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The Dismantling of De Jure Segregation in Louisiana, 1954-1974. (Volumes I and II).

Carroll Joseph Dugas
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**The dismantling of de jure segregation in Louisiana, 1954-1974.
(Volumes I and II)**

Dugas, Carroll Joseph, Ph.D.

The Louisiana State University and Agricultural and Mechanical Col., 1989

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U·M·I
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THE DISMANTLING OF DE JURE SEGREGATION
IN LOUISIANA, 1954-1974
VOLUME I

A Dissertation

Submitted to the Graduate Faculty of the
Louisiana State University and
Agricultural and Mechanical College
in partial fulfillment of the
requirements for the degree of
Doctor of Philosophy
in
The Department of History

by
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B.A., Nicholls State College, 1970
M.Ed., Nicholls State University, 1972
May 1989

DEDICATION

To my wife, Pam, who patiently endured this ordeal with me over the past several years, and without whose love, support, assistance, and encouragement this dissertation would not have been written.

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ABSTRACT

In the two decades between 1954 and 1974, the State of Louisiana progressed from a closed, white-dominated society to an open, multi-racial society with legal safeguards in place to assure equal protection and equal opportunity for all residents regardless of race or color. Prior to 1960, the vast majority of blacks were unable to vote, serve on juries, buy homes in decent neighborhoods, use publicly-owned facilities or frequent hotels, restaurants and other public accommodations. In addition to these humiliations, they were required to utilize inadequate "separate but equal" public parks, playgrounds, swimming pools, schools, waiting areas and correctional facilities until the mid-1960's.

Most of the state's segregated institutions were desegregated between 1964 and 1969. The major desegregation battle was fought in public elementary and secondary schools. As the 1960's came to a close, the foundations had been laid for the creation of unitary school systems, desegregation of correctional facilities and prohibition of racial discrimination in housing and employment.

With the dawn of the 1970's, a more conservative mood swept the nation, but a more progressive decade began in Louisiana. Although the enigma of a dual system of higher

education continued to escape resolution and discrimination continued in employment and housing, the political arena was brighter for blacks. They were voting in large numbers and thus were able to secure the election of local and state candidates who were less hostile to black aspirations. In 1971, a coalition of black and Cajun votes was able to elect a liberal, populist governor. Once the new administration assumed office in 1972, existing segregation statutes were repealed, and in the following year, a new constitution was written with guarantees of equality and equal protection for all citizens of the state.

By 1974, de jure segregation was dead and blacks had the means to assure that its demise was permanent. Although the thornier issue of de facto segregation remained unresolved, there was hope and promise that it, too, would be eradicated one day.

Chapter 1

INTRODUCTION

Like other Southern states, Louisiana was reluctant to relinquish its antiquated system of racial segregation prior to 1954. The legal or de jure means by which the state enforced its more than a century-old custom of separating white and black Louisianians resulted in blacks being accorded less than second-class citizenship. Virtually all elements of political, economic and social life were segregated, first by custom and then by law. After 1954, the intense resistance of state and local government officials to federal assaults on legal segregation left Washington with no other recourse than to impose comprehensive demands upon the state, in order to compel Louisiana's white citizens to comply with the mandates of the United States Constitution.

The purpose of this study is to review and analyze the dismantling of de jure segregation within the State of Louisiana between 1954 and 1974. In order to clarify the situation that existed in Louisiana at the time of the first Brown v. Board of Education decision in 1954, the history of racial discrimination by statutory means is first summarized from the post-Reconstruction era to the mid-twentieth

century. The major portion of the study next addresses the numerous legal artifices devised by state segregationists to resist increasing federal pressure to eliminate all vestiges of de jure racial segregation in Louisiana. Note is taken of the de facto basis upon which segregation and discrimination also existed by custom, but which was more difficult to erase. By 1974, most active resistance to desegregation in Louisiana had disappeared, although lingering vestiges of the old system remained in evidence. Therefore, it was necessary occasionally to extend the study past 1974, for the sake of continuity and completeness.

Immediately following the Civil War, the defeated South briefly and unrealistically resumed many of its antebellum practices, attempting to negate the results of Union victory. However, the imposition of Radical Reconstruction in 1868, brought forth an attempt to create a fair and equitable political system in which freed black slaves would become citizens and receive equal treatment before the law. Most white Democrats intensely resisted Radical rule, and it was apparent that the reality of civil equality for blacks might be ephemeral, and might not survive the Radical state regime. With the end of Radical Reconstruction in Louisiana in 1877, black gains were placed in jeopardy when the "Redeemers" or "Bourbons" replaced the former Republican regime. Most visible signs of black social equality with whites were quickly erased, although the state's Democratic leaders refrained from overt acts of legal discrimination

that might provoke reactions from the federal government. However, as national public opinion and federal courts progressively showed less concern about black equality, and as the courts dismantled both constitutional and statutory guarantees of black equality, the state's leaders took their cue and codified what had already existed in custom and practice in a de facto system of racial segregation. By 1954, the state's racially segregated system was firmly entrenched by law and had entered all facets of life.

The first Brown case had a major impact on the segregated systems of the Southern states. Although it was originally applied only to public school systems, Brown later became a symbol and standard for the federal government in its determination to abolish de jure segregation "root and branch." The decision at the time did not stir the people of Louisiana to immediate action and concern, because there was no visible sign of its immediate application to local conditions. However, the implications of its decision were not lost on strict adherents to the status quo, and their strength and numbers rose gradually to lead the fight against desegregation with every means at their disposal, legal or otherwise.

During the 1950's, the South witnessed a major intrusion into its local affairs by federal courts to enforce the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution. The courts, for example, came to oppose racially discriminatory voter

registration procedures, and the systematic exclusion of blacks from state juries in Louisiana. In addition, the courts provided blacks a modest victory in higher education and interstate transit during the early 1950's. By the middle of the decade, however, Louisiana's leaders began to dig in their heels and adopted a defensive strategy of "legislate and litigate," to keep the federal judiciary at bay and to postpone indefinitely the possibility of massive integration. By the end of the decade, obsession with the race issue had permeated Louisiana white society, and came to dominate the next two gubernatorial elections of 1959-60 and 1963-64. As the 1950's came to a close, many of the state's white leaders and ordinary citizens braced for an all-out battle to defend racial segregation, regardless of the consequences.

Efforts by state segregation leaders to halt action by the federal courts reached their zenith during the battle to desegregate New Orleans public schools in 1960. The defeat of Louisiana segregationists in that encounter resulted in a permanent rent in the fabric of school segregation, and they were never again able to command such support or attention from the majority of the people of the state. Thereafter, the fight to retain segregation was conducted at the local level as desegregation spread gradually from one locality to another.

During the early 1960's, peaceful demonstrations spread across the South as black college students, stirred by a

sense of racial pride and outrage at injustice, helped to awaken anger and concern among people elsewhere in the nation. When the Southern states, including Louisiana, responded to these nonviolent protests with arbitrary force and enactment of measures to stifle peaceful expression of protest, pressure was brought to bear on the executive and legislative branches to take remedial action. At the same time, federal courts launched additional assaults on the de jure system of racial segregation and assisted the demonstrators by striking down numerous state and federal court decisions which had supported arrests conducted under arbitrary and discriminatory state laws. The courts also expanded their views on the selection of an impartial jury, but were hesitant to interfere in trial procedures unless a clear case of discrimination could be proven by the defendant.

The eradication of de jure segregation was given a tremendous boost in the mid-1960's by comprehensive federal legislation and aggressive executive and judicial actions. The Civil Rights Act of 1964 outlawed private acts of discrimination in public accommodations, as well as in all programs receiving federal funds, while the Voting Rights Act of 1965 restored the right of Southern blacks to register and vote. At the same time, federal courts began to force each public school system in Louisiana to begin at least limited desegregation of its educational institutions under a freedom of choice plan, and completed the process of

desegregating the state's colleges and universities. By 1965, however, blacks demonstrated impatience with the slow progress toward total desegregation and became increasingly militant in their protests against racial injustice. Scattered areas within the state became the scenes of ugly demonstrations between whites and blacks, and state officials began to perceive a noticeable change in the federal courts thereafter, when life and property were placed in jeopardy.

Federal efforts in behalf of blacks peaked in the late 1960's as Congress and the courts culminated their respective efforts in protecting civil rights and assisting blacks as equals within American society. Congress registered its opposition to housing discrimination in 1968, while the Johnson Administration energetically enforced federal laws protecting black rights. However, the victory of Richard Nixon that year, in a campaign denouncing federal "excesses" in behalf of civil rights, was an ill omen for continued federal vigor in this field.

During the Nixon Administration, 1969-74, the executive branch adopted a "go slow" policy toward further desegregation. In effect, it attempted to freeze black gains in the South, unless there was substantial evidence of blatant racial discrimination through de jure means. However, the federal courts remained vigilant, ordering the immediate end of all dual education systems in 1969. As the Supreme Court became afterward less aggressive in its views on civil rights, the Fifth Circuit Court of Appeals became more so,

taking an active role in the desegregation process. By the end of 1970, the remainder of the dual public school systems were brought to an end in Louisiana, and except for a few scattered pockets of resistance, de jure segregation had been terminated in elections, education, public facilities, transit, public accommodations, family relations, employment and housing.

With most of the legal obstacles to blacks removed by 1970, the concern of the federal government shifted to eliminating lingering effects of de jure segregation, as well as examining de facto situations to determine if they did not indeed result from the previous systematic legal program of racial discrimination. The federal government also shifted attention from segregation in the South to segregation in the northern and western parts of the nation, and on the use of busing as a means of achieving a more equitable racial balance in segregated school systems. As a result, the Southern states were once again permitted to conduct their own affairs, unless substantial evidence was offered to substantiate an allegation of lingering racial discrimination.

By 1972, the mood in Louisiana had undergone a profound change. Blacks were able to register and vote in large numbers, and were able to influence the outcomes of several elections. Their support helped elect black candidates, or at least forced white candidates to court their vote publicly. After an election, black aspirations could no longer be ignored, resulting in the provision of real benefits for

blacks as citizens in their own right, and not as incidental recipients of assistance provided to needy whites. A new day dawned in Louisiana as black votes helped elect Edwin Edwards, an open-minded, neo-populist gubernatorial candidate from Cajun South Louisiana. Edwards publicly courted black votes and received them. After taking office in 1972, he actively supported measures proposed by the black delegation to the state legislature, including the repeal of a host of segregationist legislation that remained on the statute books. Although de facto segregation and isolated acts of private discrimination continued to exist, the state witnessed a new attitude of openness and its first real promise of racial harmony and equality by 1974.

Chapter II

DESEGREGATION AND STATE LAW

Introduction

Between 1954 and 1974, black demonstrations against segregated public transportation and "white only" jury selection focused the attention of both federal courts and black organizations on discrimination and state law in Louisiana. Demonstrations began in the state with protests that arose over segregated transit in the latter half of the 1950's, expanded in the early 1960's with voter registration drives and lunch counter sit-ins, and then spread in the mid-1960's to include picketing of downtown businesses and protests against general racial discrimination in various parts of the state. Throughout this time, the white hierarchy was adamant about maintaining the status quo and used an array of laws that were designed to prevent any challenges to the system of segregation. Here, the federal courts played another major role in voiding state and local efforts to stifle black aspirations for equal treatment under the law.

The jury selection system was another target area of blacks to assure due process in the courts of the state.

Although federal laws had existed since the late 1800's to safeguard black rights to equal treatment before the courts, the state found ways to extend the segregated system to jury service. Despite the fact that the state supreme court expressly forbade systematic exclusion of blacks from jury service before the turn of the century, rarely did a black citizen serve on any jury panel, civil or criminal, prior to 1960. The United States Supreme Court was reluctant to interfere with state and local court procedures, and often accepted assurances of jury commissioners that they had performed their duties without racial prejudice. Had it more closely monitored the jury selection process across the state, the court would have uncovered gross disparities between what Louisiana professed and what the state actually did.

Demonstrations

The first black demonstrations in Louisiana were the result of events that occurred in other parts of the South. In the 1950's, there were attempts, often sanctioned by the National Association for the Advancement of Colored People (NAACP), to bring about an end to segregated public transportation in Louisiana cities that had local public transit systems. By the early 1960's, the Congress of Racial Equality (CORE) became active in the nonviolent sit-in demonstrations conducted at private businesses that practices racial discrimination, as well as in demonstrations

in support of the right of blacks to register to vote and use public facilities. In the mid-1960's, the focus of black protest became more militant, resulting in blacks showing less patience in waiting for desegregation and discrimination to end gradually. Unfortunately, the militancy resulted in a harder line being taken by the federal government just as barriers to equal rights for blacks were crumbling. By the early 1970's, in an attempt to insure that law and order was adhered to and respected, Congress and the federal courts retreated substantially from their tolerant views regarding protests in the sixties.

Among the first demonstrations to erupt in the state were those involving state and local transit systems. During the 1950's, demonstrators in Baton Rouge, New Orleans and Shreveport expressed their opposition to segregated seating on public conveyances. When the federal courts voided the state's segregated transit law in 1958, blacks challenged white waiting rooms and restaurants within terminals. By 1960, sit-ins had become a reality across the South.

In the spring of 1960, the first major sit-in in the state occurred in Baton Rouge. Several black college students from nearby Southern University staged a sit-in at lunch counters in the Greyhound Bus Terminal, a drug store and a local department store. Although they sat quietly without placards of any kind and simply requested service, twelve of them were arrested for disturbing the peace. In

state district court, they were told that their mere presence at the lunch counters had breached the peace, and were summarily found guilty and fined \$100 each, or sentenced to ninety days in jail.¹ In addition, the students were expelled from Southern University. Following denial of their appeals by the state supreme court, they turned to the federal courts. In late 1961, the Supreme Court reversed their convictions in State v. Garner, deciding that there was insufficient evidence to support the charge of disturbing the peace. The court also found that the statute upon which the convictions were based was "overbroad" in its language.²

Less than a month after the Baton Rouge sit-ins, one present and three former college students were arrested when they attempted to use a white-only library in Shreveport. They were arrested by waiting city police, who had been alerted in advance by an informer, and charged with vagrancy and disturbing the peace, despite their peaceful behavior.³

These events stirred major concern among solons meeting in the Regular Session of the Louisiana State Legislature in the spring and early summer of 1960. Overreacting, they adopted a host of legislation to bolster existing state laws

¹State of Louisiana v. Briscoe, State of Louisiana v. Houston, State of Louisiana v. Garner, 6 Race Relations Law Reporter (hereafter cited as RRLR), 168 (1960).

²Garner v. State, 82 S. Ct. 248 (1961).

³Willie Burton, On the Black Side of Shreveport (1983) 103.

that dealt with law and order. Among the issues addressed were perjury, aggravated battery, disturbing the peace, resisting an officer, criminal mischief, trespass, solicitation, and obstructing public passages. Upon adjourning, legislators felt assured that they had adequately prepared law enforcement officials with the tools necessary to combat any assault upon the status quo by any future demonstrations.⁴

Hardly had the legislature recessed before a new wave of sit-ins struck Shreveport and New Orleans. In August, four black college students were arrested in Shreveport after asking officials of a local department store why they had fired all black cafeteria workers, requesting that qualified blacks be hired for meaningful positions, asking that discriminatory signs on water fountains be removed, and for asking that discrimination no longer be practiced at the store's lunch counter. When they refused requests by department store officials to leave, they were arrested.⁵

In September and October of 1960, New Orleans stores became the targets of demonstrators. During the course of the sit-ins, the mayor and police chief made public statements condemning the demonstrations and declaring that they would use the full force of the law to bring them to an

⁴State of Louisiana, Acts of Louisiana, 1960, Regular Session (Baton Rouge, 1960), no. 68, no. 69, no. 70, no. 76, no. 77, no. 78, no. 80.

⁵Burton, On the Black Side, 103.

immediate end. Subsequently, one white and three black protesters were arrested while staging a sit-in at a white-only lunch counter in a downtown store. They were prosecuted on a charge of criminal mischief and were convicted. The protesters appealed on the grounds that the store manager and the city police were enforcing an unconstitutional "custom of the state" in violation of the Fourteenth Amendment. However, the state supreme court upheld the convictions since the criminal mischief statute made no reference to race, and because of the nature under which the law had been applied in this case.⁶ In 1963, the United States Supreme Court reversed the convictions, taking full note of statements made by the mayor and police chief, whose clear intent had been to maintain segregated service in dining facilities, and whose methods had not been entirely motivated by the need to preserve the peace in a possibly volatile situation.⁷

Another breach of the peace case arose out of the arrest of several blacks who attempted to use the facilities of a segregated parish library in Clinton, Louisiana. When the defendants refused to leave, they were arrested. In 1966, the case reached the Supreme Court, which ruled that the defendants had not intended to provoke a breach of the peace, and that the evidence demonstrated that they had

⁶State v. Goldfinch, La., 132 So.2d 860 (1961).

⁷Lombard v. State, 83 S.Ct. 1122 (1963).

acted in a quiet, orderly and polite manner while in the library. The tribunal held that they had a right to be in the library and had simply expressed their constitutional rights of free speech, assembly and petition for redress of grievances. Since the basis for the state's prosecution of the protesters was their race, their convictions denied them the equal protection of the laws.⁸

In still another case, the Supreme Court reversed the breach of the peace convictions of blacks who had entered a white waiting room in a Shreveport bus terminal, and then had refused to leave when requested to do so by local authorities. Four black citizens intending to stage a "Freedom Ride" to Jackson, Mississippi, were arrested at the Continental Trailways Bus Terminal, where approximately forty city and parish lawmen were waiting for them. In addition to their arrests, the two persons who had brought them to the terminal were also arrested.⁹ Citing Garner v. State, the Supreme Court reversed their convictions on the grounds that the presence of blacks in a white waiting room was insufficient evidence to establish guilt for the charge of breach of the peace.¹⁰

The major demonstration case in the early 1960's which focused the attention of federal courts on state devices to

⁸Brown v. State, 86 S.Ct. 719 (1966).

⁹Burton, On the Black Side. 106-107.

¹⁰Taylor v. Louisiana, 82 S.Ct. 1188 (1962).

limit blacks protesting against racial discrimination was Cox v. State of Louisiana. The case included all of the elements used by the state to prevent mass demonstrations of any kind, particularly those involving race. Pitted against one another were anxious law enforcement and municipal officials with a determined yet orderly crowd of black demonstrators in front of them and an increasingly hostile and growing number of whites behind them, arrayed before the parish courthouse in downtown Baton Rouge in 1961.

The demonstration began with a CORE-directed action against downtown businesses that were maintaining "white only" lunch counters. On December 14, 1961, a group, primarily composed of students from Southern University, carried signs protesting segregation and urging a boycott of certain stores during the lucrative buying spree leading up to Christmas. City police responded by arresting twenty-three of the protesters. That night, Ronnie Moore, student president of the local CORE chapter, called for a mass demonstration to protest the arrests and the "evil of discrimination."¹¹

On the following day, approximately 2000 blacks, mainly college students, assembled on the Southern University campus five miles north of Baton Rouge. Learning that the bus drivers who were supposed to bring them to the city had been arrested, most of the protesters decided to march in an

¹¹ Baton Rouge Morning Advocate, Dec. 15, 1961.

orderly fashion to the downtown area. When Moore was arrested for violation of an antinoise ordinance while using a bullhorn to urge on the marchers, Reverend B. Elton Cox, a field secretary of CORE and advisor on the general protest movement, assumed the leadership of the march.¹²

Arriving in Baton Rouge before noon, the demonstrators assembled at the old State Capitol Building approximately two and one-half blocks from the parish courthouse where the twenty-three picketers arrested the previous day were being held. From there, the group marched to the courthouse. Upon the arrival of Cox at the head of the group, the chief of police consulted with him in the presence of the sheriff and the mayor. Cox informed the authorities of the purpose, content and duration of the demonstration, and was told by the police chief that his group could assemble across the street from the courthouse, approximately 101 feet away, and no further. The demonstrators then proceeded to fill the sidewalk for an entire block, while the police cordoned off the street directly in front of them. There was no public access along the pathway, and entrances to buildings across from the courthouse were effectively blocked.¹³

During the demonstration, the crowd sang a few songs and cheered when they heard loud responses from inmates on the third floor of the courthouse, which made law

¹²Ibid., Dec. 16, 1961.

¹³Ibid.; Cox v. State of Louisiana, 348 F.2d 750 (5th Cir. 1965).

enforcement officials even more uneasy. Adding to the tension was the gathering of around two hundred fifty whites on the sidewalk along the front of the courthouse, directly across from the black demonstrators. Subsequent testimony and a film taken by a local television crew showed that the black protesters were loud but in control, while the whites present were becoming increasingly agitated as the blacks sang, cheered and waved signs protesting racial discrimination.¹⁴

The climax of the demonstration came when Reverend Cox addressed the group, condemning segregation and the illegal arrest of the picketers. He then instructed the group to break for lunch and to stage a sit-in at four downtown businesses with dining facilities that still refused to serve blacks. In the event that they were again denied service, they were to sit quietly for one hour and then leave. At this point, Sheriff Bryan Clemmons assumed that Cox's speech had been "inflammatory" and had disturbed the peace, then took it upon himself to order the crowd to disperse immediately. Most of the personal accounts of what happened next agree that Cox instructed the group not to move. Thus far, the mood of the students had not been hostile, aggressive, unfriendly or riotous. The sheriff later testified that he had felt that the situation was getting out of hand. As about eighty city police and parish deputies began to push

¹⁴Ibid.

the black demonstrators back and fired tear gas at them, pandemonium broke out and the protesters fled in disarray. Fifty persons were arrested during the melee and Reverend Cox was arrested later in the day on charges of obstruction of public passageways, obstruction of justice, breach of the peace and criminal conspiracy.¹⁵

Cox was subsequently tried in state district court and found guilty of all but the criminal conspiracy charge. When he and two other CORE members criticized the district attorney and the judge for the way in which the case had been handled, they were indicted by the East Baton Rouge Parish grand jury for defamation.¹⁶ On appeal to the state supreme court, the sentence on obstruction of justice was set aside, but the convictions on obstruction of public passageways and breach of the peace were affirmed in June of 1963. During the state court proceedings, a ruling was handed down that the right of free speech was not absolute, and that a state could regulate its exercise by general and nondiscriminatory legislation.¹⁷ The statute regulating the obstruction of public passageways provided that:

No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road, or other passageway of any public building, structure, water craft or ferry, by impeding, hindering,

¹⁵Ibid.

¹⁶Cox v. Louisiana, 348 F.2d 750 (5th Cir. 1965).

¹⁷Cox v. Louisiana, La., 148 So.2d 600 (1963).

stifling, retarding or restraining traffic or passage thereon or therein.

However, legitimate labor organizations and certain approved labor methods to secure higher pay and better working conditions were exempted from the law.¹⁸ Another statute defined disturbing the peace as occurring when someone intended to provoke a breach of the peace by crowds or congregating with others:

. . . in or upon a shore protection structure . . .
or on a public street or public highway, or upon a public sidewalk, or any other public place or building or in any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, motion picture theater, drive in, beauty parlor, swimming pool area, or any sports or recreational area or place, or any place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or any building owned by another . . .

Those persons who failed or refused to disperse or move on when ordered to do so by a law enforcer of the state, parish or municipality would be subject to arrest.¹⁹

Cox filed two separate appeals with the United States Supreme Court, one involving his conviction on charges of disturbing the peace and obstruction of public passageways, and another involving the validity of a state statute prohibiting picketing near a courthouse. Arguments were held before the court on separate days, and the justices decided

¹⁸Acts of Louisiana, 1960, Regular Session, no. 80.

¹⁹Ibid., no. 69.

to issue two separate opinions in each case in January of 1965.

In the first case, the Supreme Court held that Cox's rights of free speech and free assembly had been infringed upon because the breach of the peace statute allowed persons to be punished merely for peacefully expressing contrary views on segregation, and it granted local officials "unfettered discretion" in regulating the use of streets for peaceful parades and meetings. The court held that the portion of Cox's speech advocating sit-ins was constitutionally protected, and that cheering, clapping and singing to protest segregation, discrimination and the arrest of fellow students was not a breach of the peace.²⁰

The court recognized that a state or municipality had the right to regulate the use of city streets and other facilities in order to assure public safety and convenience, and that everyone could not address a group at any time or public place. Government authorities had a duty and responsibility "to keep streets open and available for movement," but a statute that was so "vague and indefinite" as to allow for the punishment of peaceful expression of the rights of free speech and assembly was unconstitutional.²¹

²⁰Cox v. Louisiana, 85 S.Ct. 453 (1965).

²¹Ibid.

According to the justices, one of the functions of free speech "is to invite dispute," even to the point of inciting people to anger. In this incidence, fear by local authorities that violence might erupt due to the opinions being expressed by Cox did not justify curtailment of his basic rights of free expression. In addition, a government authority could not require persons desiring to disseminate ideas to present them to law enforcement officials for their consideration and arbitrary discretion to approve or reject them. Therefore, Cox's convictions were reversed.²²

In the second Cox v. State of Louisiana case, the Supreme Court dealt with the issue of picketing near a courthouse. The state statute in question was almost identical to a federal law passed by Congress in 1950, and provided that:

Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty pickets or parades in or near a building housing a court of the State of Louisiana . . . shall be fined not more than five thousand dollars or imprisoned not more than one year, or both.

The Supreme Court upheld the right of a state to pass a law in order to protect "its judicial system from pressures which picketing near a court house may create." However, Cox could not be convicted for any offense relating to this statute since he had received tacit permission from the

²²Ibid.

chief of police, in the presence of the sheriff and mayor of Baton Rouge, to conduct a demonstration across the street from the parish courthouse and had complied with that agreement. Although local officials later regretted their decision to allow the demonstration to proceed, they could not rescind this prior grant of permission and arrest the demonstrators for their actions in picketing near a courthouse. The Supreme Court then declared that laws and regulations governing freedom of speech and assembly should be drawn so as to give the public fair warning of what was illegal, but should not be so broad as to stifle protected freedoms.²³

This case did not end here, though, because the state district attorney for East Baton Rouge Parish promptly charged Cox with "attempting to obstruct justice." After failing to have the case removed to the federal district court, the defendant applied for and received a stay order from the Fifth Circuit Court of Appeals, on the grounds that the state was seeking to prosecute him for "attempting" to do what the Supreme Court had ruled was not a violation of the law.²⁴

In another case arising out of the CORE-directed demonstration in Baton Rouge in 1961, the issue of unlawful assembly was raised. In Clemmons v. CORE, local officials asked the federal courts for an injunction against the black

²³Cox v. Louisiana, 85 S.Ct. 475 (1965).

²⁴Cox v. Louisiana, 1348 F.2d 750 (5th Cir. 1965).

civil rights organization for sponsoring anti-segregation demonstrations on the grounds that such gatherings had obstructed public streets and resulted in numerous violations of state criminal statutes in the past. The court permanently enjoined the defendants on discovering that CORE had not secured a permit to conduct the march of December 15, 1961, and that the group of approximately two thousand persons had ignored the plaintiffs' order to disperse. The federal judge declared that the defendants' rights of free speech and assembly were subordinated to the state's interest in public safety when there was a "clear and present danger" to that safety. Later, the Court of Appeals reversed the lower court decision because the plaintiffs had failed to show a federal cause of action. Local officials had not shown that CORE and the demonstrators had intentionally conspired to deprive them and other members of the community of their federally protected rights under the law. Therefore, the district court was ordered to dissolve the injunction and to dismiss the complaint.²⁵

Because the federal courts had neutralized the effectiveness of several of Louisiana's law and order statutes, the state legislature in 1963 passed additional laws to strengthen its resolve and position as civil rights organizations announced plans to traverse the South on behalf of

²⁵Clemmons v. CORE, 201 F.Supp. 737 (E.D. La. 1962), 323 F.2d 54 (5th Cir. 1963).

blacks who were too intimidated to stand up for their civil rights. Among the laws enacted were new trespass, disturbing the peace, criminal mischief, resisting an officer and solicitation measures.²⁶

In the mid-1960's, CORE sponsored various demonstrations in several Louisiana cities in order to focus attention on the plight of blacks. A case in the town of Clinton involved the arrest of a white CORE task worker who accompanied two black residents in their attempt to register to vote in East Feliciana Parish in August of 1963. Although sitting quietly, he was arrested for disturbing the peace, and the district judge set a cash bond of \$2000, despite the fact that the maximum penalty for conviction was \$1000 and one year in jail. On August 20, the town of Clinton and East Feliciana Parish sought an injunction in state court against CORE because its civil rights activities encouraged others to violate state laws and threatened plaintiffs with violence and irreparable injury. After the state court issued a temporary restraining order against it, CORE sought unsuccessfully to have the case transferred to federal district court. On further appeal to the Fifth Circuit Court in 1963, CORE received a stay order, but the state district judge, John R. Rarick, ignored it and extended his restraining order to muffle CORE. Attempts by black leaders in the

²⁶ Acts of Louisiana, 1963, Regular Session, no. 91, no. 93, no. 97, no. 98, no. 99.

parish to settle racial problems peacefully with the mayor of Clinton failed in September, so CORE organized a boycott of town merchants the following month. Thirty persons, mostly blacks, were subsequently arrested for disturbing the peace and defamation. In December, the East Feliciana Parish grand jury indicted twelve blacks who had signed a letter to the mayor the previous September asking him to form a race relations committee to help solve problems. The case was never brought to trial, and after the passage of the Civil Rights Act of 1964, the Fifth Circuit Court dismissed CORE's earlier appeal because the issue had become moot.²⁷

Another CORE case involved demonstrations in the town of Plaquemine in Iberville Parish. On August 13, 1963, the town became the scene of a CORE-directed protest meeting at a Baptist Church, where national CORE director James Farmer was scheduled to speak. The meeting was broken up by law enforcement officers using horses, electric cattle prods, and tear gas, resulting in the arrests of hundreds of blacks who had come to hear the speech. As in Clinton, local officials sought and received a restraining order. However, this time, the order was issued by a federal district court, on the grounds that such action would prevent possible injury to large numbers of persons. Because the judge was

²⁷Leon Friedman (ed.), Southern Justice (New York; Pantheon Books, 1965) 119-20; 9 RRLR 1131-32; Clinton v. CORE, 341 F.2d 298 (5th Cir. 1965).

out of state and could not be reached to grant a hearing on a motion by CORE to dissolve the order, CORE appealed to the Fifth Circuit Court, which lifted the restraining order. Shortly thereafter, the district judge returned, issued a new temporary restraining order and denied CORE's request to dissolve the new decree. In mid-September, he issued a new restraining order, then lifted it on the following day to allow the case to be tried in state courts before federal action was taken on it. In October, a state district court issued a preliminary injunction prohibiting defendants from further actions in promoting or engaging in demonstrations in the town or parish.²⁸

In September of 1963, members of the black community in Shreveport sought a permit for a memorial march through the downtown area as a show of sympathy for the deaths of four black children resulting from the recent bombing of a church in Birmingham, Alabama. When the request was denied, the group decided to hold the march anyway and to proceed to a memorial service at a nearby church. Nearly two hundred law enforcement officers prevented the march from taking place, and proceeded to surround and intimidate the several hundred blacks who had congregated at the church. Incidents there resulted in numerous injuries to some of the demonstrators at the hands of the police as the crowd was dispersed. On

²⁸Friedman, Southern Justice, 118; Town of Plaquemines and Parish of Iberville v. CORE, 8 RRLR 862-73 (1963).

the following day, students at a black high school organized an impromptu march of their own, and were met by helmeted policemen "with clubs, shotguns, and pistols . . . slinging, beating, bruising, kicking, and pushing every black in sight and reach."²⁹

A more peaceful situation occurred in West Monroe in the following summer, when two white voter registration workers affiliated with CORE were arrested for disturbing the peace because of their assistance in registering local black residents. Since the voter registration book was open for only three days, the chief of police decided to enforce a city ordinance which prohibited whites and blacks from walking together on the town's sidewalks for five days. His clear intent was to prevent the formation of integrated teams of registration workers and to serve as a show of arbitrary police power to local blacks who might have intentions on becoming involved in civil rights activities.³⁰

One of the most serious civil rights demonstrations to take place in the state occurred in Bogalusa in 1965. Racial trouble began in January when local blacks tested their rights to use public accommodations in the city, and Ku Klux Klan threats forced the cancellation of a speech by Brooks Hays, an Arkansas Congressman known for his straightforward views on the impracticality of segregation. In

²⁹Quoted in Burton, On the Black Side. 101-02.

³⁰Friedman, Southern Justice, 60-61.

February, state police were called in when racial tensions escalated after two CORE workers claimed to have been attacked by a mob of white men. In the following month, CORE announced that it would use Bogalusa as a "summer project," and blacks began picketing local stores that continued to practice racial discrimination. Tensions between blacks and whites in the city resulted in fighting between rival pickets on the town's main street during the last two days of May, and led to the brutal murder of one black deputy sheriff and the wounding of another.³¹

During the summer of 1965, both blacks and whites armed themselves as scattered incidents continued to inflame residents of the surrounding area in both Louisiana and Mississippi, luring white supremacist groups to the racial battlefield that Bogalusa had become. At this point, Governor John J. McKeithen sent in the state police armed with rifles and submachine guns to set up roadblocks to deter additional outsiders from descending upon Bogalusa. Also, the federal courts became concerned about the hostile actions taken by various white supremacist groups operating in the city and by the lack of leadership provided by Bogalusa officials. The federal district court issued a preliminary injunction against the chief of police and certain other local officials, specifically enjoining them from

³¹Diane Smith, "School Integration in Washington Parish, Louisiana: 1954-1972" (Master's thesis, Louisiana State University, 1972) 37-49; Baton Rouge State Times, Apr. 22, June 1, 1965.

failing to protect demonstrators from assaults and harassments while peacefully demonstrating in protest of racial discrimination. When the court discovered that the chief of police and the commissioner of public safety had not complied with its order, it cited them for contempt and ordered them to adopt and publicize a plan which included the education of police officers on their duties and responsibilities during demonstrations.³² In two related cases, twelve civil rights workers filed a \$425,000 damage suit against Bogalusa, Washington Parish, and the State of Louisiana; and two organizations and thirty-three individuals were restrained by the federal courts from interfering with the civil rights of black residents of Washington Parish.³³

By the late 1960's, local authorities in some areas of the state were still attempting to prevent vocal protests by blacks against racial discrimination. Several blacks were arrested in 1968, while picketing the West Baton Rouge Parish School Board Office in Port Allen because of the racist policies of the board. Their arrests were based on a local ordinance that made picketing unlawful except under certain conditions. The federal district court in Baton Rouge upheld the ordinance, but the Fifth Circuit Court of Appeals reversed the decision on the grounds that the

³²Ibid.; Hicks v. Knight, 10 RRLR 1430 (1965).

³³United States v. Original Knights of the Ku Klux, 250 F.Supp. 330 (E.D. La. 1965).

regulation violated the First Amendment because of its overbreadth. The ordinance restricted all types of public and private picketing, prohibited picketing on sidewalks and streets, embraced all facilities in Port Allen, and limited the number of picketers to two.³⁴

As racial tensions intensified in the mid-1960's, state and local officials became alarmed at the arrival within the state of large numbers of "outside agitators" whose purpose was to assist blacks in the attainment of their constitutional rights. As a result of their concern, state authorities attempted to prosecute certain persons under the "Subversion Statutes" for their activities in promoting civil rights for blacks, as well as linking the civil rights movement with the time-honored charge that it was part of an international communist conspiracy. These attempts led to the case of Dombrowski v. Pfister (1964), in which a federal district judge approved of the state's attempts to prosecute civil rights workers for sedition, treason, subversion and communist activities aimed at the unlawful overthrow of the state government. However, the Supreme Court reversed the decision in 1965, invalidating Louisiana's anti-subversion statute because of its "chilling effect" on freedom of expression. The court found the statutory definition of "subversive organization" so vague, broad, and uncertain as to inhibit freedom of expression because of its threat of

³⁴Davis v. Francois, 395 F.2d 730 (E.D. La. 1968).

criminal prosecution. The majority also voided the portion of the statute that required members of Communist-front organizations to register, because it failed to provide a method for procedural due process.³⁵

The state riot statute was called into question at the end of the decade in the case of Douglas v. Pitcher. Under this law, the state prohibited the "endeavor by any person to incite or procure any other person to create or participate in a riot," which was defined as "a public disturbance involving an assemblage of three or more persons acting together or in concert which by tumultuous and violent conduct, results in injury or damage to persons or property." The law had been patterned on the federal Anti-Riot Act, which had been upheld by the federal courts. The Douglas case arose from the arrest of two black speakers at a mass protest rally in Baton Rouge following the killing of a black youth by a white city policeman. The rally was followed by disorders in which several persons were injured and property damage had occurred. Perhaps reflecting the national reaction to a more militant atmosphere that prevailed by the end of the 1960's, the federal district court decided in the case to uphold the state's riot statute.³⁶

³⁵Dombrowski v. Pfister, 227 F.Supp. 556 (E.D. La. 1964), 85 S.Ct. 1116 (1965).

³⁶Douglas v. Pitcher, 319 F.Supp. 706 (E.D. La. 1970).

The Law and Racial Intimidation

Sometimes, Louisiana law was used to intimidate blacks in order to render them ineffectual in attempting to gain equal treatment and due process. This objective was sought by various devices, but the intent was clear.

One of the earliest attempts to silence the voices of change was to strike at any organization which might possibly challenge the segregated system. Because of its active involvement in the campaign to secure civil rights for blacks, the NAACP became the primary focus of the state government in stifling black aspirations in the latter half of the 1950's. Although the first state branch of the organization had been chartered in 1914, it was never seriously challenged until 1956. At that time, the NAACP was prosecuted under a 1924 anti-Ku Klux Klan law, which regulated "all fraternal, patriotic, charitable, benevolent, literary, scientific, athletic, military, or social organizations," requiring them to file a list of their members and officers residing in Louisiana. This requirement had to be met between December 15 and December 31 each year. However, the group was reluctant to file its membership list because of fears of reprisals by segregationists, which led to a court challenge. On March 29, 1956, a state district court judge issued a preliminary injunction banning the NAACP from operating within the state as long as it failed to comply with state law. The organization appealed unsuccessfully to

federal and state courts and lay dormant until being resurrected in December in New Orleans, Lafayette, Lake Charles, Shreveport, Alexandria, and Baton Rouge. When State Attorney General Jack P. F. Gremillion announced his intention to prosecute them for failure to comply with the orders of the state courts, they decided to submit and file the required membership lists by the end of the year.³⁷

Besides the NAACP, two educational organizations were also compelled to file membership lists because of the stand of their parent organizations on segregation in 1956. The state attorney general issued an opinion bringing them under the scope of the 1924 law, and declared that teachers who belonged to them could be dismissed under current teacher tenure laws. Therefore, the National Parent-Teacher Association filed a list of its 6500 Louisiana members, while the Louisiana division of the National Education Association filed a partial list of the names of 4000 of its approximately 9000 members.³⁸

In 1958, the state legislature enacted a new law aimed at integrationist organizations in the guise of forestalling Communist infiltration into the state. The statute required certain types of "non-trading organizations" that were affiliated with organizations created or operating under the

³⁷Acts of Louisiana, 1924, Regular Sessions, no. 2; New Orleans Times-Picayune, Apr. 25, Dec. 20, 1956.

³⁸New Orleans Times-Picayune, Nov. 28, 1956.

laws of other states to file affidavits declaring that none of its officers was a member of any group cited by the House Un-American Activities Committee or the United States Attorney General as Communist, Communist-front or subversive.³⁹ Under the 1924 and 1958 laws, members of the NAACP were being fired from their jobs, employees were being prohibited by their school boards from joining, and local NAACP leaders were being intimidated by law enforcement officers and white supremacist groups.⁴⁰ The Shreveport affiliate of the NAACP challenged the two statutes in the federal courts, which voided them in the early 1960's on the grounds that the first violated due process while the second subjected members of the NAACP to possible economic reprisals.⁴¹

In another blatant episode of racial harassment, two cases arose out of an incident that occurred in Plaquemines Parish in the mid-1960's, but which was not settled until the early 1970's. One case involved machinations by parish authorities who grossly violated a black resident's civil rights. Then, when he selected an out-of-state civil rights attorney currently residing in Louisiana to defend him, parish officials began harassing his legal counsel in an

³⁹Acts of Louisiana, 1958, Regular Session. no. 260.

⁴⁰Burton, On the Black Side, 104.

⁴¹Louisiana ex rel. Gremillion v. NAACP, 181 F.Supp. 37 (E.D. La. 1960), 81 S.Ct. 1333 (1961).

effort to deter any possibility of civil rights progress for black residents of the parish.

