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Reflections on the Commemoration of the 50th Anniversary of the Crisis at Little Rock Central High School

Cover Page Footnote
In September 2007, the city of Little Rock — and the entire country — commemorated a crisis of public school integration and race relations that occurred fifty years ago at Central High School in Little Rock, Arkansas. The following is one of six essays which are products of the Ben J. Altheimer Symposium on the 50th Anniversary of the Central High Crisis, held at the University of Arkansas at Little Rock Bowen School of Law on September 20 and 21, 2007. Symposium speakers and participants included nationally-renowned civil rights activists, members of the local judiciary, and local leaders involved both fifty years ago and today in working toward equality between all races and ethnicities.
REFLECTIONS ON THE COMMEMORATION OF THE 50TH ANNIVERSARY OF THE CRISIS AT LITTLE ROCK CENTRAL HIGH SCHOOL

Judge Wiley Branton, Jr.*

The 1957 crisis at Little Rock Central High School did not happen in a historical vacuum or in isolation from events occurring throughout the United States. In order to understand the full significance of the Central High crisis, one first needs to understand the history that led to that fateful moment in history.

I. A HISTORY OF SECOND CLASS CITIZENSHIP

From the infamous Dred Scott decision in 1857 up to the time of Brown v. Board of Education in 1954 (except for a brief period of time during the post Civil War reconstruction period), black people in the United States were considered second class citizens, or less. The Supreme Court of the United States told us as much.

In Scott v. Sanford, more commonly referred to inter alia as the Dred Scott decision, Dred Scott, a slave, attempted to sue for his freedom in federal court. In writing the majority opinion holding that a person of African ancestry had no right to sue in federal court, Chief Justice Roger B. Taney stated as follows:

> We think [people of African ancestry] are not [citizens] and that they are not included, and were not intended to be included, under the word “citi-

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Since graduating from law school in 1976, Judge Branton has over thirty years of varied legal and academic experience including judicial service, private practice of law, service as general counsel for a District of Columbia government agency, service as an adjunct law professor at two law schools, and service as a full-time college professor.

Judge Branton is the son of the late Wiley A. Branton, Sr., a distinguished civil rights attorney, and former Dean of the Howard University School of Law. Judge Branton was born in Fayetteville, Arkansas, in 1951, where his father was one of the first black students to graduate from law school at the University of Arkansas. Judge Branton was six years old when the Little Rock Central High School crisis erupted in 1957; his father served as the lead counsel for the black plaintiffs in the case that became known as Cooper v. Aaron.

1. Scott v. Sandford, 60 U.S. 393 (1856) ("Dred Scott Decision").
3. 60 U.S. 393 (1856).
zens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States.  

Note the broad sweep of Chief Justice Taney’s words. It is not “just” slaves who are not citizens, but it is people of African ancestry.

With the victory of the Union over the Confederacy in 1865 at the conclusion of the American Civil War and the enactment of the Thirteenth Amendment (abolishing slavery and involuntary servitude), the Fourteenth Amendment (providing that all persons born or naturalized in the United States were both citizens of the United States and of the States wherein they resided, and were further entitled to the equal protection of the law), and the Fifteenth Amendment (guarantying the right of all citizens to vote) to the Constitution of the United States, any truly “righteous and just” person would have thought that black citizens finally had the same legal and political rights as their white counterparts. And for the brief period of post-Civil War Reconstruction, the legal status of black people did improve.

But by the end of the 19th century, the status of black Americans had clearly and unequivocally slipped back to second class citizenship or less. To close out the 19th century, the United States Supreme Court weighed in with the infamous Plessy v. Ferguson decision in 1896. Plessy established the so called “separate but equal” doctrine, which became the Supreme Court sanctioned basis for legal separation of the races. Although Plessy actually dealt only with public transportation, the United States Supreme Court subsequently and specifically applied the “separate but equal” doctrine to the field of public education.

Starting in the late 1930s, however—and spearheaded largely by the legal efforts of the National Association for the Advancement of Colored People (NAACP), the NAACP Legal Defense Fund, and the plaintiffs they represented—the doctrine of separate but equal began to erode.

In Missouri ex rel. Gaines v. Canada, the State of Missouri had not provided a law school for black citizens within its borders, and the Court determined that the establishment of such a black law school within the State of Missouri was a discretionary matter with state officials. Therefore, the Supreme Court held that requiring black Missouri citizens to obtain their legal education outside the state of Missouri, even if at the state’s expense,

4. Id. at 404.
5. But see Slaughter House Cases, 16 Wall. 36, 83 U.S. 36 (1872).
6. 163 U.S. 537 (1896).
nevertheless denied the equal protection of law as guaranteed by the Fourteenth Amendment to black Missouri citizens.

