

time of crisis precisely the purpose of the National Guard and the sworn duty of the State's Chief Executive?

It should be noted that there has never been any appreciable evidence of the rumored hordes of "outside" segregationists descending upon Little Rock. If they had appeared on the scene, however, there is no evidence that the National Guard could not have quelled the threat.

With the Guard gone, the situation was extremely ugly in Little Rock the next week. President Eisenhower had been reluctant to intervene, but by September 23, he had had enough. He issued a presidential proclamation ordering the obstructionists to "cease and desist," and the next day the 101st Airborne Infantry Division ("The Screaming Eagles") arrived in Little Rock.[38] Order was rapidly restored.

IV. SUMMARY AND CONCLUSION

This thumbnail sketch of the events that unfolded in Little Rock in August and September of 1957 barely scratches the surface of the social and political cross currents casting Little Rock, Arkansas, and Judge Davies reluctantly into the glare of center-stage. Numerous books and articles have been published on the subject, examining those events from every angle.

When considering the heroes of this crucial struggle, the nine brave children must be at the top of the list. The courage of those teenagers is awe-inspiring. There were other heroes, of course, but the focus of this article is the role of Judge Davies.

Governor Faubus saw the assignment of a "northerner" to the case as sinister.[39] In fact, there was nothing sinister about it. It was an assignment made at the request of Judge Miller, an Arkansan, while Judge Davies was here to handle run-of-the-mill cases.[40]

Others suggest that Davies just did not understand southerners and "our way of life." A review of the court records, however, reflects that he had a firm purchase on "southern thinking" of the time.

Much later, Judge Davies observed in an interview that Governor Faubus's actions and pronouncements were "a purely political ploy."[41] Although writers down through the years have gone at this issue in more ways than a kitten goes at a toy mouse,[42] the record establishes beyond peradventure that the Judge had it down to a gnat's eye.

One writer who has carefully studied the events aptly summed it up this way:

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38. *See* REED, *supra* note 10, at 229; *see also* Warner, *supra* note 1, at 31.
39. *See* Warner, *supra* note 1, at 19.
40. *See id.*
41. *Id.* at 27.
42. *See* JACOWAY, *supra* note 26, at 162.

> Into this legal predicament arrived a U.S. district judge from North Dakota. Appointed to the federal bench in August 1955, Davies had spent more than fifteen years as a trial lawyer and eight years as a municipal judge in his home-town of Grand Forks, North Dakota.

Although Judge Davies had served two years on the federal bench by the time of his assignment to the post in Little Rock, he had not previously encountered a racial integration case. Yet the decisions rendered by Davies in his brief tenure in Little Rock and the ensuing constitutional controversy would change the nature of public school integration in the United States. While other federal judges equivocated in the face of segregationist pressure, Davies remained resolute in upholding the United States Constitution and the decrees of the Supreme Court. Furthermore, he was one of the first federal jurists to lend definitive meaning to the vague *Brown II* phrase "with all deliberate speed." Tenacity and tough-mindedness in the face of adversity were the hallmark characteristics that guided Judge Davies's judicial career, and they were not at any time more apparent than in Little Rock in September 1957.[43]

The Judge's "steady as she goes" performance during the hurricane puts one in mind of lines from a famous poem:

> If you can keep your head when all about you
> Are losing theirs and blaming it on you,
> If you can trust yourself when all men doubt you
> But make allowance for their doubting too,
> If you can wait and not be tired by waiting,
> Or being lied about, don't deal in lies,
> Or being hated, don't give way to hating,
> And yet don't look too good, nor talk too wise:
> You'll be a Man, my son![44]

The Judge, a devout Catholic, attended mass each Sunday when he was in Little Rock.[45] His diary reflects that after the first Sunday, he was accompanied by a bodyguard.[46] By his preparation and nature he was strong, and he did not "faint in the day of adversity"[47] (many did).

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43. Warner, *supra* note 1, at 16–17.
44. Rudyard Kipling, *"If,"* *available at* http://www.blupete.com/Literature/Poetry/KiplingIf.htm
45. Copies of relevant diary entries are in the possession of the author.
46. *Id.*
47. *Proverbs* 24:10 (King James).