In the first case, Duncan v. Perez, a black man was arrested for simple battery in connection with his part in breaking up a confrontation between his two cousins and four whites in 1965. Although the charge was dropped, he was rearrested and his bond set at twice that of the parish bond schedule. In a non-jury trial, he was convicted and sentenced. When his out-of-state civil rights attorney lost an appeal to the state supreme court, Duncan was again arrested and a new bond was set. Then, the attorney was arrested on a charge of practicing law in the state without a license after he attended a conference with the parish district judge to post an appeal bond for his client. Relatives who attempted to post a property bond for Duncan were informed by the sheriff that the assessed value of the property had to be at least double the amount of the bond, although this was contrary to state law and practice. The case eventually reached the United States Supreme Court, which reversed the conviction because the defendant had been denied trial by jury. Duncan then sued the parish district attorney in federal court to enjoin him from further prosecution on the charge of battery. In 1970, the court concluded that the defendant would not have been prosecuted and reprosecuted had it not been for the civil rights nature of the case, Duncan's selection of an out-of-state civil rights attorney to represent him, and his vigorous defense of his legal

rights. Therefore, the court voided any future attempts by the state to re prosecute him, on the grounds that irreparable injury and bad faith prosecution had been clearly established by the parish district attorney over the past five years of litigation.⁴²

In the related case of Sobol v. Perez, parish officials conspired to make an example of Duncan's attorney. Sobol was licensed to practice law in the District of Columbia and New York State, before the United States Supreme Court, and in federal courts operating in the Eastern District in Louisiana. He had resided in the state since 1965, performing volunteer work for the Lawyers Constitutional Defense Committee, which provided attorneys for civil rights litigation in the South. After being arrested in 1967, for practicing law in the state without a license, Sobol was fingerprinted, jailed for four hours and had his bail set at \$1500 without any appearance before a judge. Being joined by the United States as "intervenor," the attorney filed suit against Plaquemines Parish political boss Leander Perez, Sr., his son who served as the parish district attorney, and the parish district judge. In 1968, the federal courts decided that Sobol's arrest was harassment and was meant to deter him as well as other attorneys from providing legal representation in civil rights cases. It was determined

⁴²Duncan v. Perez, 321 F.Supp. 181 (E.D. La. 1970), 455 F.2d 557 (5th Cir. 1971).

that the plaintiff's actions in representing Duncan did not constitute unauthorized practice of law under Louisiana statutes, which allowed out-of-state lawyers temporarily present in the state to practice in state courts. The law had never been used against any other visiting attorney, so that its use in the Sobol case "could only be interpreted as harassment."⁴³

Trial Procedure

The major issue arising in connection with trial procedure was in the racial composition of grand and petit juries. On several occasions prior to 1954, the state supreme court had expressed its intentions that juries be selected without discrimination against members of the race of the accused. However, local and state officials were able to exploit loopholes in the law or within the de jure system of segregation itself to insure that virtually all-white juries were selected until the mid-1960's. In Louisiana, the roster of registered voters was the primary list used in compiling the general venire from which the grand and petit juries were selected. Since few blacks were registered to vote before the 1960's, it was practically assured that juries would be all-white. Then, local officials resorted to various other devices in order to purge the lists of any remaining black names.

⁴³Sobol v. Perez, 321 F.Supp. 181 (E.D. La. 1970), 455 F.2d 557 (5th Cir. 1971).

The systematic exclusion of blacks from juries was the first major obstacle that had to be removed in order for black citizens to receive fair and equitable treatment in state courts. During the latter half of the nineteenth century, attempts were made by the federal government to assure blacks of the selection of fair and impartial juries. The Civil Rights Act of 1875 provided harsh penalties for state officials who excluded blacks from jury duty. Then, in 1880, the Supreme Court declared that every citizen was entitled to the right of trial by a jury that was free of prejudice. Although proscribing outright exclusion of any class or race, it did approve of the states establishing qualifications for juror eligibility. Unfortunately, this loophole subverted federal intentions of protecting the rights of blacks in the selection of a jury free of racial discrimination.⁴⁴

In 1895, the Louisiana State Supreme Court ruled that a black defendant had the burden of proving that his jury was chosen under a policy of systematic exclusion of blacks. Otherwise, the court would accept the testimony of jury commissioners that some black names were included in the jury wheel at the time of the selection of the defendant's venire, and that they had made no distinctions on the basis

⁴⁴*Strauder v. West Virginia*, 100 U.S. 303 (1880).

of race, color or previous condition of servitude in jury selection.⁴⁵

Not until 1935 did the United States Supreme Court adopt a view contrary to this decision, when it declared that it would not accept a simple denial by the state that it did not discriminate. Instead, state officials would have to offer proof in the face of a strong prima facie challenge, and they would be required to demonstrate that there were reasons other than race for the lack of qualified blacks on juries.⁴⁶

Whether or not naivete played a role in its decision in 1937, the state supreme court held that there was no discrimination on the grounds of alleged systematic exclusion of blacks from juries if the evidence showed that blacks were included in every jury list, that some blacks had served on grand or petit juries in the past, and if accused blacks were tried as fairly as whites in state courts. Citing the Fourteenth Amendment and Article 1, Section 2 of the Louisiana State Constitution of 1921, it declared that state action through the legislature, courts, or executive or administrative officers "in excluding all persons of the African race solely because of race or color from serving as grand or petit jurors in (the) criminal prosecution of a person of the African race, is a denial of equal protection

⁴⁵State v. Murray, La., 17 So. 832 (1895).

⁴⁶Norris v. Alabama, 55 S.Ct. 579 (1935).

of the laws." No one had a right to a jury composed of only whites, only blacks, or mixed persons. A loophole in the ruling was provided when the court instructed jury commissioners to select only "persons who they know to be competent, regardless of whether they are black or white." In addition, it stated that there would be no presumption of discrimination if all names but a few placed in the general venire were white, unless evidence to the contrary was presented. Otherwise, it would be presumed that the list was selected "in a fair effort to select best qualified persons, and not with any view of discrimination on account of race or color."⁴⁷

During the 1940's, the state supreme court issued additional rulings on the waiving of rights, proportional representation on juries, and prima facie evidence of jury discrimination. In a 1940 case, the state supreme court held that a defendant had to first raise the issue of racial discrimination in the selection of his grand or petit jury at his initial trial. If not, he waived such right and could not later cite this reason in motioning for a new trial.⁴⁸ As late as 1955, the United States Supreme Court upheld this decision, when it affirmed the conviction of three black Louisiana residents for rape, despite their allegations that blacks had been systematically excluded

⁴⁷State v. Gill, La., 172 So. 412 (1937).

⁴⁸State v. White, La., 192 So. 345 (1940).

from their grand jury. The high court decided that they had been provided with counsel and a reasonable opportunity to object to the composition of their grand jury "in a timely fashion," and in failing to do so, had waived their constitutional rights at that time.⁴⁹

In 1941, the state supreme court ruled on a case involving a parish jury commission that had drawn up its own prospective juror list, composed of black and white names of persons that it considered to be competent and qualified to serve. The justices held that "in absence of proof of fraud or designed discrimination, it is to be presumed that commissioners performed their duties within the spirit of the law, wisely and well." In addition, the court decided that the law did not set a fixed proportion or percentage of whites or blacks on juries, and that "negroes are not entitled to representation on grand and petit juries in proportion to the population."⁵⁰ In the following year, the state supreme court declared that no violation of a black defendant's rights occurred if blacks were included on a petit jury panel, but none were selected.⁵¹

Louisiana's high court held in 1944, that the evidence showed that a prima facie case of racial discrimination was

⁴⁹Michel v. Poret, Poret v. State, La., 76 S.Ct. 158 (1955).

⁵⁰State v. Pierre, La., 3 So. 2d 895 (1941).

⁵¹State v. Augusta, La., 7 So.2d 177 (1942).

made in Allen Parish, where 10 to 20 percent of the population was black but where no black citizen had ever served on a jury in the history of the parish. Therefore, in a rare judgment, it was decided that the accused had been denied equal protection of the laws in the selection of his jurors.⁵²

In 1947, the state supreme court ruled that a person charged with a crime was not entitled to have the exact percentage of his race placed on the general venire lists of grand and petit juries in order to avoid a charge of discrimination. However, "substantial representation" by the race of the accused would be sufficient as opposed to "token representation."⁵³

Congress re-enacted Section 4 of the 1875 Civil Rights Act concerning jury service in 1948. The statute declared that:⁵⁴

No citizen possessing all qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude; and whoever, being an officer or other person charged with any duty in the selection or summoning of jurors, excludes or fails to summon any citizen for such cause, shall be fined not more than \$5000.

⁵²State v. Anderson, La., 18 So.2d 33 (1944).

⁵³State v. Perkins, La., 31 So.2d 188 (1947).

⁵⁴United States Code Annotated, Title 18 (hereinafter cited as 18 USCA), (St. Paul: West Publishing), Section 243.

Despite the passage of this law, discrimination in the selection of juries in Louisiana remained the rule instead of the exception.

During the 1950's, the state supreme court and at least one trial court took a harder line toward systematic exclusion or token inclusion of blacks on juries. In two cases decided in 1952 and 1957, the state supreme court held that such tactics were unconstitutional, but that the percentage of blacks and whites in the population or on the voter registration list was not to be used as a gauge in determining whether the selection of a grand jury was based on racial discrimination.⁵⁵ In 1952, a district court in Orleans Parish became the first trial court to annul an indictment on the grounds that blacks had been systematically and intentionally excluded from parish grand juries because of their race and color in violation of the Fourteenth Amendment.⁵⁶ In a 1955 case, the state supreme court upheld the conviction of a white man who had motioned for a new trial on the grounds of systematic exclusion of blacks from his grand jury. The court felt that he had no right to such a challenge of his indictment since neither he nor his victim was black.⁵⁷ Two years later, the court overruled a

⁵⁵State v. Green, La., 60 So.2d 208 (1952); State v. Eubanks, La., 94 So.2d 262 (1957).

⁵⁶Louisiana v. Dowels, 1952 (unreported case, cited in Eubanks v. State, 1958).

⁵⁷State v. Lea, La., 84 So.2d 169 (1955).

motion by a black defendant that "persons of color" who had served on his grand jury were not of the same class as "Negroes."⁵⁸

The United States Supreme Court issued a major ruling concerning jury selection in Louisiana in the case of Eubanks v. State in 1958, reversing the decision of the state supreme court, which had declared that there was insufficient evidence for a charge of systematic exclusion of blacks from a grand jury in an Orleans Parish murder case. During the course of an investigation by the Supreme Court, it was determined that the population of Orleans Parish was one-third black, and that the parish jury commission had initially begun to include blacks as potential jurors in 1936. By 1954, when Eubanks was indicted, thirty-six grand juries had been selected, with at least six blacks being included in each list. However, only one black citizen was selected among the four hundred thirty-two jurors named during the previous eighteen year period, and it was alleged that the single black juror chosen was thought to have been white. Despite the fact that there were a substantial number of blacks available and qualified for jury service, virtually none had served. In overturning the case, the Supreme Court held that the "mere general assertions by officials of their performance of duty in selecting (a) grand jury is not an adequate justification for

⁵⁸State v. Palmer, La., 94 So.2d 439 (1957).

exclusion of Negroes from grand jury service," declared that "chance and accident alone do not constitute adequate explanation for continued omission of Negroes from grand juries over long periods of time," and overruled the defense "of local tradition" for failure of the state to comply with equal protection.⁵⁹

At this same time, the state supreme court overruled a motion that the state was required to present evidence that blacks were being called for jury service. The justices declared that the court had ruled for nearly eighty years that discrimination in the selection of juries was unconstitutional. Once again, the court held that the burden of proof for a charge of racial discrimination in the selection of a jury was on the defendant.⁶⁰

In 1959, the Fifth Circuit Court of Appeals issued its opinion in United States ex rel. Goldsby v. Harpole, a Mississippi case in which a conviction was struck down on the grounds that there was strong prima facie evidence of systematic exclusion of blacks from juries. This decision became the foundation for subsequent decisions by the appellate court involving discrimination in jury selection.⁶¹ In a companion case in 1964, the court ruled that there was systematic exclusion of blacks from the jury system in a

⁵⁹Eubanks v. State, 78 S.Ct. 970 (1958).

⁶⁰State v. Fletcher, La., 106 So.2d 709 (1958).

⁶¹United States ex rel. Goldsby v. Harpole, 263 F.2d 71 (5th Cir. 1959).

Georgia case, and that the state had in effect required blacks "to choose between an unfairly constituted jury and a prejudiced jury."⁶²

In the 1965 case of Swain v. Alabama, the Supreme Court appeared to do an about face. Prior to this decision, the federal courts were predisposed to overturn convictions when there was complete exclusion of blacks or obvious tokenism of blacks on juries, and they had generally approved of prima facie evidence of jury discrimination for reversals. However, after Swain, the Supreme Court cast doubt on what constituted a prima facie case of discrimination, when it declared that "an imperfect system is not equivalent to purposeful discrimination based on race." It also indicated that a jury system did not have to perfectly mirror the population and proportions of different groups present within the community.⁶³ However, the Fifth Circuit Court of Appeals chose to strictly construe the meaning of this decision, and continued to apply the Constitution's guarantee of a fairly selected jury system. During the late 1960's, the Fifth Circuit Court maintained a higher set of standards than those imposed by the Supreme Court.⁶⁴

⁶²Whitus v. Balkcom, 333 F.2d 496 (5th Cir. 1964).

⁶³Swain v. Alabama, 85 S.Ct. 824 (1965).

⁶⁴Frank T. Read and Lucy S. McGough, Let Them Be Judged: The Judicial Integration of the Deep South (Metuchen, N. J.: Scarecrow Press, 1978) 339.

During the 1960's, the courts undertook the issues of criteria for jury selection, exemptions from jury service, use of prejudicial remarks during trials and the use of peremptory challenges. It was during this time that both the Fifth Circuit Court of Appeals and the United States Supreme Court became actively involved in the supervision of jury procedures in the Southern states.

The Louisiana State Supreme Court handed down a major state decision in civil rights in 1962, in State v. Goree, which dealt with the use of "best man" criteria for jury selection. The case stemmed from a charge against several blacks for "battery with a dangerous weapon on a white man" in Lincoln Parish, the site of all-black Grambling College. The court discovered that the parish had a non-white population of 11,925 persons out of a total population of 28,535 in 1960. On the official parish voter registration list, there were 860 qualified black voters among the nearly 8000 persons registered. Of the registered black voters, 112 were teachers, 38 were over sixty-five years of age, 440 were women, 9 were school bus drivers, 61 were students and 1 was a doctor. The evidence showed that the parish jury commission had used the registration list to draw up a general venire list from which the grand and petit jury lists were taken. In the five years prior to the Goree trial in 1961, only one black name had been drawn for the petit jury. Jury commissioners testified in court that they had failed to include blacks in the general venire list because of

their decision to place only the names of persons who they considered to be the "best men" for jury service. They claimed that their actions had not been motivated by racial considerations, and had only eliminated persons who were entitled to exemptions because of occupations or age. ⁶⁵

The trial court judge in Goree in 1961, held that the jury commission had carried out the state mandate of selecting "none but good and competent jurors" who were "of well known good character and standing in the community." He also ruled that the jury lists were virtually all-white "because of the well-known fact that the moral standards of Lincoln Parish Negroes are rather low," basing his opinion on personal observations that 85 percent of the criminal cases brought before his court had been committed by blacks. He also held that the number of blacks available for jury selection was low because the better qualified ones were entitled to exemptions from jury service if they were professors, school teachers, school bus drivers or sixty-five years of age or older. ⁶⁶

In overturning Goree's conviction, the state supreme court held that the jury commission in Lincoln Parish had overstepped its authority by assuming the power of exempting qualified blacks, automatically exempting them without their prior consent. Under state law, persons desiring to invoke

⁶⁵State v. Goree, La., 139 So.2d 531 (1962).

⁶⁶Ibid.

the exemption law were required to produce certain documents declaring that they wished to be exempted. Since qualified blacks were available for jury service but no effort had been made to select them, the state supreme court decided that systematic exclusion of blacks from the general venire and petit jury lists had been established.

Shortly thereafter, the decision by an Orleans Parish jury commission to exempt common laborers from jury panels was challenged in federal courts, because of its effect in removing many qualified blacks from juries. In 1964, a federal district court approved the process because Orleans Parish did not pay its jurors, which would have worked a hardship on common or daily wage earners, many of whom were black. Therefore, the court validated the procedure even though it resulted in a disproportionate number of blacks being excused from jury service.⁶⁵

On appeal to the Fifth Circuit Court of Appeals, the decision was reversed. Evidence was presented that no blacks had served on an Orleans Parish grand jury since 1936, and that no blacks had ever been selected for petit juries in criminal cases. In addition, it held that the equal protection clause of the Constitution prohibited a state from creating arbitrary and unreasonable classifications for jurors in criminal cases, and that the state had

⁶⁷ Ibid.

⁶⁸ United States ex rel. Poret v. Sigler, 234 F.Supp. 171 (E.D. La. 1964).

failed to adequately explain its long-standing practice of placing small numbers of blacks on its juries. In deciding to exempt certain persons from jury duty, the "overriding consideration . . . is not the burden of jury service on prospective jurors but fairness of the system." The court could find no state statute permitting Orleans Parish to exempt laborers as a class. If such a law had existed, it would have been invalid on the grounds that it violated the constitutional requirement that an impartial jury represent a cross section of the community. However, the exclusion of certain occupational groups such as doctors and firemen was approved because of the need for their uninterrupted services within the community.⁶⁹

In 1966, the Fifth Circuit Court of Appeals held that a litigant who was not a member of an excluded class could also challenge the composition of a jury that was affected by discrimination. It ruled that a person was entitled to a jury that reflected "a fair cross-section of the community."⁷⁰

It was this rationale that was the basis of the Jury Selection and Service Act of 1968, which prohibited any discrimination in the jury selection process and designated the list of registered voters as the primary source of jurors. The law also required the use of other sources, when

⁶⁹Labat v. Bennett, 365 F.2d 698 (5th Cir.1966).

⁷⁰Rabinowitz v. United States, 366 F.2d 34 (5th Cir. 1966).

necessary, to insure that federal grand and petit juries were "selected at random from a fair cross-section of the community," and to insure that all citizens would have the opportunity to serve as jurors. Another provision of the act stipulated that no citizen could be excluded from federal jury service on account of "race, color, religion, sex, national origin, or economic status."⁷¹ Therefore, it was a logical progression in the line of judicial reasoning when the Supreme Court ruled in 1972, that whites could not be tried fairly by grand and petit juries from which blacks had been excluded.⁷²

A federal district court in Louisiana ruled in a Tangipahoa Parish case in 1967, that voter registration rolls which represented a fair cross-section of the community could be used by a jury commission as the only source for the names of prospective jurors. Then, if the general venire reflected a cross-section of the community and the grand and petit juries were drawn fairly by lot from such a venire, it was immaterial that the racial composition of the ultimate jury was disproportionate. However, in a rehearing of the case before the court in 1969, it was shown that blacks made up 29 percent of Tangipahoa Parish's adult population and 15 percent of its registered voters, but only 2.6 percent of jury venires at the time of the defendant's

⁷¹Read, Let Them Be Judged, 344; 28 USCA, Sections 1986-71.

⁷²Peters v. Kiff, 92 S.Ct. 2163 (1972).

trial. Therefore, the court decided that a prima facie case of systematic exclusion of blacks from juries had been established.⁷³

In a Vermilion Parish case of 1976, the state supreme court upheld the practice of adding names of blacks to a jury venire if it included less than 20 percent blacks (their proportion of parish population). The court affirmed the procedure to enable the parish to meet the requirement that the venire represent a true cross-section of the community, even though it had to consciously take race into consideration.⁷⁴

With the repeal or voidance of segregation laws and the inauguration of a more moderate state administration by the early 1970's, most state courts and jury commissioners were in compliance with federal guidelines for jury selection. Perhaps, the following case illustrates how far the courts of the state had gone in a few short years toward establishing equal justice for black defendants. In a 1971 case charging Ouachita Parish with racial discrimination in the composition of parish juries, the state supreme court held that the representation of blacks on the parish jury venire was substantial, that its jury commissioners had used a wide variety of sources for acquiring the names of prospective jurors, that selections of jurors from the lists had been

⁷³United States ex rel. Wilson v. Walker, 263 F.Supp. 289 (E.D. La. 1967), 301 F.Supp. 95 (E.D. La. 1969).

⁷⁴State v. Peters, La., 204 So.2d 284 (1976).

conducted randomly, and that the defendant had produced no proof of actual intentional or purposeful discrimination by parish officials.⁷⁵ Of course, discrepancies still occurred, but the days of blatant discrimination in the formation of jury venires was ended.

Another racial issue that confronted the courts during the 1960's was the utterance of prejudicial remarks to the jury. In 1957, the state supreme court affirmed the decision of a trial court judge, who had allowed a juror to serve on a jury after having acknowledged his belief in "white supremacy." The judge stated that the juror was not prejudiced, and that his selection did not jeopardize the black defendant's right to a trial by a jury of his peers.⁷⁶ However, in a rehearing of another case in 1961, the state supreme court decided that a defendant's attorney was entitled to ask prospective jurors whether they belonged to religious, integrationist or segregationist groups for the purpose of uncovering the possibility of prejudice, thus enabling the defense to make a peremptory challenge of a juror. In a major breakthrough, the court held that membership in an organization advocating racial segregation "might be regarded as proper notification" of possible prejudice.⁷⁷

⁷⁵State v. Millsap, La., 248 So. 2d 324 (1971).

⁷⁶State v. Edwards, La., 94 So. 2d 674 (1957).

⁷⁷State v. Hills, La., 129 So. 2d 12 (1961).

However, as late as 1967, the state supreme court still affirmed some cases where there were obvious prejudicial remarks made during the course of a trial. Among the grounds presented by one black defendant in motioning for a new trial, were prejudicial comments made at the time of jury selection by the parish district attorney, who acknowledged his membership in a White Citizens Council, and error by the trial court judge in refusing to allow the defense to inquire of a juror whether his friends or associates were members of the Ku Klux Klan. The state supreme court denied the motion and affirmed the conviction because of failure to establish a prima facie case of discrimination in the jury selection process, the removal of any prejudicial effect of alleged prejudicial comments when the trial judge instructed jurors to disregard it, and because the refusal to allow the inquiry of the juror was proper.⁷⁸

The possible use of peremptory challenges in a racially discriminatory manner was the issue in three cases involving the State of Louisiana during the first half of the 1960's. In one trial, a prosecutor in Plaquemines Parish used peremptory challenges as a means of excluding blacks from a petit jury. However, the state supreme court declared that such action, along with the small number of blacks on a convicted black defendant's jury venires, did not show a planned or continued exclusion or inclusion of a token

⁷⁸State v. Rideau, La., 193 So.2d 264 (1966).

number of blacks from the jury list.⁷⁹ In a similar case decided in 1964, the court held that peremptory challenges could be exercised without the assignment of any cause, reason or inquiry into the motive.⁸⁰ By 1965, it appeared that the Supreme Court had removed peremptory challenges from prosecutors as a jury discrimination device, but defendants were still required to prove that the prosecution had used such a method over an indefinite period of time to exclude blacks from juries. In order to allow lawyers to exercise freedom of discretion in removing jurors for valid reasons, the high court refused to seriously interfere with peremptory challenges.⁸¹

During the 1970's, the state supreme court solidified its support for virtually unlimited discretion by attorneys in their use of peremptory challenges of prospective jurors. In 1971, the court once again ruled that it would not reverse the conviction of a defendant because of peremptory challenges of one or two blacks on a jury venire that has resulted in no blacks being seated on the jury.⁸² Then, in 1975, the court ruled that there were no grounds for review if the state used peremptory challenges allegedly to remove all blacks from the jury venire who were not earlier removed

⁷⁹State v. Clark, La., 140 So.2d 1 (1962).

⁸⁰State v. Ward, La., 167 So.2d 359 (1964).

⁸¹Swain v. Alabama, 85 S.Ct. 824 (1965).

⁸²State v. Square, La., 244 So.2d 200 (1971).

for cause.⁸³ As late as 1976, the state supreme court ruled that the state's exercise of its peremptory challenges of prospective black jurors did not constitute denial of due process or equal protection if there was no evidence of a historical pattern of black exclusion from juries.⁸⁴

In the forefront of the civil rights struggle by blacks in Louisiana was the attempt to secure dignity, due process and equal treatment under the laws of the state. With the Brown decision of 1954, black citizens of Louisiana began to envision the possibility of the first real progress in race relations since the end of Reconstruction. Beginning in the latter half of the 1950's, a few daring black leaders in New Orleans, Baton Rouge, and Shreveport launched nonviolent protest movements to crack the facade of the de jure system of segregation. Although supported by large numbers of black college students, they were frequently alone in their fight as hundreds of thousands of blacks, made timid by the system of segregation, watched hopefully but silently.

Entrenched in every political, economic and social position within the state, the segregationists used the police powers at their disposal to counter every attempt by blacks to reverse their second-class citizenship. The state's leaders reacted to black demands for equal treatment by enacting a multitude of new legislation to thwart any

⁸³State v. Anderson, La., 315 So.2d 266 (1975).

⁸⁴State v. Haynes, La., 339 So.2d 328 (1976).

possibility of black equality with whites, and by launching crushing attacks upon any individual or organization appearing to lean toward integration. As sit-ins, boycotts and demonstrations spread during the early 1960's, along with a new invasion of Northern "agitators" and "communist agents" seeking to destroy the Southern way of life, the state's white leaders expressed their alarm by unrelenting attacks upon them by legal means. Only through the intercession of the federal courts, which neutralized the effectiveness of most of the arbitrary state legislation and restrained state leaders through injunctions from interfering with peaceful expressions by blacks against segregation, could any semblance of progress be made. Not until then was the power of the segregationists broken and the first real promise of hope brought to the masses that real change in racial relations was present.

Among the most vexing problems in the state was the judicial system itself, where blacks were systematically excluded from juries prior to 1960. Although the state supreme court and the federal government had banned such practices since the end of the nineteenth century, legal loopholes were found to prevent all but a handful of token blacks from serving. Tied to the jury system was voter registration, since the list of registered voters was used by parish jury commissioners to compile venire lists. Because few blacks were registered to vote prior to 1960, the system virtually assured the selection of all-white

juries. Then, legal maneuvers such as peremptory challenges or exemptions of prospective jurors could be used to remove any remaining blacks from them.

Once again, it took vigilant federal efforts to break the hold of segregationists on the jury system. By 1970, overt discrimination in jury selection had become untenable. Although the legal system had come a long way by the early 1970's, isolated incidents of racial discrimination in the state's legal process continued, but with decreasing frequency as federal and state guidelines made it increasingly difficult to escape from inspection when charges surfaced of discriminatory practices in violation of due process and equal treatment under the law. However, as in other areas of civil rights, the federal government began retreating in its protection of black protests by the early 1970's. Although the Fifth Circuit Court of Appeals remained vigilant, the United States Supreme Court became less willing to support civil rights activities, or to interfere within court proceedings unless substantial evidence was offered by a defendant that racial discrimination had been practiced on a systematic basis.

Chapter III

DISCRIMINATION IN VOTING AND ELECTIONS

Introduction

The federal government was the primary agent in the eradication of discrimination in the area of voting and elections in Louisiana. The promise of political equality that was extended to the freedmen during Reconstruction quickly faded with the accession of the Bourbon Redeemers in 1877. By 1900, 95 percent of blacks residing in the state had been disfranchised by de jure pronouncements. Not until the federal courts began the cumbersome process of unraveling the intricate web of legal electoral barriers did the abandoned black citizen see a glimmer of hope for improvement in his political situation.

After 1900, white leaders of Louisiana adopted the white primary to exclude the few remaining black voters and any viable Republican opposition. Under this system, candidates for various offices were selected by party members in state primaries prior to a general election. Since only whites were allowed to belong to the Democratic Party and over 90 percent of the state's voters were registered as Democrats, selection in the white Democratic primary was tantamount to election. With the voidance of the white

primary by federal courts in the 1940's, sizable numbers of blacks resumed registering to vote in the state. The flood of registrations in the 1950's alarmed conservative whites and prompted a racist attack and purge of registration rolls in various parts of the state beginning in 1956. Unlike the situation in the late nineteenth century, this time the federal government did not shirk its responsibilities but launched a sustained and effective attack on efforts by election officials and white supremacy organizations to stifle black electoral aspirations. Assisting the federal courts were efforts by the Justice Department and Congress, which passed a series of civil rights bills to strengthen and encourage the endeavors of the judicial and executive branches to insure voter equality.

By 1964, the end of discrimination in voting was within sight. The poll tax had been outlawed by constitutional amendment and overt measures aimed at mass disfranchisement of blacks had been voided. Parish registrars were under strict inspection by the federal courts and the Justice Department for any indications of discriminatory operation of their offices, while the state's interpretation and citizenship tests for registration were placed under a freeze in areas with a long history of voter discrimination.

The enactment of the Voting Rights Act in 1965 tightened loopholes in the Fifteenth Amendment and subsequent election laws. Thereafter, it became next to impossible for any overt discrimination in electoral procedures to pass the

scrutiny of the federal government. By the late 1960's, the federal government shifted its attention to the issue of reapportionment plans for public bodies, many of which grossly underrepresented blacks. By 1972, blacks were beginning to take an active political role in the state, and de jure means of discrimination in voting and in the conduct of elections were fading into history. In the same year, the state saw the inauguration of a liberal, neo-populist governor who had been elected by a coalition of blacks and South Louisiana Cajuns.

Disfranchisement of Blacks After Reconstruction

The first Reconstruction Act of March 2, 1867, imposed black suffrage on the ten Southern states that were subject to military reconstruction. Prior to that time, Louisiana officials had refused to take any action on the enfranchisement of freed black males, despite strong encouragement of delegates to the 1864 state constitutional convention by President Abraham Lincoln and General Nathaniel Banks, who directed the federal occupation of southern Louisiana. Despite fierce opposition to any suffrage concessions to blacks, the convention adopted a resolution permitting the state legislature the discretion to extend the vote to some free blacks. Later suggestions to the new legislature by President Andrew Johnson and Governor James M. Wells to enfranchise loyal free blacks or black Union Army veterans fell on deaf ears. When the governor tried to force the

issue by reconvening the 1864 constitutional convention, a riot ensued in New Orleans in 1866. This event became grist for nascent Radicals in Congress and helped persuade many Northern moderates to support harsher reconstruction measures. An investigation of the riot by the Joint Committee on Reconstruction recommended in February of 1867, that Louisiana be placed under a military government until such time as a "loyal" state government could be formed.¹

The second Reconstruction Act of March 23, 1867, provided for the calling of a state constitutional convention and outlined the procedures to be followed in writing a new state constitution. General Philip Sheridan, who commanded the troops occupying the state at this time, immediately complied with the Reconstruction Acts and began the task of registering qualified voters. When voters went to the polls to decide on the question of whether to hold a new constitutional convention, there were over 78,000 blacks and over 48,000 whites (down from 94,711 white adult males in 1860) registered. In September of 1867, blacks cast their first ballots in Louisiana history, with the vote being 75,083 for and 4006 against holding the constitutional convention.² Subsequently, the new constitution written by this legal body included a severe clause disfranchising disloyal

¹Joe Gray Taylor, Louisiana Reconstructed, 1863-1877 (Baton Rouge: Louisiana State University Press, 1974) 112-13.

²Ibid., 143-47.

persons (later repealed by constitutional amendment in 1870) and adopted the Fourteenth Amendment's definition of citizenship.

Between 1869 and 1898, the federal government safeguarded, or at least abstained from interfering with, black suffrage. In 1869, Congress passed a constitutional amendment which became the Fifteenth Amendment in the following year. Under it, the federal government undertook to establish the right of blacks to vote on a constitutional basis. Unfortunately, in 1876, the United States Supreme Court struck a major blow to the amendment in ruling that the measure did not confer suffrage on anyone, but merely prohibited the states from denying the suffrage on certain grounds.³ In 1870, Congress enacted the Enforcement Acts, one provision of which declared that voting for federal Representatives was a constitutional right, and it was upheld by the federal courts in the 1880's.⁴ In the following year, Congress made it a federal crime for any officer of a Congressional election to violate an electoral obligation imposed on him by state or federal law. By 1880, the Supreme Court upheld the right of Congress to adopt state election laws and to add Congressional penalties to enforce such acts.⁵

³United States v. Reese, 92 U.S. 214 (1876).

⁴Ex parte Yarbrough, 4 S.Ct. 152 (1884).

⁵Ex parte Siebold, 100 U.S. 371 (1880).

Within the State of Louisiana, an 1879 constitutional convention controlled by Bourbon Redeemers (Conservative Democrats who replaced the Radical Republicans in 1877) tried to undo the work of the 1868 Radical constitution. Blacks were not yet disfranchised, primarily because of fears of reawakening Northern wrath and beliefs by white Conservatives that black votes could be controlled or manipulated to their own advantage. William Hair, historian of Bourbon Louisiana, contends that "Bourbon misrule" began with the inauguration of Governor Louis A. Wiltz in 1880, and was based on the Constitution of 1879 which "anchored a regime that was remarkably powerful, backward, and corrupt." He affirms that Bourbon power rested on the manipulation of black votes, because blacks outnumbered whites on the registration rolls until 1890. Republican voting strength in the state disappeared following the return of the pre-Civil War leadership, as predominantly black parishes consistently sent in overwhelmingly Conservative Democratic returns in elections wracked by fraud and intimidation.⁶

In 1898, a major downturn occurred in black suffrage in Louisiana. In the pivotal Supreme Court decision reached in Williams v. Mississippi, the court assented to an 1890 state literacy test for voter registration and a poll tax, holding that, if the two requirements were applied to whites as well

⁶William I. Hair, Bourbonism and Agrarian Protest: Louisiana Politics 1877-1900 (Baton Rouge: Louisiana State University Press, 1969) 107, 113.

as blacks, they did not violate the Fifteenth Amendment, because they did not deny the right to vote on the grounds of race or color to anyone.⁷ In effect, this decision opened the way for mass disfranchisement of blacks throughout the South.

With the advent of a strong Populist challenge to the Bourbon oligarchy in the 1890's, the administration of Conservative Democrat Governor Murphy J. Foster became determined to rid the state of "the mass of ignorance, vice and venality without any proprietary interest in the State." Beginning in the election of 1892, Populists (a loose political alliance of primarily poor and rural whites and blacks) posed a threat to the hierarchy of Conservative Democrats. During the 1896 general election, the governor's supporters controlled the election machinery in many key parishes, and only through this means succeeded in securing his re-election in one of the most fraudulent elections in Louisiana history. Dissatisfied Democrats had joined Republicans and Populists in the most serious electoral challenge since the end of Radical Reconstruction in 1877. A constitutional amendment recommended by Governor Foster and passed by the legislature in 1894 to restrict the suffrage by literacy and property requirements was also on the ballot, but failed to pass. Therefore, the legislature of 1896 passed complex registration and election laws to break

⁷Williams v. Mississippi, 170 U.S. 213 (1898).

the back of Louisiana Populism, which had succeeded in appealing to the sympathies of a majority of the black voters of the state. Tens of thousands of poor whites and over 90 percent of blacks were disfranchised when the new election laws took effect on January 1, 1897. The legislature then took steps to assure the success of its actions by authorizing an election of delegates to a new constitutional convention. To seal the doom of both black and white Populists, the legislature decreed that the work of the 1898 convention would not be submitted to the voters for their approval.⁸

The delegates to the 1898 constitutional convention were quite efficient in their aim to disfranchise a majority of the state's voters. By and large, the Constitution of 1898 was essentially the Constitution of 1879, with the addition of measures restricting the suffrage. To eliminate migrant sharecroppers, requirements were imposed establishing residency at two years in the state, one year in the parish, and six months in the precinct. Voters were compelled to demonstrate their ability to read and write in their native language, or to show proof that they owned property assessed at not less than \$300. Although blacks were hit hardest by this provision, many poor and illiterate whites were also entrapped. Electors were also subjected to a poll tax of one dollar per year, with receipts for the

⁸Hair, Bourbonism and Agrarian Protest, 234-35, 268-69.

previous two years having to be presented at election time. This requirement was designed on the assumption that blacks were more likely to fail to pay their poll taxes during non-election years, or to misplace their receipts. A provision was then added for poor and illiterate but loyal whites in the form of the nation's first "grandfather clause." Under this device, a man could register to vote if he, his father or his grandfather had been a registered voter in 1867. However, persons eligible under the grandfather clause were allowed only three and a half months to comply.⁹ Approximately 40,000 whites and 111 blacks were later registered under this provision.¹⁰ In order to make it easier for illiterate whites to identify Democratic candidates, the convention adopted the rooster emblem as the symbol on Louisiana election ballots for the state Democratic Party and white supremacy.¹¹

After 1898, the only men who could still vote in Louisiana were literate, tax-paying property owners and their sons, and men who had voted in 1867, or their descendants. The result of these electoral maneuvers was a drastic decline in voter registration and voter turnout for several decades, as presented in table 1. The number of black

⁹State of Louisiana, Constitution of 1898, Articles 197, 198; Joe Gray Taylor, Louisiana: A Bicentennial History (New York: W.W. Norton, 1976) 144.

¹⁰Hair, Bourbonism and Agrarian Protest, 277.

¹¹Taylor, Louisiana, 144.

voters declined from 130,444 or 44 percent of the state's registered voters in 1897, to a paltry 5,320 or 4.1 percent by 1900, when the full impact of the disfranchisement movement was in effect. The lowest point in black voter numbers was reached in 1940, when only 886 blacks were registered, comprising 0.1 percent of the state's voters. Not until 1948, was there significant improvement in the registration of blacks within Louisiana.¹²

It is quite evident from the figures presented in table 1, that Louisiana's Bourbon Democrats had succeeded in erasing all political progress made by blacks since Reconstruction, and had removed many of the "disloyal" poor whites from the rolls as well. Although blacks were the main target of the disfranchisement movement, the number of white registered voters in the state declined from 164,888 in 1897 to 125,437 in 1900, and then to 106,360 in 1904. Another casualty of the disfranchisement movement was the decline in voter turnout, once elections had been "purified" of "corrupt tendencies" by the removal of black voters, and white men "were free to divide on the issues." Instead, voter apathy set in and viable opposition to the hegemony of Conservative Democrats was almost nil, as table 2 demonstrates. With the elimination of 55.6 percent of the voters of 1897, the near record 73.7 percent turnout of 1896 was

¹²Perry H. Howard, Political Tendencies in Louisiana, 1812-1952 (Baton Rouge: Louisiana State University Press, 1971) 190, 492.

Table 1
Registration of White and Black Voters, 1897-1964

Voter Registration					
Year	State Total	White	Percent White	Black	Percent Black
1897	294,432	164,888	56.0	130,444	44.0
1900	130,725	125,437	95.9	5,320	4.1
1904	108,079	106,360	98.4	1,718	1.6
1908	154,142	152,142	98.9	1,743	1.1
1912	154,828	153,044	98.9	1,684	1.1
1916	187,312	185,313	98.9	1,979	1.1
1920	260,815	257,282	98.6	3,533	1.4
1924	323,555	322,600	99.7	955	0.3
1928	379,270	377,246	99.5	2,054	0.5
1932	559,233	557,674	99.7	1,559	0.3
1936	643,632	641,589	99.7	2,043	0.3
1940	702,545	701,659	99.9	886	0.1
1944	722,715	721,043	99.8	1,672	0.2
1948	924,705	896,417	96.9	28,177	3.1
1950	818,031	756,356	92.5	61,675	7.5
1952	1,056,720	945,038	89.8	107,844	10.2

Source: Perry H. Howard, Political Tendencies in Louisiana, 1812-1952 (Baton Rouge: Louisiana State University Press, 1971) 190, 422.

not breached until 1912, and surpassed but six times in the fourteen gubernatorial elections held after 1896.¹³

Allan Sindler finds that the alleged aim of the Bourbons to establish class harmony by placing all whites in one large political party united by race was a monumental failure. Instead of whites being free of the worry of a black challenge to white supremacy and the possibility of a

Table 2
Percentage of State Voter Turnout, 1896-1952

Year	Gubernatorial	Presidential	Year	Gubernatorial	Presidential
1896	73.7	36.1	1928	76.2	56.9
1900	55.9	51.9	1932	67.9	48.1
1904	50.2	49.9	1936	83.9	51.2
1908	69.3	49.0	1940	78.8	53.0
1912	79.7	50.9	1944	66.3	48.3
1916	61.1	49.6	1948	70.9	45.0
1920	55.0	48.5	1952	74.2	61.7
1924	74.0	37.7			

Source: Perry H. Howard, Political Tendencies in Louisiana, 1812-1952 (Baton Rouge: Louisiana State University Press, 1971) 421-22.