_Sipuel v. Board of Regents_\(^9\) was an Oklahoma case also involving the failure of a state to provide a law school within its borders for black citizens while providing such a facility for its white citizens. The Court stated that the "State must provide [a law school education] for [a Negro applicant] in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group."\(^10\)

_Missouri ex rel. Gaines and Sipuel_ were somewhat "easy" cases for the Supreme Court to decide because (1) the states involved only provided facilities for white citizens within the state and (2) there were no separate facilities for its black citizens. The Supreme Court's resolution of these cases still left intact the "separate but equal" doctrine.

But in _Sweatt v. Painter_,\(^11\) at least as applied to higher education, the Supreme Court began to dismantle the separate but equal doctrine.\(^12\) In that case, the State of Texas actually provided separate but allegedly "equal" law schools for its white and black citizens. The Court noted that the "number of faculty, variety of courses and opportunity for specialization, size of the student body, scope of the library, availability of law review and similar activities" were superior at the white law school.\(^13\) Moreover, the white law school possessed to a "far greater degree those qualities which are incapable of objective measurement but which make for greatness in a law school."

The court further stated as follows:

The law school to which Texas is willing to admit petitioner excludes from its student body members of the racial group which number 85% of the population of the State and include most of the lawyers, witnesses, jurors, judges and other officials with whom petitioner will inevitably be dealing when he becomes a member of the Texas bar. With such a substantial and significant segment of society excluded, we cannot conclude that the education offered petitioner [black law student] is substantially equal to that which he would receive if admitted to the University of Texas Law School.\(^15\)

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10. _Id._
12. _See id._ at 634.
13. _Id._ at 634–35.
14. _Id._ at 634.
15. _Id._ at 635. Another case similar to _Sweatt v. Painter_ but involving the State of Oklahoma is _McLaurin v. Okla. State Regents_. 339 U.S. 637, 640–42 (1950). As an aside, I would submit that the same rationale cited by the Supreme Court in both _Sweatt_ and _McLaurin_ explains why it is still important even today to have racial and ethnic diversity in all levels of public education.
II. OH HAPPY DAY

In 1954, the Supreme Court issued its landmark decision in *Brown v. Board of Education*,16 which struck down the “separate but equal doctrine.” *Brown* specifically reversed *Plessy v. Ferguson* and declared that in the field of public education, separate educational facilities were inherently unequal. Much credit for the successful prosecution of this case should be given to the lawyers associated with the NAACP, the NAACP Legal Defense Fund, and the plaintiffs who were willing to press their claims for justice at great peril. Much credit should also be given to the Justices of the United States Supreme Court, who finally made a moral and just decision. Chief Justice Earl Warren should also be given special credit for persuading the Court to issue a unanimous decision in an effort to gain more public acceptance of the Court’s decision.

In commenting upon the fundamental importance of public education in our everyday life, the *Brown* Court stated as follows:

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. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.17

The foregoing language from *Brown* is as relevant and as accurate today as it was when initially stated by the Court over fifty years ago.

As one can hardly now imagine, the 1954 *Brown* decision was seen as a great moral and legal victory for black America. To black America, the United States Supreme Court, which had previously given us the *Dred Scott* and *Plessy* decisions, was finally telling us that we were no longer to be treated as second class citizens. There was truly great rejoicing throughout black America. To many black Americans, *Brown* was seen as the equivalent of a second emancipation proclamation. And like President Lincoln’s historical Emancipation Proclamation, the promises of *Brown* were to prove to be somewhat illusory.

III. ON THE OTHER SIDE OF TOWN

As black people were looking forward to the implementation of Brown with great expectations, there were many citizens throughout the entire socio-economic spectrum in white America who were shocked and horrified by the implications and the possible implementation of Brown.

In 1955, the Governor of the State of Virginia appointed a commission that was “instructed to examine the effect of the decision of the Supreme Court of the United States in the school segregation cases . . . and to make such recommendations as may be deemed proper.” This commission became known as the Gray Commission, named after the Chairman of the Commission, Garland Gray. Notwithstanding the fact that this was a State of Virginia undertaking, there were many participants and attendees from outside of the State of Virginia. On November 11, 1955, the Gray Commission issued its final report, which flatly stated that “this Commission believes that separate facilities in our public schools are in the best interest of both races, educationally and otherwise, and that compulsory integration should be resisted by all proper means in our power.” The report proposed specific strategies that included state constitutional amendments and statutory changes calculated to oppose and thwart Brown.