¹³Ibid., 190, 421-22.

return to "black Republican rule," the disfranchisement movement brought about a dulling of the issues, low voter turnout, continued party control by an inner clique, and separation of the state from national issues and politics.¹⁴

Roger Fischer claims that blacks submitted to the new disfranchisement measures and increased segregation by law after 1890, because they had lost all means by which to oppose their relegation to a lower caste. With no hope of relief through the political process or through the courts during the next few decades, any attempt to protest their condition by physical resistance would be suicide. According to Fischer, segregation hardened in Louisiana after 1890, because whites of the state "had sampled the frightening fruits of black power before 1877," and Conservative leaders were adamant about preventing its recurrence by any means.¹⁵

Federal Action to 1955

The federal government took very little action during the first quarter of the twentieth century to protect the rights of blacks, much less to begin the process of rolling back restrictions on black suffrage. Although the United

¹⁴Allan P. Sindler, Huey Long's Louisiana: State Politics, 1920:1952 (Baltimore: Johns Hopkins Press, 1956) 22.

¹⁵Roger A. Fischer, The Segregation Struggle in Louisiana, 1862-77 (Urbana: University of Illinois Press, 1974) 154-57.

States Supreme Court struck down the grandfather clause in 1915, as a violation of the Fifteenth Amendment, it was inadequate in preventing other more effective means of disfranchising blacks. By 1921, the State of Louisiana had a network of safeguards to prevent massive registration of its black residents. Among the devices used were strict registration requirements, a poll tax, the white primary, and various local election gimmicks to make it difficult for blacks to register or to cast a meaningful vote. Not surprisingly, most whites easily met all electoral qualifications, while few blacks could satisfy either local or state regulations for registration. It is no small wonder, then, that blacks made up less than one percent of the registered voters between 1924 and 1944, although they made up from 39 to 34.5 percent of the state's voting age population in 1920 and 1940, respectively. It was not until the intervention of the federal courts in the late 1940's that blacks finally began to make progress in voting in the state.

In 1921, the state constitutional convention established several qualifications for voter registration. Prospective voters must have attained the age of twenty-one and resided in the state for one year, in the parish for six months, and in the precinct for three months prior to an election. In addition, a prospective voter was required to be able to read and write in English or in his mother tongue, to "be a person of good character and reputation," to "be able to understand and give a reasonable

interpretation of any section" of the state or national constitutions, and to pay a poll tax. The section dealing with "good character" could be used to eliminate a host of "undesirable" registrants, including persons in common law marriages and those who gave birth to or fathered illegitimate children. Finally, the constitution provided the means for private citizens to be able to challenge the names of illegally registered voters.¹⁶ In effect, the new constitution extended the power of disfranchisement to local parish registrars and vigilant white supremacists.

Besides registration requirements, Louisiana had an exclusive white primary to prevent the few qualified blacks from voting. As late as 1921, the view of the United States Supreme Court was that a party primary was not to be construed as an election within the meaning of the Constitution. Therefore, the state's white primary was indirectly safeguarded by the nation's highest court.¹⁷

The process of overturning the white primary began in the late 1920's and culminated with the Smith v. Allwright decision in 1944. A successful NAACP suit of 1927, challenging a Texas law that excluded blacks from participating in a Democratic Party primary election opened the way for future litigation on the suffrage issue. Then, in 1932, the Supreme Court voided another law that gave the Texas

¹⁶Constitution of 1921, Article 8.

¹⁷Newberry v. United States, 256 U.S. 232 (1921).

Democratic Executive Committee the power to determine its own membership, thus excluding blacks from participation in its elections. When the high court finally invalidated the white primary itself in 1944, the way was legally opened for a return to massive voter registration and re-entry of blacks into Southern politics. However, it did not prevent the states from adopting other quasi-legal artifices and subterfuges to hamper black registration for another two decades.¹⁸

Louisiana election laws first came under attack by the Supreme Court in 1941, in connection with a 1900 statute which provided for all political parties to nominate candidates for United States Representatives by direct primary elections. The court declared that a citizen had the right to vote in a Congressional primary and to have his vote honestly counted. Since the state required that all political parties nominate candidates for Representative in primaries, they were an integral part of the election procedure and were thus subject to constitutional protections. The Supreme Court was also cognizant of the reality that winning the Democratic primary in Louisiana was equivalent to election, and that general elections were mere formalities.¹⁹

¹⁸Nixon v. Herndon, 273 U.S. 536 (1927); Nixon v. Condon, 286 U.S. 73 (1932); Smith v. Allwright, 321 U.S. 649 (1944).

¹⁹Acts of Louisiana, 1900, Regular Session, no. 46.

The Southern states did not immediately comply with Smith v. Allwright, but resorted to such stalling devices as the "South Carolina Plan" and the "Bosworth Amendment." In the former scheme, South Carolina sought to circumvent action by the federal courts by deleting all references to "state" primaries from its constitution and laws, in an attempt to disguise its elections as being free of state action. Under the "Bosworth Amendment," Alabama required all voters to demonstrate their ability to understand and explain parts of the United States Constitution to the satisfaction of local registration officials. However, both contrivances were nullified by the federal courts in the late 1940's.²⁰ Blacks in Louisiana won a somewhat limited victory in 1951, when the Democratic State Central Committee dropped its requirement that voters and party candidates be white. Any further resistance by the Southern states in maintaining white primaries or other devices to forestall an end to the all-white Democratic primary ended with the Supreme Court's decision in 1953, to outlaw sophisticated as well as simple modes of discrimination in the conduct of state primary elections.²¹

¹⁹Acts of Louisiana, 1900, Regular Session, no. 46.

²⁰Rice v. Elmore, 333 U.S. 875 (1948); Schnell v. Davis, 336 U.S. 933 (1949).

²¹Stephen L. Wasby, Anthony A. D'Amato and Rosemary Mettrailer, Desegregation from Brown to Alexander: An Exploration of Supreme Court Strategies (Carbondale: Southern Illinois University Press, 1977) 34; Terry v. Adams, 345 U.S. 461 (1953).

In the State of Louisiana, thousands of black residents began to resume registration for the first time since the 1890's, but as Democrats rather than Republicans. This transformation of party allegiance began across the nation during the 1930's with the influence of such factors as the Presidency of Franklin Roosevelt, the outmigration of blacks from the South to Northern urban centers, the dominance of the Republican Party by conservatives, and by the influence of Huey Long within Louisiana. Although the state's poll tax was repealed in 1934, it was the voiding of the white primary in the 1940's that resulted in a dramatic increase in the number of black voter registrations, especially in the more tolerant areas of New Orleans and South Louisiana. Black registration rose from 886 in 1940, to 28,177 in 1948, and to over 150,000 by 1956. According to Louisiana political sociologist Perry Howard, the increase in black voters by 1948 became a factor to be reckoned with in close elections, and helped to give Earl K. Long his first primary gubernatorial victory in 1956. Blacks received their greatest benefits through welfare legislation enacted during the tenure of Long governorships, and showed their appreciation to their benefactors at the polls.²² New Orleans Mayor DeLesseps S. Morrison, who had received strong support from the city's 13,000 black voters, had won his first mayoralty election with a 4,372 vote margin of victory. The near

²²Howard, Political Tendencies in Louisiana, 275-77, 422.

doubling of black registration in the city by 1950, made him extremely mindful of the importance of the black vote in his re-election campaign of that year. Therefore, he openly gave black New Orleanians assistance and attention, and was rewarded with their overwhelming support throughout his subsequent political career in Louisiana.²³

Outside of New Orleans, the situation for blacks was less promising. Prior to 1956, blacks in northern and central Louisiana, the Florida Parishes (the area which was formerly part of the West Florida territory until 1813), and in St. Bernard and Plaquemines Parishes in southern Louisiana, were strongly dissuaded from registering by

Table 3
State Voter Registration, 1948-1956

Year	Total Voters	Total White	Percent White	Total Black	Percent Black
1940	702,545	701,659	99.9	886	0.1
1944	722,715	721,043	99.8	1,672	0.2
1948	924,705	896,417	96.9	28,177	3.1
1952	1,056,720	756,356	89.8	107,844	10.2
1956	1,057,687	945,038	85.6	152,073	14.4

Source: Howard, Political Tendencies in Louisiana, 422.

²³Edward F. Haas, DeLesseps S. Morrison and the Image of Reform: New Orleans Politics, 1946-1961 (Baton Rouge: Louisiana State University Press, 1974) 39, 67.

various means. In the parishes of East Carroll, Madison, Tensas and West Feliciana, there were no blacks registered at all.

The Voter Registration Purges of 1956

The two Brown cases of 1954 and 1955 served as catalysts for the resumption of the race question in Louisiana politics. With the political advent of the Longs, the race issue was pushed into the background, but in the mid-1950's, race re-emerged as a potent force in the state's political arena. Since the Longs depended on both black and white votes for power, they largely remained silent on racial issues. As long as they kept race out of the forefront of politics, their power and the bifactional system operating in the state continued. However, Brown fractured whatever racial compromise had existed in Louisiana politics and led to the rise of a rabid racist faction that inflamed public opinion on a level unprecedented in twentieth century Louisiana. The state became divided over the racial issue and anyone who appeared bold enough to take a moderate stand on race was politically ruined by a nascent cadre of racist politicians determined to preserve white supremacy.²⁴

By 1956, State Senator Willie Rainach of Claiborne Parish in North Louisiana and Leander Perez, boss of

²⁴Earlean M. McCarrick, "Louisiana's Official Resistance to Desegregation" (Ph.D. dissertation, Vanderbilt University, 1964) 11.

Plaquemines Parish, had emerged as the foremost leaders of racists bent on preventing any cracks in the bulwark of segregation. At this time, Rainach served as the leader of the Louisiana Association of Citizens' Councils, the foremost white supremacy group in the state, and as the chairman of the Joint Legislative Committee on Segregation, formed in 1954 to serve as a watchdog committee of the state legislature to oversee de jure segregation in Louisiana. From within his dual posts, Rainach was able to amass great power and influence over the state until his unsuccessful run for the governor's office in 1959.

As 1956 began, black voter registration in the state was over 151,000, a nearly 50 percent increase since 1952. Rainach warned that this was a dangerous trend and had "disastrous consequences" which portended a return to the days of Reconstruction. He alleged that the voter rolls were filled with thousands of illegally registered voters in violation of the state constitution's literacy clause. Therefore, under the auspices of the Citizens' Councils, a drive was pushed in 1956 to reverse the trend of black voter registration by challenging their names in primarily North Louisiana parishes. Directed by Rainach, Council members used a state constitutional provision that allowed private citizens to challenge the qualifications of any name on a parish voter registration list. A person whose name had been challenged then had to be notified by mail by the parish registrar, and had ten days to appear before the

registrar to refute the challenge or his name would be removed from the voter list.²⁵

The effectiveness of the voter purge drew the attention of the Justice Department, which launched an immediate investigation into voter irregularities in ten Louisiana parishes. Testifying before the Senate Subcommittee on Privileges and Elections, United States Assistant Attorney General Warren Olney III presented evidence of gross violations in the application of the state's voter registration laws. In these ten parishes alone, where only a scant percentage of the black residents were previously registered, 8552 black voters were purged from parish registration rolls. In Ouachita Parish, where the most extreme voter purges had occurred, over 3400 names had been challenged "by a scheme and device to which a number of white citizens and certain local officials were parties." Olney disclosed that the scheme had begun to eliminate all black voters residing in Wards 3 and 19 of the parish in January of 1956. In March, the Ouachita Parish Citizens' Council began challenging names and induced the parish registrar to notify those challenged to appear before her within ten days to prove their qualifications by the affidavits of three witnesses. In April and May, Citizens' Council members were allowed to examine voter records and to prepare lists of black voters,

²⁵ New Orleans Times Picayune, Jan. 26, 1956; Constitution of 1921, Article 8.

at which time they filed 3420 documents (only twenty-three of which were against whites) with the registrar, alleging that the persons challenged were illegally registered.²⁶

When large numbers of blacks appeared at the registrar's office to respond to the challenges, they were informed that only fifty names would be reviewed per day, which effectively eliminated over 2700 of the 3240 persons soon to be removed from the voter list. The registrar then refused to accept as witnesses any parish voters living in a precinct other than that of the challenged voter, or persons who had already acted as witnesses for any other challenged voter. Thus, most of the deleted voters were unable to

Table 4
Voters Removed in Ten Parishes by Purges of 1956

Parish	Voters Removed	Parish	Voters Removed
Bienville	560	LaSalle	345
Caldwell	330	Lincoln	325
DeSoto	383	Quachita	3240
Grant	758	Rapides	1058
Jackson	953	Union	600

Source: 2 Race Relations Law Reporter, 478 (1957).

²⁶₂ RRLR, 469-71, 478 (1957).

reply to their challenges and had no other recourse except to re-register. Blacks who then attempted to do so, were required to give a "reasonable interpretation" of a clause of the state or federal constitutions, while whites were not given such a test. Regardless of their interpretation, all blacks who submitted to the test were informed that their responses were "unreasonable".²⁷

Similar problems were encountered in the other parishes which had conducted voter purges. In Rapides Parish, two hundred blacks were improperly eliminated from the registration rolls within a ten-day period. The registrar of Caldwell Parish refused to accept witnesses unless they were accompanied by a law enforcement official and by a member of the local Citizens' Council to identify them, and would not allow whites to serve as witnesses for challenged blacks. In several of the parishes, registrars allegedly did everything in their power to discourage deleted voters from filing statutory reply affidavits as required by state law, then refused to accept them when proffered. Blacks were also told in several cases that they would need to contact an attorney to straighten out their registration.²⁸

As 1956 came to a close, Rainach announced "Operation Cleanup," a new Citizens' Council drive to purge state voter lists of "illegally registered voters," beginning January 1,

²⁷Ibid., 477.

²⁸Ibid.

1957. By the end of 1956, 11,000 blacks had been removed from the rolls in thirteen North Louisiana parishes.²⁹

In January of 1957, United States District Judge Ben Dawkins ordered the registrars of Bienville, Jackson, DeSoto, and Grant parishes to submit their voter registration records to a federal grand jury meeting in Shreveport to investigate the possibility of violations of civil rights laws. Rainach referred to the investigators as "Yankee lawyers" who were trying "to intimidate our people."³⁰

Less than a month later, Louisiana Attorney General Jack P. F. Gremillion explained to the Civil Rights Subcommittee of the House Judiciary Committee the process for voter challenges and due process available to persons challenged and removed from the voter rolls. He contended that state laws were being fairly applied to both whites and blacks on a nondiscriminatory basis, and that "there has not been any deprivation of Civil Rights regardless of any minority group" in the state.³¹ Assistant Attorney General Olney refuted Gremillion's testimony, presenting further allegations of voter registration irregularities in the ten parishes under investigation. Among his charges was that some registrars did not give registrants the option of selecting a constitutional clause to interpret, as

²⁹ Little Rock Arkansas Gazette, Dec. 15, 1956.

³⁰ New Orleans Times Picayune, Jan. 29, 1957.

³¹ 2 RRLR, 473-74 (1957).

Gremillion had declared. Also, in none of the parishes did registrars routinely send a reply affidavit form to challenged voters.³²

The registrar of Ouachita Parish was the subject of two suits in conjunction with the 1956 voter purges. In the case of Sharp v. Lucky, a black attorney claimed that the registrar had injured him in his status as an attorney by refusing him permission to inspect a client's registration in her office, and by refusing to permit blacks to use her office for registration matters. When the United States District Court dismissed the case, the Fifth Circuit Court of Appeals reversed on the grounds that a registrar may not operate a segregated office. On remand, the district court ruled that the registrar had acted in good faith and with good will in providing services when segregation had been practiced, but that this policy had been discontinued. Thus, the court declined to take any action, and its decision was affirmed on appeal.³³

The case of Reddix v. Lucky involved a black man whose name had been challenged and removed from the Ouachita Parish voter registration list in 1956. Claiming that racial discrimination had led to the illegal removal of his name, he brought suit against the registrar in federal

³²Ibid., 477.

³³Sharp v. Lucky, 148 F.Supp. 8 (W.D. La. 1957), 165 F.Supp. (W.D. La. 1958), 266 F.2d 342 (5th Cir. 1959).

court. The district court held that the registrar had only done what she was required to do by state law, and that the plaintiff had failed to exhaust available legal remedies, including attempting to re-register. On appeal, the United States Court of Appeals reversed on the grounds that Reddix had a case under the requirements of the Fifteenth Amendment, and because the actions of the registrar in removing 2500 names from the voter roll within thirty days of an election was "shockingly unfair."³⁴

Impact of the Civil Rights Act of 1957

A major step was taken by the federal government in the protection of the right to vote with the enactment of the Civil Rights Act of 1957. Though modest, it aimed at strengthening the enforcement of voting rights by the federal courts, created a Civil Rights Commission to investigate alleged racial discrimination in voting, created the Civil Rights Division within the Department of Justice, and granted the United States Attorney General power to institute suits in conjunction with voting.³⁵

Within Louisiana, the Citizens' Council of New Orleans declared that the act was "calculated to destroy the American right of local self-government" and was "the first

³⁴Reddix v. Lucky, 2 RRLR 426-27 (1957); 252 F. 2d 930 (5th Cir. 1958).

³⁵Civil Rights Act of 1957, Pub. L. No. 83-315, 71 Stat. 634 (1957).

step in the federal government taking over complete control of the election processes of the state." Among the few supporters of the act was Camille Gravel, Jr., chairman of the Democratic State Central Committee and a national committeeman from the state, who defended the civil rights law as a way to prevent "un-Christian, un-American, and un-Democratic" anti-black activities in Louisiana. In 1957, Gravel affirmed his support of the Brown decision and his opposition to segregation and the efforts to remove thousands of black voters. His outspoken attitude resulted in several attempts to remove him from his position of leadership in the state Democratic Party. However, the chairman of the Democratic National Committee refused to remove him and Gravel would not resign. Gravel avowed that he was "a moderate, loyal, realistic Louisiana Democrat" who believed in respecting and recognizing human rights of minority groups, and that the "right to vote is a fundamental right in a democracy." He charged Senator Rainach with trying to destroy the Democratic Party in the state and trying to make a name for himself in preparation for a run for governor.³⁶

Using the Civil Rights Act of 1957, the Justice Department initiated suits against various parish registrars and other persons who allegedly deprived blacks of their right to vote. In Washington Parish, the local Citizens'

³⁶New Orleans Times Picayune, Mar. 31, July 7, 17, 1957.

Council and the registrar were charged with acting "under color of law" and conspiracy in fraudulently purging parish voter registration rolls. The federal district court rejected claims that parts of the Civil Rights Act were unconstitutional, and enjoined Council members from further vote challenges and interference with the rights of citizens to vote.³⁷ In a Bienville Parish case, local officials claimed that the Civil Rights Act and the Fourteenth and Fifteenth Amendments were unconstitutional. Rejecting their contentions, the court held that the local Citizens' Council had deprived blacks of their right to vote by its purge of voter rolls, during which 95 percent of registered blacks were challenged for registration errors, while white voters with similar errors were ignored. Since the registrar had continued to discriminate against blacks seeking to register, it ordered the reinstatement of the names of those persons deleted from the registration list in 1956, and enjoined the registrar from such action in the future.³⁸

State Legislation and Politics, 1958-1960

By 1958, the atmosphere in the state legislature had changed dramatically since 1956 (sessions held in

³⁷ 4 RRLR 962-63 (1959), 5 RRLR 112-13 (1960); *United States v. McElveen*, 177 F. Supp. 355 (E.D. La. 1959), 180 F.Supp. 10 (E.D. 1960).

³⁸ 5 RRLR 773 (1960); 6 RRLR 802-03 (1961); *United States v. Association of Citizens Councils of Louisiana*, 196 F.Supp. 908 (E.D. La. 1961).

odd-numbered years were devoted exclusively to fiscal matters). The state hovered on the brink of disaster as segregationists under the influence of Senator Rainach reigned supreme over the regular legislative session, with only feeble opposition to the demands of racist legislators. To oppose them was to risk being accused of integrationist or communist sympathies.

Among the numerous segregation measures enacted in 1958, were three which dealt with voting. One statute empowered the attorney general to defend parish registrars from suits involving federal rights, while other acts continued the salary of voter registration officials who were called away from their official duties because of federal litigation relating to voting and extended the prohibition against the selling of votes to include registration.³⁹ By the end of the 1958 session, tensions ran so high that absence or abstention from a vote on segregation laws made a solon suspect, placing him at risk of political suicide. One senator, J. D. DeBlieux of Baton Rouge, counselled moderation and was defeated for re-election by a racist challenger in the 1959-60 state elections.⁴⁰

Continued voter purges in 1958 resulted in open opposition from parish registrars in Winn and St. Landry Parishes,

³⁹ Acts of Louisiana, 1958, Regular Session, no. 482, no. 483, no. 517.

⁴⁰ McCarrick, "Louisiana's Official Resistance," 81.

in a federal investigation, and in a clash between Governor Earl K. Long and Senator Rainach. A report released in 1958 showed that four parishes had no blacks registered to vote, while nine others had less than one hundred registered.⁴¹ After receiving sixty-eight complaints of discrimination being practiced in registration, the United States Civil Rights Commission met at Shreveport to investigate charges against seventeen registrars, whose records were subsequently subpoenaed. State Attorney General Gremillion portrayed the commission as "a grand inquisition by the federal government," and accused it of "threatening, coercing and in a tyrannical manner bringing unlawful procedures to bear, causing great injury" to the registrars as well as to qualified voters.⁴² In October of 1959, a three-judge federal court decided that the commission had exceeded its powers and had threatened the registrars with "immediate and irreparable damage" by failing to advise the accused registrars of charges against them. The court then enjoined the commission from conducting further hearings in Shreveport. Not until 1960, did the United States Supreme Court reverse the lower court ruling and affirm the actions of the Civil Rights Commission.⁴³

⁴¹Burton, On the Black Side, 114.

⁴²New Orleans Times Picayune, June 25, Aug. 1, 1959.

⁴³New Orleans Times Picayune, Oct. 8, 1959; Larche v. Hannah, 177 F.Supp. 816 (W.D. La. 1959).

During the first half of his term, Governor Long refrained from any serious attacks on Rainach or his supporters. However, when the senator interfered with voter registration in Winn Parish, the governor's home base, to influence the outcome of the Eighth Congressional District election in 1958, Long unleashed a scathing attack on him. The governor, not known for mincing words, declared that many people were following Rainach "not because they agree with you but because they are scared of you," and inferred that the senator was raising the segregation issue in order to further his own political ambitions. Long then avowed his "1000 per cent" support for segregation and declared that segregation should not be used as an issue for running for political office.⁴⁴

Senator Rainach achieved his revenge during the 1959 legislative session, when he and John Garrett, the leading racist in the House of Representatives, succeeded in defeating two administrative measures that were designed to break the power of the racists. One bill would have allowed voter challenges only where names had been on the registration list more than twelve months prior to the challenge, while the other bill would have prohibited the removal of a voter for "an inconsequential or inadvertant error." Although Rainach's allies defeated the measures in the Senate on the

⁴⁴St. Petersburg (Fla.) Times, June 27, 1958; New Orleans Times Picayune, Sept. 10, 1958.

grounds that they were not fiscal items, the senator encountered his first strong opposition in the process. Governor Long had been tardy in confronting the racists earlier when their power was in its infancy, and now, with the first gubernatorial primary scheduled for late 1959, and with the racists in ascendance nationwide, taming the movement proved to be too great for Long.⁴⁵ Louisiana historian Glen Jeansonne observed that as the governor approached the end of his political career, he had never really decided what kind of stand to take on the race issue. For fear of losing the small but increasing black vote, he rarely resorted to race-baiting, but to champion blacks might cost him much of the white vote. Therefore, the ill and exhausted Long straddled the issue until his death in 1960.⁴⁶

The 1959-60 gubernatorial election was the first state election since 1924, in which race was the major issue. No avowedly segregationist candidate made the second Democratic primary, although Rainach placed third in the first primary. However, the apparent failure of the "peace and harmony" campaign of Jimmie Davis in the first primary led to his decision to adopt racism in the second, and to abandon all attempts to win black votes, most of which went to

⁴⁵McCarrick, "Louisiana's Official Resistance," 93-94, 99-100.

⁴⁶Glen Jeansonne, "Racism and Longism in Louisiana: The 1959-60 Gubernatorial Elections," Readings in Louisiana Politics, ed. Mark T. Carleton, Perry H. Howard and Joseph B. Parker (Baton Rouge: Claitor's Publishing, 1975) 475.

front-runner DeLesseps S. Morrison. With its obvious implications, Davis announced that he would not accept the support of the NAACP or of Teamster boss Jimmy Hoffa, and would not tolerate Northern groups coming into the state "with a designed plan to divide our people and disrupt our Southern way of life."⁴⁷ A Davis ad claimed that Morrison had won 74.84% of the black vote as a result of courting blacks by placing them on the New Orleans city payroll and by putting up token resistance to integration of municipal facilities in New Orleans. Davis received the backing of Earl Long, Leander Perez and Willie Rainach, while the influential New Orleans Times Picayune and Shreveport Times exaggerated the significance of the bloc of black votes received by Morrison in the first primary. Glen Jeansonne holds that the second primary of 1960 revealed that segregation had become the major single issue in the election and that the segregation crisis brought out 80.7 percent of the state's approximately 850,000 white and 150,000 black Democratic voters.⁴⁸ Of course, the result of this intensely racist campaign was disaster for Morrison, as Davis swept into office with a mandate for white supremacy and segregation.

During the campaign, Davis had committed his administration to a course of defiance, and he now proceeded to

⁴⁷A. J. Liebling, The Earl of Louisiana (Baton Rouge: Louisiana State University Press, 1970) 194-96, 205-06; New Orleans Times Picayune, Jan. 8, 1960.

⁴⁸Jeansonne, "Racism and Longism," 453-55.

steer segregationist forces in the direction of resistance to federal attempts to eliminate state segregation laws. In his May 10, 1960, inaugural address, Governor Davis pledged to preserve segregation and to "maintain our way of life without compromise, without prejudice and--without violence," and declared his intention to "cooperate with the federal government." However, he would "not permit interference with those rights that the constitution specifically reserves to Louisiana."⁴⁹

The 1960 regular session of the state legislature was preoccupied with preserving racial segregation, and proceeded to enact several measures to prevent large numbers of blacks from successfully registering to vote. Three acts dealt with voter registrars, making it a crime for elected officials or private citizens to interfere with, coerce or influence a registrar; empowering the state attorney general to serve as legal advisor to registrars; and requiring all registrars to comply "faithfully and without reservation of conscience or mind" with all state registration and election laws.⁵⁰ Another statute specified the form to be used for voter registration and barred from registration applicants who had been convicted of a felony, had participated in a common law marriage or had borne or fathered an illegitimate

⁴⁹New Orleans Times Picayune, May 11, 1960.

⁵⁰Acts of Louisiana, 1960, Regular Session, no. 82, no. 484, no. 485.

child within the past five years. This measure was subsequently approved by the state's voters as a constitutional amendment, in the mistaken belief that placing voter restrictions in the state constitution might dissuade federal courts from interfering with the wishes of the people of Louisiana.⁵¹ A final act required all candidates for public office to list their race on all forms relating to nomination and candidacy, and provided for listing their race on the ballot. This law was designed to prevent a recurrence of the success of two black office-seekers who had qualified in the recent second primary in New Orleans.⁵²

Impact of the Civil Rights Act of 1960

One bright spot for voter rights in Louisiana was passage of the Civil Rights Act of 1960, which extended federal authority over registration by granting the Justice Department additional powers to protect voting rights. The United States Attorney General could request that the federal courts determine whether discrimination was the result of a "pattern or practice" by the state, and federal courts were empowered to appoint referees to help determine qualified voter applicants.⁵³

⁵¹Ibid., no. 305, no. 613.

⁵²Ibid., no. 538.

⁵³Civil Rights Act of 1960, Pub. L. No. 86-449, 74 Stat. 86 (1960).

Prior to its passage, the new Civil Rights Act was condemned by Third Congressional District Representative Edwin Willis, with the support of First District Representative F. Edward Hebert, as "one of a series of punitive political measures to penalize the Southern States" in an appeal for the minority vote of Northern and Western cities in the upcoming Presidential election of 1960. Referring to the act as "unconstitutional" and "devastating," he declared that it restored the old Force Bills of Reconstruction days "when the people of the South lived under a government by carpetbaggers," and was sure to breed "racial troubles of untold proportions."⁵⁴

Shortly after passage of the Civil Rights Act in May of 1960, Louisiana Attorney General Gremillion sought to ban its use in a federal probe of voting rights complaints against several parish registrars. However, a three-judge panel upheld the constitutionality of the law and voided state attempts to prevent the Justice Department from inspecting, reproducing and copying all records and papers having to do with registration or voting in federal elections conducted by the registrar of East Feliciana Parish.⁵⁵

In mid-1960, the United States Commission on Civil Rights conducted additional hearings on voter registration

⁵⁴New Orleans Times Picayune, Mar. 7, 1960.

⁵⁵Ibid., May 26, July 28, 1960; In re Palmer, 5 RRLR 774 (1960).

in Louisiana. Witnesses from East Carroll, Madison, Claiborne, Caddo, and Jackson parishes testified before the commission that they had tried numerous times to register, only to be denied for various reasons. They were informed that they needed two registered voters to identify them, that the time had not yet come for blacks to register, that blacks would get too much power if they were allowed to vote, that the registrar was out of application forms, that they had failed the constitutional interpretation test or that they had spoiled their registration forms by omissions or errors.⁵⁶ As the year came to an end, former State Senator J. D. DeBlieux, a racial moderate, was appointed chairman of the Louisiana Advisory Committee of the United States Commission on Civil Rights. Its main function was to study the state's achievements and problems in voting, administration of justice, public employment, employment by federal contractors and public education.⁵⁷

In hearings conducted by the Commission on Civil Rights in May of 1961, voting rights violations in Plaquemines, Bossier, Webster, St. Helena and Jackson parishes were investigated. State Attorney General Gremillion testified that there was no discrimination against blacks in the state, and charged that federal officials were "far more interested in forcing Louisiana Negroes to vote than are the

⁵⁶New Orleans Times Picayune, Sept. 28, 1960.

⁵⁷Ibid., Dec. 15, 1960.

Negroes themselves." He then proceeded to outline benefits accorded to blacks in the state: 72 percent of aid to dependent children, 46 percent of old age assistance, 53 percent of disability payments and 66 percent of all admissions to charity hospitals, despite the fact that only 32 percent of state population was black. Also called to testify were several registrars. The registrar of Jackson Parish required perfect spelling and the ability to interpret parts of the United States Constitution, but had rarely asked whites to interpret provisions because "they were more intelligent along these lines." The registrar of Webster Parish informed the commission that she skipped the test with people she knew, most of whom were white. However, records showed that of the 15,035 white adults residing in the parish, 11,881 were registered, while only 125 of 7313 black adults were registered. The registrar of Plaquemines Parish required applicants to calculate their ages in years, months and days. When asked by the commission to demonstrate with her present age, she failed her own test.⁵⁸

By the end of November of 1961, voter registration in Louisiana had reached 1,071,242 (919,520 white and 151,722 black). As the year came to an end, the Justice Department challenged the voter interpretation test, claiming that its

⁵⁸Ibid., May 5, 6, 1961.

purpose was to allow parish registrars arbitrary discretion to deprive otherwise qualified blacks to register to vote.⁵⁹

Slow Progress in Black Registration, 1962-1964

During the early 1960's, the Justice Department and the federal courts took the leading role in removing the legal obstacles preventing blacks from mass voter registration. The Louisiana State Legislature continued to impede federal attempts to equalize voting rights for blacks by the passage of additional measures to forestall the inevitable. However, the federal judicial and executive branches conducted a relentless attack upon the state and its subdivisions through litigation and voidance of de jure statutes and other discriminatory actions in registration and voting. Congress joined them by its passage of Title I of the Civil Rights Act of 1964, which established the legal framework for the momentous Voting Rights Act of the following year.

In the 1962 regular session of the Louisiana State Legislature, additional registration laws were enacted. One act established the procedure for conducting a new citizenship test and required the state board of voter registration to direct parish registrars to use the test for voter eligibility. A companion statute prescribed a form to use for voter registration, including restrictions on felony

⁵⁹Ibid., Dec. 29, 1961; Baton Rouge State Times, Nov. 30, 1961.

convictions, common law marriages and fathering or giving birth to an illegitimate child. A constitutional amendment was sent to the voters directing the state voter registration board to adopt a specified written test on the obligations of citizenship for use by parish registrars.⁶⁰

The federal courts granted the Justice Department permission to inspect and reproduce past and present records of several registrars in 1962. They also ordered the registrar of East Carroll Parish to accept specific documents such as drivers' licenses as identification for voter registration, enjoined him from requiring that black applicants be personally known to him or be identifiable by a white registered voter, and required the registrar to submit monthly progress reports showing the names of all persons rejected for registration and the reason for their rejection. In July, the United States District Court certified twenty-eight blacks who had applied and qualified for registration in East Carroll Parish, but who were unable to register due to the resignation of the registrar. Following this action by the court, the state again challenged the constitutionality of the Civil Rights Act of 1960, alleging that it violated the Tenth Amendment. However, the court upheld the right of a federal court to certify applications, and declared that the state's exercise of powers under the Tenth Amendment (powers

⁶⁰ Acts of Louisiana, 1962, Regular Session, no. 62, no. 63, no. 539.

reserved to the states) was subject to the Fourteenth (due process and equal protection of the laws for all citizens) and Fifteenth Amendments (prohibited denial of suffrage on account of race, color, or previous condition of servitude). A year later, the federal district court held that the Tenth Amendment did not impinge on expressed or implied powers delegated to the federal government, even where those powers were in conflict with state powers. Since Article I, Section 4 of the United States Constitution gave the federal government power over the holding of federal elections, it also had control over registration for such elections. Under the Fourteenth and Fifteenth Amendments, voter qualifications had to be nondiscriminatory.⁶¹

During 1963, the federal courts continued to review the past and present actions of primarily North Louisiana registrars. The actions that resulted in the removal of 85 percent of the voters of Jackson Parish in 1956 were voided, public officials and the local Citizens' Council were enjoined from such action in the future, and registration officials were enjoined from requiring applicants to pronounce or define any words or statements in the application form or to give an interpretation of a provision of the constitution.⁶² Another registrar was enjoined from

⁶¹ 7 RRLR 327 (1962); *United States v. Manning*, 215 F.Supp. 272 (W.D. La. 1963).

⁶² *United States v. Wilder*, 222 F.Supp. 749 (W.D. La. 1963).

refusing to accept certain types of documents of identification and from using different and more stringent procedures on registration tests for blacks than for whites in Madison Parish.⁶³

A major breakthrough in the destruction of Louisiana's de jure attempts to restrict black suffrage came in 1963, with the voiding of the state's laws which permitted local registrars to test voter applicants on their ability to interpret provisions of state or federal constitutions. In United States v. State of Louisiana, the federal courts enjoined the use of such testing throughout the state, in order to reverse the effects of past discrimination in the use of the interpretation test. It was held that the interpretation test had been in every state constitution since 1898, but had never been enforced until August 3, 1962, and that it was another grandfather clause that effectively disfranchised blacks. The courts also placed a freeze on the use of the new citizenship test in twenty-one parishes where there had been evidence of discriminatory application of the interpretation test between 1956 and 1960. Black registration in these parishes had declined from 28,504 in 1956, to 10,256 in 1960, out of a total black population of 107,446 within this region. By comparison, 162,427 whites were registered in these parishes in 1960, out of a total

⁶³United States v. Ward, 222 F.Supp. 617 (W.D. La. 1963).

white population of 212,273. Therefore, the federal courts forbade the use of the citizenship test in all of these parishes until black applicants could be judged by standards equal to those persons already registered, and until there was no further evidence of discriminatory effects of past tests. However, the citizenship test could be administered to persons not yet of voting age by August 3, 1962, to persons who had not met residency requirements by then or for a general re-registration of an entire parish.⁶⁴

Following this decision, the federal judiciary continued to keep a watchful eye on these parishes during 1963, to detect any signs of maneuvering to defer action on registrations and to accelerate the registration process. When the registrars of East and West Feliciana Parishes closed their offices with the excuse that they had no legal standards to use in testing applicants for registration, the Fifth Circuit Court of Appeals ordered them to reopen their offices in accordance with hours specified by state law and to "process expeditiously" all applications of qualified voters.⁶⁵ In Red River Parish, which had 93 percent of its adult white population registered but less than 2 percent of its adult blacks, the registrar had rejected 70 percent of black applications and accepted 90 percent of white ones

⁶⁴United States v. State of Louisiana, 225 F.Supp. 353 (E.D. La. 1963); New Orleans Times Picayune, Nov. 28, 1963.

⁶⁵United States v. Palmer, 230 F. Supp. 716 (E.D. La. 1964); 9 RRLR 783 (1964).

since the registration purge of 1956.⁶⁶ In Webster Parish, the courts discovered that the registrar had administered an oral constitutional interpretation test to blacks from 1957 to 1962, and then had reintroduced the test in 1963, when large numbers of blacks had begun to register and to pass the new citizenship test. Also, she would not process the applications of blacks when alone in her office, had required blacks to produce witnesses for identification and had used the registration application in a discriminatory way as a testing device for blacks from 1957 to 1963. By September of 1962, 53 percent of white adults and only 1.3 percent of black adults in the parish were registered. In all cases, the federal courts ordered registrars to cease discriminatory operation of their offices, to make their records available for inspection and duplication, to notify each voter applicant of the reason for his rejection and to file regular registration reports with the courts.⁶⁷

During 1963, CORE conducted voter registration drives in various parts of the state. In 1963, their target was the Sixth Congressional District, which had Baton Rouge as its hub. There were over 800,000 Louisiana residents of voting age in the state who were not registered at this time. In the Fourth and Fifth Congressional Districts,

⁶⁶United States v. Crawford, 229 F.Supp. 898 (W.D. La. 1964).

⁶⁷United States v. Clement, 9 RRLR 772-73 (1964).

there were more persons nonregistered than those who were. By November of 1963, there were 1,182,676 persons registered to vote in the first Democratic primary for governor in December. Of this total, 86.4 percent were white and 13.6 percent were black registrants. Tensas Parish still had no blacks registered, while Claiborne, Plaquemines, Red River, West Carroll and West Feliciana parishes had less than a hundred blacks registered. Not until December of 1963, did the first black resident since Reconstruction register to vote in Tensas Parish.⁶⁸

The 1963-64 Democratic primaries for governor were the last blatantly racist gubernatorial elections in Louisiana history. As in the 1959-60 primaries, race played a major role in determining the final outcome. During the first primary in December of 1963, the extreme segregationists were again unsuccessful in placing a candidate in the runoff, and two moderates emerged to run in the second primary. DeLesseps S. Morrison placed first ahead of newcomer John J. McKeithen, who ran a distant second. As in the first primary in 1959, Morrison received a lopsided majority of the black vote and was immediately placed on the defensive. Backers of McKeithen accused Morrison of secretly collaborating with the NAACP for the black vote in exchange for a promise to liberalize the state's voter registration laws.

⁶⁸ Baton Rouge State Times, Aug. 9, Nov. 22, Jan. 17, 1964; New Orleans Times Picayune, Nov. 27, 1963, Jan. 8, 1964.

Because Morrison failed to extricate himself from allegations of being an integrationist conspiring to amass enough black votes to propel himself into the governor's office, the extremists threw their weight behind McKeithen in the second primary as they had done for Davis in 1960, and waged a bitterly racist campaign. The result was Morrison's defeat in his third and last try for the governorship of Louisiana. According to the Public Affairs Research Council of Louisiana (PAR), McKeithen's victory was due primarily to the issue of race, religion and urbanism. At his inauguration, however, Governor McKeithen disappointed the rabid segregationists when he spoke in favor of reason and moderation on the race issue.⁶⁹

In early 1964, the United States Supreme Court struck down Louisiana's 1960 law which required that the race of all candidates for public office be designated on all nomination and candidacy forms as well as on the election ballot. In Anderson v. Martin, a lower federal court ruling that had affirmed this statute was overturned by the Supreme Court, which held that compulsory designation of race violated the Equal Protection Clause of the Fourteenth Amendment and placed the state behind an attempt at racial discrimination at the polls. Further, the indication of race or color on

⁶⁹William Greer McCall, "School Desegregation in Louisiana: An Analysis of the Constitutional Issues" (Ph.D dissertation, University of Tennessee, 1973) 192-93; New Orleans Times Picayune, May 12, 1964.

the ballot furnished a means for arousing prejudice for or against individual candidates.⁷⁰

Two major federal enactments had a major influence on the franchise in the South in 1964: the Twenty-Fourth Amendment and the Civil Rights Act. Although Louisiana had repealed its poll tax in 1934, the new federal amendment had a major impact on the few Southern states still requiring this device for voting. Of more far-reaching importance was Title I of the new Civil Rights Act of 1964, which prohibited the unequal application of requirements for voter registration in federal elections, prohibited denial of the vote because of minor errors and omissions on registration applications, denied the use of all but written literacy tests for registration, made a sixth grade education in English sufficient proof of literacy and empowered the United States Attorney General to expedite electoral suits by requesting a three-judge federal court to hear cases of alleged discriminatory application of election laws.⁷¹

During the summer of 1964, CORE once again conducted a voter registration drive among blacks in Louisiana. Although there were 1,193,775 persons qualified to vote in the second primary in January of that year, the number of registered voters declined and had only risen to 1,191,021

⁷⁰Acts of Louisiana, 1960, Regular Session, no. 538; Anderson v. Martin, 84 S.Ct. 454 (1964).

⁷¹Civil Rights Act of 1964, 18 USCA Section 101.

by the end of the summer (86.3 percent white and 13.7 percent black). For the Presidential election in November, totals rose to 1,202,056, but then dropped back down to 1,197,766 (1,033,915 whites and 163,851 blacks) by the end of the year.⁷²

Impact of the Voting Rights Act of 1965

All federal forces united in 1965, to deliver a crushing blow to remaining organized attempts to discriminate in registration and voting. The United States Supreme Court affirmed the right of the federal government to sue a state and its officials in order to safeguard voting rights,⁷³ and upheld a lower court ruling that had voided Louisiana's interpretation test. In turn, Congress broadened its role in protecting the right to vote and strengthened the powers of the executive branch by passage of the Voting Rights Act, which undermined further de jure attempts to prevent massive black registration in the Southern states.

In March of 1965, the United States Supreme Court upheld the federal district court decision of 1963, which had voided Louisiana's constitutional interpretation test and enjoined the use of the citizenship test in parishes which showed evidence of past discrimination in the use of

⁷²New Orleans Times Picayune, May 28, Sept. 22, 1964; Baton Rouge State Times, Oct. 28, Dec. 22, 1964.

⁷³United States v. Mississippi, 380 U.S. 128 (1965).

tests for voter registration. The 1965 Louisiana State Legislature promptly amended and re-enacted a 1962 law that prescribed a form for use in the registration of voters. Essentially, this form was the same as the one provided for in 1962.⁷⁴

The Voting Rights Act of 1965 protected the right of citizens to register as well as to vote, and opened the floodgates for black registration in Louisiana for the first time since the 1890's. The statute waived the use of the poll tax in certain state elections, prohibited the use of literacy tests and unfair devices to restrict the suffrage in any state or county where less than half of the voting age population was registered or had voted in the 1964 elections, extended the 1964 Civil Rights Act's sixth grade literacy requirement, and empowered the United States Attorney General to appoint federal examiners to register voters and federal observers to supervise elections in areas with a history of practicing discrimination in voting. In addition, the act granted the Attorney General and the United States District Court for the District of Columbia prior approval of voting laws in areas suspected of practicing discrimination, and authorized the Attorney General to begin legal proceedings to end state and local poll taxes. In the following year, the United States Supreme Court

⁷⁴Louisiana v. United States, 85 S.Ct. 817 (1965); Acts of Louisiana, 1965, Regular Session, no. 165.

upheld the validity of the Voting Rights Act and voided state poll taxes because they denied equal protection.⁷⁵

Using the Voting Rights Act, the federal courts issued five-year freezes against the use of registration tests in Louisiana parishes with long histories of voter discrimination, and ordered registrars to accept authentic licenses, permits, military identification documents and records of real property as proof of identity.⁷⁶ Also in 1966, the state's laws regarding the procedure for identifying voter applicants and residency requirements for voting were upheld, but the statute which denied assistance to illiterate voters in casting ballots was voided as a violation of the Voting Rights Act. The state was ordered to provide assistance for illiterate voters as it did for handicapped voters. However, the courts upheld the state's contention that federal election officials in Louisiana were misapplying the 1965 act, and ordered them to comply with the state's residency requirements.⁷⁷

Beginning in 1965, dramatic changes became evident in voter registration and in the conduct of elections in Louisiana. In a ten-year period between 1964 and 1974, the

⁷⁵Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (1965); *South Carolina v. Katzenbach*, 383 U.S. 301 (1966).

⁷⁶*United States v. Clement*, 358 F.2d 89 (5th. Cir. 1965).

⁷⁷*United States v. Louisiana*, 265 F.Supp. 703 (E.D. La. 1966).

Table 5

Registration of White and Black Voters, 1960-1974

Year	State Total	White	Percent White	Black	Percent Black
1960	1,152,000	993,000	86.2	159,000	13.8
1962	1,087,000	935,000	86.0	152,000	14.0
1964	1,202,000	1,037,000	86.3	165,000	13.7
1966	1,315,000	1,072,000	81.5	243,000	18.5
1968	1,438,000	1,133,000	78.8	305,000	21.2
1970	1,462,000	1,143,000	78.2	319,000	21.8
1972	1,785,000	1,388,000	77.8	397,000	22.2
1974	1,718,000	1,330,000	77.4	388,000	22.6

Source: United States, Bureau of the Census, Statistical Abstract, 1972-1975.

number of qualified black voters in the state more than doubled, from approximately 165,000 in 1964, to about 388,000 in 1974. Also, between 1960 and 1974, percentages of the black adult population that were registered to vote increased from 31.1 percent to 58.9 percent (table 5). The number of blacks who were registered to vote in the eleven former Confederate States rose from 1,463,000 in 1960 to 3,449,000 in 1971; and black registration percentages

Table 6
Registration of White and Black Voters in the South,
1960-1971

	Total	White	Percent White	Black	Percent Black
1960	13,739,000	12,276,000	89.4	1,463,000	10.6
1962	13,591,000	12,110,000	89.1	1,481,000	10.9
1964	16,428,000	14,264,000	86.8	2,164,000	13.2
1966	16,999,000	14,310,000	84.2	2,689,000	15.8
1968	18,814,000	15,702,000	83.5	3,112,000	16.5
1970	20,342,000	16,985,000	83.5	3,357,000	16.5
1971	20,837,000	17,378,000	83.4	3,449,000	16.6

Source: United States, Bureau of the Census, Statistical Abstract, 1972-1975.

expanded respectively from 29.1 percent to 58.6 percent (table 6).⁷⁸

In 1967, the Fifth Circuit Court of Appeals reversed a lower court ruling and declared that federal courts had jurisdiction under the Civil Rights Act of 1964, granting a person the right to recover damages from private individuals who had conspired to deny him the right to vote.⁷⁹ At this

⁷⁸U. S., Bureau of the Census, Statistical Abstract 1975, 449.

⁷⁹Payne v. DeLee, 377 F.2d 61 (5th Cir. 1967).

time, the federal courts also affirmed a 1916 Louisiana statute that required each elector to vote for as many candidates as there were offices to be filled, or the entire ballot would be invalidated. The courts were persuaded that this measure was designed simply to assure full participation of voters in elections.⁸⁰ A town marshal's election was overturned in Tallulah, Louisiana, in 1969, because voters had not been adequately informed that the use of a master lever would not automatically cast a vote for town marshall. A federal district court held that part of the Voting Rights Act had been violated because of the imposition of a practice that had the effect of "denying or abridging the vote on account of race or color," and because public officials had failed in their duty to accurately and fairly tabulate, count and report a qualified voter's ballot.⁸¹

Political Changes in the State, 1967-1969

The 1967 Democratic state primary for governor was the first since 1955, in which race was not the major issue. Governor John J. McKeithen ran for re-election after securing voter approval of a state constitutional amendment in 1966, allowing him to succeed himself. With little viable

⁸⁰ *Amedee v. Fowler*, 275 F.Supp. 659 (E.D. La. 1967).

⁸¹ *United States v. Post*, *Wyche v. Post*, 297 F.Supp. 46 (W.D. La. 1969).

opposition, and riding a crest of popularity, the governor won handily with 70 percent of the votes cast. Later, in the summer of 1968, the state sent its first integrated delegation to the Democratic National Convention meeting in Chicago. Eleven blacks served among the delegates.

A major sign of political change within the state occurred in the 1960's with the mayoral elections in New Orleans, where the black vote became the decisive element for the first time and coalition-style politics became the key factor for election. The groundwork had been laid between 1946 and 1962 by Mayor DeLesseps S. Morrison, who had established a firm electoral basis on upper class white moderates and the increasing black vote. In the 1965 mayoral election, Victor Schiro (Morrison's successor) quietly courted the city's black vote, winning 35 percent of it to defeat James Fitzmorris. In the 1969 Democratic first primary, Fitzmorris emerged as the frontrunner along with Maurice "Moon" Landrieu in the run-off. The strategy of Fitzmorris was to rely heavily on white support along with significant black support that he had received in 1965. However, he misunderstood the black disposition when he endorsed a white candidate over black State Representative Ernest "Dutch" Morial in a race for councilman-at-large on the New Orleans City Council, and refused to declare publicly that he would appoint a black to head a city department. Landrieu acceded to both requests, actively sought black support and received assistance from influential civic

and business leaders of the city. In the second primary, blacks made up 30 percent of New Orleans voters, and over 75 percent of both white and black electors turned out. The result was that Landrieu won the election with 40 percent of the white vote and over 90 percent of the black vote.⁸²

The results of the 1969 New Orleans mayoral election demonstrated that ignoring an increasing black electorate could be politically self-destructive. Conversely, a candidate who could win overwhelming black support, along with a decent percentage of the white vote, could win an election. Blacks continued to register in large numbers, and had become the balance of power in New Orleans politics. In fact, the city already had a black population of between 45 and 50 percent, and was expected to top 50 percent in 1971. The old campaign strategy of race-baiting in areas of the state where a significant black vote existed had become, by 1969, doomed to defeat.⁸³

Reapportionment Struggle, 1969-1972

While by 1969, the Voting Rights Act had accomplished its task by destroying de jure means to prevent blacks from registering, voter apathy still immobilized tens of thousands of adult blacks and whites. Electoral litigation in

⁸²James Chubbuck, Edwin Renwick and Joe E. Walker, "The Emergence of Coalition Politics in New Orleans," Readings in Louisiana Politics, 474-77.

⁸³Ibid., 484; New Orleans Times Picayne, Mar. 3, 1970.

the courts began to focus on the issue of reapportionment of the state legislature and of local government bodies, such as the police juries and school boards, because of underrepresentation of blacks in multi-member districts.

In a Rapides Parish case of 1969, a federal district court voided a school board redistricting plan in which eleven members would be elected from eleven wards and seven from the parish at-large, because members of a racial minority would be a minority in the parish as a whole and thus would be unable to elect a candidate of their choice under such a districting plan. Instead, the court approved a "weighted vote plan" in which each board member would be allotted a vote weighted from one to eight, in proportion to the approximate percentage of persons he represented following the 1970 census.⁸⁴ In a Caddo Parish case involving the reapportionment of its police jury, a federal court overturned the local government body's plan to redraw district lines and to designate incumbent police jurors as representatives of the newly drawn districts. The court ordered the police jury to choose between a weighted vote plan based on the number of registered voters in each ward, and holding new elections from the newly drawn districts.⁸⁵

⁸⁴LeBlanc v. Rapides Parish Police Jury, 315 F. Supp. 783 (W.D. La. 1969).

⁸⁵Fain v. Caddo Parish Police Jury, 312 F.Supp. 54 (W.D. La. 1969, 1970).

In 1971, the federal courts ordered the reapportionment of the state legislature. A new legislative apportionment plan was adopted by the state legislature in June of 1971, to replace the current one drawn up in 1966. The new statute created a patchwork of single-member, multi-member and "floating" member districts. An amendment to create single-member districts was proposed by Republican Representative James Sutterfield of New Orleans and was rejected, although it had the support of black groups, the state chamber of commerce and the Louisiana Municipal Association. In July, Louisiana Republicans asked the United States Justice Department to void the legislative reapportionment plan in favor of statewide single-member districts. In the following month, the Justice Department rejected the plan on the grounds that it would discriminate against blacks by diluting their voting power. Under the 1971 statute, Orleans Parish, which was 45 percent black, would have been divided into eleven districts, electing eighteen representatives to the legislature, but with only two of these districts having a black majority.⁸⁶

Less than a week after the decision by the Justice Department, United States District Judge E. Gordon West approved a plan designed by the court's special master, Edward J. Steimel (executive director of the Public Affairs

⁸⁶ Atlanta Constitution, June 6, 1971; New Orleans Times Picayune, July 24, 1971; New York Times, Aug. 21, 1971.

Research Council), but without a public hearing. Under the Steimel reapportionment plan, statewide single-member districts were created and several incumbent legislators were forced to run against one another because of new district lines. A suit was quickly initiated by the state attorney general's office, three New Orleans solons (Adrian Duplantier, Nat Kiefer and Michael O'Keefe) and the state branch of the AFL-CIO, which favored multi-member districts. In early September, a three-judge panel of the Fifth Circuit Court of Appeals overturned the district court's decision because Judge West had failed to conduct a public hearing. Time was now a major factor because of the approaching state primary, scheduled for November 6, 1971.⁸⁷

Within a week, Judge West held a public hearing on the Steimel reapportionment plan, and restated his approval of it. The opposition again appealed the decision, but the Fifth Circuit Court refused to delay implementation of the new plan, although it did modify the Steimel plan slightly. Governor John J. McKeithen and other state officials then petitioned the United States Supreme Court to postpone the legislative primary, but their request was denied in mid-October of 1971. Under the West-Steimel reapportionment plan, one senatorial and five house of representative districts in New Orleans had a black majority. Several parishes in North Louisiana, as well as Republicans, also

⁸⁷ New Orleans Times Picayune, Aug. 26, Sept. 4, 5, 1971.

had a better chance of electing blacks under the new plan because of the creation of new single-member districts and the redrawing of district boundaries.⁸⁸

In a case involving a suit to order the reapportionment of judicial districts of the Louisiana State Supreme Court, the courts ruled that the concept of "one-man, one-vote" reapportionment did not apply to the judicial branch. Since the judicial districts had been created by the 1921 state constitution, the federal courts felt that they could not be changed by state legislation.⁸⁹

By 1974, the federal courts stated their preference for single-member districts for reapportionment of public bodies, because they tended to preserve the voting rights of minorities. However, the courts were willing to approve multi-member districts if they were justified by other valid considerations and did not involve attempts at racial discrimination.⁹⁰

During the early 1970's, the federal government tackled two major voting issues. In 1970, Congress voted to extend the Voting Rights Act of 1965 for another five years. The law also extended the suffrage to eighteen year olds in all national, state and local elections; abolished literacy

⁸⁸Ibid., Sept. 11, 18, 1971; National Observer, Oct. 16, 1971.

⁸⁹Wells v. Edwards, 347 F.Supp. 453 (M.D. La. 1972).

⁹⁰Bradas v. Rapides Parish Police Jury, 376 F.Supp. 690 (W.D. La. 1974).

tests for five years; and reduced residency requirements to thirty days for voting in presidential elections. In the same year, the United States Supreme Court upheld the literacy ban and the residency requirements.⁹¹

The next voting issue confronted by the federal courts was Louisiana residency requirements in 1971. It was determined that the states had broad powers over suffrage so long as they did not apply their election laws in a discriminatory way, and that no federal constitutional objection was presented by a state requirement of age, literacy and lack of a previous criminal record as a condition for suffrage. Upholding Louisiana's residency requirement of one year in the state and six months in the parish preceding an election, the courts declared that there was no inherent right to vote, but that voting was a privilege granted by the state. A resident of a state did not have a right to vote in state elections, the United States Constitution as amended did not grant the right to vote and suffrage was not derived from United States citizenship.⁹² However, in 1972, the United States Supreme Court struck down Tennessee's law requiring one year residency in the state and ninety days in the county as being too lengthy and discriminating against new state residents. Although the court did not mandate the

⁹¹Voting Rights Act of 1970, Pub. L. 91-285, 84 Stat. 314; *Oregon v. Mitchell*, 400 U.S. 112 (1970).

⁹²*Fonthem v. McKeithen*, 336 F.Supp. 153 (E.D. La. 1971).

amount of time that would be considered the maximum waiting period, it did say that "30 days appears to be an ample period of time."⁹³ The other states, including Louisiana, took note and reduced residency in all elections to thirty days.

Evidence of Real Change for Blacks, 1972-1974

In 1972, the fruits of two decades of efforts in the state to bring about changes in the voting status of blacks became apparent. With federal laws to prevent discrimination in voting in full operation, blacks desiring to vote or run for political office in Louisiana were free to do so. The election of Edwin Edwards as governor was a historic moment in race relations in the state in 1972. This was the first time that a neo-populist coalition of blacks and whites had elected a governor, although it had come close to occurring in the Populist-Republican fusion ticket in 1896, and had been a possibility in the 1960 and 1964 gubernatorial elections when Morrison had sought the office. However, the school desegregation issue and heightened racial tensions within the state had denied him the chance. A similar coalition was currently operating in New Orleans under the Landrieu Administration, which was elected in 1969. The Cajun-black coalition of 1972 brought to fruition a long-standing dream of political unity between the races

⁹³Dunn v. Blumstein, 405 U.S. 330 (1972).

on the statewide level, when Edwards was elected with a solid South Louisiana French-Catholic vote and a bloc of the state's black vote. The major differences between the Morrison defeats and the Edwards victory were the presence of a significantly larger black vote in Louisiana in 1972 than in 1960 or 1964, and Edwards' reception of 75 percent of the Cajun vote, while Morrison could get only 60 percent of it.⁹⁴

One of the most striking changes in Louisiana during the early 1970's, was the election of numerous blacks to various local offices. Blacks elected to office prior to 1970 were indeed rare occurrences, although several had run during the 1960's and a few had reached the second primary. By 1971, there were seventy-four blacks serving in elected offices, but their number had more than tripled by 1975. Although nearly all of these positions were minor offices, a definite trend had developed, encouraging other black aspirants to enter the political field (table 7).⁹⁵

The early 1970's witnessed the continuation of efforts by the federal government to assure that suffrage was protected, though the Nixon Administration relegated civil rights to a diminished level of priority. The vigorous desegregation policies of the Johnson Administration were

⁹⁴Charles E. Grenier and Perry H. Howard, "The Edwards Victory," Readings in Louisiana Politics, 488, 497.

⁹⁵Statistical Abstract, 1971, 1975.

Table 7
Black Elected Officials in Louisiana, 1971-1975

Year	State Total	State Legis- lators	City and Parish Offices	Law Enforce- ment	Educa- tion
1971	74	1	37	23	13
1972	119	8	59	29	23
1973	149	8	74	26	41
1974	237	9	114	34	80

Source: United States, Bureau of the Census, Statistical Abstract, 1971-1975.

replaced by a federal policy that appeared to become actively involved only when blatant de jure action was detected, while de facto or cultural forms of discrimination went largely unnoticed. Even the federal courts appeared to back away from vigorous involvement in the civil rights struggle. Perhaps, the country was tired of the movement and desired a breathing spell after two decades of disquiet. It may also have been due to the tremendous success of the movement itself, because black citizens now had the ability to utilize the political process to effect change and had legal channels to vent their anger and frustration at ill-treatment.

Over the more than seven decades since black residents of Louisiana had been disfranchised, various artifices had been implemented by white leaders of the state to prevent mass black voting. Segregationists, fearing a return to conditions prevalent under Radical Reconstruction, desired to keep blacks in a subservient position. If their vote could not be controlled, then they would be disfranchised. Until 1944, no progress was made in black suffrage in the state, with less than one percent of the black adult-aged population registered.

Not until the late 1940's did a few thousand blacks succeed in registering to vote, primarily in South Louisiana and in the New Orleans area. When large numbers of blacks sought to register in the 1950's, white registration leaders employed several remedies to discourage them from seeking to register. However, with the passage of the Civil Rights Act of 1957, the federal government began to take an increasingly active role in extending the vote to black citizens of Louisiana. Federal investigations of registration procedures were conducted in parishes where few if any blacks were registered, or in those where Citizens' Council purges had removed hundreds of thousands of blacks and few whites from the voter rolls. Local registration officials were ordered to justify their operations, became subject to inexpedient and costly litigation, and were ordered to cease discriminatory operation of their offices henceforth.

With the racist atmosphere that prevailed in the late 1950's and early 1960's within Louisiana, segregation leaders utilized de jure means to thwart federal intentions to dismantle racial barriers that intimidated blacks from asserting their right to full participation in the political process. Not until these contrivances were voided would blacks be able to right other injustices through the democratic process.

In the early 1960's, with the passage of new civil rights legislation in 1960 and 1964, the federal government actively protected the right to register to vote and eliminated state attempts to retain or reinstitute measures that perpetuated past racial discrimination in voting. With the enactment of the Voting Rights Act of 1965 and a vigorous effort by all three branches of the federal government, racial barriers to political equality in Louisiana crumbled. State leaders found it virtually impossible to prevent blacks from registering by de jure means, as litigation made it unwise if not counterproductive to continue resistance at the state level.

As larger numbers of blacks began to register under federal protection, they began to voice their opinions and vent their anger and frustration within the political process. Uniting together and often forming coalitions with racially moderate whites in local areas, blacks succeeded in getting elected persons who were sympathetic or at least not hostile to black aspirations. For the first time in nearly

a century, blacks were elected to local offices or had spokesmen who took an active role in safeguarding their interests and future. No longer did the overwhelming majority of black citizens of Louisiana need to await the sympathy and assistance of forces outside of the state to rescue them from an oppressive and subservient situation. Of course, much work still had to be done, and an ever vigilant effort had to stand guard to prevent a recurrence of former conditions.

Chapter IV

DESEGREGATION OF HIGHER EDUCATION

Introduction

Public institutions of higher education in Louisiana were the first de jure segregated facilities in the state to fall when seriously challenged in federal courts. The federal district court in New Orleans issued initial desegregation orders in the early 1950's, supported by the Fifth Circuit Court of Appeals, that brought about the destruction of the century-old system of segregated operation of the state's colleges and universities.

Unlike the chaos and violence that accompanied the onset of desegregation of major universities in neighboring states, desegregation of Louisiana's institutions was accomplished with relative calm through litigation. State officials resorted to the use of various legal and extra-legal artifices to forestall the dismantling of the segregated system and to wear down the opposition. However, no governor or other important state official "stood in the doorway" of a state-supported university spouting platitudes for the mob and vowing to defy federal marshals and court orders to the death, only to have to turn aside later and humbly allow desegregation to proceed anyway. There were no displays of

massive resistance, defiance or riots as had occurred over the brief enrollment of Autherine Lucy at the University of Alabama in 1956, or with the enrollment of James Meredith at Ole Miss in 1962. Instead, desegregation in Louisiana proceeded gradually, orderly and cautiously without the explosive scenes accompanying that of several other states in the Deep South.

The first challenges to the segregated system of colleges and universities maintained by Louisiana were filed prior to 1950. As in other Southern states, desegregation efforts were focused initially on graduate and professional schools, usually targeting the states' largest universities. After limited integration had been achieved on some level, it then trickled down to undergraduate programs, smaller public colleges and finally to private institutions. Unlike the situation in other Southern states in the 1950's and early 1960's, governors of Louisiana did not play forceful roles in attempts to prevent desegregation in higher education. Instead, a handful of vocal racists led the state legislature and were instrumental in the passage of massive resistance measures to prevent, delay or curtail desegregation orders. However, by 1958, the federal courts had broken the state's organized resistance and then proceeded on a case-by-case basis to create a nondiscriminatory system in admissions policies in the state's public colleges and universities. By 1965, this goal had been reached.

In the late 1960's, a major problem continued to plague higher education. The disestablishment of the dual system of public colleges and universities was unlike the situation present in the dismantling of the separate systems provided for blacks and whites in elementary and secondary schools. There, a racial balance could be achieved often by simply busing students or redrawing school district lines. However, over the past century, a dual system of parallel separate but unequal colleges for blacks and whites had sprung up within some of the same cities in Louisiana. Often referred to as "sweetheart schools," they presented an apparently unsolvable problem in the 1970's, being the de facto relics of the de jure system and causing major concern for the NAACP and the Justice Department because of their very existence. Renewed challenges were made to the state's system of colleges and universities in the 1970's, resulting in intensive negotiating sessions that led to a compromise between officials of the state and federal governments in the form of the Consent Decree of 1981, under which the state's institutions of higher learning were to operate for the next six years.

Higher Education in Louisiana Prior to 1950

Four of Louisiana's predominantly white institutions of higher education were created prior to the Civil War, three as private institutions and one public. The three private schools were Centenary College, Tulane University and

Louisiana College. The only public institution was Louisiana State University. All were designated for the education of whites only, and no antebellum facilities were provided for the higher education of blacks in the state.

Centenary began operation in 1825, as the College of Louisiana in Jackson, Louisiana. In 1845, it came under the control of the Methodist Conference of Louisiana and Mississippi and was merged with another Methodist college in Mississippi to become Centenary College of Louisiana at Jackson. In 1908, Centenary was relocated to its present site in Shreveport.¹

Tulane was founded by several physicians as the Medical College of Louisiana in 1834. After the state legislature of 1845 provided for the creation of the University of Louisiana at New Orleans, the Medical College became its medical department in 1847. As with other existing colleges in the state, its existence was threatened by the Civil War and a shortage of funds. However, the generosity of Paul Tulane in the 1880's put the college on a sound financial basis. The state legislature rewarded his benevolence by renaming the institution in his honor in 1884, but also stipulated that the college would be for the education of white students only.²

¹State of Louisiana, Board of Regents. The Master Plan for Higher Education in Louisiana (April 1984), 1.

²Ibid.

Louisiana College, the last of the present private colleges dating prior to the Civil War, began as Mt. Lebanon College for males under the auspices of the North Louisiana Baptist Convention in Bienville Parish in 1852. A similar facility for women was established nearby in DeSoto Parish by another Baptist organization as the Keatchie Female College 1857. Both colleges were later closed and merged into the new Louisiana College, beginning operation at Pineville, Louisiana, in 1906.³

The state's largest institution of higher learning, Louisiana State University, was first provided for by the legislature in 1855, as a public university with a strong military leaning. The new Louisiana State Seminary of Learning and Military Science began operating on January 2, 1860, in Pineville, Louisiana, under the superintendency of William T. Sherman of later Civil War fame. With the secession of the state and the impending war, the new institution was closed in the following year as its superintendent returned to the North and most of the cadets and instructors joined the ranks of the Confederate Army.⁴ After the Civil War, the seminary resumed operations primarily through the efforts of former Confederate Colonel David F. Boyd, who secured the position of superintendent when it reopened in October of 1865. Two years later, the seminary came under heavy criticism from Radicals for being "an enclave of the

³Ibid.

⁴Ibid., 2.

Confederacy," because of the presence of several former Confederate soldiers or their sons on the faculty and within the student body. According to Boyd's biographer, Germaine Reed, the seminary was not integrated after the Civil War principally because of its remote location from New Orleans, the hub of Radical Reconstruction in the state, and because of the efforts of political defenders of the institution.⁵ When the seminary burned in 1869, it was transferred "temporarily" to Baton Rouge, where it has remained, and was renamed Louisiana State University. In 1876, the state legislature merged the university with a land grant college that it had authorized two years earlier, and formed Louisiana State University and Agricultural and Mechanical College.⁶

After the Civil War, the state legislature gradually expanded educational opportunities in higher education for whites across the state. In 1884, Northwestern State University began operation as Louisiana Normal School, a two-year teacher college in Natchitoches. Louisiana Tech began operation as the Industrial Institute and College of Louisiana at Ruston in 1894, with the purpose of educating students in "the practical industries of the age." The last white public institution of higher learning created before

⁵Germaine M. Reed, David French Boyd: Founder of Louisiana State University (Baton Rouge: Louisiana State University Press, 1977) 55-62, 68-69.

⁶The Master Plan for Higher Education, 2.

1900, was the University of Southwestern Louisiana, established as Southwestern Louisiana Industrial Institute in 1898.⁷

Prior to 1900, only one public and four small private colleges were established for blacks in Louisiana. In 1869, Straight University, Union Normal School and Leland College began operation in New Orleans, while Coleman College opened in Gibsland in 1890, and remained in operation until 1929. Straight and Union Normal, founded by the Congregational and Methodist Episcopal Churches respectively, merged in 1930 to become Dillard University, and remains in operation. Leland College closed in 1915, reopened in Baker, Louisiana in 1923, and then closed permanently in 1960, for financial reasons.⁸

The first state-supported institution of higher learning for blacks was Southern University, created by the state legislature in 1880 (under an 1879 constitutional mandate) as the Louisiana State Institute for the Higher Education of Colored Youths. In theory, it was supposed to be the "separate but equal" equivalent of Louisiana State University (LSU), but meager funding kept it operating at a mere subsistence level. Originally located in New Orleans, the property was sold and the institution relocated to

⁷Ibid., 3.

⁸Ibid., 2.

Scotlandville north of Baton Rouge, where it has been in operation since 1914.⁹

Between 1900 and 1920, several more private colleges were established in the state. Grambling University began as a private industrial school for blacks in 1901, and became a public training school under the authority of the Lincoln Parish School Board in 1918. In New Orleans, four private Catholic colleges were created, three for whites and one for blacks. The white colleges included Loyola (1904), St. Mary's Dominican (1910) and Our Lady of Holy Cross (1916). The only black Catholic college in the state, Xavier, was created as a high school in 1915, and added a university division in 1917.¹⁰

The 1921 State Constitution and subsequent legislation stemming from its provisions were the basis for the later court battles to dismantle the de jure system of segregation in higher education in Louisiana. Each institution that operated in the state first had to secure a charter from the state legislature. When this document was granted, it included a statement stipulating that the institution would be operated as a white or black college. Article 12, Section 1 of the 1921 State Constitution required separation of the races in the state's public schools, and later became the focal point for basing massive resistance measures to

⁹Ibid.

¹⁰Ibid., 3.

harden segregation in the 1950's and early 1960's. Section 24 of the article applied segregation to private institutions as well. The constitution also created two governing boards for all public colleges and universities. The Louisiana State University Board of Supervisors was established to rule over the expanding empire of the state's oldest and largest public institution of higher learning, while the State Board of Education would exercise jurisdiction over all other public elementary, secondary and higher learning institutions in the state.¹¹

Between 1921 and 1950, new public institutions of higher learning for whites mushroomed across the state. Delgado Community College was opened by New Orleans as a vocational trades school in 1921. Tangipahoa Parish opened Hammond Junior College in 1925, which later became Southeastern Louisiana University. In 1931, the legislature authorized the creation of Louisiana State University Medical Center in New Orleans, while Ouachita Parish Junior College (the future Northeast Louisiana University) opened branches at Lake Charles in 1939, and at Thibodaux in 1948. The former became McNeese State University and the latter Nicholls State University.¹²

¹¹State of Louisiana, Constitution of 1921, Article 12, Sections 1, 24; The Master Plan for Higher Education, 4.

¹²The Master Plan for Higher Education, 4.

While opportunities for whites expanded rapidly in the field of higher education, black gains in the state were almost nil. Grambling was transferred from the control of Lincoln Parish to that of the state and became a black junior college in 1924. It was reorganized in 1936, to offer a rural teacher education program, and in 1940, began offering a four-year curriculum. The only other provision made for blacks was the hasty creation of a law school as part of Southern University in 1948. This action was primarily a response by fearful white Louisianians to the United States Supreme Court decision in Sipuel v. Board of Regents (1948), which reaffirmed the court's earlier decision in Gaines v. Canada (1938), involving black requests for admission to white state-supported law schools in Oklahoma and Missouri, where no separate black law schools were available.¹³

Heretofore, the state had largely neglected black education. On the eve of the issuance of the first desegregation order to the state's institutions of higher learning, there were only two small, inadequately supported public colleges for blacks: Grambling in North Louisiana and Southern University in the southern part of the state, both of which were far inferior on all levels to any of the institutions provided for whites. By contrast, there was an

¹³ Ibid., Sipuel v. Board of Regents, 332 U.S. 631 (1948); Missouri ex rel. Gaines v. Canada, 305 U.S. 337 (1938).

expanding network of white public colleges and universities, with LSU having become one of the foremost universities in the nation as well as in the South, with its own separate governing board and further plans for expansion. In addition, whites were able to take advantage of public colleges located in every corner of the state: Northeast, Northwestern and Louisiana Tech in North Louisiana; Southwestern and McNeese in Southwest Louisiana; and LSU, Southeastern and Nicholls in Southeast Louisiana.

The decision by the Supreme Court in Sipuel in 1948, to reaffirm its stand concerning the right of blacks to attend professional schools, shook the leaders of the South from their complacency in neglecting to provide at least marginal educational opportunities for blacks. Many of the more realistic leaders discerned that the seeds of destruction for the de jure system of segregation in education lay in the doctrine of "separate but equal," upon which the entire system was based. Therefore, several Southern states embarked upon a massive building program to provide separate facilities for blacks, particularly in education, that were more closely "equal" to those provided for whites. However, such an undertaking could not be completed in the short space that the South had remaining to persuade the courts that segregation was neither unfair nor a violation of rights guaranteed under the Fourteenth Amendment.

Louisiana's leaders were slow to respond to the Sipuel decision, creating a law school for blacks on the Southern

University campus but providing nothing else of substance. The real question of "equality" now arose. Was the establishment of a separate law school in the state for blacks the same as equal treatment, and was such action sufficient to justify the continued operation of a dual system of public higher education?

Desegregation of Higher Education, 1950-1954

In 1950, the United States Supreme Court handed down two significant decisions affecting the segregated operation of public colleges and universities. In Sweatt v. Painter, the court challenged the doctrine of separate but equal in education by working within the framework of the Plessy case. Since the Southern states based their legal foundations for the creation of a dual system of higher education on this theory, the court challenged them to prove that the "separate" facilities provided were truly "equal." Addressing the question of "substantial equality," the Supreme Court overruled an attempt by the State of Texas to create a separate law school for blacks in order to keep the University of Texas Law School white. It determined that the black law school was inferior to the one provided for whites and could not stand the constitutional test. On the same day, the Supreme Court decided in McLaurin v. Oklahoma State Regents, which involved seating restrictions placed on

a black graduate student, that the state must accord equal treatment to all students.¹⁴

Between 1947 and 1954, the primary targets of desegregation suits in Louisiana were the graduate and professional schools operated under the LSU system. The filing of two suits against its medical and graduate schools in 1947, resulted in the establishment of a law school at Southern University. The case of Wilson v. Board of Supervisors involved the rejection of applications by twelve blacks for admission to the LSU School of Law solely because of their race and color. The plaintiffs argued that it was the only law school in the vicinity where they could receive the high degree of training that they needed, and that the "separate but equal" law school provided by the state for the use of blacks at Southern University nearby was not a suitable substitute.¹⁵

Evidence presented in the case attested that the two law schools did not meet the test of "substantial equality." The LSU system had an estimated plant value of \$35,000,000; was approved by every applicable accrediting agency in America; had twelve colleges and several divisions within them; and offered various undergraduate, professional,

¹⁴Sweatt v. Painter, 339 U.S. 629 (1950); McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950).

¹⁵Wilson v. Board of Supervisors, 92 F.Supp. 986 (E.D. La. 1950); Baton Rouge Morning Advocate, Sept. 14, 1950.

masters and doctoral degrees. Its law school was founded in 1906, while the Southern University Law School had been created reluctantly in 1948, in order to provide an education in law for blacks. Southern University had an estimated plant value of only \$2,500,000; had the highest rating offered but was not a member of the Southern Association of Colleges and Secondary Schools; and except for its meager law school facilities, was merely a college instead of a university.¹⁶

Excluding the fact that they were not white, the court found that the plaintiffs met all of the qualifications necessary for admission to the LSU Law School. Therefore, a three-judge federal panel granted Roy Wilson and the other plaintiffs their request for admission on the grounds that they had been denied their Fourteenth Amendment rights. Although one state representative wired the governor requesting that he close the law school immediately, nine blacks were enrolled in the LSU Law School in 1950. Four of them took non-degree courses, three were dropped or withdrew and two were subsequently admitted to the Louisiana State Bar Association.¹⁷

In two other cases involving LSU in 1950, its medical school and graduate school of arts and sciences were ordered

¹⁶Wilson v. Board of Supervisors, 92 F.Supp. 986 (E.D. La. 1950).

¹⁷Ibid., Baton Rouge Morning Advocate, Oct. 15, 1950; New Orleans Times Picayune, Dec. 1, 1957.

desegregated, but its undergraduate school remained relatively segregated until 1964. By 1956, the graduate school, school of social welfare, law school, and combined arts and sciences and law undergraduate program were subject to desegregation. However, all black students in attendance at LSU were graduate or professional students, with the exception of one black undergraduate student admitted briefly in the fall of 1953.¹⁸

In 1953, a suit to desegregate LSU's undergraduate Junior Division was brought on the behalf of A. P. Tureaud, Jr., by his father, a prominent New Orleans civil rights attorney who represented black plaintiffs in most of the early desegregation cases filed in Louisiana. Upon applying for admission to LSU to pursue a six-year combined curriculum of arts and sciences and law courses, Tureaud was informed by the Registrar's Office that his application was rejected because of the university's policy not to admit blacks. In the subsequent lawsuit, the LSU Board of Supervisors argued that Southern University was equal to LSU, and that black students could take their arts and sciences program there, then transfer to LSU School of Law if they were dissatisfied with the one provided for them at Southern. However, Judge J. Skelly Wright investigated the "substantial equality" between the two universities, taking

¹⁸Foister v. Board of Supervisors, Payne v. Board of Supervisors (unreported cases, 1950); confidential communication.

into consideration the education and reputation of the faculty, variety of courses offered, physical facilities, library facilities, position and influence of the alumni, standing of the university in the community, and traditions and prestige. He concluded that the programs offered by LSU and Southern in the six-year combined arts and sciences and law courses did not pass the constitutional test, and thus ordered the admission of Tureaud and other qualified students "similarly situated."¹⁹

Tureaud became the first black undergraduate student to enroll at LSU in the fall of 1953, but was dropped in October when the university successfully challenged the district court ruling. The Fifth Circuit Court of Appeals reversed the lower court's decision in Tureaud's favor on the grounds that a three-judge tribunal needed to hear the case since it involved a ruling on laws and policies that violated the United States Constitution. Several months later, Tureaud won an appeal to the Supreme Court, which vacated the appellate court's decision and remanded the case "in light of the Segregation Cases decided" by then in Brown. In March of 1955, the district court reinstated its 1953 desegregation order that Tureaud be admitted to LSU's Junior Division to take an arts and sciences and law program. Tureaud had attended Xavier University and wanted to

¹⁹Tureaud v. Board of Supervisors, 116 F.Supp. 248 (E.D. La. 1953).

transfer his education courses to the undergraduate division when he sought to enroll at LSU for the fall term in 1955. However, he was informed by the registrar that the court order allowed him to "enroll as a combination student in arts and law" only, and that all other undergraduate schools were closed to him. At this same time, a United States Army veteran was denied the right to transfer from Southern University to the LSU college of commerce. In October, the Fifth Circuit Court of Appeals returned to its previous position that a three-judge panel was necessary to decide Tureaud's case, then cancelled this decision in early January of 1956, and upheld the district court's earlier desegregation order. However, by then, Tureaud had abandoned his suit to become a student at LSU, frustrated by legal maneuvering and having lost valuable time necessary for his education and training.²⁰

While Tureaud was battling unsuccessfully for admission to LSU, another suit was being fought by black students to gain admission to Southwestern Louisiana Institute (SLI) in Lafayette and McNeese State College in Lake Charles. In September of 1953, black students residing in the Lafayette area sought to enroll at SLI, but they were denied admission because of their "race and color." After an unsuccessful appeal to the State Board of Education, which administered

²⁰ Ibid., 207 F.2d 807 (5th Cir. 1953), 74 S.Ct. 784 (1954), 225 F.2d 434 (5th Cir. 1955), 228 F.2d 895 (5th Cir. 1956).

over SLI, suit was filed in federal court in January 1954. During the trial, the State Board of Education maintained that it based its decision to deny blacks admission to SLI on Act 62 of the 1898 legislature and on Article 12, Section 1 of the 1921 State Constitution. Act 62 created SLI "for the Education of the white children of the State of Louisiana in the arts and sciences," while Article XII, Section 1 provided separate public schools for blacks and whites of six to eighteen years of age.²¹

The court decided that a denial of the request by the plaintiffs would cause hardships by either precluding them from the opportunity of receiving a college education, or subjecting them to undue hardships commensurate with having to commute to or reside in a distant locality in order to attend a black college. The alternatives to SLI were Grambling and Southern, one hundred twenty-six and eighty-nine miles respectively from Lafayette. The court felt that all three public institutions were equal in physical facilities, and that to deny qualified black students the opportunity to attend college at home, while whites in the area had that benefit, "constituted an unlawful discrimination."²²

²¹Constantine v. Southwestern Louisiana Institute, 120 F.Supp. 417 (W.D. La. 1954); Acts of Louisiana, 1898, Regular Session, no. 62; Constitution of 1921, Article 12, Section 1.

²²Constantine v. Southwestern Louisiana Institute (1954).