In 1956, numerous members of the United States Senate and House of Representatives signed off on the “Southern Manifesto,” which took dead aim at the Brown decisions. Avowed segregationist Senator Strom Thurman of South Carolina played a prominent role in advancing the Southern Manifesto. It declared the Brown decisions to be “unwarranted” and “decried” the Supreme Court’s encroachment on States’ rights. The signatories to the Southern Manifesto pledged to use all lawful means to bring about the reversal of the Supreme Court decisions. Arkansas Senators John L. McClellan and J. W. Fullbright, and Arkansas Congressmen E.C. Gathings, Wilbur D. Mills, James W. Trimble, Oren Harris, Brooks Hays, and W.F. Norrell were all signatories to the Southern Manifesto.

Governor Marvin Griffen of Georgia spent considerable effort and drew a lot of attention traveling around the south to stir up resistance to the Brown decision. There were many who shared his views, including people in the state of Arkansas. In short, there were many white people in the south who felt under siege by Brown.

It should be noted that not every white person or white community resisted Brown or was against Brown. There were even communities within the state of Arkansas that voluntarily desegregated. Two of those communities were Nashville and Hoxie. Hoxie is particularly noteworthy because its school board immediately tried to comply with Brown. Unlike the Little Rock School District (LRSD), which professed ignorance on how to implement Brown and was waiting for further instructions from above, the Hoxie school board recognized its legal and moral duty and sought to fulfill its
obligation. When the school board met with resistance to its plans to desegregate, the Hoxie school board itself went to federal court and obtained a court order preventing interference with its plans.\(^{18}\)

IV. THE CRISIS AT CENTRAL AND THE SIGNIFICANCE OF A "LOSING" LAWSUIT

When most people think of the crisis at Little Rock Central High School, they immediately conjure up the image of nine courageous black teenagers making their way through a hateful mob only to be turned away by the national guard under the orders of Governor Faubus. A particularly troubling and unforgettable image, and one that I submit should live in infamy forever, is that of Elizabeth Eckford—a young black teenager dressed in a clean and fresh pressed dress, ready for her first day at a new school—facing the angry white mob all by herself. Eventually, a white lady of courage came to her assistance. That incident was utterly shameful and unforgivable.

But what most people have failed to appreciate is that the stage upon which the Little Rock Nine entered into history in the fall of 1957 would not have existed but for the fact that a lawsuit had already been filed in January 1956 seeking a more aggressive plan for the integration of the Little Rock School District. More specifically, in 1955, the local and state chapters of the NAACP "retained" my father, Wiley A. Branton, Sr., to file a lawsuit on behalf of a class of black plaintiffs seeking more rapid and significant integration of the LRSD. Wiley A. Branton, Sr., undertook this representation as local and lead counsel with the assistance of other lawyers associated with the NAACP and the NAACP Legal Defense Fund. The plan proposed by the LRSD was a very limited plan. It called for a limited number of black students to enter Central High School starting in 1957. The second phase would involve further limited integration at the junior high school level. And finally, there would be some further integration at the elementary school level. The plan was short on specific numbers and timetables.

The case filed on behalf of the black plaintiffs in the United States District Court for the Eastern District of Arkansas was styled Aaron v. Cooper.\(^ {19}\) The black plaintiffs challenged the adequacy of the LRSD plan and sought implementation of a more significant plan. The plaintiffs essentially wanted all schools integrated immediately. The district court ruled that the LRSD plan was an adequate plan made in the utmost good faith, and the court ordered the school district to go forward with its proposed plan. The district court also indicated that it would "retain jurisdiction of the case for

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18. See Brewer v. Hoxie Sch. Dist. No. 46, 238 F.2d 91 (8th Cir. 1956).
the entry of such other and further orders as may be necessary to obtain the effectuation of the plan as contemplated.\textsuperscript{20} The black plaintiffs appealed to the Eighth Circuit, which affirmed the district court.\textsuperscript{21} For strategic and practical reasons, the black plaintiffs did not appeal the Eighth Circuit ruling.

Even though the black plaintiffs had lost the first round, two very important things had been accomplished, the significance of which may not have been appreciated at the time. First, by the district court ordering the school district to go forward with its proposed plan, what had previously been a purely voluntary plan from which the school district could have withdrawn at any time without consequence was now a "court ordered" plan, irrespective of the plan's inadequacies. Second, the district court retained jurisdiction to implement the plan should problems develop, and they soon did. Once Governor Faubus orchestrated the resistance at Central, the already pending case of \textit{Aaron v. Cooper} became the legal vehicle through which the constitutional crisis was handled.

The only reason that the Little Rock Nine attempted to enter Central High School in the fall of 1957 was because they were acting pursuant to the LRSD's own desegregation plan which had then been approved, adopted, and ordered by the district court. I submit that had the 1956 lawsuit not been filed with the resulting order to go forward with the LRSD plan, then when fall of 1957 drew near and heated opposition to even the limited integration began to stir, the LRSD would have simply and indefinitely delayed the start of any integration until there was more acceptance. As a consequence, the crisis at Central would likely have occurred in some other city in another state in another school.