In November of 1954, a federal district court ruled that sixteen blacks residing in the Lake Charles area were entitled to attend McNeese State College since no similar or equal institution for blacks existed in the vicinity. In the following May, the state legislature approved an appropriation of \$5,000,000 for the construction of a branch of Southern University in the Lafayette area to dissuade blacks in southwestern Louisiana from attending McNeese or SLI. However, no further action was taken on this matter. A year later, federal courts ordered Southeastern Louisiana College in Hammond to admit qualified blacks. Therefore, by the middle of 1956, LSU law and graduate schools, and the undergraduate schools of SLI, McNeese and Southeastern were desegregated with litigation being the only organized opposition encountered.²³

Collapse of Massive Resistance

The Louisiana State Legislature met in an atmosphere of emotion, tension and frustration in the spring of 1956. Since its last meeting, the United States Supreme Court had voided a Baltimore ordinance providing for segregated public beaches and bathhouses, as well as segregated operation of a municipally-owned golf course in Atlanta in 1955.²⁴ In

²³Pittsburgh Courier, Dec. 4, 1954; New Orleans Times Picayune, May 30, 1955, Apr. 2, 1956.

²⁴Dawson v. Mayor of Baltimore, 350 U.S. 877 (1955); Holmes v. Atlanta, 350 U.S. 879 (1955).

addition, the first decision had been rendered in Bush v. Orleans in early 1956, ordering the desegregation of Orleans Parish public schools and invalidating a package of state laws that had been enacted in 1954, to circumvent the first Brown ruling. The order handed down in Bush was applicable to higher education, since it declared that all federal, state or local laws requiring or permitting "racial discrimination in public education "must yield to" the principle established in the first Brown ruling.²⁵

Alarmed at this progress being made in the desegregation of public education, the state legislature of 1956 enacted thirteen separate segregation laws without a dissenting vote. Two of them, Acts 15 and 249, applied to higher education. Act 15 required all persons seeking admission to a public college or university in the state to submit a certificate signed by the principal of the high school and by the superintendent of the school system from which they graduated, attesting to the applicant's eligibility and "good moral character." Act 249 amended the teacher tenure laws of the state, making it possible to remove public school teachers found guilty after a hearing:²⁶

of being a member of or contributing to any group, organization, movement or corporation that is prohibited by law or injunction from operating in the

²⁵Bush v. Orleans, 138 F.Supp. 337 (E.D. La. 1956).

²⁶Acts of Louisiana, 1956, Regular Session, no. 15, no. 249.

State of Louisiana, or of advocating or in any manner performing any act toward bringing about the integration of the races within the public school system or any public institution of higher learning of the State of Louisiana.

If there was any doubt about the true intent of the legislators in passing these two acts, it was dispelled by its proponents shortly after the adjournment of the session. State Senator Willie Rainach declared that Act 15 would be applied to both new and current students at public colleges and universities, while other proponents boldly stated that the two acts were intended to prevent the further enrollment of blacks in predominantly white institutions and to force out blacks already in attendance under federal court orders. However, State Attorney General Jack P. F. Gremillion said that certificates were only required of new students.²⁷

The two acts apparently had their desired effect because the four desegregated state institutions of higher learning all reported reductions in black registration. At LSU, it fell from a high of three hundred two in the summer of 1955, to a low of sixty-two in the fall of 1956. Black registration at Southeastern fell from forty-nine to sixteen, and similar reductions were reported at McNeese and SLI in the fall of 1956. In addition to all black applicants, hundreds of whites were also rejected at these

²⁷ Baton Rouge Morning Advocate, July 17, 1956; New Orleans Times Picayune, Aug. 28, 1956; State of Louisiana, Report and Opinions of the Attorney General of the State of Louisiana From May 18, 1956--March 1, 1958, 710.

institutions because of their failure to submit the required certificates in the spring of 1957.²⁸

In the midst of the controversy over Acts 15 and 249, LSU President Troy Middleton submitted a list of questions and answers to the LSU Board of Supervisors regarding the treatment of blacks at the university, and they were subsequently adopted by the board as controlling regulations on September 1, 1956. Under the new guidelines, segregation was required at any function defined as social, but no segregation was imposed on truly educational activities. Blacks would be segregated at athletic and entertainment events, but could attend educational meetings with whites. They could be elected to honor societies but could not attend the organization's annual banquet or university-wide dances or use the swimming pools. On campus, blacks would not be segregated in dormitories or in classrooms and could use common restrooms, cafeterias, dining halls, utensils and drinking fountains. At commencement, black guests would be placed in segregated seating, but black graduates would be seated and awarded degrees together with whites.²⁹

In early 1957, the validity of Acts 15 and 249 was challenged in federal courts. Because black registration was placed in jeopardy by Act 15, federal judges issued

²⁸New Orleans Times Picayune, Aug. 28, 1956, Feb. 8, 1957; Baton Rouge Morning Advocate, Oct. 11, 1956.

²⁹New Orleans Times Picayune, Sept. 2, 1956.

temporary restraining orders in January, ordering the registration of twelve blacks at McNeese, SLI and Southeastern. Three separate discrimination cases filed by plaintiffs presently attending LSU, Southeastern or SLI were consolidated for judgment in Ludley v. Board of Supervisors. After an investigation, the court could find no incidence where a single principal or superintendent had signed a certificate as required under Act 15, which effectively barred all blacks from admission to any predominantly white college. Furthermore, Acts 15 and 249 had the effect of resegregating the state's colleges and universities by providing another legislative method for preserving segregation in education by de jure means. Thus, the court voided Act 15 because "the obvious intent of the legislature in passing the act was to discriminate against Negro citizens," and Act 249 because it violated equal protection.³⁰

The LSU Board of Supervisors and the State Board of Education appealed the decision on the grounds that they were agencies of the state, which had not only withdrawn its consent to be sued but had acquired immunity under the Eleventh Amendment. The Fifth Circuit Court of Appeals affirmed the lower court decision, then produced letters from black principals who had refused requests for their signatures on certificates because of fear of reprisals by

³⁰Ludley v. Board of Supervisors, Bailey v. Louisiana State Board of Education, Lark v. Louisiana State Board of Education, 150 F.Supp. 900 (E.D. La. 1957).

their white superiors. The court construed the offending legislation as attempts to grant arbitrary power to certain officials in order to deny students admission to public colleges without establishing objective standards which they could attempt to satisfy. In reference to the state constitutional amendment withdrawing the consent of the state to suits against itself through its officials, the appellate court held that this did not prevent a federal court from determining that a suit against an official was not a suit against the state.³¹

Massive resistance efforts to maintain the state's dual system of colleges and universities were delivered a major blow with the settlement of the case of Fleming v. Board of Supervisors in 1958. The suit arose out of the decision by the LSU Board of Supervisors to deny blacks admission to its new branch in New Orleans. The board responded in court that previous injunctions and court orders had applied exclusively to the main campus in Baton Rouge. After only thirty minutes of deliberation, the federal district court ordered the board to admit blacks at its branch. The board then appealed for a stay of the order, hoping to lengthen the process of desegregation and to wear down the opposition. However, the appellate court denied its request within ten days from the date of filing of the appeal. Such

³¹Ludley v. Board of Supervisors, 252 F.2d 372 (5th Cir. 1958).

quick action was a major defeat for segregationists, who were not sufficiently prepared to defy the federal courts as swiftly and deftly. Thereafter, attempts to block desegregation of public colleges were only face-saving maneuvers with little chance of success.³²

A historic event occurred in September of 1958, when the new Louisiana State University at New Orleans (LSUNO) registered more than fifty blacks, thus becoming the first state college to begin operation on a desegregated basis. Although the campus was plastered with Ku Klux Klan banners and racist graffiti a week later, few incidents marred its initial semester.³³

In 1958, LSU faced a State House of Representatives probe because of the actions of sixty-six of its professors who had signed a Louisiana Civil Liberties Union petition which expressed opposition to segregation bills to close the public schools. Among the leaders of the LSU protests was English Professor Waldo McNeir. LSU President Troy Middleton was summoned to a legislative hearing, where he avowed his support for segregation and declared his intention to follow "whatever the law is." His responses to questions posed by legislators assuaged their concern, and the matter was dropped temporarily. However, McNeir's use

³²Read, Let Them Be Judged, 200; Fleming v. Board of Supervisors, 265 F.2d 736 (5th Cir. 1959).

³³Atlanta Constitution, Sept. 19, 1958.

of LSU letterhead stationery in late 1960, to send letters to two racist legislators protesting against interposition and declaring the actions of the legislature in two special sessions in 1960 as "a disgrace and a national scandal" which "seriously damaged this country in the eyes of the world," resulted in another probe of the university for alleged subversive activities. Following another appearance before a legislative hearing, Middleton issued new rules for faculty conduct on matters of public controversy. Quoting from the manual of the American Association of University Professors, he declared that a teacher was not to use his position to discuss in class controversial topics that were not within his field of study, and stated that any member of the university who could not act in the best interest of LSU was "a handicap and a burden to the organization he serves." Two weeks later, McNeir resigned (effective June 1, 1961) because of "outside threats and outside pressures," although both he and Middleton denied that this was the actual cause for his leaving LSU after eleven years.³⁴

In early 1959, the LSU Board of Supervisors again appealed the lower court's decision to allow blacks to enroll at LSUNO. Its new appeal was on the grounds that the board was a specific agency of the state, which could not be

³⁴New Orleans Times Picayune, June 11, 1958, Dec. 19, 1960, Jan. 5, 1961.

sued without its consent. In a more formal opinion, the Fifth Circuit Court of Appeals affirmed the desegregation order and overruled the board's claim of exemption from an injunction prohibiting its attempts to segregate LSUNO. Additionally, the court held that an individual officer or corporate agency that acted on the behalf of the state, ceased to represent the state when it attempted to exercise power in violation of the Constitution.³⁵ Hence, the state's largest university had failed to dissuade the federal courts from desegregating its branch in New Orleans as well as its own graduate and professional schools. It would now be only a matter of time before the entire edifice of de jure segregation in the state's colleges and universities would crumble.

Desegregation of Higher Education, 1959-1965

By 1959, the back of massive resistance attempts to halt or delay desegregation in higher education in Louisiana had been broken. The attention of segregationists in the legislature was now focused on preventing the desegregation of public elementary and secondary schools in New Orleans. During the next six years, the remaining undergraduate departments of the sprawling LSU system and other state colleges were peacefully desegregated on a case-by-case

³⁵Fleming v. Board of Supervisors, 265 F.2d 736 (5th Cir. 1959).

basis. There were no further legislative attempts at massive resistance, and neither did any Louisiana governor stand in a university doorway, nor did campus riots prevent the registration and admission of blacks to the state's colleges. The major weapon used by the state was its contention that its institutions of higher learning were agencies of the state and were thus protected by state immunity from suit without its consent.

The scenario for desegregation of a college typically followed the pattern of filing a discrimination suit, followed by a hearing within a few days in federal court. At that time, attorneys for the State Board of Education would admit that the board was maintaining a policy of segregation and would justify its actions by hiding behind the Eleventh Amendment. The district court would promptly issue a desegregation order, which would be followed by an immediate appeal for a stay order by the state attorney general. This request would then be denied quickly by the Fifth Circuit Court of Appeals and desegregation would proceed.

Prior to 1960, the campuses of Southeastern, the University of Southwestern Louisiana (formerly SLI) and McNeese had been desegregated, as had most of the LSU system, with the exception of the undergraduate division on its main campus in Baton Rouge. In the fall of 1962, there were 50 black graduate students at LSU's main campus (108 in the previous summer semester), over 250 undergraduate black students at LSUNO (an additional 217 graduate students in

the summer semester) and no blacks at its Alexandria campus. Southeastern had 20 black undergraduates, McNeese had approximately 150, and USL had 247. There were no blacks enrolled at the other state colleges: Louisiana Tech, Nicholls, Northeast and Northwestern.³⁶

In the fall of 1963, fifty-nine blacks were enrolled in LSU graduate and professional schools, but none in its undergraduate schools since the brief admission of A. P. Tureaud, Jr., in 1953. In November of 1963, a black applicant for admission as an undergraduate student was denied. However, in May of 1964, LSU acknowledged that it would admit a black woman in pre-law during the summer semester under the 1953 court order to enroll blacks in arts and sciences. University officials took this opportunity to state that the school's policy on segregation remained the same. Less than two weeks later, the NAACP filed a suit against LSU to force it to admit six blacks to other undergraduate departments. In early June, LSU registration officials were ordered to admit seven blacks, but by the middle of the month, twenty black students were enrolled.³⁷ Racial discrimination at the university did not end here, though.

LSU President John A. Hunter ordered the closing of the university swimming pool on June 15, 1964, reportedly to

³⁶ Baton Rouge State Times, Oct. 3, 1962.

³⁷ Ibid., Jan. 21, June 8, June 16, 1964; Anderson v. Board of Supervisors, 9 RRLR 603-04 (1964).

repair damage caused by an Alaskan earthquake of the previous March. However, the campus newspaper alleged that the closure resulted from a black undergraduate's attempt to use the pool, which led to the circulation of a petition by students and faculty in protest of the pool closing. The denial of the use of the pool and the refusal of the LSU Union barbershop to give a haircut to another black student, despite earlier pronouncements by university officials that blacks would be accorded all rights and privileges of white students, were the two most significant incidents brought on by integration, which otherwise proceeded quietly.³⁸

The same scenario of litigation was followed in the desegregation of Nicholls, Northeast, Delgado, Northwestern and Louisiana Tech between 1963 and 1965. Nicholls was ordered to desegregate in the fall of 1963, complied, then filed an appeal which it lost in the following year. The same situation occurred with Northeast and Delgado in 1964, and Northwestern and Louisiana Tech in 1965.³⁹ The desegregation of Grambling brought an end to the last segregated state-operated college, when it was ordered to admit a

³⁸Baton Rouge State Times, June 26, 1964.

³⁹Baker v. Louisiana State Department of Education, 339 F.2d 911 (5th Cir. 1964); McCoy v. Louisiana State Department of Education, 229 F.Supp. 735 (E.D. La. 1964); Williams v. Board of Managers, 9 RRLR 1783 (1964); Burton v. Louisiana State Department of Education, 10 RRLR 116 (1965); Potts v. McKeithen, 10 RRLR 116 (1965); New Orleans Times Picayune, Oct. 23, 1964; Baton Rouge State Times, Feb. 3, 1965.

white student in its summer session of 1965, despite a state law that forbade the enrollment of whites at black colleges (the same order had been given to the Southern University branch at New Orleans in 1964).⁴⁰ Therefore, by 1965, both blacks and whites were free to attend any public institution of higher learning in Louisiana without fear of denial because of race or color under de jure restrictions.

During the 1960's, another question arose in Louisiana concerning the right of a private college to racially discriminate in its admissions. Such a case arose over Tulane University, which claimed to be an entirely private university. In April 1961, the administrators of the Tulane Educational Fund declared that they would admit qualified black applicants "if it were legally permissible" to do so. However, Act 43 of the 1884 state legislature and Article 12, Section 24 of the state constitution prevented it from desegregating, and university officials were concerned with the issue of restrictive covenants, since bequests by Paul Tulane and Sophie Newcomb were restricted to white students only.⁴¹

⁴⁰ Baton Rouge State Times, Feb. 3, 1965; Jamieson v. Louisiana State Department of Education, 10 RRLR 1004 (1965); Welch v. State Board of Education, 9 RRLR 1737 (1964).

⁴¹ Acts of Louisiana, 1884, Regular Session, no. 43; Constitution of 1921, Article 12, Section 24; Guillory v. Administrators of Tulane University, 203 F.Supp. 855 (E.D. La. 1962); New Orleans Times Picayune, Apr. 14, 1961.

When Barbara M. Guillory and Pearlle H. Elloie were denied admission to Tulane's graduate school on racial grounds in 1961, they brought suit in federal court. Tulane's response was that it was not subject to the Equal Protection Clause of the Fourteenth Amendment because of its private character, that state laws prohibited the university from admitting blacks, and that past donations to Tulane had clauses restricting their use to whites only. In one of his last decisions as a federal district judge in New Orleans, J. Skelly Wright ruled that Tulane was a public institution by virtue of the substantial support and management in its affairs that it had received from the state since its inception, and therefore, was subject to the Fourteenth Amendment. He found the question of previous donations to the university to be moot, since the Supreme Court had already declared such restrictive covenants to be judicially unenforceable. In regard to state prohibitions on Tulane which mandated its operation on a segregated basis, Judge Wright professed that Louisiana "can no more dictate discrimination in private institutions than it can segregate its own facilities." Thus, if Tulane officials desired, there was no legal impediment to the enrollment of black students.⁴²

Less than two months later, a new federal judge ordered another trial because of unresolved issues concerning

⁴²New Orleans Times Picayune, Sept. 2, 1961; Guillory v. Administrators of Tulane University, 207 F.Supp. 554 (E.D. La. 1962).

Tulane's status as a public school and the degree of involvement by the state in its operation. In a new trial, Tulane was declared a private institution and not subject to Fourteenth Amendment restrictions. However, racial restrictions on the use of state funds and private donations to the university were voided because they were restrictive covenants, and thus judicially unenforceable. Since Tulane was private, Act 43 was unconstitutional to the extent that it restrained the university from desegregating, because "a state may not compel racial segregation in private affairs." Therefore, Tulane had no legal requirements by restrictive covenants or by state statute to retain segregation, and could validly admit black applicants if it desired.⁴³

A week later, in December of 1962, Tulane announced that it would begin accepting qualified black students in its spring semester. In January, eleven black graduate students (including Guillory and Elloie) enrolled without incident. In a campus newspaper interview in April, several of the students reported that they were treated fairly, had found no distinction made because of their race in social or class activities, were allowed full access to university facilities available to other students, and had encountered no problems from either students or professors. When Newcomb College, the seventy-five year old exclusive women's

⁴³Guillory v. Administrators of Tulane University, 212 F.Supp. 674 (E.D. La. 1962).

adjunct to Tulane, admitted its first black student in the fall semester of 1963, the Tulane system became fully integrated.⁴⁴

Higher Education in Louisiana Since 1965

By 1965, de jure segregation in higher education in Louisiana had been brought to an end. However, the more difficult problem of de facto segregation had replaced it. In the course of establishing a dual system of higher education for blacks and whites in the state since 1880, the legislature sought to mute black protests at being excluded from white institutions by establishing black colleges in some of the same cities where white colleges existed. As a result of this policy, the LSU and Southern University systems rose side-by-side, with "sweetheart schools" being established for each race at state expense and usually located at opposite ends of the same city. It was the existence of these parallel schools which perplexed the NAACP and the federal government from the late 1960's, and has yet to be resolved.

LSU became established in Baton Rouge as a white institution in 1869, while Southern University arrived there in 1914, after a brief tenure in New Orleans. By 1948, each university had its own law school, though the one at LSU

⁴⁴New Orleans Times Picayune, Dec. 13, 1962, Jan. 26, 1963; Tulane University Hullabaloo, Apr. 5, 1963; Pittsburgh Courier, Oct. 5, 1963.

antedated Southern's by over forty years. In 1956, the legislature authorized the construction of branches of both LSU and Southern in New Orleans. Another expansion was approved in 1964, when two branches of LSU were created at Eunice and Shreveport, and a branch of Southern at Shreveport-Bossier City. Therefore, with the rapid dismantling of the segregated de jure system in higher education, the state continued to fund and establish a dual system of predominantly white and black colleges, further entrenching a de facto system.

In 1965, J. D. DeBlieux, chairman of the Louisiana Advisory Committee to the United States Commission on Civil Rights, reported that fifteen colleges and universities in the state had signed compliance agreements under the requirements established by the Civil Rights Act of 1964. These institutions agreed not to discriminate because of race, color or national origin in the admission or treatment of students in all academic programs as well as social, recreational and extracurricular activities. There would also be equal access by all students to dormitories, cafeterias and other facilities on campus.⁴⁵

In the fall of 1967, there were 85,140 students enrolled in public colleges and universities in Louisiana. Of this number, 68,907 (80.9 percent) were white and 16,233 (19.1 percent) were black. However, 13,597 (83.8 percent)

⁴⁵Baton Rouge State Times, May 21, 1965.

of the total black enrollment were attending a predominantly black institution, and only 2636 (16.2 percent) a predominantly white institution. The percentage of blacks enrolled at formerly white universities ranged from 0.83 percent at Southeastern to 9.00 percent at McNeese. No white students enrolled at Southern University at New Orleans (SUNO) and Shreveport-Bossier City (SUSBO), one at Grambling and only nine at Southern in Baton Rouge (table 8). On the three Southern University campuses, only 9 whites were enrolled out of 9453 students. On the six LSU campuses (including the Medical Center in New Orleans), only 884 blacks were enrolled out of 28,429 students (table 9).⁴⁶

The NAACP, the Justice Department, the Department of Health, Education and Welfare (HEW) and the federal courts viewed the continued existence of the dual system in higher education in Louisiana with increasing interest. HEW was particularly concerned with "trouble spots" arising over separate branches of LSU and Southern at Baton Rouge, New Orleans and Shreveport, and with the existence of Grambling and Louisiana Tech within three miles of one another. Beginning in January of 1969, HEW suggested "a system-wide plan of cooperation between institutions involving consolidation of degree offerings, faculty exchange, and general institutional sharing of resources." Since all of these

⁴⁶ Southern Education Research Service, "School Desegregation in the Southern and Border States (October 1967).

Table 8
Enrollment at Louisiana Universities, 1967

University	Total Enrollment	White Enrollment	Percent White	Black Enrollment	Percent Black
Grambling	4,154	1	0.02	4,153	99.98
La. Tech	7,147	7,058	98.75	89	1.25
LSU	28,429	27,545	96.89	884	3.11
McNeese	4,542	4,133	91.00	409	9.00
Nicholls	3,727	3,611	96.89	116	3.11
Northeast	6,740	6,472	96.02	268	3.98
Northwestern	6,333	5,877	92.80	456	7.20
Southeastern	5,283	5,239	99.17	44	0.83
SUBR	7,338	9	0.12	7,329	99.98
SUNO	1,758	0	0.00	1,758	100.00
SUSBO	357	0	0.00	357	100.00
USL	9,332	8,962	96.04	370	3.96
Totals	85,140	68,907	80.93	16,233	19.07

Source: Southern Education Research Service (October 1967).

universities received federal funding, the continued operation of an alleged dual system of higher education by the state placed approximately \$30,000,000 in federal funds in jeopardy.⁴⁷

⁴⁷ New Orleans Times Picayune, Mar. 19, 1969.

Table 9
Black Enrollment at LSU Branches, 1967

Location	Black Enrollment	Location	Black Enrollment
Alexandria	25	New Orleans	450
Baton Rouge	350	Shreveport	12
Eunice	44	Medical Center-NO	3

Source: Southern Education Research Service (November 1967).

Beginning in 1969, the Justice Department initiated efforts to secure voluntary cooperation with state and university officials in arriving at a satisfactory desegregation plan. However, the state and LSU officials maintained that it was already in full compliance with federal guidelines, and William Arceneaux, director of the Louisiana Coordinating Council for Higher Education, responded that submitting a plan "would be an admission of guilt." In October, Governor John J. McKeithen informed HEW officials that he would not comply with federal demands for complete desegregation of Louisiana colleges, which had been desegregated "since the Brown decision," and that further desegregation would have to be enforced by federal marshals because he would not force anyone to attend a college that

was not his choice. Following a meeting between state and federal officials in November, the governor pledged full cooperation in efforts to encourage students to attend various state institutions of higher learning, and renewed his refusal to order any student to attend a college other than his own preference.⁴⁸

Although some progress was reported between Louisiana Tech and Grambling in the fall of 1969, HEW was not satisfied with the responses from state and university officials, and declared that Louisiana (and subsequently the states of Arkansas, Florida, Georgia, Maryland, Mississippi, North Carolina, Oklahoma, Pennsylvania and Virginia) was operating a racially segregated system of higher education in violation of Title VI of the Civil Rights Act of 1964. In January 1970, LSU President John A. Hunter declared that HEW plans would result in the closure of Southern University in Baton Rouge, that LSU was in compliance with desegregation orders and that the only way to eliminate the racial identity of Southern was to eliminate Southern.⁴⁹

During the next four years, only limited action was taken by any of the parties, primarily because of their common realization of the innumerable problems inherent in

⁴⁸United States v. State of Louisiana, 527 F.Supp. 509 (E.D. La. 1981); Miami Herald, Oct. 31, 1969; New Orleans Times Picayune, May 23, June 20, Nov. 16, 1969.

⁴⁹United States v. State of Louisiana (1981); New Orleans Times Picayune, Jan. 17, 1970.

this enigma, which had no simple resolution. Colleges and universities were not cost-free, so such factors as student transportation, finances and personal preference had to be taken into consideration. Since the state no longer had laws requiring the segregated operation of any of its institutions of higher learning, it was difficult to arrive at a prompt solution as was often available in the dismantling of dual systems in public elementary and secondary education. Another vexing problem that needed to be addressed was the division of opinion among blacks themselves concerning federal pressure to dismantle the dual system in higher education. With the disestablishment of public schools in Louisiana during the late 1960's and early 1970's, black pride and heritage had taken a beating as former black schools were either closed or absorbed into the previously all-white system. Blacks were proud of the strides made by Grambling and Southern over the past century and were opposed to seeing them absorbed into the predominantly white LSU system or into Louisiana Tech.

Although no real progress had been made to dismantle the dual higher education systems in Louisiana by 1974, blacks did achieve a few gains in the limited attempts by university officials to assuage federal concern. In the fall of 1969, Louisiana Tech and Grambling began conducting joint programs and allowing students from each university to take courses on either campus, while pursuing a degree program at one of the institutions. It was also agreed upon to

conduct faculty exchanges between the two campuses and to merge the agricultural programs of the two universities. After July 1972, agricultural majors of both universities would graduate from Louisiana Tech.⁵⁰

In 1970, LSU and Southern University (SU) in Baton Rouge began a cross-registration program, which by 1974, permitted any student at either university to take a course each semester at the other campus without charge. In 1974, one hundred twenty-four LSU and SU students were involved in this and other "special cooperative student exchange programs" in education, ROTC, engineering and graduate school. Besides employing blacks in faculty positions at LSU, a faculty exchange program was conducted between the two universities. Between 1967 and 1969, fifty-nine LSU faculty members and ten from SU participated in the program. By 1974, faculty exchanges and cooperative programs had been instituted in many of the departments of both institutions. LSU and SU also began sharing facilities, such as the LSU library and gym-auditorium.⁵¹

Because not enough action had been undertaken to bring about a resolution of the dual system in higher education, the Justice Department brought suit against the State of Louisiana and university officials in 1974. Grounds for the

⁵⁰New Orleans Times Picayune, Oct. 30, 1969.

⁵¹Louisiana State University, Report on Compliance with the Civil Rights Act of 1964, Nov. 6, 1980.

suit included the defendants' establishment, maintenance and perpetuation of "an unlawful dual system of higher education based on race;" failure to comply with Title VI and HEW guidelines concerning the nondiscriminatory expenditure of federal funds; and failure to voluntarily submit a constitutionally acceptable plan to disestablish the dual system of universities.⁵²

As if to exacerbate the existing problems, a new state constitution was approved by the voters in 1974, and took effect in 1975. Under the new plan of government, voters rejected a proposed plan to create a single governing body over all institutions of higher learning, choosing instead to create four boards to oversee the operation of higher education in the state. The Board of Trustees for State Colleges and Universities was given jurisdiction over Delgado, Louisiana Tech, USL, Southeastern, Nicholls, Northwestern, Northeast, Grambling and McNeese. The Louisiana State University Board of Supervisors would govern the main campus in Baton Rouge; branches in Alexandria, Eunice, New Orleans and Shreveport; the Paul M. Hebert Law Center on the Baton Rouge campus; and the Center for Agricultural Sciences and Rural Development in Baton Rouge. The Southern University Board of Supervisors would have jurisdiction over its main campus north of Baton Rouge and branches in New Orleans and Shreveport-Bossier City.

⁵²United States v. State of Louisiana (1981).

Finally, the Board of Regents was set up as a super board, serving as a statewide planning and policy-making agency to help coordinate the activities of the other three boards. Unfortunately, the actual power lay within the three separate boards, while the Board of Regents would serve merely in an advisory capacity.⁵³

During the next six years after the Justice Department suit was filed in 1974, little was accomplished to resolve the problems that resulted in the suit. Beginning in 1980, a series of intensive meetings was held, which resulted in the formation of a compromise that became known as the Consent Decree of 1981. A three-judge court approved it in the belief that it was a sound, reasonable and systemwide desegregation plan that offered realistic hopes for the creation of a unitary system of higher education and held out the promise of enhancing predominantly black universities in the interim.⁵⁴ The decree was scheduled to end on December 31, 1987, but continued until the middle of 1988. At that time, the federal government scrapped the decree, declaring it to be a failure, because the system of predominantly white and black universities was no nearer to consolidation in 1988, than it had been in 1981.

In 1988, the composition of Louisiana's public universities was little different from that of 1974. However, it

⁵³The Master Plan for Higher Education, 7; Constitution of 1974.

⁵⁴United States v. State of Louisiana (1981).

was a vast change from 1954, when only two meagerly funded and equipped black colleges served the needs of the state's black population, while whites had access to a system of colleges and universities spread across the state. Beginning in 1880, provisions for the higher education of blacks had slowly advanced and survived for a century despite innumerable burdens and hardships, while being considerably outdistanced by white institutions.

Desegregation was imposed by federal courts on white institutions of higher learning, beginning with the LSU Law School in 1950, then spreading to smaller state colleges after 1954. As the courts became increasingly involved in the dismantling of the dual system of public elementary and secondary school systems in the early 1960's, scant attention was focused on the state's colleges and universities. By 1965, qualified black and white Louisiana citizens were able to attend any public institution of higher learning within the state, without fear of denial because of race or color. In contrast to the situation in several nearby Southern states, desegregation of the state's colleges had proceeded rather smoothly, the major challenge being litigation.

After 1965, de jure segregation ceased to be a problem, but its residual effects continued to operate on a de facto basis. The operation of separate LSU and SU systems within the state since 1880, had resulted in the establishment of predominantly white LSU and black SU branches in Baton

Rouge, New Orleans and Shreveport-Bossier City. De jure segregation had also resulted in the creation of predominantly white Louisiana Tech and black Grambling only three miles apart in North Louisiana. The continuation of these separate, virtually one-race, universities in close proximity but without laws mandating attendance of one or the other, became the major concern of the NAACP and the federal government after the termination of de jure segregation in 1965.

Today, one of the major problems facing higher education in Louisiana is determining how to consolidate the dual system without unintentionally discriminating against minorities or violating the right of Louisiana citizens to attend the university of their choice. This enigma continues to perplex state and university officials, black groups and the federal courts as they seek an equitable resolution to this winless situation.

Chapter V

DESEGREGATION OF THE PUBLIC SCHOOLS, 1954-1962

Introduction

Prior to 1954, conditions for black children in public education were deplorable, both in the South as well as in many Northern cities with large black populations. Although the two decisions rendered in Brown v. Board of Education in 1954 and 1955 had declared de jure segregation in public schools unconstitutional, and had ordered the dismantling of all dual school systems for blacks and whites, the actual process of disestablishing the system was painfully slow. This was because the decision when and how to desegregate each individual Southern school district was left up to the local federal district courts, which had to deal with widely differing circumstances and patterns of resistance.

No other issue had the emotional impact on citizens of Louisiana that public school integration did. Although still behaving in a rational manner in 1954, Louisiana officials immediately invoked the powers of the state to conduct a campaign of "massive resistance" to federal orders to desegregate the state's public schools, and periodically added laws later to reinforce an already weighty defense of segregation. The segregationist atmosphere that dominated

the state legislature peaked with a crisis over the desegregation of public schools in New Orleans in the fall of 1960. However, the defeat of the segregationist forces in that battle did not dissuade them from continuing their efforts to resist integration. If integration could not be prevented, then it might be delayed or circumvented.

By the end of 1962, the public schools of Orleans Parish were under court orders to increase integration, and desegregation orders were pending against the parishes of St. Helena and East Baton Rouge. In addition, the Roman Catholic schools of the Archdiocese of New Orleans were open to all qualified black applicants and had enrolled several black students in the fall of 1962. However, public schools outside of New Orleans and parochial schools outside of the archdiocese, still rigorously maintained segregation.

Pre-1954 Federal Court Decisions and State Actions

Beginning with the case of Plessy v. Ferguson in 1896, the federal courts gave legal sanction to the principle of "separate but equal." Previously, the executive and legislative branches of the federal government had relinquished their obligations to protect the equal rights of all American citizens, and would not re-assume those responsibilities for another half century. Following the lead of the Supreme Court, the courts took a conservative approach toward segregation and allowed the doctrine of "separate but equal" to flourish across the nation. Thus, the South was

permitted to erect a bulwark of segregation laws based on Plessy.

Although Plessy established court approval of segregation in the area of transportation, it became the legal basis for a discriminatory policy that culminated in the creation of a dual system of education in Louisiana. By then, the leaders of the state realized that the federal government would not come to the aid of blacks, and tragically, "separation" came to mean "exclusion."

Within the next thirty years, the Supreme Court extended constitutional protection of segregation to the dual school systems of the South. In 1899, it affirmed "separate but equal" in public schools when it upheld the closure of a black high school in Georgia, allegedly for economic necessity. Remarkably, the court decided that the board's actions were not based on race and that no one's rights had been violated by the closure.¹

In the next decade, the Supreme Court entered the field of private education, when it upheld a Kentucky statute that prohibited private schools from admitting blacks and whites to the same institution.² The last overt decision by the court in upholding segregation in education came in 1927, when it affirmed the decision by a Mississippi county to exclude a Chinese girl from attending the county's only high

¹Cumming v. Board of Education, 175 U.S. 528 (1899).

²Berea College v. Kentucky, 211 U.S. 45 (1908).

school on the grounds that she was not "Caucasian."³ Unfortunately, the high court failed to address the central question of equality presented by this case. How "equal" was a situation in which a high school existed in a school district for whites, but none existed for non-whites?

The situation for blacks residing in Louisiana was similar to that of other Southern states. In many areas of the state, dilapidated one-room schoolhouses or abandoned buildings served as the only school for blacks to attend within a parish, if a black school existed at all. Black students received little, if any, supplies or funds from parish and state coffers, while black teachers were often paid less and had a much higher pupil-teacher ratio than their white counterparts. Black education was frequently only an after-thought, receiving meager funding from the inadequate appropriations with which the white school system was willing to part.

The first mention of the state's public school system was in the Constitution of 1845, with the simple sentence that "(T)he Legislature shall establish free public schools throughout the State," and would support them by taxation on property or by other means.⁴ The Constitution of 1852 provided that free public schools were intended for free white children, while the Constitution of 1864 extended the

³Gong Lum v. Rice, 275 U.S. 78 (1927).

⁴State of Louisiana, Constitution of 1845, Article 134.

provision for education to all children between the ages of six and eighteen residing in Louisiana, although it was popularly interpreted to mean the "white" children of the state.⁵

A native white supremacist government dominated state government from 1865, until military reconstruction was imposed in 1867. State Superintendent of Schools Robert M. Lusher envisioned an excellent system of public education for white children as an assurance that white citizens would continue their intellectual and cultural dominance over Louisiana, while the education of blacks was left to the federal government under the Freedmen's Bureau. Lusher rejected as too radical the proposal of Governor J. Madison Wells to create black schools with black tax money, and opposed any education for blacks, much less the creation of a dual system of segregated schools.⁶

When a Radical-dominated convention met to draft a new constitution for the state in 1867, one of the major achievements for blacks was the adoption of Article 135, which provided for the establishment of at least one tax-supported public school in each parish for "(A)ll children of this State," between the ages of six and twenty-one. The article also stipulated that children would be admitted to

⁵State of Louisiana, Constitution of 1852, Article 136; State of Louisiana, Constitution of 1864, Article 141.

⁶Fischer, The Segregation Struggle in Louisiana, 28.

all "institutions of learning sustained or established by the State . . . without distinction of race, color, or previous condition," and that there would be "no segregated schools or institutions of learning, established for any race by the State of Louisiana."⁷

In 1869, the state legislature created a public education system without a compulsory attendance provision, but with stiff penalties for refusing to admit any child to state-supported schools. Louisiana historian Roger A. Fischer found that rural parishes either ignored, disobeyed or circumvented the law. In some North Louisiana areas, blacks and whites quietly agreed to establish a dual system of separate schools for each race, while segregated Catholic schools and private academies in the southern part of the state served as alternatives to mixed schools.⁸

Only in New Orleans was there a serious attempt to desegregate the public schools. The city's residents vainly set up a dual system of schools after 1867, in hopes of preventing desegregation. When integration came in 1871, white flight caused private and parochial schools to mushroom across the city. Fischer points out that desegregation was effective only from 1871 to 1874, and that whites were tranquil and tolerant of the five hundred to a thousand

⁷State of Louisiana, Constitution of 1868, Article 135.

⁸Fischer, The Segregation Struggle in Louisiana, 90-91, 109.

blacks scattered among several thousand white students only because of their helplessness to prevent it at that time. Meanwhile, five thousand black students attended all-black city schools. Although white parents sent their children to integrated public schools, they never accepted the situation, and the desire to resort to violence and intimidation was always at hand. When racial violence broke out in New Orleans at the end of 1874, progress in the desegregation of city schools was halted, and whites awaited the opportunity to re-segregate their schools.⁹

The return of Conservative Democrat leaders to power in Louisiana in 1877, resulted in the rapid dismantling of the desegregated school system in New Orleans. Lusher returned as superintendent of public schools, with the desire to relegate blacks to a position bordering on slavery. In the fall of 1877, the new school board in Orleans Parish quietly and in an orderly manner reassigned blacks to all-black schools, and the dual system became entrenched in the city. When appeals to Governor Francis T. Nicholls brought the response that he had not promised integration but "equal facilities," black activists resorted to litigation.¹⁰ Paul Trevigne and Arnold Bartonneau filed separate suits challenging violations of Article 135 of the state constitution and the Equal Protection Clause of the Fourteenth Amendment,

⁹Ibid., 114-20, 131-32.

¹⁰Ibid., 139, 120, 131-32.

but were denied relief.¹¹ Then, in 1878, the United States Supreme Court declared Louisiana's Civil Rights Act of 1869 unconstitutional.¹² Finally, the state's new "Redeemer" government drafted a new state constitution in 1879, which removed all legal impediments to segregation by maintaining silence on the issue of equality between the races and by deleting all references to race or discrimination.

Although it did not provide for a dual system of education based on race, the 1879 state constitution failed to provide safeguards for black education and thus prepared the way for discrimination and exclusion of blacks from the public schools. The first mention of separate schools for the races was made in the 1898 constitution, which declared that "(T)here shall be free public schools for the white and colored races, separately established" for all children between the ages of six and eighteen and supported by taxes. When the constitution was redrafted in 1913, it simply restated the 1898 provision regarding public education.¹³

The 1921 state constitution was the last to be in effect in Louisiana prior to the disestablishment of the dual educational system. Article 12, which dealt with the creation and operation of all public schools, provided that:

¹¹Ibid., 140-41.

¹²Hall v. De Cuir, 95 U.S. 485 (1878).

¹³State of Louisiana, Constitution of 1898, Article 248; State of Louisiana, Constitution of 1913, Article 248.

The educational system of the State shall consist of all free public schools, and all institutions of learning, supported in whole or in part by appropriation of public funds. Separate free public schools shall be maintained for the education of white and colored children between the ages of six and eighteen years . . .

The article also provided for the creation of a State Board of Education to oversee the public school system, and stipulated that the board "shall not control the business affairs of the parish school boards, nor the selection or removal of their officers and directors." Provision was made for the creation and election of parish school boards as well as for separate municipal boards already in existence. By the 1950's, there were sixty-four parish school boards and three municipal ones operating in Monroe, Bogalusa and Lake Charles. Article 12 further declared that no public funds could be used to support any private or sectarian school. As desegregation of public schools approached, though, constitutional restrictions such as this one were overcome in the quest for an alternative to court-ordered integration of the public schools.¹⁴

Federal Court Policy to 1955

Beginning with the case of Gaines v. Canada in 1938, the United States Supreme Court began an exceedingly slow reassessment of "separate but equal" as applied to education, culminating in 1955 with the order to desegregate

¹⁴Constitution of 1921, Article 12.

schools "with all deliberate speed." If the Southern states wished to separate blacks in professional and graduate schools, the court said, then the state had to provide blacks with equal facilities to match those provided for whites. However willing they may have been to comply, the Southern states were unable to provide a completely equal system for blacks, while the Supreme Court would not be entirely satisfied with separate facilities even if they were equal.

In 1951, a three-judge federal district court held the Clarendon County, South Carolina, school system accountable to the Supreme Court test that was applied to higher education. The school district was to immediately improve physical facilities for blacks if it continued to maintain its dual education system. However, the judges would not overturn the Plessy decision. On appeal by the NAACP, the Supreme Court consolidated this case with several other pending school desegregation cases under Brown v. Board of Education in 1954.¹⁵

On May 17, 1954, the United States Supreme Court announced in its first Brown decision by a unanimous vote that de jure segregation in the public schools was unconstitutional. It was no longer a matter of making dual systems truly equal, because the entire system was declared

¹⁵Briggs v. Elliot, 98 F.Supp. 529 (E.D. S.C. 1951).

patently unfair and unconstitutional. Instead of establishing a timetable for the actual dismantling of the dual school systems, time was given to interested states and other parties to send representatives to enlighten the court on the amount of time sufficient to complete the transition to a completely unitary system.¹⁶

Prior to this time, there was little doubt or uncertainty in the minds of most white Louisianians about the legal and ethical considerations of segregating whites and blacks into two separate school systems. This point had never before been seriously challenged within the state, and it had been taken for granted that the majority of whites across the United States felt the same about segregation as Louisianians always had. Therefore, the Brown decision startled the state's leaders, who quickly attributed it to the influence of a communist conspiracy to undermine the values and foundations of the nation.

The major impact of Brown was its destruction of the moderate course on race that had been followed in Louisiana for nearly three decades, and allowance of the rise of a small cadre of segregationist reactionaries to wrest control of the state's moral conscience. The decision reinjected race as an issue into state politics, shattering the complacency of many Louisianians and compelling them to take a position on racial segregation. For a time, anyone who

¹⁶Brown v. Board of Education, 347 U.S. 483 (1954).

attempted to remain neutral on the race issue was branded as being "soft" on the American way of life, and his motives became suspect. In fact, many Louisianians felt the need to go out of their way in order to prove their racism and to allay charges that they were "closet communists" or "integrationists," which were the same thing in the minds of many white citizens. Brown was an emotional tug-of-war for whites, but brought more uncertainty for blacks. It was a rare black Louisiana citizen who risked economic reprisal, as well as the real threat of physical danger to himself and his family, in order to exert his new-found rights.

Following a year of taking testimony and wrestling with the problem of setting a feasible timetable for desegregation, the Supreme Court decided that flexibility was the key to making its decision work. In its second Brown decision in 1955, the court decided that desegregation would proceed "with all deliberate speed," thus allowing lower federal courts discretion as local conditions warranted, and granting the public time to become adjusted to the idea of integration. The high court hoped that its decision would be carried out steadily and gradually with a minimum of protest or violence.¹⁷ However, the court did not foresee the campaign of massive resistance soon to be erected by the Southern states to delay the inevitable and to wear down those in opposition to segregation. Fifteen years after the

¹⁷Brown v. Board of Education, 349 U.S. 294 (1955).

first Brown decision, the dual systems in the states of the Deep South were basically intact through the employment of various legal maneuvers to hinder desegregation.

State Action to Prevent Desegregation, 1954-1959

A political effect of the first Brown decision in 1954, was the predominance in Louisiana of the state legislature in the struggle to safeguard the security of segregation. In contrast to later situations in Arkansas, Mississippi and Alabama, the battle to preserve the system of segregated schools in Louisiana was led by legislators, while governors played a minor role. With a small group of legislative segregationists seizing the initiative and guiding the state with or without the assistance of the state's chief executive, a role reversal took place in twentieth century Louisiana, which heretofore had a reputation for having virtual despots for governors and rubber stamp legislatures.

The state legislature was in session in 1954, when the Brown decision was announced, and action was taken almost immediately as a typical show of Southern defiance. Gaining power gradually between 1954 and 1959, segregationist representatives primarily from North Louisiana dominated the state's official response to court orders to desegregate the state's public schools. The most determined and vocal of the legislative racists were John Garrett in the State House of Representatives and Willie Rainach in the State Senate. Together, they were an almost unbeatable team and succeeded

in obtaining most of the segregationist legislation they sought.

Louisiana's governor was the only source of opposition that might have tempered the meteoric rise of the segregationist legislators and the vitriolic atmosphere of racism that they created in the late 1950's. Unfortunately, Governor Robert Kennon took no action to prevent their ascendancy, and his successor in 1956, Earl K. Long, tried to straddle the issues and appear to be all things to all people. Long's inaction for three years allowed a groundswell of support to rally to the segregationist cause, and helped propel the state toward a confrontation with federal authorities. The legislative segregationists browbeat the moderates into silence in the late 1950's, planned strategy for massive resistance to delay integration, and incited white public opinion in behalf of defiance that erupted into violence during the desegregation crisis in New Orleans in the fall of 1960. As it turned out, the principal antagonists in the battle to retain segregated schools were the legislature and the federal district court in New Orleans. By the time that Governor Long tried, in 1959, to halt the movement toward an explosive climax, he was powerless to act effectively.¹⁸

Within three days of the announcement of Brown in May of 1954, the state legislature adopted Resolution No. 22,

¹⁸McCarrick, "Louisiana's Official Resistance," 24.

which began Louisiana's official resistance to desegregation. In it, the legislature declared its belief in the compact theory of the nature of the Constitution of the United States, in the strict constructionist theory, and in the state sovereignty theory, although each of these theories had been discarded previously by the federal executive and judicial branches. The segregationists were intent on defying the federal government, and since the moderates felt that such action was relatively harmless, they allowed their opponents to win a victory by either voting for the measure or abstaining.¹⁹

Of a more serious nature was the decision of the legislature to create a joint legislative committee on segregation, that was designed to study the means by which the state could circumvent the Brown decision, and to carry on and conduct "the fight to maintain segregation of the races in the state." Selected to chair the new committee was Senator Rainach, who already served as the leader of the White Citizens' Councils. Under Rainach, the group sowed the seeds of massive resistance and served as the state's official body for advocating a policy of delay, evasion and defiance. Next, the legislature adopted a stand of interposition, whereby the state would use its police powers and

¹⁹Ibid., 29; Acts of Louisiana, 1954, Regular Session, Resolution No. 22.

Eleventh Amendment protection of immunity from prosecution against its consent to deter desegregation.²⁰

Three laws were enacted to strengthen segregation by erecting a legal framework of resistance. Article 12 of the state constitution was amended by Act 752 (approved by voters later in the year) to read:

All public elementary and secondary schools in the State of Louisiana shall be operated separately for white and colored children. This provision is made in the exercise of the state police power to promote and protect public health, morals, better education and the peace and good order in the State, and not because of race. The Legislature shall enact laws to enforce the state police power in this regard.

Act 555 prohibited the State Board of Education from approving any public school that violated Act 752, prohibited state colleges and universities from recognizing diplomas issued by such schools, and forbade the allocation to these schools of state funds, free textbooks and other school supplies. Lastly, Act 556 extended the powers of local school boards to enable them to impede racial desegregation of their school systems.²¹

In the fiscal session of the state legislature meeting in 1955, Senator Rainach embarked on a course to persuade the federal courts in Louisiana to back away from desegregation if there appeared to be no "substantial difference"

²⁰ Acts of Louisiana, 1954, Regular Session, Resolution No. 27; McCarrick, "Louisiana's Official Resistance," 31.

²¹ Acts of Louisiana, 1954, Regular Session, no. 752, no. 555, no. 556.

between white and black public schools. His "School Equalization Bill" proposed to equalize school facilities for whites and blacks at a cost of \$33.5 million, but failed because of executive and legislative opposition. Governor Kennon wanted a dollar matching program because the proposal was too expensive, and he preferred to spend the funds on highway construction. Meanwhile, many legislators felt that the Supreme Court would soon outlaw segregation anyway, so it would be a waste of money.²²

When the Supreme Court established the dictum of "with all deliberate speed" in 1955, Louisiana leaders breathed a sigh of relief. In essence, it meant that desegregation would be left to the local federal district courts, which would have wide latitude to fashion orders to the specific needs and circumstances of individual school districts. John Garrett declared that it was a mild ruling, and that the court had admitted its "mistake" in the first Brown decision by returning control to the local level; while Alexander P. Tureaud, Sr., representing the NAACP in its struggle to desegregate Orleans and St. Helena Parish public schools, observed that the decision would place the burden for desegregation on the parents of black students. Perhaps, Willie Rainach stated it best when he said that it was a "milder decree than we expected" and "gives us room to

²²New Orleans Times Picayune, May 20, 1955.

continue our fight."²³ Thus, the segregationists found the means for deterring desegregation indefinitely through protracted litigation.

Prior to the meeting of the next regular session of the state legislature, a significant event occurred in February of 1956. In Bush v. Orleans Parish School Board, Federal Judge J. Skelly Wright declared segregation in the Orleans Parish school system unconstitutional and ordered the board to begin desegregation "with all deliberate speed." In addition, he voided Acts 555, 556 and 752 of the 1954 legislature.²⁴

In May, Governor Long opened the regular session of the 1956 legislature with a message calling for "reasonableness and caution" on race relations, but sought to conciliate the segregationists at the same time.²⁵ For the next three years, he steered a neutral course between racist hysteria on one side and the feeble voice of moderation on the other, but would not exert forceful leadership on the race issue. In this vacuum, Senator Rainach and his colleagues thrived.

By a unanimous vote, the legislature quickly adopted a concurrent resolution interposing the sovereignty of the State of Louisiana "against encroachment upon the police powers reserved to" the state by the United States

²³Ibid., June 1, 1955.

²⁴Bush v. Orleans Parish School Board (1956).

²⁵New Orleans Times Picayune, May 13, May 18, 1956.

Constitution. This measure expressed the intent of the legislature to use its powers to use force, if necessary, to interpose the authority of the state to maintain segregated public schools, parks and recreational activities despite federal court decisions rendered in Bush v. Orleans and in other such cases infringing upon the rights of the states.²⁶ Thus, lawmakers had begun the long trek toward defiance that would peak during the crisis over the desegregation of New Orleans schools in 1960.

With minor opposition, the 1956 legislature enacted a series of education laws to insure the preservation of the de jure system of segregation in public schools. As discussed in the previous chapter, several laws were passed that affected higher education and teacher tenure. Any employee of a school board--teachers, school bus operators or other non-teaching personnel--could be dismissed for "advocating or in any manner performing any act toward bringing about integration of the races within the public school system or any public institution of higher learning of the state." Other laws were passed which transferred to the legislature the authority of local school boards to classify schools on a racial basis, and suspended the operation of the state compulsory school attendance law in any area where integration was required. Finally, a state

²⁶Acts of Louisiana, 1956, Regular Session, House Concurrent Resolution No. 10.

constitutional amendment was proposed which withdrew the consent of the state to suits against certain agencies of the state, including the State Board of Education and all sixty-seven local school systems within the state.²⁷

During the next two years, no action was taken on the desegregation of any schools within Louisiana, but leaders continued to pontificate on possible solutions to Brown and to line up behind measures proposed by the Joint Legislative Committee on Segregation. In 1957, Eighth District Congressman George S. Long suggested that the public school system be abolished and immediately replaced by a private school system. Then, all taxes dedicated to the support of public education could be repealed. Governor Earl K. Long later declared his belief that desegregation would not improve life for blacks, who he felt were not in favor of integration.²⁸ By 1958, though, the racists were in firm control of the state legislature, and it was no longer possible to take a moderate stand on segregation.

In 1958, the state legislature enacted several measures to strengthen the state's position in the event that federal courts set a date for the desegregation of Orleans Parish schools. Among the laws enacted were a new pupil assignment law, a comprehensive school closure law, and a tuition grant program. The school closure law authorized the governor to

²⁷ibid., no. 249, no. 319, no. 438, no. 613.

²⁸New Orleans Times Picayune, Oct. 2, Dec. 1, 1957.

close any school under orders to desegregate, as well as any black schools still in operation once nearby white schools had been closed because of desegregation mandates. In order to hinder possible integration, the legislature redesigned the procedure for student requests for transfers and assignments, allowed parents to withdraw their children from the public schools, and declared that no child could be compelled to attend an integrated school against the wishes of his parents. In the event that public schools were closed or that whites fled schools ordered to desegregate, the procedure was established for the formation of "educational cooperatives" as alternatives to integrated schools. The legislature authorized the payment of tuition grants to students attending private schools in school districts where no segregated public schools were available. In addition, school boards were authorized to transform the public school system into a private system by permitting them to:²⁹

. . . sell, lease, or otherwise dispose of, at public or private sale . . . any real or personal property used in connection with the operation of any school . . . which has been indefinitely closed by order of the Governor . . . to any private agency, group of persons, corporation, or cooperative bona fide engaged in the operation of a private non-sectarian school . . .

In 1959, fears of desegregation once again swept over the state. A political showdown occurred during the fiscal

²⁹Acts of Louisiana, 1958, Regular Session, no. 256, no. 257, no. 258, no. 259.

session of that year between Senator Rainach and Governor Long in the state legislature. The result was a crushing legislative and physical defeat for the governor, whose power and health had eroded to the point of ineffectiveness. As the gubernatorial election of 1959-60 approached, many legislators and state leaders feared that Rainach's popularity among voters might elevate him to the governorship, and that he would vent his wrath on his opposition. Of major concern to the state's voters was the federal court order to the Orleans Parish School Board in the summer of 1959, to prepare a desegregation plan by March 1, 1960 (later changed to May 16).³⁰ With a date finally set, desegregation was no longer a theoretical issue but a real threat to the state's dual education system. This peril was thrust into the gubernatorial campaign and resulted in the election of Jimmie Davis, who received the support of racial extremists and a bloc of the North Louisiana vote.

The Desegregation Crisis in Orleans Parish, 1960-1961

From 1960 to 1961, the nation witnessed a massive effort by Louisiana legislative and administrative officials to prevent the desegregation of Orleans Parish public schools. Beginning with the passage of pro-segregation measures in the regular session of 1960, the legislature presented the federal courts with the prospect of closing

³⁰Bush v. Orleans, 4 RRLR 582 (1959).

the public schools rather than surrendering to integration. A battle ensued between state legislators backed by Governor Jimmie Davis on one side, and the federal courts on the other, with Judge J. Skelly Wright playing the key role in voiding all attempts by the state to delay desegregation any further. Six successive special sessions of the legislature met to deal with the desegregation crisis in New Orleans in the space of five months, during which time approximately one hundred acts and resolutions were adopted to circumvent, prevent, delay or curtail integration. By the end of 1960, the fury of the extremists was spent and the federal courts had triumphed, although the state legislature continued to vocally resist desegregation in Orleans Parish in early 1961.

In May of 1960, the state's new governor assumed office with a mandate to do everything within his power to prevent any crack in the facade of de jure segregation. Although Willie Rainach was no longer in the State Senate (because of his unsuccessful run for governor in 1959), the power and influence of the segregationists had not diminished, and their bellicose attitude placed the state perilously near the brink of a serious confrontation with federal authority. When the Orleans Parish School Board failed to submit a desegregation plan by the May 16 deadline, the federal court established its own, ordering integration to begin in September, then enjoined the school boards in St. Helena and East Baton Rouge Parishes from continuing to require the

segregated operation of their school systems.³¹ It was in this crisis atmosphere that the 1960 regular session of the legislature met.

On the day that Judge Wright issued his desegregation plan for Orleans Parish, Governor Davis addressed the legislature, repeating his inaugural pledge to "maintain segregation without compromise, without prejudice, without violence," and pledged to recommend a number of bills to fulfill his pledge. During the regular session of the legislature, most of the laws enacted simply reaffirmed or extended previous legislation, some of which had been invalidated by the federal courts. A new school closing bill authorized the governor to close all public schools when any of them was threatened with integration. Because of the federal court decision in April to desegregate several state trade schools, three acts were passed, applying the same regulations to trade, industrial and special schools that had been applied to the public schools, while another law prohibited the allocation of supplies to integrated public, trade and special schools.³²

Once the state legislature had adjourned, it was up to the governor to continue to resist or to submit to federal

³¹Bush v. Orleans, 5 RRLR 379 (1960); Hall v. St. Helena, 5 RRLR 654 (1960); Davis v. East Baton Rouge Parish School Board, 5 RRLR 653 (1960).

³²Acts of Louisiana, 1960, Regular Session, no. 542, no. 495, no. 579, no. 580, no. 582, no. 496, no. 492, no. 581.

desegregation orders. On August 18, acting under legislative authority and a state court order of July 29, Governor Davis announced that he was assuming control of New Orleans public schools. Five days later, the governor announced that the public schools in Orleans Parish would open in September on a segregated basis through his efforts and that of the attorney general. However, on August 29, Judge Wright enjoined the state from acting under the July 29 state court order and voided several state acts as unconstitutional. Among the acts set aside were those prohibiting supplies and funds to integrated schools, placing of the school board under the protection of the Eleventh Amendment, and three acts permitting the closure of public schools by the governor. Two days later, Judge Wright ordered a delay in desegregation from September to November 14, because of the Orleans Parish School Board's assurances of good faith and additional time needed in order to comply with the court order.³³

Between June and November of 1960, various groups rose in support of keeping the Orleans Parish public schools open. The Roman Catholic, Presbyterian and Episcopal churches stood in the forefront of opposition to closures, citing the immorality of segregation and the bad effect

³³State of Louisiana v. Orleans Parish School Board, 5 RRLR 656 (1960); New Orleans Times Picayune, Aug. 26, 1960; Bush v. Orleans, Williams v. Davis, 187 F.Supp. 42 (E.D. La. 1960).

closure would have on the children, the community and business. Also in opposition to closure were a group of Tulane professors, a group of white high school students, and small groups of white parents, such as "Save Our Schools, Inc." (SOS).³⁴

After Attorney General Gremillion announced on September 1, that his office had exhausted all legal means to prevent desegregation in Orleans Parish, the governor announced that he would present a program to combat integration. Although, no action was taken for the next two months, a nearly endless string of special sessions began to meet from November until the following spring.

During the first special session (November 4-15), the strategy of the legislature was to "legislate and litigate." By enacting and re-enacting segregation laws, it hoped to postpone desegregation indefinitely. Once a case had been decided against the state, the laws would be rephrased and re-enacted, stalling desegregation until the next court battle. Most of the twenty-nine bills presented by the Joint Legislative Committee on Segregation, chaired by John Garrett, dealt with preventing desegregation of New Orleans schools and re-enacting laws already voided by the federal courts. The main opposition came from the New Orleans delegation itself: Representatives Maurice Landrieu and Salvador Anzelmo, and Senator Robert Ainsworth. However,

³⁴New Orleans, Times Picayune, June 23, 1960.

their efforts were unsuccessful in preventing overwhelming passage of the segregationist package.

To prevent the immediate desegregation of Orleans Parish, the legislature removed "certain powers, duties, and functions of all parish school boards in parishes of over 300,000 population," transferred its powers to the legislature, and made its employees subject to the exclusive control of the legislature under Eleventh Amendment immunity. Then, the lawmaking body created a special Board of Trustees to take custody of all funds accruing to a defunct school board (which the Orleans Parish School Board had been designated), and established grounds on which it could remove any board member who failed to carry out the wishes of the state or of the State Board of Education.³⁵

On November 8, 1960, Governor Davis approved all twenty-nine pieces of legislation that emerged from the first special session. Two days later, Judge Wright enjoined the enforcement of seventeen of the acts. Not to be outdone, State Superintendent of Public Schools Shelby Jackson (a supporter of the movement to abolish the public school system) announced a state public school holiday for November 14, the scheduled date of integration of New Orleans schools. However, on November 13, the governor called the closing of the schools "a scorched earth policy,"

³⁵Acts of Louisiana, 1960, 1st Extraordinary Session, no. 17, no. 18, no. 21.

and declared that the state should use legal remedies to regain control of the public schools but avoid the use of force. On the same day, Judge Wright enjoined the closing of schools in Orleans Parish and restrained the state from interfering with the duties or officers of the school board.³⁶

All schools in Louisiana were closed on November 14, 1960, except those in Orleans Parish, where desegregation proceeded after nearly a decade of litigation. The state's de jure system of segregation in its public elementary and secondary schools had suffered a fatal blow. Instead of a prolonged court battle, the special session of the legislature had seen its resistance program voided in less than forty-eight hours, and state leaders enjoined from further interference in the desegregation of Orleans Parish. Having used every means at its disposal, the state could not prevent the transfer of black students to previously all-white schools any longer.

Neither the governor nor the state legislature were ready to admit defeat, yet. Five more special sessions were held during the next four months to try to reverse the desegregation of New Orleans schools. In mid-November, Governor Davis appealed for calm in the city, requesting that the state legislature "be the battlefield."³⁷ In the

³⁶New Orleans Times Picayune, Nov. 14, 1960; Bush v. Orleans, Williams v. Davis, 188 F.Supp. 916 (E.D. La. 1960).

³⁷New Orleans Times Picayune, Nov. 17, 1960.

end, though, all were forced to admit that segregated schools would not withstand negation by the federal judiciary. Therefore, the state's leaders changed to tactics which would bring a delay in the implementation of integration and minimize the impact of desegregation on formerly all-white schools where segregation could not stand.

The desegregation of two New Orleans schools (Frantz and McDonough No. 19) led to racial violence and tension in the last two weeks of November 1960, and a lengthy white boycott of the two schools. It also created one of the worst economic slumps to hit New Orleans in the twentieth century. Stores reported sales down from 35 to 40 percent, and restaurant and entertainment establishments reported a decline of at least 20 percent. Despite their concern, though, business leaders were afraid to speak out lest they incur the wrath of the local Citizens' Councils and other segregationist groups.³⁸

During the second special session (November 16 to December 15, 1960), the legislature attempted to abolish the old Orleans Parish School Board and to create another under its own authority. It also took this opportunity to exonerate Judge Wright for his actions in bringing about desegregation, and to accuse him of bias toward the state and its leaders. The judge's response came on November 30, when

³⁸New York Times, Nov. 28, 1960.

he declared void twenty-three legislative acts and resolutions that interfered with the implementation of his desegregation orders in New Orleans. Any lingering hopes that integration might be reversed were dashed in December when the United States Supreme Court upheld the lower federal court's desegregation orders.³⁹

Lawmakers met in a third special session (December 17 to January 15, 1961), consuming most of the time venting their frustration against the Orleans Parish School Board, but powerless to reverse the court's actions. One legislator suggested lynching to solve the problem of white parents who insisted on sending their children to integrated New Orleans schools. Although later declaring that he was just joking, his statement betrayed legislative frustration at being unable to restrain the federal courts.⁴⁰

By the beginning of 1961, opposition to segregationist measures in the state legislature had waned. Attempts to curb, minimize, or alter the course of the extremists or to circumvent federal authority had been futile. Besides, further opposition to the racial extremists was politically damaging, and the extremists had already demonstrated their inability to do any serious damage. Meanwhile, Governor

³⁹ Acts of Louisiana, 1960, 2nd Extraordinary Session, no. 2, 4; House Concurrent Resolution no. 3, no. 5, no. 6, no. 7, no. 26; *Bush v. Orleans*, 188 F.Supp. 916 (E.D. La. 1960).

⁴⁰ *Baton Rouge State Times*, Dec. 22, 1960.

Davis began concentrating on other state issues, particularly repairing state relations with the national government in order to secure funding for various state projects and a favorable settlement of the lucrative tidelands oil dispute.

Establishing Freedom of Choice, 1961-1962

Three special sessions were held during the first quarter of 1961, but fiery resistance was absent, along with attempts to erect a wall of legislation to check the federal courts. In February, the legislature turned its attention toward halting the spread of integration to the parishes of St. Helena and East Baton Rouge. By then, the issue of maintaining segregated schools in Orleans Parish was dead, and the new position was to keep it token integration under a freedom of choice plan of operation. Under this plan, students were permitted to select the school closest to their home on a non-racial basis, "if space was available."

In February of 1961, the Fifth Circuit Court of Appeals affirmed a lower court order to St. Helena Parish to desegregate its public schools, and a similar ruling against East Baton Rouge Parish was pending. Once again, the legislature attempted school closing measures to forestall integration. This time, it provided for a local option closing law, under which a school board was authorized to conduct a referendum on school closing. If successful, the board could suspend or close all parish public schools. To counter the possibility of desegregation of schools in Baton Rouge, the

legislature packed the East Baton Rouge Parish School Board with four additional members appointed by the governor. Since the board already included two avowed segregationists, the addition of four more would avoid the recurrence of a board complying with federal orders in defiance of state authority.⁴¹

At this same time, President John F. Kennedy proposed federal aid to the public schools. Under his proposal, Louisiana would receive \$15 million in 1962, \$17.5 million in 1963, and \$20 million in 1964. However, Superintendent of Education Shelby Jackson ridiculed it as "not even a drop in the bucket," while the South Louisiana Citizens' Council opposed all federal aid because it would be a "smokescreen" by the national government to gain control of education by interfering with Tenth Amendment guarantees reserving the control of public schools to the states. In May, the state legislature overwhelmingly adopted a resolution calling on the Louisiana delegation in Congress to oppose the federal aid to the schools bill.⁴²

In March of 1961, the federal courts enjoined the state from additional interference with the operations of the court-approved "old Orleans Parish School Board," accused

⁴¹St. Helena Parish School Board v. Hall, 287 F.2d 376 (5th Cir. 1962); Acts of Louisiana, 1961, 2nd Extraordinary Session, no. 5, no. 7.

⁴²Baton Rouge State Times, Feb. 20, May 16, 1961; New Orleans Times Picayune, Mar. 18, 1961.

the state superintendent of public schools of contempt, and began discussing local option school closing in St. Helena Parish. By now, the legislature realized that it could not replace the board in New Orleans with one of its own design, and Superintendent Jackson was compelled to agree not to interfere with the operation of schools there any longer. However, federal courts were reluctant to prevent St. Helena school officials from conducting an election on the issue of closing public schools to prevent desegregation.⁴³

In April, St. Helena Parish voters opted to close schools by a vote of 1147 to 56, in the first referendum on the state's local option law. Although over 80 percent of registered voters had turned out, the total reflected a voter registration list of only 1572 (111 blacks) in a parish with over 9000 residents (4700 blacks). Therefore, in August, the federal courts voided the results of the election, referring to the local option school closing act as a means of continuing segregation.⁴⁴

During the 1961 fiscal session of the state legislature, administrative support for measures to defy desegregation orders was lacking. Perhaps, one calming influence was the fact that of one hundred thirty-four black applications

⁴³Bush v. Orleans, 191 F.Supp. 871 (E.D. La. 1961); Baton Rouge State Times, Mar. 4, 1961; Hall v. St. Helena Parish School Board, 6 RRLR 416-17 (1961).

⁴⁴New Orleans Times Picayune, Apr. 23, 1961; Hall v. St. Helena Parish School Board, 197 F.Supp. 649 (E.D. La. 1961).

for admission to all-white schools in Orleans Parish in 1960, only five had been accepted to attend two schools. A sustained boycott of the two integrated schools since November had nearly shut them down, and only sixty-six applications were submitted by blacks for admission to white schools in the next school year. When schools opened in September of 1961, only twelve black students were attending schools with whites in six previously all-white schools in New Orleans. Peace and quiet prevailed, but the boycott of integrated schools continued, as many of the students transferred to parochial and nearby St. Bernard Parish schools.⁴⁵

When the regular session of the state legislature met in 1962, there was a noted absence of the type of defiance present in the regular and special sessions of 1960, and business was conducted peacefully. The consensus among legislators was to preserve white supremacy, while embracing freedom of choice as a defense against stronger measures by the federal courts when complete segregation had become untenable. The administration was most concerned in 1962 with fiscal matters and preventing a resumption of discord with the national government. Governor Davis felt that defiance would endanger Louisiana's chances for securing a favorable resolution of the tidelands issue, by which the

⁴⁵McCarrick, "Louisiana's Official Resistance," 195-96; Baton Rouge State Times, Jan. 30, 1961; New Orleans Times Picayune, Sept. 8, 1961.

state stood to gain millions of dollars in needed revenue. In addition, a new missile plant and investments by private industry in the state would be placed in jeopardy. Therefore, race was relegated to a subordinate position and primary attention was focused on other issues.⁴⁶

Although the Davis Administration shied away from overt racial measures, legislators continued to enact laws which assisted parents who sought alternatives to desegregated schools. The compulsory school attendance law was repealed; procedures were established for tuition grants for children attending non-profit, non-sectarian, private schools; provision was made for a tuition grant program through the Louisiana Financial Assistance Fund; children were protected from being compelled to attend a school in which members of their race constituted less than half of the total student body; and funds were provided to St. Bernard Parish for the education of Orleans Parish students fleeing desegregated schools.⁴⁷

In April, Judge Wright left New Orleans for a new appointment and was replaced by Frank B. Ellis, who quickly rescinded Wright's order requiring desegregation of the first six grades in Orleans Parish in the fall. In late May, Judge Ellis substituted a "grade-a-year" plan by which

⁴⁶McCarrick, "Louisiana's Official Resistance," 199-02.

⁴⁷Acts of Louisiana, 1962, Regular Session, no. 128, no.147, no. 148, no. 196, no. 342.

students would be allowed to attend formerly all-white or all-black schools nearest their homes under freedom of choice. Beginning in September 1963, dual geographic attendance districts in first and second grades would be abolished, with an additional grade being desegregated each succeeding year thereafter.⁴⁸

When the new school year began in September of 1962, the only desegregated public school system in the state was still that of Orleans Parish. At that time, a major step in desegregation was taken with the integration of Roman Catholic parochial schools in the New Orleans archdiocese. In early 1956, Archbishop Francis Rummel had announced plans to desegregate schools of the New Orleans archdiocese (comprising twenty-three Louisiana parishes at the time). His announcement placed the state school hot lunch program in jeopardy in Catholic schools, as well as its sports program's affiliation with the Louisiana High School Athletic Association (LHSAA). To add to his problems, a lay Catholic organization (the Association of Catholic Laymen) was formed to keep the Catholic schools segregated and appealed to the Pope to halt racial integration. In addition, following a Citizens' Council rally which booed the name of the archbishop, a cross was burned on the lawn of his residence. Rummel finally decided to postpone integration until

⁴⁸Bush v. Orleans, 204 F.Supp. 568, 205 F.Supp. (E.D. La. 1962); 7 RRLR 19, 349, 354 (1962).

September 1957 at the earliest because of "certain difficulties."⁴⁹

Not until 1962 was action taken by the Catholic Church on the desegregation of its schools. In 1960, a spokesman for the archbishop announced that desegregation of New Orleans archdiocese Catholic schools would not occur until after public schools were actually desegregated. The church then waited nearly two years after Orleans Parish was desegregated before undergoing its own integration. In March of 1962, Archbishop Rummel announced that all schools in the archdiocese would be open to anyone. At the time, total archdiocesan enrollment was 75,907 students in 153 elementary and secondary schools (10,851 blacks were enrolled in 30 all-black schools). A church spokesman stated that black students were already enrolled in several former all-white parochial schools, but would not elaborate.⁵⁰

Following the announcement by Rummel, the public outcry among Catholics and non-Catholics alike condemned his decision. The South Louisiana Citizens' Council called it "tragic" and predicted that it would turn New Orleans white Catholic schools into black ones. Several persons picketed the archdiocesan chancery to protest against desegregation, while many predicted a mass boycott of Catholic schools in

⁴⁹New Orleans Times Picayune, Aug. 8, Aug. 26, 1957.

⁵⁰Ibid., Sept. 1, Nov. 17, 1960, Apr. 29, 1962.

the fall. Despite the threats and protests, spring enrollment figures demonstrated that 73,514 students were registered for the fall.⁵¹

When the new school year began in the fall of 1962, there were few major incidents as sixty black students began attending twenty formerly all-white Catholic schools in the New Orleans archdiocese for the first time since 1895. The most serious trouble occurred at schools in Buras in Plaquemines Parish and in Westwego near New Orleans. Leander Perez led a boycott at the Buras school, which opened with only thirty-eight white students (three hundred forty in 1961-62) and none within a week because of threats of violence. At a Westwego elementary school, two hundred persons milled around the school protesting desegregation for a few days. In addition, about a hundred persons picketed the residence of the new archbishop (John Cody) in New Orleans. In November, the New Orleans archdiocese reported a 3 percent increase in enrollment in desegregated schools over that of 1961, and that one hundred seven blacks were attending twenty formerly all-white public schools (in the parishes of Orleans, Jefferson, St. Tammany and St. Mary). With the exception of a few minor incidents, desegregation was proceeding quietly along freedom of choice lines.⁵²

⁵¹Ibid., Mar. 28, Mar. 29, Apr. 20, 1962.

⁵²Ibid., Aug. 30, Sept. 5, Nov. 18, 1962; Washington Post, Sept. 1, 2, 1962.

Although lauding the actions of Rummel and Cody in the New Orleans archdiocese, the bishops of the dioceses of Baton Rouge, Lafayette and Alexandria would not follow their examples, yet. The bishop of Baton Rouge declared that the desegregation of the schools in his diocese (under the authority of the New Orleans archdiocese until November 8, 1961) was not imminent, while the bishop of Lafayette responded that desegregation would occur "sometime after the next school year." The bishop of Alexandria also had no timetable.⁵³ In essence, they were all waiting for the federal courts to integrate the public schools within their dioceses before moving to implement their own desegregation plans.

By the end of 1962, the state's public and parochial schools were still segregated, with the exception of twelve blacks attending six schools with whites in Orleans Parish and one hundred seven blacks attending twenty parochial schools with whites in the Archdiocese of New Orleans. Outside of Orleans Parish and the archdiocese, no blacks attended any school with white students.

Between 1954 and 1960, leaders of Louisiana fought hard to maintain the de jure system of total segregation, with their efforts peaking in the New Orleans desegregation crisis of 1960. After six special sessions between November 1960 and March 1961, and contempt orders against various

⁵³Baton Rouge State Times, Mar. 31, 1962.

state officials, both legislative and executive leaders admitted defeat over New Orleans, and adopted a new tactic--freedom of choice--to keep public schools as white as possible, if they could not be kept totally white. Their strategy turned to fighting to retain total segregation on a parish-by-parish basis until they were no longer able to prevent integration. Then, their approach was to allow only a limited number of token blacks to transfer to predominantly white schools in order to appease the federal government. However, the state's leaders were incapable of repairing the breach in the segregation facade. As 1962 came to an end, the federal courts had struck down all arguments aimed at keeping the public schools of East Baton Rouge and St. Helena Parishes totally segregated, and it was but a matter of time before they underwent some form of desegregation.

Chapter VI

DESEGREGATION OF THE PUBLIC SCHOOLS, 1963-1974

Introduction

Despite the passage of nine years since the first Brown decision, sixty-five school districts in Louisiana continued in 1963 to maintain totally segregated dual public school systems. It was not until the enactment of the Civil Rights Act of 1964 that major changes became evident in the state.

Under the various provisions of the Civil Rights Act, pressure was brought to bear on school districts to desegregate in order to continue receiving federal funds. Using Title VI of the act, HEW nudged school districts toward minimum desegregation on the basis of freedom of choice, then enforced strict application of freedom of choice to move districts closer to the goal of disestablishing dual school systems. Under freedom of choice, students were theoretically able to select their schools, but it tended to perpetuate the dual system.

Not until 1965 did a majority of the school systems of Louisiana submit to any type of desegregation. Even then, it was only token integration in the form of freedom of choice, which left all-black schools intact and with only a

few black students admitted to formerly all-white schools. Once again, local and state officials in the state employed the strategy of delay, circumvention and litigation to keep massive integration at bay. However, the federal courts became increasingly suspicious of local intentions, adopting a progressively harder line toward integration within the framework of freedom of choice. While the local school districts saw freedom of choice as the solution to federal demands for desegregation, the courts saw it as a means toward reaching the final goal of a unitary school system free of racial discrimination. Beginning in 1967, the federal judiciary began to abolish freedom of choice plans that did not promise to bring about a unitary system quickly.

By 1969, the host of impediments to creating unitary, nondiscriminatory school systems were swept away when both the Fifth Circuit Court of Appeals and the United States Supreme Court decided that time had run out, and that remaining dual systems based on de jure segregation had to be eradicated immediately. However, the segregationists were still not totally vanquished, resorting now to alternate means to further thwart the intentions of the federal courts. Their machinations compelled the judiciary to closely monitor every aspect in the conversion to unitary systems. Unfortunately, just as the courts were able to glimpse the conclusion to discriminatory operation of the public schools, the executive branch under the Nixon

Administration instituted a "go-slow" policy in the early 1970's that had the effect of decelerating the entire desegregation process.

Despite major opposition in many areas of the state when court-ordered dissolution of the dual system of education was imposed in the fall of 1969, the courts prevailed. By the end of the 1970-71 school year, all of the state's local school systems were under a unitary system and the de jure system of segregation had ceased to operate. However, the thornier issue of de facto segregation reared its head, proving to be a formidable challenge for the federal courts in the South as well as in other parts of the nation during the 1970's.

Desegregation by Freedom of Choice, 1963-1964

During 1963, negligible progress was made toward desegregating the sixty-seven public school systems of Louisiana. The fiscal session of the 1963 state legislature was relatively quiet on segregation, with only one education law enacted to increase funding for tuition grants to \$300,000.¹ During the year, though, race once more intruded into the gubernatorial elections as DeLesseps S. Morrison was again accused of being soft on segregation and lost to John J. McKeithen in a campaign reminiscent of that of 1959-60.

¹Acts of Louisiana, 1963, Regular Session, no. 27.

The desegregation of East Baton Rouge Parish public schools became the focus of the state's attention in 1963, although it did not produce anything approaching the emotional upheaval that the desegregation of Orleans Parish had prompted three years earlier. In March, the parish was ordered by the federal courts to submit a desegregation plan by July. Since student assignments were already made by then, the courts allowed only twenty-eight blacks to enroll in the four parish high schools during the 1963-64 school year. Thereafter, beginning in 1964, a grade-a-year plan would operate on the basis of freedom of choice until all grades had been desegregated.²

In May of 1963, the federal courts approved a long-range plan for Orleans Parish, which established a single-zone attendance system for first and second graders for the 1963-64 school year, with the addition of one grade each year thereafter. The courts also approved transfers of black third and fourth graders who had previously applied for admission or transfer to white schools under the 1960 court order, and ordered the desegregation of a special school for gifted students in the 1963-64 school year and of kindergartens in the following year. However, the courts delayed the desegregation of faculties until the school system had made the transition to a single-zone system.³

²Davis v. East Baton Rouge Parish School Board, 214 F. Supp. 624 (E.D. La. 1963), 219 F.Supp. 876 (E.D. La. 1963).

³Bush v. Orleans, 8 RRLR 533-34 (1963).

Two other desegregation cases arose over Bossier and Terrebonne Parishes in 1963. In Bossier Parish, federal money had been provided for the construction of schools that the children of military personnel stationed at Barksdale Air Force Base would attend, and these schools were being operated on a racially segregated basis. However, the federal court in the Western District of Louisiana dismissed the suit for lack of jurisdiction.⁴ In Terrebonne Parish, children were being segregated on three levels: white, black and Indian. The federal district court in New Orleans enjoined the Terrebonne Parish School Board from denying Indian children equal access to the white public schools, and gave Indian students in the eleventh and twelfth grades the option immediately to attend the formerly white or Indian school nearest their homes. In addition, the board was ordered to determine the feasibility of desegregating the tenth grade, and to submit a plan to the court in August of 1964, for the "orderly and timely" desegregation of all other grades.⁵

Thus far, desegregation of Southern schools had not been very successful. As is demonstrated in tables 10 and 11, only 1.17 percent of blacks residing in the eleven former Confederate States were attending schools with whites

⁴United States v. Bossier Parish School Board, 220 F. Supp. 243 (W.D. La. 1963).

⁵Naguin v. Terrebonne Parish School Board, 8 RRLR 1421 (1963); New Orleans Times Picayune, Mar. 29, 1963.

Table 10
Blacks in Southern Schools with Whites, 1954-1964

School Year	Percentage	School Year	Percentage
1954-55	.001	1959-60	.160
1955-56	.115	1960-61	.162
1956-57	.144	1961-62	.241
1957-58	.151	1962-63	.453
1958-59	.132	1963-64	1.170

Source: 5 Race Relations Reporter 21 (May 1974).

Table 11
Percentage of Blacks in Schools with Whites, 1959-1964

School Year	South	Border	Region
1959-60	.160	45.4	6.4
1960-61	.162	49.0	7.0
1961-62	.241	52.5	7.6
1962-63	.453	51.8	8.0
1963-64	1.170	54.8	9.2

Source: 1 Southern Education Report 29 (July/August 1965).

during the 1963-64 school year, while the border states (Delaware, Kentucky, Maryland, Missouri, Oklahoma and West Virginia) had 54.8 percent and the entire region 9.2 percent.⁶ Therefore, it would take only drastic and sustained action by the federal government to bring down the dual education systems of the South.

Impact of Title VI of the Civil Rights Act of 1964

Under the Civil Rights Act of 1964, the federal government adopted a more active stand against segregated schools, with all three branches of government coalescing to break the grip of de jure segregation. Title IV and Title IX brought the Justice Department into active desegregation efforts, while Title VI brought the Department of Health, Education and Welfare (HEW) into the desegregation struggle through federal funding of education programs.