While I defer to other presenters at this symposium a fuller discussion of the Central High crisis, I would make these additional points:

First, given the vocal opposition of people opposed to integration, particularly in the south, and given the deafening silence of citizens who may have been of the opinion that segregation was wrong, what happened in Little Rock in 1957 could just as well have happened in any number of other cities throughout the United States.

Second, what happened in Little Rock in 1957 under the leadership of Governor Faubus, other actions taken by the state legislature, and to a lesser extent actions taken by state courts, amounted to the most serious constitutional crisis in the United States since the Civil War. Because of the trouble that erupted during the 1957–1958 school year, the LRSD specifically sought a delay of its "own" plan until a calmer climate prevailed, which was granted by the district court. The black plaintiffs appealed the district court's grant of a stay to the Eighth Circuit, which reversed the district court and

\textsuperscript{20} \textit{Id.} at 866.

\textsuperscript{21} \textit{See} \textit{Aaron v. Cooper}, 243 F.2d 361 (8th Cir. 1957).
ordered the plan to go forward. The school board then appealed the Eighth Circuit's decision to the Supreme Court. If one has any doubt about the significance of the crisis that was orchestrated by Governor Faubus, read the opening words of *Cooper v. Aaron*: \(^{22}\)

As this case reaches us it raises questions of the highest importance to the maintenance of our federal system of government. It necessarily involves a claim by the Governor and Legislature of a State that there is no duty on state officials to obey federal court orders resting on this Court's considered interpretation of the United States Constitution. Specifically it involves actions by the Governor and Legislature of Arkansas upon the premise that they are not bound by our holding in *Brown* . . . . We reject these contentions. \(^{23}\)

Third, civil rights cases poignantly demonstrate the extreme importance of who sits on the United States Supreme Court, as well as on other courts in general.

V. WHAT IS THE LEGACY OF *BROWN, COOPER, AND CENTRAL HIGH*?

Although it can be dangerous and often inaccurate to ascribe one single view to any group of people, I would suggest that the primary motivation of black people in seeking admission to any and all educational facilities on a non-segregated basis was black people's desire to share in the American dream. Having built up equity in America by hard labor, inventiveness, industry, fighting in all its wars, and countless suffering, black people felt entitled to share in the American dream. And what is the American dream? One aspect of that dream is that to have a good quality of life and to advance one's station in life, one needs a good job. In order to obtain a good job, one needs a good education. And in order to obtain a good education, one needs good schools. In short, black people were simply seeking a better opportunity. Fifty years later, and for a variety of reasons, it is not so clear that the "dream" has been achieved.

The LRSD, the Pulaski County Special School District, and the North Little Rock School District were involved in desegregation/integration litigation for nearly fifty years after the 1957 crisis, and those school districts have only achieved "unitary" status within the last few years. In 1984, Judge Henry Woods ordered a consolidation of the three school districts as a desegregation remedy based upon his findings of intra-district and inter-district violations, which had a negative impact on desegregation within the LRSD. While the Eighth Circuit upheld Judge Woods's findings of intra-district and

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\(^{22}\) 358 U.S. 1 (1958).

\(^{23}\) *Id.* at 4 (citation omitted).
inter-district violations, it reversed Judge Woods's order for consolidation, finding it too drastic a remedy. I still commend Judge Woods for his efforts. The Eighth Circuit decision provides a good summary of the history of desegregation in Pulaski County in the years immediately following the 1957 crisis.  

Although the population of the City of Little Rock is close to 70% white, the student population of students attending public school in Little Rock is now about 60% black. Many white people have clearly fled the Little Rock public schools for one reason or another, but that trend clearly started in the aftermath of the 1957 crisis. This trend is by no means unique to Little Rock. One could make the argument that in view of the large number of white families that have left the LRSD, the segregationists have partially won out. That conclusion might be partially correct in some cases, but it is by no means the complete explanation for the current state of affairs.

There has clearly been much progress on racial issues since 1957. With respect to education, although racial segregation is no longer permitted and although black people have the ability to attend any school receiving public funding where their abilities and quality academic record will take them, I am, however, concerned that large numbers of black students, other non-white minorities, and poor people of every race are failing in school and falling behind. These issues must be fully and aggressively addressed.

Fifty years after the crisis at Central High, we can still celebrate the courage of the Little Rock Nine, their families, the community that nurtured them, and the lawyers who represented them. We commemorate a solemn and painful part of our American history, which had elements of good, evil, and indifference. We continue to struggle with unresolved old issues as well as new issues.

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