Under Title IV, the United States Commissioner of Education was authorized to provide assistance for school districts that had difficulty in desegregating. Aid could be rendered by providing information and personnel to assist in the preparation and implementation of a desegregation plan, by establishing special training centers on desegregation for school personnel, and by providing funds for school boards to conduct in-service training or to employ specialists to advise the school system on desegregation problems.

⁶1 Southern Education Report 29 (July/August 1965).

In the latter part of the 1960's, Title IV came under increasing attacks by civil rights groups because of its lack of comprehensiveness and failure to work for the establishment of completely unitary school systems, while encouraging "tokenism" through freedom of choice desegregation plans. In addition, both HEW and the Justice Department viewed Title IV as a "by request" service that could only be provided to school districts and state agencies requesting assistance.⁷

Title IX authorized the Attorney General to intervene in private suits that were brought to desegregate public schools. It also permitted the Justice Department to initiate suits on the behalf of blacks who were fearful of inaugurating the suits themselves.⁸

Title VI had the most impact on school systems since most of them had begun to rely upon federal funding for numerous educational programs. This section of the Civil Rights Act prohibited racial discrimination in any program receiving federal financial assistance, and provided for "the termination of or refusal to grant or to continue assistance" to programs or activities that failed to comply.⁹ In order to continue to receive funds, a school

⁷Ibid., 31-32 (March/April 1966); Civil Rights Act of 1964.

⁸Civil Rights Act of 1964.

⁹Ibid.

system was required to comply with Title VI, demonstrating that it was not operating a racially discriminatory school system or risk the loss of federal aid. Beginning in 1965, HEW implemented Title VI through annual guidelines..

In its first guidelines issued for the 1965-66 school year, HEW (through the Office of Education) established three methods by which a school district could comply with Title VI. The district could meet federal requirements by: (1) signing an "Assurance of Compliance" ("HEW-441") form pledging nondiscriminatory operation; (2) by voluntarily adopting a plan to desegregate at least four grades per year; or (3) if it was under a federal court order to desegregate.¹⁰

By August of 1965, 71 percent of school districts in the Southern and border states had met federal requirements and were eligible for a continuation of federal aid. Of the 5135 school districts in the region, 2722 signed "HEW-441" forms, 838 voluntarily agreed to desegregate four grades per year, and 96 were under court orders to desegregate. Of the school districts submitting voluntary plans, half were under freedom of choice, while the remainder used geographic zoning, closed black schools or ended student transfers outside of districts. Under HEW regulations, these school districts had three years to achieve full desegregation.¹¹

¹⁰1 Southern Education Report 31 (July/August 1965).

¹¹Ibid.

In Louisiana, school officials declared that they would not submit voluntary desegregation plans, pending the outcome of litigation. On February 1, 1965, Attorney General Jack P. F. Gremillion announced that the State Board of Education was permitted under state law to sign HEW compliance orders if it desired to do so. However, the board declined to sign them, leaving the decision to individual school boards on whether to accept federal funds. In July, Governor John J. McKeithen declared that the state was financially unable to replace federal money that might be lost due to noncompliance with HEW guidelines, and the State Board of Education offered to serve "as a pipeline through which federal money will be sent to schools." Thus far, every school system except that of Plaquemines Parish received some form of federal funding, and the state was in jeopardy of losing as much as \$42 million. By mid-August, none of the state's sixty-seven school districts had filed an "HEW-441" but nineteen court orders had been submitted on behalf of twenty-five school districts under prior desegregation orders.¹²

In September of 1965, the Vernon Parish School Board was prompted to desegregate because of financial considerations. It prefaced its decision by declaring that it could lose \$330,000 in federal funds, which comprised 20 percent of its 1965-66 operating budget. At the same time, Rapides

¹²10 RRLR 454 (1965); 1 Southern Education Report 32-33; New Orleans Times Picayune, July 2, 1965.

Parish voted against compliance, placing \$265,000 per year in federal funds in jeopardy. Bossier Parish was ordered to desegregate at this time, partially because of its acceptance of federal funds to build schools for the use of children of military personnel stationed in the parish, and had violated Title VI by segregating those schools.¹³

The federal government initiated cut-off action against sixty-five Southern school districts in October for noncompliance with HEW guidelines. Thirty-one of the districts were located in Louisiana. James D. Prescott, executive secretary of the Louisiana School Boards Association, responded that the loss would result in the curtailment of some programs, but that most parishes would "get by with relatively little discomfort." However, by the end of 1965, thirty-three school districts in the state were in compliance with Title VI, while thirty-four were not and faced termination of federal funding. Among the reasons cited for noncompliance were that the districts did not want federal aid, did not want it on HEW compliance terms, or challenged HEW guidelines on constitutional grounds.¹⁴

In March of 1966, HEW issued new guidelines for desegregation, including the suggestion that a plan for faculty

¹³1 Southern Education Report 33 (September/October 1965); New Orleans Times Picayune, Sept. 4, 1965; Lemon v. Bossier Parish School Board, 349 F.2d 1020 (5th Cir. 1965).

¹⁴1 Southern Education Report 30 (November/December 1965).

desegregation be adopted. Simply allowing blacks to choose to transfer to all-white schools within a dual education system did not overcome the discriminatory effects of segregation, while the very existence of all-black schools was inconsistent with a valid desegregation plan. The new guidelines brought freedom of choice plans under closer scrutiny by HEW, requiring more actual student and teacher desegregation within the classroom.¹⁵

No school districts had all federal funds terminated during the 1965-66 school year, but some failed to receive allotments under new programs such as the Elementary and Secondary Education Act (ESEA). As the 1966-67 school year commenced, seventeen districts in Louisiana lost funds, four had funds deferred because of failure to fully comply with HEW guidelines, and forty-six were in compliance. In December of 1966, the Commissioner of Education reported that freedom of choice plans presently in operation were "an interim arrangement which is bringing us toward desegregation but is not the ultimate solution."¹⁶

With this in mind, in the spring of 1967, HEW created the Office for Civil Rights to oversee school districts in order to assure that they were in compliance with the demands of Title VI. Existing freedom of choice plans were allowed to continue, but only if they were achieving the

¹⁵2 Southern Education Report 31-32 (July/August 1966), 31 (January/February 1967).

¹⁶2 Southern Education Report 31 (January/February 1967), 30 (March 1967).

goal of bringing about a unitary system. Nine Louisiana school districts began the 1967-68 school year without federal funds. However, limited progress was made in faculty integration because 323.8 black and 254.7 white teachers in the state were teaching in schools predominantly attended by children of another race.¹⁷

Under Title VI, HEW had moved gradually from requiring minimum desegregation of students on the basis of freedom of choice in 1965, to strict application and scrutiny of freedom of choice plans, forcing school districts to move ever closer toward disestablishing their dual systems in order to continue to receive federal funds. In the ten years following the 1954 Brown decision, the gain in desegregation in the Southern states was a negligible 1.06 percent by 1964. Within four years of the application of Title VI, the federal government reported that 20.3 percent of Southern black students were attending schools with white enrollments of at least 50 percent in the 1968-69 school year.¹⁸

Between 1964 and 1969, the State of Louisiana received nearly \$150 million in federal funds. Money was received under the National Defense Education Act of 1957, Elementary and Secondary Education Act of 1965, Smith-Hughes Act,

¹⁷ 3 Southern Education Report 14 (January/February 1968); Southern Education Reporting Service, "School Desegregation in the Southern and Border States" (September 1967).

¹⁸ 4 Southern Education Report 17 (June 1969).

Vocational Act and George-Borden Act. Under these various programs, funds were received for educational functions at correctional facilities and special schools, and for handicapped and migrant children, library resources, and vocational education. During the 1968-69 school year alone, the state received over \$40 million for education. Without federal assistance, most schools would have had to curtail or abolish programs, or seek local or state funding to replace them, which would have been no easy task. Therefore, economic pressure from HEW was an inducement for school districts to begin at least token integration. Once this had been accomplished, there was no turning back, and annual revisions in HEW guidelines brought about more desegregation until the federal courts were able to order the complete eradication of dual systems based on law in 1969.¹⁹

When the Nixon Administration came to power in 1969, a major change occurred in the use of Title VI. While the new administration decelerated the use of Title VI to gain compliance with desegregation orders, the federal courts became more active and overturned most freedom of choice plans. On July 3, 1969, in a joint statement by the Departments of Justice and HEW, the Nixon Administration announced that it would no longer use the threat of cut-offs in federal funding to secure the disestablishment of dual

¹⁹Louisiana, State Department of Education. One Hundred Twentieth Annual Report for the Session 1968-69 (1969).

education systems, but would rely on the Justice Department to oversee overt efforts to maintain or to re-establish de jure systems.²⁰

Freedom of Choice, 1964-1968

Between 1964 and 1968, the public schools of Louisiana were transformed from total segregation to token integration under freedom of choice. As the 1964-65 school year began, only three of the sixty-seven school systems in the state were desegregated. The impact of the Civil Rights Act of 1964 was already being felt as school systems sought means by which to replace federal funds that would be discontinued if a school district failed to desegregate. By the fall of 1965, a majority of school systems in Louisiana were open to integration, and by 1967, all public school systems were operating under some type of desegregation plan. In 1968, the United States Supreme Court ended all hopes that freedom of choice plans might be used indefinitely to prevent massive integration. Thereafter, the explicit objective of the federal courts was to bring about a swift end to the dual system of education based on de jure segregation, replacing it with a unitary system free of racial discrimination.

During the summer of 1964, federal courts in Louisiana ordered the integration of grades eleven and twelve of the

²⁰Derrick A. Bell, Jr., Race, Racism and American Law (Boston: Little, Brown and Company, 1973) 467-68.

St. Helena Parish public schools in the fall, joining the schools of Orleans and East Baton Rouge Parishes under a freedom of choice plan.²¹ Although other suits were filed to desegregate Iberville and Jefferson Parish schools, the courts proceeded slowly and did not order their immediate integration.²² Facing the loss of millions of dollars in federal assistance, particularly after the enactment of the Elementary and Secondary Education Act in 1965, school districts in the state remained obstinate and refused to complete "HEW-441" forms or to submit voluntary desegregation plans, opting instead to be brought under court order to desegregate, then becoming eligible for federal funds.

In two cases decided in 1965, the United States Supreme Court took a harder line on desegregation. In one case, the court held that delays in desegregating school systems "are no longer tolerable," and in another, that a school district being operated under a grade-a-year plan must admit black students to grades not yet desegregated in order to take courses not available at an all-black school where a student was initially assigned. In addition, faculty desegregation was held to be within the scope of the Brown decision.²³

²¹Hall v. St. Helena Parish School Board, 233 F.Supp. 136 (E.D. La. 1964).

²²Williams v. Iberville Parish School Board, 9 RRLR 1748 (1964); Dandridge v. Jefferson Parish School Board, 10 RRLR 1061 (1965).

²³Bradley v. School Board of Richmond 382 U.S. 103 (1965); Rogers v. Paul 382 U.S. 198 (1965).

During the summer of 1965, the federal courts in Louisiana accelerated the pace of desegregation. Twenty-one new school districts were scheduled to be integrated in the fall. As each case was heard separately, the defendant board admitted that it was operating a biracial system and had taken no action to grant the relief sought by black plaintiffs to allow them to attend schools on a nondiscriminatory basis. Then, the court ordered the board to submit a desegregation plan on the basis of recent federal court decisions. All of the plans that were approved before June 22, 1965, provided for gradual desegregation beginning with two grades in the fall of 1965, two in 1966, and four each in 1967 and 1968. Pupil transfers and assignments were to be made on a nondiscriminatory basis, with dual attendance zones to be abolished as grades became desegregated. However, the plans left the dual system of education virtually intact.

On June 22, 1965, the Fifth Circuit Court of Appeals ruled in Singleton v. Jackson Municipal Separate School District that school districts must be fully desegregated by the fall of 1967. The two Louisiana cases of Lemon v. Bossier Parish School Board and Valley v. Rapides Parish School Board, decided by the Fifth Circuit Court in August, became the standards for desegregating a school system in Louisiana. Both cases were placed under the Singleton decision, ordering that a minimum of four grades per year be desegregated, and that freedom of choice plans be completed

by the fall of 1967. In general, grades 1, 2, 11 and 12 were to be desegregated in 1965-66; 3, 4, 9 and 10 in 1966-67; and 5, 6, 7 and 8 in 1967-68. Applications for transfers would be granted or denied on the basis of student requests, scholastic record and aptitude, and space available in the school requested or in a comparable school that was geographically nearer the student's residence. As grades were integrated, dual attendance districts were to be abolished. Faculty desegregation was deferred until substantial progress had been made in pupil integration. All schools beginning operation under a court-ordered desegregation plan in the fall of 1965 were placed immediately under the Lemon and Valley decision.²⁴

Nine school systems came under court orders to integrate too late to implement desegregation plans in the fall of 1965, and were ordered to adopt freedom of choice at the beginning of the spring semester in January of 1966. In order to catch up with other school systems and complete desegregation by the fall of 1967, they were ordered to desegregate at least four grades at that time.

In the summer of 1965, several black plaintiffs attempted to prevent the tedious process of parish-by-parish litigations to disestablish dual systems of education by

²⁴Singleton v. Jackson Municipal Separate School District, Valley v. Rapides Parish School Board, 10 RRLR 1074, 1077; Lemon v. Bossier Parish School Board, 349 F.2d 1020 (5th Cir. 1965).

initiating a class action suit to bring about immediate desegregation of all public schools under the jurisdiction of the State Board of Education. However, the federal courts found that there was no longer any state constitutional requirement for segregation in the public schools, and that the Board of Education was prohibited in the state constitution from controlling the business affairs of local school boards. If segregation was being practiced, it was being directed by individual school boards, which were the only agencies that could be held accountable to the charge of operating a discriminatory school system. Therefore, it was necessary to initiate suits against each individual board.²⁵

As the 1965-66 school year began, no desegregation suits were filed against thirty-three school districts, fourteen districts had two grades desegregated, one had three grades desegregated, three were awaiting orders to desegregate four grades, no action had been taken in suits against five districts, three districts had four grades desegregated and Orleans Parish had kindergarten through grade five desegregated. In addition, Iberia, St. Martin and Beauregard parishes decided to desegregate all grades immediately on a freedom of choice basis. Throughout Louisiana, only 0.69 percent of black students attended

²⁵LeBeauf v. State Board of Education, 244 F.Supp. 256 (E.D. La. 1965).

schools with whites. By contrast, 6.01 percent of blacks in the entire South and 68.90 percent of blacks in the border states were enrolled in schools with whites.²⁶

In the spring of 1966, the Justice Department and federal courts brought the remainder of parishes still operating segregated school systems under freedom of choice. Most often, the courts ordered the desegregation of grades 1, 3, 5, 7, 9, 11 and 12 in the fall of 1966, and the rest in the fall of 1967, so that all school systems were fully integrated by 1967. Also, any previously issued court order was amended to reflect the Singleton decision.

During the summer of 1966, the federal district court in New Orleans issued an opinion in Jenkins v. City of Bogalusa which was applied to other cases heard by this court. Under the decision, every student was required to submit an annual freedom of choice form, and school officials and teachers were prohibited from influencing any student in making his choice of schools. If no choice was made, the student was to be assigned to the school nearest his home where there was available space. Prior attendance at a certain school was not to be considered for assignments, and no choice could be denied except for the reason of overcrowding. Bus transportation was to be provided to students who lived in excess of one mile from the school they would attend, and no student was to be subjected to

²⁶₁ Southern Education Report 31 (January/February 1966).

racial discrimination in any services, facilities or activities conducted or sponsored by his school. All school facilities, conditions and instruction were to be equalized, while schools not meeting these requirements were to be closed. To assist black students in adjusting to formerly all-white schools, remediation programs would be provided because of past inequities between white and black schools. Employment, promotion and retention of professional school personnel were to be made on a non-racial basis, and teachers were to be encouraged to transfer to schools where most of the faculty members were of a different race. In order to assure that the court's orders were being carried out, the board was required to file reports stating the number and disposition of freedom of choice applications, the names of students requesting withdrawal of their applications and reasons for such action, the manner of faculty assignment, and a description of steps taken to equalize schools.²⁷

During the 1966-67 school year, 16.8 percent of black students in the South were in schools with whites. In Louisiana, only 3.5 percent of its black students were attending integrated schools. Only Mississippi had a more dismal record of desegregation.²⁸ Although desegregation

²⁷Jenkins v. City of Bogalusa School Board, 11 RRLR 1751-52 (1966).

²⁸2 Southern Education Report 31 (January/February 1967).

under freedom of choice was little more than tokenism, it excited emotional responses in several areas of the state in the fall of 1966.

Only minor problems were experienced at most of the schools integrated in 1966, except for a brief period of picketing at a high school in St. Bernard Parish and a black boycott of a high school in Pointe Coupee Parish. The most successful protest was held in Plaquemines Parish, where several formerly all-white schools were boycotted by whites. Of 5400 whites expected to enroll in public schools, over 5000 joined the boycott. When whites refused to attend Woodlawn High School with twenty-eight blacks, Leander Perez, Sr. offered his former residence as the site for a private school. All students and teachers of the public high school promptly moved to the new school, while the black students attending Woodlawn High under court order were allowed to return to their former schools. The Plaquemines Parish School Board was then authorized by the federal courts to close the abandoned high school as well as another school in Belle Chasse which was plagued by low student attendance and faculty resignations.²⁹

As private schools for whites sprang up in Plaquemines Parish as replacements for the public schools, a critical need for money was identified. Over 5000 applications for

²⁹2 Southern Education Report 30, 32 (December 1966); New Orleans Times Picayune, Sept. 1, Sept. 4, 1966.

state tuition grants were distributed throughout the parish, which would have cost the state an additional \$1.8 million. Since there were already 11,000 persons receiving grants at the cost of \$3.8 million, the influx of these new applicants placed a serious financial strain on the tuition program. In addition to tuition, the new segregated private schools were entitled to the use of free textbooks, supplies and transportation. When asked to intervene in the plight of the grant program, Governor McKeithen responded that he would not divert funds from the public schools to the financially distressed Louisiana Financial Assistance Commission, which handled the state grants-in-aid tuition program. Instead, he would let nature take its course.³⁰

After consolidating seven cases (including those of Caddo, Bossier, Jackson and Claiborne parishes), the Fifth Circuit Court of Appeals issued a new ruling in United States v. Jefferson County Board of Education in late December of 1966. The court determined that the freedom of choice plans in operation in the seven school districts under study had promoted resegregation, and that the only acceptable desegregation plan was one that achieved the goal of a unitary, nonracial school system. A segregated school system was required to desegregate regardless of whether it received federal funds; school boards had an affirmative duty to integrate their student bodies, faculties,

³⁰ New Orleans Times Picayune, Sept. 1, Sept. 4, Nov. 23, 1966.

facilities and activities; school systems had to convert to a unitary attendance zone system; and boards were to refrain from using pupil assignment laws while in the process of converting to a unitary system. Any school system that had a history of segregated faculties or token integration had a duty to adopt an alternative desegregation plan, such as geographic attendance plans, the Princeton Plan (assigning students to schools by grade rather than by location of residences) or a combination of plans.³¹

Between May and September of 1967, the district courts in Louisiana attempted to apply the Jefferson case to all school districts under their jurisdiction. Although the court attempted to implement a new, comprehensive desegregation plan, adjustments had to be made for special circumstances. In Plaquemines Parish, where the public school system was on the verge of collapse, the school board was halted by the federal courts from taking additional steps toward the dissolution of the public schools. It was then ordered to restore bus transportation, lunch programs and books, equipment and supplies to the schools from which they had been withdrawn. In addition, school officials were enjoined from permitting any public school property to be used in private schools, discouraging students from attending public schools and encouraging them to attend private

³¹United States v. Jefferson County Board of Education, 372 F.2d 836 (5th Cir. 1966).

schools, and from interfering with the board's attempts to comply with desegregation orders.³²

Just prior to the beginning of the 1967-68 school year, private segregated schools across the state were dealt a major blow when the federal courts struck down the tuition grant law of 1962. Fearing a negative ruling on its operations, the Louisiana Financial Assistance Commission (LFAC) had attempted to validate its operations in 1966 by prohibiting the payment of tuition grants to children attending a private school that was primarily maintained by state grant-in-aid payments. In the spring of 1967, the state legislature established a backup system of tuition grants in the event that the courts invalidated the present program. A new scheme created the "Louisiana Education Commission for Needy Children" which would administer a new system of grants for the aid of "needy" children attending private, non-sectarian schools. To pass the scrutiny of the courts, the amount of payments would be based on family income and the number of dependents, with a maximum payment of \$350 per child per school year. However, in August of 1967, a three-judge federal court called the state tuition program a link in a century-old chain of de jure segregation of the white and black races. The court felt that unless the tuition grant system was eliminated, it would destroy the public school system. The LFAC had made the state "a party to

³²United States v. Plaquemines Parish School Board, 12 RRLR 220, 1299-00 (1967).

organized private discrimination," and its grants had damaged blacks by draining students, teachers and funds from the desegregated public system. The court also cited evidence of tuition grant schools having substandard facilities and inferior educational programs. The 1967 tuition program was declared a sham by the federal courts and voided in March of 1968.³³

When the new school year began in 1967, new HEW guidelines took effect, allowing only those freedom of choice plans to continue that were achieving meaningful desegregation and were bringing an end to the dual education system. Failing plans were to develop a more effective plan that resulted in substantial faculty desegregation, at least 30 percent of schools desegregated by 1968, and complete desegregation by 1969. M. Hayes Mizell, an advisor to the Office of Education, summed up the effect of freedom of choice on blacks in a public statement condemning this policy. He declared that freedom of choice for Southern blacks meant "the freedom to risk social isolation and academic failure, and the freedom to be denied equality of educational opportunity." It would not and could not attain the goal of a unitary system because it was "dependent upon the courage, inclination and determination of the Negro citizen to throw off the psychological and social restraints placed upon him

³³ Poindexter v. Louisiana Financial Assistance Commission, 12 RRLR 1386-87 (1967), 296 F. Supp. 686 (E.D. La. 1968); Acts of Louisiana, 1967, Regular Session, no. 99.

by generations of slavery, legally enforced segregation and prejudice."³⁴

Freedom of choice placed the burden for ending the dual education system on blacks, whose own schools had a stigma of inferiority to white schools. Therefore, few whites would choose to attend them under a freedom of choice plan. Black pride and heritage was dealt a serious blow by black children opting to enroll in the "better" white schools, where they were subjected to enormous social and emotional pressures.³⁵

In October of 1967, Washington Parish became the first school district in Louisiana to have its freedom of choice plan abolished and its schools ordered by federal courts to operate on a unitary system of geographic attendance zones. The courts declared that the justification for freedom of choice as an interim plan was removed once all grades had been desegregated. The next step was the assignment of students to the school nearest to their homes on a nonracial basis by geographical zoning. Complete desegregation was to be extended to all school-related services, facilities, activities and programs, transportation, and faculty and administrative staffs. In addition, the school system was to equalize facilities, equipment and instruction; provide

³⁴₃ Southern Education Report 14, 19 (January/February 1968).

³⁵ Ibid., 21.

remediation programs to overcome inadequacies brought about by the effects of segregation; adopt measures to prevent abuse and harassment of blacks by school employees; and plan new schools without regard to the old dual system.³⁶

In 1968, the United States Supreme Court ended any faint hopes in Louisiana that freedom of choice could be used indefinitely to delay the disestablishment of the dual education system. In Green v. County School Board of New Kent County, the high court adopted the view of the Fifth Circuit Court of Appeals, declaring that freedom of choice would only be acceptable if it was effective in promptly bringing about unitary school systems. School boards had the obligation of devising a plan that "promises meaningful and immediate progress" toward ending de jure segregation.³⁷

In August of 1968, the Fifth Circuit Court of Appeals remanded nineteen Louisiana school cases for rehearings in Adams v. Mathews. Lower courts were ordered to conduct hearings by November to determine whether present desegregation plans in these cases "promise realistically to work now." It was presumed that a school district had failed the test established by Green if it had predominantly black or white schools with few members of the opposite race attending them, or if it had no substantial integration of its

³⁶Moses v. Washington Parish School Board, 276 F.Supp. 834 (E.D. La. 1968).

³⁷Green v. County School Board of New Kent County, 391 U.S. 430 (1968).

faculties and school activities. Such school districts were to take "affirmative action" toward effective desegregation before the beginning of the 1968-69 school year or shortly thereafter, adopting new alternatives to freedom of choice. Their options included consolidation of schools, pairing of schools and implementation of majority-to-minority transfers to bring about a truly unitary and nonracial school system.³⁸ However, the federal courts realized the problems inherent in disestablishing the dual system, and granted school districts additional time to comply with Green and Adams. Unfortunately, many school districts used this reprieve once again to hinder the desegregation process.

By 1968, only a very small percentage of the black student population was enrolled in schools with whites, while the overwhelming majority attended all-black schools. Local school officials in Louisiana continued to cling desperately to freedom of choice and refused to take any forward steps that would appear to be cooperating too closely with the federal courts, or that would bring about an end to the dual system.

In some parishes, high schools kept social contact with black students to a minimum by providing few opportunities outside of class for racial mixing, such as cancelling dances and other social activities. Black students were sometimes segregated within the school itself in classrooms,

³⁸Adams v. Mathews, 403 F.2d 181 (5th Cir. 1968).

dresssing areas and lunchrooms, and were frequently ignored in class by teachers who were unwilling to deal with them. Many blacks found themselves inadequately prepared for the transition to formerly all-white schools, often due to the inequitable de jure system of segregation that had resulted in the creation of inferior black schools. Black students were often taunted, teased, physically and mentally harassed, and socially ostracized by whites. Therefore, it was not surprising that many blacks transferred back to their former schools during the school year or did not return in the fall. In this respect, freedom of choice was a monumental failure, since it did nothing to encourage blacks to attend schools on a choice basis because "choice" actually meant daily harassment and emotional and social problems.

Freedom of choice was a success as a short-term desegregation plan, but a failure as a long-term one. It had been successful in that it was a beginning and had brought less social and emotional upheaval than an immediate end to the dual system by massive integration would have brought. It was a compromise situation since it rested on the principle of gradualism, with few blacks willing to challenge the all-white public school system. Whites were willing to accept a few black students in order to continue receiving federal funds. However, local school officials used freedom of choice as yet another weapon in their arsenal to delay action on desegregation. Nowhere in the state did public

officials agree to dismantle their dual systems immediately and voluntarily. Instead, they did only what they were compelled to do and no more.

By the end of 1968, the federal courts and the Justice Department realized that freedom of choice had failed as a viable desegregation plan for bringing about a unitary system. The final blow was delivered to the dual system by the Supreme Court, which tardily arrived at a view similar to that of the Fifth Circuit Court, declaring that freedom of choice was not an end in itself but merely an interim plan to be used to bring about the final goal of a totally unitary system where there would be no separate all-white or all-black schools based on the past effects of de jure discrimination.

End of the Dual Education System, 1969-1971

Federal pressure brought to bear on school boards to adopt alternative desegregation plans to freedom of choice resulted in the collapse of several dual school systems in Louisiana in the fall of 1969, and of the remainder by the end of the 1970-71 school year. However, the emphasis was on terminating the de jure system and its lingering effects on public education, not on the de facto system that was the product of legitimate neighborhood schools. It was more difficult for the Southern states to draw a distinction between what had resulted from a de facto situation and what had emerged as a result of decades of segregation by state

and local decree. The local school boards had the burden of offering substantial proof that virtually one-race neighborhood schools were constitutional. In the Northern and Western parts of the nation, which had only traces of segregation by law in public education, it was more difficult to levy charges of discrimination and easier to defend an alleged practice of segregation.

In 1969, the Johnson Administration, which had exercised strict supervision over public school systems with a history of racial discrimination, yielded to a less vigilant Nixon Administration. During the 1968 Presidential campaign, Richard Nixon had pledged to decelerate the desegregation process, though adopting a stand opposing the South's de jure system. Although the federal courts would have benefited from the assistance of a strong ally in the White House, the machinery was in place to bring about an end to the all-black and virtually all-white schools of the South. The federal courts were poised and prepared to deliver the last blows to a system already on the verge of collapse. It was the ruling by the United States Supreme Court in the case of Alexander v. Holmes (1969) that strengthened the resolve of the lower federal courts to bring a swift and timely end to the dual system of education based on de jure segregation.

On May 28, 1969, the Fifth Circuit Court of Appeals reversed a lower court decision in Hall v. St. Helena, which had upheld freedom of choice plans in eight parishes.

Applying its ruling to thirty-eight school systems in Louisiana, the appellate court instructed school boards that they had an affirmative duty to abolish all vestiges of state-imposed racial segregation in the public schools. Any system that had schools with no whites or with less than ten percent of the total black student population was prima facie evidence that its desegregation plan was not working, and the board had an obligation to adopt a new plan. Emphasis was also placed on fully integrated faculties, staff, facilities, transportation and school activities.³⁹

Less than a month later, the federal district court for the Western District in Louisiana implemented this decision in thirty-four school districts under its jurisdiction. All boards were ordered to promptly submit their existing plans for review by the Office of Education, and to submit a new plan of operation to the court for the 1969-70 school year within thirty days. If any board failed to submit a plan, one would be recommended by HEW. Pursuant to additional requirements by the appellate courts, all plans had to be approved by the district court by July 25, 1969.⁴⁰ State Superintendent William J. Dodd referred to the HEW desegregation plans as "crackpot social experiments" drawn up and forced on the state by "a host of Northern bureaucratic

³⁹Hall v. St. Helena Parish School Board, 303 F.Supp. 1224 (E.D. La. 1969); 417 F.2d 801 (5th Cir. 1969).

⁴⁰Conley v. Lake Charles School Board, 303 F.Supp. 394 (W.D. La. 1969).

carpetbaggers and local scalawags" intent upon allowing HEW to seize control of the public schools.⁴¹

As the 1969-70 school year approached, the most serious trouble occurred in the state since the New Orleans desegregation crisis of 1960. Since 1954, massive integration had been merely conjecture, but now, talk and litigation were at an end and the destruction of the dual system was at hand as forty-four school systems were ordered to accomplish substantial desegregation. During the summer of 1969, branches of the Citizen's Committees for Quality Education (CCQE) sprang up around the state to unite whites in opposition to court orders that would bring about massive integration.

Led by Dr. Donald Roberts, the CCQE sponsored a demonstration of several thousand whites in a march to the State Capitol Building in Baton Rouge on August 16, 1969. There, Roberts called for a special session of the legislature to repeal the compulsory school attendance law, to grant public aid for private education, to file a suit against HEW due to its violation of the 1964 Civil Rights Act's prohibition of the use of busing to overcome racial imbalances in the schools, to establish ability grouping in the high schools, and to utilize the National Teachers Examination to determine competency of teachers in their subject areas and to replace "substandard teachers." The crowd booed the governor's executive secretary when he tried to explain that

⁴¹ New Orleans Times Picayune, July 11, 1969.

everything possible had already been done at the state level to prevent massive integration, and that the governor was working with others for a return to freedom of choice.⁴²

About this time, a Gallup Poll was released revealing that 44 percent of Americans felt that desegregation was proceeding "too fast," 22 percent that it was "not fast enough," and 25 percent that it was proceeding "about right." Most of those in the 44 percent category felt that quickened desegregation would promote racial strife and that a gradual approach was the best method by which to proceed. Among Northern white parents polled, 54 percent were opposed to sending their children to a school that was over half black, while 64 percent of Southern white parents were similarly opposed. The poll revealed that nearly half of Southern whites had finally accepted the principle of massive school integration, and that only 21 percent of them were opposed to sending their children to a school with even a few black students. Also, 47 percent of Southern whites did not object to schools with half black enrollment. By contrast, a similar poll conducted in 1963 had shown that 61 percent of Southern whites were opposed to sending their children to schools with any blacks, and 78 percent were opposed to the idea of a school with half black enrollment.⁴³

⁴²Baton Rouge Morning Advocate, Aug. 17, 1969.

⁴³Ibid.; New York Times, Sept. 2, 1969.

Scattered trouble arose across Louisiana as the new school year approached. The most serious problems occurred in Iberia, Evangeline and St. Landry parishes in the southwestern part of the state. Violence at a high school and a march by black students in New Iberia to protest the closure of the black high school resulted in the closure of the city's only high school and imposition of a strict curfew for the following two nights. Hostile crowds in Evangeline and St. Landry Parishes forced school boards to close the schools indefinitely, and suits were filed in state court to force the boards to return to freedom of choice. However, on September 11, 1969, the federal courts ordered the two parishes to reopen their schools. When they reopened on the following day, a white boycott left them virtually all-black.⁴⁴ Organizers in both parishes then set up private schools as alternatives to integrated public schools. By the end of the year, approximately 1800 of the 2000 white children in the Ville Platte area of Evangeline Parish were attending private schools. In November, about 4000 whites attended a rally in Opelousas in St. Landry Parish, with Governor McKeithen and several other state officials in attendance. The governor informed the crowd that if HEW plans were ordered in all of the schools, that the legislature would refuse to "vote a dime for public education," and

⁴⁴Baton Rouge Morning Advocate, Aug. 28, Sept. 3, 5, 13, 1969.

called upon the federal government to treat Louisiana like the Northern states, where segregation existed legally.⁴⁵

Scattered violence, boycotts and picketing occurred at several schools in parishes in the southeastern part of the state. Violence, street demonstrations and a few firebombings occurred in Gonzales and Plaquemine in the parishes of Ascension and Iberville. In these areas, as well as in the parishes of St. John, St. James and West Baton Rouge, boycotts and picketing significantly reduced the number of white students attending public schools. Because of continued violence, classes in Ascension and West Baton Rouge Parishes were suspended briefly.⁴⁶

In the Florida Parishes area, problems were encountered mainly in Washington and Tangipahoa Parishes. In Washington Parish, federal marshals escorted black teachers and students to some schools because of the threat of violence, and pickets and a small boycott plagued attendance at a few schools. In Tangipahoa Parish, boycotts and pickets were conducted and one school burned, with a strong suspicion of arson being the cause.⁴⁷

Most areas in the central and northern part of the state were quiet. A rally in support of a boycott was staged in Concordia Parish, followed by a modest boycott on

⁴⁵Read, Let Them Be Judged, 508-09.

⁴⁶Baton Rouge Morning Advocate, Aug. 26, 29, 30, 31, Sept. 3, 7, 10, 1969.

⁴⁷Ibid., Aug. 26, Sept. 7, 1969.

the first day of school. In Grant Parish, blacks boycotted several schools because of the use of busing to achieve integration there. In North Louisiana, there was much talk of boycotts, picketing and the creation of private academies, but no serious incidents were reported.⁴⁸

Although several organized attempts were made by various groups, including local chapters of the CCQE, to prevent the dissolution of the dual system, desegregation proceeded with surprising success. In most areas, members of the community realized that the fight to retain segregated schools was over and that widespread fears of racial violence were unfounded. Therefore, they decided to get on with the business of educating their children. Except for an occasional racial incident at a secondary school, the transition to a unitary system had been accomplished with a minimum of violence.

Despite all of the talk about the creation of private schools as alternatives for the desegregated public schools, few were actually established. In areas where parochial schools existed, they were filled to capacity and inundated with requests for new applications. The greatest increase in white private school enrollments came in the 1969-70 and 1970-71 school years, when an additional 15,158 and 11,716 students respectively entered nonpublic schools, while the public schools lost nearly 25,000 (4.5 percent) of their

⁴⁸Ibid., Sept. 8, 9, 1969.

white students (table 12) during these two years. Between 1969 and 1971, the largest number of new nonpublic schools were opened in Caddo (fourteen) and Ouachita (ten) Parishes.⁴⁹ However, once the initial reaction to desegregation had passed and economic pressures began to outweigh unfounded fears, whites returned to the public schools, resulting in the collapse of most of the hastily formed private schools and returning the parochial schools to their former enrollments. Exceptions were in areas where the only educational alternative was a predominantly black school or in primarily Catholic parts of South Louisiana.

On October 29, 1969, the United States Supreme Court issued its opinion in Alexander v. Holmes, in which it declared that the standard of "all deliberate speed" set in the second Brown decision in 1955, was "no longer constitutionally permissible." School districts were ordered to "terminate dual school systems at once and . . . operate now and hereafter only unitary schools." The major significance of this decision was that it vindicated the actions of lower federal courts exercising jurisdiction over Louisiana, and extinguished the last hopes by intransigent school systems that desegregation could be delayed long enough that the federal government might abandon its determination to bring about unitary school systems.

⁴⁹Louisiana, State Department of Education. Louisiana School Directory Session 1970-71, 266.

⁵⁰Alexander v. Holmes, 396 U.S. 1218 (1969).

Table 12
Louisiana School Enrollment, 1960-1976

Year	Public		Nonpublic	
	White	Black	White	Black
1960-61	429,078	279,899	113,541	24,828
1961-62	442,112	290,533	116,446	24,657
1962-63	460,589	301,433	118,466	24,689
1963-64	473,917	311,380	123,897	24,774
1964-65	487,039	318,966	125,428	24,420
1965-66	498,781	325,082	127,233	24,133
1966-67	510,965	331,040	131,162	23,188
1967-68	525,813	337,225	125,441	21,682
1968-69	545,829	344,482	118,276	20,266
1969-70	535,996	348,473	133,434	20,186
1970-71	521,146	349,470	145,150	20,528
1971-72	522,965	351,522	140,804	19,278
1972-73	--	--	--	--
1973-74	518,327	352,140	136,408	20,258
1974-75	513,717	348,961	134,807	20,886
1975-76	521,152	350,081	134,808	21,563

Source: Louisiana, State Department of Education.

Louisiana School Directory, Sessions 1960-76.

In November of 1969, the United States Supreme Court rejected Louisiana's request that it be allowed to return to freedom of choice, but took no action on a desegregation timetable for thirty-eight school systems, which had until the fall of 1970 to complete the transition to a unitary school system. As a result of this decision, seven members of the state's Congressional delegation sponsored a House bill to amend the 1964 Civil Rights Act to give parents freedom to select which school their children would attend, and to prohibit the withholding of federal assistance from a public school because of the racial composition of its student body.⁵¹ However, in December, the Fifth Circuit Court of Appeals adopted a strict view of the Alexander v. Holmes decision and declared all dual systems void.

In the Singleton v. Jackson (Singleton III) case, the Fifth Circuit Court struck down freedom of choice plans in six states, including several within Louisiana. Under the decision, faculties and staff would be merged by February 1, 1970, and student bodies by the fall semester.⁵² Two weeks later, though, the Supreme Court revised the Singleton III decision in Carter v. West Feliciana Parish School Board, ordering three school boards to plan for desegregation of

⁵¹New Orleans Times Picayune, Nov. 11, 25, 1969.

⁵²Singleton v. Jackson Municipal Separate School District, 419 F.2d 1211 (5th Cir. 1969).

student bodies as well as faculty and staff by February 1, 1970.⁵³

The Carter decision brought massive integration to Deep South public schools and divided the courts on how to enforce it. Many judges became concerned about having to disrupt the schools in the middle of a semester, because of the damage it would inflict on black and white children alike. Reluctantly, the Fifth Circuit Court voided its earlier decision delaying student integration and began remanding active school cases to the district courts to comply with the Carter decision and complete the transformation to unitary systems by February 1, 1970.⁵⁴

Fifteen school systems in Louisiana were given less than two weeks to desegregate their student bodies, faculties and staffs. Eight districts closed their schools for several days in order to move equipment from one school to another and to transfer students. In a few others, the change was made almost overnight and near chaos ruled as some schools reopened with nearly half of their teachers and students new. Except for a few scattered boycotts and heated discussions about creating private schools as "alternatives to the federal schools," cooler heads prevailed and the unitary system was brought about with

⁵³Carter v. West Feliciana Parish School Board, 90 S.Ct. 611 (1969).

⁵⁴Singleton v. Jackson Municipal Separate School District, 425 F.2d 1211 (5th Cir. 1970).

relatively few serious incidents.⁵⁵ However, a second wave of student withdrawals now occurred as more parents began sending their children to nonpublic schools in the 1970-71 school year. Approximately 6700 students had transferred to Catholic schools in the 1969-70 school year, with some evidence showing that segregation was part of the reason for many of the transfers. However, the Louisiana Catholic Church officially discouraged such action and all parochial schools were now desegregated. The New Orleans Archdiocese responded that it had lost 1600 students in the past year, which offered some proof that there were no general transfers of public school students into the Catholic schools to avoid integration.⁵⁶

Between January and August of 1970, the federal courts in Louisiana were primarily concerned with adjusting school desegregation plans to bring about a truly unitary school system as quickly as possible. Any remaining school system having a freedom of choice plan was ordered to adjust to another desegregation plan in order to complete the dissolution of its dual system. Subterfuges conducted by various school systems were quickly overruled. Among these was the transfer of all-black classes with their black teachers intact to previously all-white schools and continuing to

⁵⁵New Orleans Times Picayune, Jan. 30, 1970; Jackson Daily News, Feb. 4, 1970.

⁵⁶Chicago Tribune, Mar. 2, 1970.

maintain a dual system within the schools themselves. The courts also exercised supervision over the integration of transportation, extracurricular activities, facilities, faculty and staff assignments, and majority-to-minority student transfers within the unitary system. School systems were also ordered to recover school equipment and books loaned to private schools, and to refrain from rendering any further assistance to private schools in the future. Meanwhile, on July 10, 1970, the director of the Internal Revenue Service announced the beginning of a crackdown on private segregated schools in the South.⁵⁷

In April of 1971, the United States Supreme Court announced new guidelines for school desegregation in Swann v. Charlotte-Mecklenburg Board of Education. The high court re-emphasized that its objective was "to eliminate from the public schools all vestiges of state-imposed segregation," and expressed its opposition to "invidious racial discrimination" in all aspects of the public schools. The court upheld the setting of racial quotas for both faculty and student assignments when it was necessary, gerrymandering of geographic attendance zones, and busing when it fostered desegregation but did not harm children or the educational process, but overruled the neighborhood school

⁵⁷Johnson v. Jackson Parish School Board, 423 F.2d 1055 (5th Cir. 1970); Smith v. Concordia Parish School Board, 3 Race Relations Law Survey (hereinafter cited as RRLS) 174 (1970).

concept for student assignments if it failed to bring about a unitary school system.⁵⁸

The Swann case stirred up controversy almost immediately. Southern reaction was bitter because of the distinction being made between formerly de jure segregation in the South and present de facto segregation in other parts of the country. Lower federal courts viewed the decision with frustration and confusion. Instead of clarifying the situation, Swann created more problems than it attempted to resolve. Its vagueness on several points resulted in a split among the fifteen judges of the Fifth Circuit Court, which continued to reverse lower court rulings primarily because statistical evidence showed insufficient racial mixing. Swann was so perplexing that it became all things to all parties and became universally misunderstood, resulting in further litigation being filed in the overburdened federal courts. The Supreme Court was particularly remiss in failing to provide guidelines specifically outlining the limits of permissible busing, leaving the problem for the lower courts to determine what the outer boundaries were. As a result of its shortcomings, Swann turned many district judges against the higher federal courts.⁵⁹

⁵⁸Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

⁵⁹Bell, Race, Racism and American Law, 551; Read, Let Them Be Judged, 530-31.

Desegregation of School Personnel

Among the chief victims of integration were black teachers and principals. In several cases, principals were demoted, becoming assistants under less qualified white principals, and were initially passed over for advancements or relegated to minor positions within the central office. Many black teachers were dismissed on various grounds, often being told no reason other than that they had been displaced because of desegregation. Most of the demoted or dismissed educators took no action against school boards because of their reluctance to jeopardize their future employment possibilities. Only a few stalwart blacks challenged the injustices rendered to them and brought suit against their boards.

As early as 1966, the federal courts and HEW began to consider faculty desegregation in earnest. In that year, the courts ruled that desegregation covered faculties and staff as well as student bodies, and new HEW guidelines included demands for at least token integration of faculties as part of the requirements for compliance with the 1964 Civil Rights Act. The first faculty integration began in New Orleans in the fall of 1966, when two black teachers were assigned to two predominantly white schools, and two white teachers were assigned to a reverse situation. New teachers applying in Baton Rouge were informed that they would be assigned to any position that might become

available regardless of the racial composition of a school.⁶⁰

As schools underwent the transformation from dual to unitary systems, federal courts became increasingly vigilant about the treatment of black educators by their school boards. In various court cases, the judiciary established new dictums for the adjustment to integrated faculties. The qualifications of all teachers in a school system had to be taken into account and "objective standards" used to evaluate them. Only the least qualified educators were to be dismissed, and they were to be given the first opportunity to be rehired when vacancies became available.⁶¹

The Singleton decision of 1969 ordered several parishes to merge their faculties and staff by February 1, 1970. Thereafter, most school systems in Louisiana were either already operating under a unitary system or about to, so the courts increased their surveillance of the treatment of black educators within the single school system. Boards were not allowed to reassign a staff member if he received less pay, less responsibility or was required to exercise a lesser degree of skill than under his previous assignment. In addition, the Fifth Circuit Court ruled in 1970, that a merit system could be used as a standard for employment,

⁶⁰Southern Education Reporting Service, "School Desegregation in the Southern and Border States, Louisiana" 2 (August 1967).

⁶¹Williams v. Kimbrough, 295 F.Supp. 578 (W.D. La. 1969).

promotion and reduction of staff once a truly unitary system had been created. However, nondiscriminatory, objective and reasonable criteria had to be utilized.⁶²

Most of the initial friction between black and white teachers declined substantially after the first full year of massive integration in a school district. However, many black educators continued to be subjected in the 1970's to racial stress, charges of incompetence from white students and parents, and unequal treatment by school board personnel and colleagues. Blacks were often bitter because of impertinent white students who ridiculed their ability to teach, and resented snubs by white teachers in lunchrooms and faculty lounges. They also felt that they were being discriminated against for promotions in subtle but legal ways as newer and tougher criteria were developed to keep most blacks out of the upper ranks of the central office staff. In the absence of provable evidence of racial intent and due to the high cost of interminable litigation against the school board, most problems were settled out of court, with little feeling of vindication by blacks.⁶³

On the other hand, many of the white appointees to predominantly black schools were young, inexperienced and ill-prepared for teaching black students. Having little

⁶²Singleton v. Jackson Municipal Separate School District, 419 F.2d 1211 (5th Cir. 1969); Carter v. West Feliciana Parish School Board, 2 RRLS 173 (1970).

⁶³Read, Let Them Be Judged, 513; confidential communication.

notion of black language, customs, deprivation and pride, many white teachers quit out of frustration, burn-out or racial animosity. Many black educators still feel that white teachers emerging from today's colleges are poorly-equipped to deal with ghetto-type situations in many inner-city school systems, where they are usually initially assigned. Not until they have gained experience and tenure are they transferred to "better" schools, which has resulted in an extremely high turnover in teaching positions in schools where a large black enrollment predominates due to center city decay and white flight to the suburbs.⁶⁴

Public School Desegregation after 1971

By the end of 1971, a unitary student body and faculty had been achieved in most of the state's sixty-six public school districts (the separate Lake Charles district had merged with the Calcasieu Parish school system). However, the courts were still compelled to consider other public school areas in order to remove the lingering effects of the dual system provided under de jure segregation. Among the areas examined were the issues of testing, continued use of racist symbols within desegregated schools, rules of discipline, busing, new school construction and abandonment, private schools and reapportionment of school districts.

⁶⁴Ibid.

Among the devices employed by several school systems after the establishment of the unitary system was the administration of various testing procedures to assess and place students. Admittedly, some systems legitimately desired to place students in classes that would impart maximum benefits and assistance in the transformation from all-black to integrated schools. For various reasons many black children performed poorly on standardized tests and were academically behind the average white student, resulting in their inordinate assignment to lower classes based on their achievement scores. The federal courts decided that this was another stigma imposed on black children and ordered the discontinuation of all such testing and placement until the demonstration of proof that the unitary system was being operated on a nondiscriminatory basis. Realizing the disparities between white and black children, the court ordered the implementation of remedial programs so that blacks could receive guidance and the opportunity to advance to their natural level of performance. Otherwise, all students were to be assigned to "heterogeneous, racially integrated classes."⁶⁵

Another problem encountered by many black children was the continued use of indicia of white supremacy and segregation at desegregated formerly all-white schools. When a

⁶⁵Lemon v. Bossier Parish School Board, 3 RRLS 92 (1971); Moses v. Washington Parish School Board, 330 F.Supp. 1340 (E.D. La. 1971).

St. Tammany Parish principal of an integrated high school continued to display a Confederate battle flag beside American and Louisiana flags, a federal district court in 1970 ordered that "all Confederate flags, banners, signs expressing the board's or its employees' desire to maintain segregated schools, and all other symbols or indicia of racism shall be removed from the schools and shall not be officially displayed at school functions of any kind." In a similar case decided in early 1971, a state district court dismissed a suit to void the decision by the Orleans Parish School Board to discontinue the use of the Confederate flag as the school banner at a local integrated high school and the term "Rebels" for its athletic teams. The board had taken such action at the request of the parish superintendent, who had been petitioned by black students to do so. The state court found the board's procedure to be within its powers.⁶⁶

With the establishment of unitary school systems, a degree of trouble could be expected from both black and white students, who were not yet acclimated to the new situation. When violence broke out at some of the high schools in the early 1970's, the application of disciplinary rules was called into question. In a case brought by black students challenging the constitutionality of Louisiana's

⁶⁶Smith v. St. Tammany Parish School Board, 316 F.Supp. 1174 (E.D. La. 1970); Gaillot v. Orleans Parish School Board, 3 RRLS 51 (1971).

school district disciplinary statutes, rules and regulations, the federal courts strengthened the stand of the schools on discipline in early 1973. The courts held that the disciplinary statutes were not so vague as to infringe upon the First Amendment rights of students, despite the use of such phrases as "willful disobedience," "intentional disruption," "immoral or vicious practices" or "disturbs the school." The judiciary would not interfere with high school regulations involving the dress code and would leave some discretion to school authorities concerning school behavior. Although a student did not surrender his rights upon entering a school, neither was he allowed to openly disrupt the educational process to express a grievance.⁶⁷

One of the most controversial desegregation issues to strike the nation in the 1970's was the use of busing for the purpose of equalizing racial numbers. Several areas of Louisiana came under court-ordered busing because of the ineffectiveness of alternative desegregation plans to bring about a valid unitary school system. Among the first school districts to be required to implement busing of students was Jefferson Parish. In the summer of 1971, the school board was ordered to draw up a new desegregation plan in accordance with Swann, with the possible use of busing to enhance greater integration of students. Although the board

⁶⁷Murray v. West Baton Rouge Parish School Board, 472 F.2d 438 (5th Cir. 1973).

submitted a plan, it did not recommend its adoption. Its scope entailed busing 3000 students (90 percent of whom were black), who had previously walked to neighborhood schools, to more distant schools with an average daily round trip of seven miles. Holding that some short-term disadvantages would have to be endured in order to achieve the long-term goal of a unitary system, the court ordered the plan implemented for the 1971-72 school year.⁶⁸

By 1972, the vast majority of people in the country were opposed to court-ordered busing to desegregate the public schools. A Gallup Poll taken in 1972, showed that two-thirds of those polled approved of integrated schools, but that 69 percent were opposed to busing as a means for achieving that goal. Earlier in the year, President Richard Nixon addressed Congress on his plan to curtail court-ordered busing. His proposals included placing an immediate moratorium on busing pending a congressional investigation to establish judicial guidelines, prohibiting busing below the seventh grade, and allowing busing only if other remedies failed. Although Congress did not adopt his recommendations, its 1972 Amendments to the Higher Education Act included provisions which slowed the desegregation process and limited the use of federal funds for busing students to "overcome racial imbalance" or to "carry out a plan of

⁶⁸Dandridge v. Jefferson Parish School Board, 3 RRLS 134 (1971).

racial desegregation." All further court-ordered busing would be stayed until all current appeals were exhausted or until January 1974, federal funds would be used to finance busing only at the request of local school officials, and no federal official could require or encourage using busing unless "constitutionally required."⁶⁹

Another area in which the federal courts took a harder line was on school construction, abandonment, consolidation and site selection. The school board in Jefferson Davis Parish closed two formerly all-black schools on the presumption that whites would refuse to attend them and to support the school system. The courts ruled that boards were justified in closing old schools and constructing new ones in order to eradicate state-imposed segregation, but not for suspect reasons. In another case, the Fifth Circuit Court held that all future abandonment, consolidation, construction and site selection for new school buildings had to "be accomplished in a manner which will prevent re-establishment of the dual school system."⁷⁰

When the Lafayette Parish School Board proposed to spend \$5 million on improvements on schools, federal courts overruled it in 1973, on the grounds that the school board

⁶⁹ Bell, Race, Racism and American Law, 512-14; New York Times, Mar. 18, 1972; 4 Race Relations Reporter 29-31 (Nashville: Race Relations Information Center, January 1973).

⁷⁰ Gordon v. Jefferson Davis Parish School Board, 446 F.2d 266, 268 (5th Cir. 1971); Dunn v. Livingston Parish School Board, 445 F. 2d 1400 (5th Cir. 1971).

had failed to establish "by preponderance of evidence" that its actions would not result in the resegregation of the school system. Before the board could approve school construction proposals, it had to consider the extent to which existing facilities could be utilized, the inequities in the present plan of operation, the racial composition of the new schools, and whether the growth of an area to be served by new schools was the result of white flight from existing schools.⁷¹

White flight from the public schools was not as serious of a problem as the courts had earlier feared that it might be, except in areas where viable private alternatives existed. Between 1968 and 1971, major shifts occurred from public to nonpublic schools in the parishes of Caddo, Evangeline, Pointe Coupee, St. John and Tangipahoa (table 13). Outside of these areas, there was no spontaneous and sustained decline in public school enrollment across the state as a reaction to massive integration (table 14). Instead, there was more often a gradual decline of white students in heavily black schools. After desegregation, many public schools experienced progressive losses of white students, as their families moved out of black school districts and into predominantly white neighborhoods. Systems were then restructured so that schools with large black

⁷¹Trahan v. Lafayette Parish School Board, 362 F.Supp. 503 (W.D. La. 1973).

Table 13
Public and Private School Enrollment, 1968-1972

Parish	1968-69		1969-70		1970-71	
	Public	Private	Public	Private	Public	Private
Caddo	62,613	4,012	61,217	5,675	57,401	8,406
Evangeline	9,088	699	6,309	3,198	6,508	2,620
Pointe Coupee	6,078	868	4,206	1,755	5,137	1,661
St. James	6,718	1,118	6,500	1,379	5,958	2,218
Tangipahoa	17,695	1,438	16,340	3,111	15,122	3,491

Source: Louisiana School Directory, Sessions 1969-71.

concentrations became even "blacker" with only a token number of whites in their enrollment, while suburban schools became essentially all-white. In New Orleans, which already had a well-developed Roman Catholic parochial school system by 1960, the process resulted in de facto establishment of several all-black, inner-city schools. A similar situation occurred in other cities which had sufficient private schools to serve as alternatives to the public schools, so that many central city schools were left virtually all-black by the 1970's.⁷²

⁷²Boyd v. Pointe Coupee Parish School Board, 505 F.2d 632 (5th Cir. 1974); confidential communications.

Table 14
Statewide School Enrollment, 1967-1976

Year	State Total	Public		Nonpublic	
		Total Public	Percent of State Total	Total Non- public	Percent of State Total
1967-68	1,010,161	863,038	85.4	147,123	14.6
1968-69	1,028,853	890,311	86.5	138,542	13.5
1969-70	1,038,093	884,473	85.2	153,620	14.8
1970-71	1,036,294	870,616	84.0	165,678	16.0
1971-72	1,034,570	874,488	84.5	160,082	15.5
1972-73	--	--	--	--	--
1973-74	1,026,726	870,468	84.8	156,258	15.2
1974-75	1,018,378	862,678	84.7	155,693	15.3
1975-76	1,027,604	871,233	84.8	156,371	15.2

Source: Louisiana School Directory, Sessions 1967-76

To counter the effects of white flight, federal courts ordered busing to equalize the black and white population within several school districts. Busing was implemented in several school systems of the Western District of the federal courts in Louisiana to arrive at an equitable racial balance due to changing residential patterns as whites migrated to the suburbs.

Another problem that concerned the federal courts in the early 1970's was the issue of reapportionment and redistricting of school board election districts. The court's primary concerns were that the ideal goal of "one man, one vote" be attained and that all traces of de jure influence be removed. However, district courts tended to take local conditions and geography into consideration before deciding to approve or reject a redistricting plan. In general, they rejected any plan that deviated more than 2.5 percent from the "one man, one vote" principle. Although the courts preferred single-member districts, they were not averse to approving multi-member districts if they did not discriminate against or significantly dilute the voting power of minorities.⁷³

Desegregation of Trade and Vocational Schools

Trade and vocational schools were brought under desegregation orders prior to the integration of public elementary and secondary schools. As with the public schools, the state legislature established a separate system of white and black trade and vocational schools, then attempted to prevent the collapse of the de jure system of technical institutions. However, they eventually came under court orders to desegregate and complied reluctantly.

⁷³London v. East Feliciana Police Jury, 347 F.Supp. 132 (E.D. La. 1972); Panior v. Iberville Parish School Board, 359 F.Supp. 425 (M.D. La. 1973); Chargois v. Vermilion Parish School Board, 348 F.Supp.498 (W.D. La. 1972).

The first case to reach the courts concerning these institutions was that of Angel v. Louisiana State Board of Education. In May of 1960, the federal district court in Baton Rouge enjoined the state from refusing to admit qualified black students solely because of their race and color to trade schools in Crowley, Natchitoches, Greensburg, Lake Charles and Opelousas. A companion case, Allen v. State Board of Education, was also settled at this time, enjoining the state from refusing to admit black students to a trade school in Shreveport.⁷⁴

During the 1960 regular session of the state legislature, a series of laws were enacted in an effort to prevent the desegregation of the state's trade schools in the fall. One act directed the governor to close any state trade or special school "in case of disorder, riots, or violence," or that "he deemed necessary to prevent" such turmoil. Another act provided for the classification of extant state trade and special schools for the exclusive use by "non-negro and negro students," granted the legislature exclusive power to reclassify such schools, and placed them under the "exclusive control, management and administration" of the governor if they came under a court order to segregate. Two other acts prohibited furnishing school supplies or funds or

⁷⁴Angel v. State Board of Education, 5 RRLR 652-53 (1960); Allen v. State Board of Education, 287 F.2d 32 (5th Cir., 1961); New Orleans Times Picayune, Apr. 30, May 26, 1960.

recognition to desegregated state trade and special schools, and empowered the governor to alienate their property to private persons if they were closed.⁷⁵

Following the Angel and Allen decisions of 1960, the state appealed on the grounds that the State Board of Education, which operated the trade schools named in the suits, was an agency of the state and could not be sued without the state's consent. However, the Fifth Circuit Court overruled this argument and ordered desegregation of the vocational schools to proceed. When the Shreveport facility had not desegregated by the summer of 1962, a federal district court ordered the defendants to show cause why they should not be held in civil and criminal contempt for their refusal to obey the court's order. In September, the State Board of Education declared that it would admit all students requesting admission to these schools "without regard to race or color." However, more than twenty public trade and vocational schools not named in court suits still remained segregated.⁷⁶

Not until the middle of the 1960's was de jure operation of the state's trade and vocational schools brought to an end. In October of 1964, the courts prohibited

⁷⁵Acts of Louisiana, 1960, Regular Session, no. 579, no. 580, no. 581, no. 582.

⁷⁶State Board of Education v. Allen, 287 F.2d 32 (5th Cir. 1961); State Board of Education v. Angel, 287 F.2d 33 (5th Cir. 1961); 8 RRLR 1075 (1963).

discrimination against blacks seeking admission to Delgado Trades and Technical Institute in New Orleans. Five more facilities were ordered to desegregate in the following February, and the remaining eighteen in May of 1965. The Louisiana State Board of Education admitted the allegations and offered no defense. Therefore, the court enjoined it from refusing to accept applicants on the basis of race, refusing to enroll blacks because of their race, denying blacks the "full and equal use" of facilities, applying different admission procedures to blacks than for whites, and practicing racial discrimination in the operation of the trade schools. All of the state's public trade and vocational training schools were now under desegregation orders.⁷⁷

The school systems of Louisiana had come a long way since 1963. Nine years after Brown had ordered an end to de jure segregation in the public schools, only one school district in the state had undergone even limited desegregation. It took a combination of efforts by Congress, the executive branch and the federal courts to end the dual system of education. The impetus for modified integration of the state's public school systems was judicial action, with the reward of continued and expanded federal funding.

⁷⁷Williams v. Board of Managers of the Delgado Training Institute, 9 RRLR 1783 (1964); United States v. State Board of Education, ¹⁰RRLR 1205 (1965); New Orleans Times Picayune, Oct. 10, 1964, Feb. 19, May 8, 1965.

However, not until 1965 did a majority of school systems submit to any form of desegregation.

Under the guise of freedom of choice, school systems bridged the gap between compliance and noncompliance with the guidelines of HEW and the dictates of the federal courts. Freedom of choice succeeded to the extent that it brought about initial integration gradually and with a modicum of violence. Most probably, if massive integration had come about suddenly, it would have spurred violent opposition that may have wrecked public education and taken a toll in lives and property. Nevertheless, freedom of choice failed because it gave whites a respite in disestablishing the dual education system, and placed the burden for integration on the backs of black parents who were products of a century of oppressive measures that stifled any intention to cross the color line. Since state and local officials would do only what was required of them, only by the heavy hand of the federal government could the segregated system be swept away.

Mainly through the actions of the Fifth Circuit Court of Appeals and a tardy Supreme Court, the dual education system was finally brought to an end in Louisiana. After every grade had been opened to integration and freedom of choice plans had been fulfilled, federal courts began to order school systems to adopt alternate plans which would bring about a unitary system more quickly and effectively. What had been considered impossible to do between 1954 and

1969, was now accomplished from 1969 to 1971, as unitary systems replaced dual systems. Although there was serious opposition in scattered parts of the state, fears of a wholesale white retreat from the public schools and widespread violence did not materialize. Most parents begrudgingly accepted a situation over which they had no control, and allowed the education of their children to proceed.

With the attainment of unitary school systems by the end of 1971, the courts turned to eradicating the remaining traces of the de jure system of segregation. To prevent the resegregation of school systems, the judiciary became vigilant over testing and placement procedures, transportation and school assignments, faculty assignment and displacement, school construction and closings, and school district reapportionment. Particularly troubling for the courts in Louisiana, as elsewhere in the nation, were changing residential patterns resulting from white migration to the suburbs. A de facto system of racial and economic segregation was created as neighborhood schools in the inner cities became virtually all-black and suburban schools essentially all-white. The most effective means for resolving this problem was through busing. However, there was a noted lack of support among two-thirds of Americans or from more conservative Presidential administrations, Congresses, and Supreme Court Justices in the 1970's. Although busing was considered to be an impractical solution, no other plan surfaced which had a more realistic chance for success.

THE DISMANTLING OF DE JURE SEGREGATION
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Chapter VII

DESEGREGATION OF PUBLIC FACILITIES

Introduction

The foundations of racial segregation in government-operated, maintained and leased public facilities derived from de jure origins, and were, therefore, easier to eradicate than segregation in areas such as housing or employment, which had primarily de facto origins. Among the facilities funded or maintained by the state, parishes or municipalities were government buildings, medical facilities, correctional institutions, auditoriums and recreational facilities.

Most of the steps taken to erase segregation from the operation of government-sponsored facilities were initiated by the federal courts. Since discrimination in public facilities was often based on law, it was easier to prove state discrimination and to void artifices employed to continue the segregated system. The Civil Rights Act of 1964 capped the activities of the federal courts and removed any uncertainty about the intentions of the federal government toward de jure segregation in public facilities. However, more intricate maneuvers continued to provide a means for continuing covert separation of blacks and whites.

Arbitrary discrimination in the use of public facilities by the State of Louisiana and its political subdivisions rested upon a network of laws dating to the first quarter of the twentieth century, then bolstered by new legislation enacted during the desperate days of massive resistance in the mid-1950's. By 1963, the entire system of de jure segregation was tottering on the brink of collapse. With the passage of the Civil Rights Act of 1964, the assault on segregated public facilities was complete, and only a few isolated cases surfaced in the courts thereafter. In most instances, the federal judiciary had established precedents elsewhere within the nation, so that federal district courts or the Fifth Circuit Court of Appeals had simply to re-apply earlier desegregation decisions to cases arising within Louisiana.

Federal Policy in Regard to Public Facilities

Prior to 1954, the United States Supreme Court heard few cases dealing with public institutions other than public schools. The court appeared to be deliberately evading a sensitive issue since it generally denied certiorari (declined to hear a case on appeal), reversed, or dismissed appeals on a technicality. The two Brown decisions of 1954 and 1955 displayed a precise and deliberate effort by the high court to eliminate de jure segregation from tax-supported public facilities. Thereafter, it adopted the view that segregation in the operation of public facilities

by the government or any of its agencies was a violation of the United States Constitution.

The two post-Brown decisions that established the Supreme Court's subsequent stand on public facilities were Dawson v. Mayor of Baltimore and Holmes v. Atlanta, both decided in 1955. In Dawson, the court affirmed a federal appeals court reversal that voided Baltimore's segregated public beach and bathhouse policy, while Holmes extended the Brown decision to Atlanta's municipal golf courses.¹ Although both of these cases were based fundamentally on de jure discrimination, later litigation involved more intricate devices adopted by Southern states and municipalities to continue segregation in public facilities. Subsequently, the Supreme Court adopted a policy of restraint, opting to either deny certiorari or affirm lower court decisions without comment, rather than becoming embroiled in court challenges arising over the desegregation of public facilities.

Following federal rejection of state and municipal legislation mandating segregated public facilities, Southern authorities resorted to leasing publicly-owned facilities to private lessees, with the understanding that proprietors would continue to operate them on a segregated basis or for the exclusive use of whites only. Theoretically, this

¹Dawson v. Mayor of Baltimore, 350 U.S. 877 (1955); Holmes v. Atlanta, 350 U.S. 879 (1955).

subterfuge would conceal the state from direct involvement in maintaining segregation. However, the federal courts remained vigilant and declared this maneuver an unlawful attempt to transform private lessees into state agents for the purpose of sustaining a prohibited policy.

In 1956 and 1957, the Supreme Court affirmed judgments in two cases involving government leasing of public facilities by taking no action on them. Lower federal courts extended the Supreme Court ban on racial discrimination by the state to that of the lessee. In one case, lower courts had held that a private lessee of public property could not discriminate on racial grounds. The other case involved a privately leased restaurant located in a Texas courthouse, which linked publicly-owned facilities with the issue of privately-operated public accommodations. By refusing to take action on either case, the Supreme Court succeeded in securing its intentions without having to become involved.²

Alarmed that the federal courts were becoming increasingly aggressive in ordering the desegregation of public facilities, the Louisiana State Legislature of 1956 adopted a harsher stand on segregation by proposing a state constitutional amendment which was adopted by the voters in November of that year. Using the United States

²Department of Conservation and Transportation v. Tate 231 F.2d 615 (4th Cir. 1956), 352 U.S. 838 (1956); Derrington v. Plummer, 240 F.2d 922 (5th Cir. 1956), 353 U.S. 924 (1957).

Constitution's Eleventh Amendment guarantee of a state from suit without its consent, the legislature interposed the state's will and immunity by prohibiting suits against state agencies that perpetuated racial discrimination. The state amendment further required the recall of members of any state agency that ordered the integration of any tax-supported facility, and removed integrated facilities from operating as a function of government.³

In 1961, the Supreme Court broke its self-imposed silence on the issue of leasing government property that was being used to perpetuate racial segregation. It declared in Burton v. Wilmington Parking Authority that leasing government-owned facilities to private individuals who operated it on a segregated basis, constituted state involvement. The court took its final stand on the issue of segregated public facilities in Hamilton v. Alabama in 1963, when it declared that this subject was no longer open to debate in federal courts.⁴ Although the fight continued in the lower federal courts, the enactment of the Civil Rights Act of 1964 put a Congressional blessing on the actions of the federal courts and enabled the Justice Department to adopt a more active role in dismantling de facto segregation in both privately and publicly operated facilities.

³Acts of Louisiana, 1956, Regular Session, no. 613.

⁴Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961); Hamilton v. Alabama (1963).

Government Buildings

Considering the nature of this type of discrimination, it was extremely difficult for a state government agency to practice overt segregation within its own buildings after 1955. When such practices fell quickly after being challenged in federal court, means were found to subvert federal demands, primarily by resorting to the private lease system. Since most of the landmark federal cases arose outside of Louisiana, federal district and appeals courts simply applied these decisions to test cases in the state when they arose. By and large, when the test cases failed, government agencies dismantled all visible indications of de jure segregation and, at least on the surface, appeared to be in compliance with federal dictates.

After voiding state laws that established segregation in government facilities, the federal courts concentrated their efforts on private leasing in the early 1960's. A federal district court cited the Burton case of 1961 in requiring restaurant, bar and lounge facilities in the New Orleans airport to desegregate in 1962, even though they were leased by the city to a private corporation. The courts also ordered the desegregation of privately leased cafeterias that were located in the New Orleans and Baton Rouge City Hall buildings in 1964.⁵

⁵Adams v. City of New Orleans, 208 F.Supp. 427 (E.D. La. 1962); Castle v. Davis, 9 RRLR 884 (1964); New Orleans Times Picayune, Feb. 14, 1964.

Another type of segregation existed within the halls of justice themselves. One of the time-honored Southern traditions was to segregate seating within the state's courtrooms and to provide separate restrooms, water fountains and lunchroom facilities within the building. During the public defamation trial of B. Elton Cox in 1962, several seats designated for the use of whites in an East Baton Rouge Parish courtroom were vacant while numerous blacks stood outside because their section was filled. Three blacks who sat in the white section were arrested when they refused to leave the area. The judge responded that the separate seating policy was a custom intended "to keep order," and that he had already ordered half of the seats in the white section to be used by blacks during the trial. He subsequently denied a motion by Cox's attorney that the segregated policy in seating and facilities be overturned.⁶ A year later, though, the Supreme Court ruled that courtrooms were public facilities and overturned segregated seating in Virginia state courtrooms.⁷ Less than a month later, using this decision, the high court voided the convictions of the three blacks who had refused to move during the Cox trial.⁸

⁶ New Orleans Times Picayune, Jan. 30, 1962; Baton Rouge State Times, Nov 17, 26, 27, 1962, May 8, 1963.

⁷ Johnson v. Virginia, 373 U.S. 61 (1963).

⁸ George v. Clemmons, 83 S.Ct. 1296 (1963); Baton Rouge State Times, May 14, 1963.

It was not until 1976, that the State of Louisiana went on record to protect public access to public meetings held in public buildings. Defining a public meeting as "a meeting which is advertised as being open to the public," the state legislature enacted a law prohibiting the denial of any person access to any public meeting in any public building used or owned by the state or one of its political subdivisions on the grounds of race, color or creed.⁹

Auditoriums

Where public auditoriums were maintained, the rule of "separate but equal" was often applied to prevent the possibility of federal desegregation orders on the grounds of denial of access by blacks to public facilities that were accorded to whites. However, where only one auditorium existed, blacks were either denied use or compelled to submit to prior approval by arbitrary white authorities before access would be granted to them.

It was almost inevitable that a test case would arise in New Orleans, with its large and active black population, over the use of white-designated public auditoriums by blacks for black causes. In 1961, the black Longshoreman's Better Conditions Club contracted with the city to use its municipal auditorium. When city officials learned of the nature of the meeting and its list of speakers, which

⁹Acts of Louisiana, 1976, Regular Session, no. 700.

included Martin Luther King, the contract was cancelled. The black group won a temporary restraining order from a local district court, prevailing over the city fathers for less than three hours before the city won an appeal.¹⁰

Two years later, a similar situation arose in New Orleans when the NAACP sought an injunction requiring city officials to grant black citizens equal access to the auditorium. The federal district court noted that the city had permitted the notoriously racist White Citizens' Council to use the facility, but had denied a similar request by the NAACP. The court, therefore, enjoined city officials from discriminatory allocation of the auditorium, and prohibited segregation and denial of its use to groups that advocated desegregation.¹¹

In many smaller municipalities, such as Houma, located in the southeastern part of Louisiana, separate facilities had been provided for the use of whites and blacks in an attempt to avoid federal charges of racial discrimination. The Houma Municipal Auditorium was used by whites, while the Dumas Auditorium was constructed for the use of blacks. Only with the passage of the public accommodations section of the 1964 Civil Rights Act did this situation come to an end, and Houma, along with other municipalities in the

¹⁰Longshoreman's Better Conditions Club v. New Orleans, 7 RRLR 194 (1961).

¹¹Bynum v. Schiro, 218 F.Supp. 204 (E.D. La. 1963), 375 U.S. 395 (1964).

state, dropped segregated requirements and reluctantly adopted a policy of free access to public facilities on a nondiscriminatory basis. By that time, most municipalities in Louisiana had come to realize that resistance to federally ordered desegregation was futile, and nearly all of them decided to comply voluntarily.

Medical Facilities

Segregation in medical facilities was almost equally based on de jure and de facto origins. Blacks who chose to enter the medical field were likely to experience discrimination in education and training programs, employment, and medical and professional staff appointments. Individual blacks who sought medical attention were most likely to encounter such practices as being housed in the older portions of hospitals where they often received treatment with antiquated equipment and condescension from the all-white staff, in contrast to whites who occupied the more modern areas and had access to state-of-the-art facilities. Blacks were also subjected to segregation in wards, private and semi-private rooms, use of lavatories, eating facilities, entranceways, emergency rooms, maternity wards and nurseries, and ambulance services. It was common for blacks to encounter poor service, requests for more financial proof than from whites for admission, and outright discourtesy from hospital personnel. To make matters worse, much of the

bias applied to blacks until 1964 could be justified by federal regulations governing hospitals.¹²

The Hill-Burton Act of 1946, which governed public hospitals under the jurisdiction of the Public Health Service, included a nondiscrimination clause which provided that state hospital construction plans "shall provide for adequate hospital facilities for the people residing in a state without discrimination on account of race, creed or color." However, the Surgeon General of the United States was authorized to establish regulations whereby the anti-discrimination clause could be bypassed by the establishment of "separate hospital facilities" for "separate population groups" as long as "equitable provision" was made for each group. Under this rationale, hospitals in the Southern states were provided with the means for continuing de jure and de facto segregation of medical patients.¹³

In the early 1960's, segregation in public and private medical facilities in Louisiana was the norm. As early as 1902, the state legislature had decreed that blacks and whites would attend separate mental hospitals, although no such public facility for blacks was in existence at that time.¹⁴ Two years later, the legislature provided for the

¹²Bell, Race, Racism and American Law, 253; confidential communications.

¹³Bell, Race, Racism and American Law, 255; Hill-Burton Act of 1946, Pub. L. 79-725, 60 Stat. 1040.

¹⁴Acts of Louisiana, 1902, Regular Session, no. 92.

establishment of a separate "colored asylum," later named the Central Louisiana State Hospital and located in Rapides Parish.¹⁵ Primarily because of their poor economic status, blacks tended to frequent state charitable clinics and hospitals or went without medical care, while private hospitals and clinics were primarily attended by whites.

In the racist atmosphere that prevailed during the New Orleans school crisis of 1960, the state legislature enacted two laws that were targeted at the use of state medical facilities by blacks. One act provided penalties for fraud and misrepresentation by persons applying for or assisting others in applying for admission to state hospitals, while the other law denied the use of charity hospitals to unwed mothers.¹⁶

Shortly thereafter, three major breakthroughs were made in the effort to destroy resistance to desegregation of medical facilities. They included the settlement of the Simkins v. Moses H. Cone Hospital case, the amending of the Hill-Burton Act and the enactment of the 1964 Civil Rights Act.

The Simkins case involved a segregated Greensboro, North Carolina, hospital which used Hill-Burton federal funds. A lower federal court ruled in 1962 that the

¹⁵Acts of Louisiana, 1904, Regular Session, no. 143.

¹⁶Acts of Louisiana, 1960, Regular Session, no. 136, no. 251, no. 306.

practice of racial discrimination in government owned, operated or subsidized hospitals violated due process and equal protection guaranteed by the Fourteenth Amendment. The hospital was ordered to open its facilities to black doctors, dentists and patients. In early 1964, the United States Supreme Court upheld this decision.¹⁷ About this same time, the Surgeon General decided to amend the Hill-Burton Act. Under new regulations, all medical facilities receiving Hill-Burton funds were required to admit and treat black patients and professionals in a nondiscriminatory manner. Race, creed, color or national origin could not be considered in the admission of patients, in patient access to all hospital facilities and services, or in the employment of doctors, nurses, interns and medical technicians.¹⁸

The Civil Rights Act of 1964 capped the efforts by Congress to eliminate discrimination from the nation's medical facilities. Various sections of the act not only prohibited racial segregation but provided incentives to desegregate voluntarily. Title III empowered the United States Attorney General to bring suit to enjoin discrimination at public facilities owned and operated by state governments; Title VI required medical facilities to make

¹⁷Simkins v. Moses H. Cone Hospital, 211 F.Supp. 628 (N.D.N.C. 1962), 376 U.S. 938 (1964); New Orleans Times Picayune, Mar. 3, 1964.

¹⁸Hospitals and Medical Facilities Amendments Act of 1964, Pub. L. 88-443, 78 Stat. 447; Baton Rouge State Times, June 25, 1965.

agreements with the federal government, pledging to operate without discrimination as a requirement for receiving additional federal funds; and Title IX permitted the Attorney General to intervene in suits by persons seeking relief from being denied equal treatment.¹⁹ With coordinated action taken by all three branches of the federal government, racially segregated medical facilities soon vanished.

Most of the hospitals in Louisiana used federal funds for construction and indigent care, yet practiced racial segregation until the mid-1960's. In the New Orleans area, Charity Hospital received \$1,243,824 for indigent care in 1962-63, Touro Infirmary received over \$1,820,000 to help construct a \$5,000,000 addition, and DePaul Sanitarium also received Hill-Burton funding.²⁰

One of the first civil rights cases involving Louisiana hospitals occurred in early 1963. Black activist Arthur Jelks asked the federal government to withhold \$2,000,000 in Hill-Burton matching federal funds from a planned charity hospital in Baton Rouge until assurances were given that it would be operated on a nonracial basis, including the right of black physicians and nurses to be on staff at the proposed medical facility.²¹ Less than a year later, spokesmen for Baton Rouge General and Our Lady of the Lake Hospitals

¹⁹Civil Rights Act of 1964.

²⁰New Orleans Times Picayune, Mar. 3, 1964.

²¹Baton Rouge State Times, Mar. 28, 1963.

announced that two-thirds of the staffs of each facility had voted to permit black physicians to practice at each hospital. However, Dr. C. Grenes Cole, the executive secretary of the Louisiana State Medical Society promptly declared his opposition to the desegregation of public and private hospital staffs.²²

In August of 1964, the first major suit in Louisiana to desegregate a medical facility was filed by Callie Castle, an elderly black woman, to integrate facilities at Charity Hospital in New Orleans. She contended that the hospital was being run in violation of the Fifth and Thirteenth Amendments, and Title III of the 1964 Civil Rights Act. Following the filing of her suit, hospital administrators desegregated treatment in the emergency room and removed all "white" and "colored" signs. In January of 1965, a hospital spokesman announced that a new system would begin to operate for handling persons applying for treatment and admission, without regard to race.²³

In February of 1965, state welfare officials declared that nursing homes receiving federal funds under the Kerr-Mills Medical Vendor Program must be willing to accept blacks or lose federal funding. Under the provisions of the 1964 Civil Rights Act, the State Department of Welfare,

²² Ibid., Feb. 25, 1964; New Orleans Times Picayune, Mar. 4, 1964.

²³ Pittsburgh Courier, Aug. 1, 1964; New Orleans Times Picayune, Jan. 14, 1965.

which received and supervised the distribution of federal funds for old age assistance, was required to receive assurances from nursing homes that they were in compliance with federal guidelines. During the past year, the state agency had disbursed \$6,000,000, and in January of 1965, had already paid out \$577,675 to licensed nursing homes for the care of over four thousand elderly welfare patients.²⁴

Citing discriminatory practices, the NAACP filed suit against several hospitals in the state in April of 1965, asking that public funds be cut off until they complied with Title VI of the 1964 Civil Rights Act. The facilities that were charged included Our Lady of the Lake (Baton Rouge) for segregating wards and providing inferior facilities for blacks, Sara Mayo (New Orleans) for maintaining segregated facilities and refusing to allow black physicians to practice in the hospital, Touro Infirmary (New Orleans) for maintaining separate facilities for blacks and whites and refusing staff membership to blacks, and St. Patrick's (Lake Charles) for segregating patients and keeping separate towels and linens for black and white patients.²⁵

In the summer of 1965, H. Hunter Huckaby, president of the Louisiana Hospitals Association, announced that hospitals in the state would have to desegregate if they wished to continue receiving federal funding, and that complete

²⁴Baton Rouge State Times, Feb. 17, 1965.

²⁵Ibid., Apr. 15, 1965.

desegregation was only a matter of time, regardless of whether a medical facility received federal allotments. Approximately 72 percent of the money appropriated by the state to hospitals came from the federal government. In order for the state to continue to receive funding, it had to show that the money was distributed to institutions that were in compliance with the Civil Rights Act, Hill-Burton Act and other federal guidelines which prohibited racial discrimination in patient care and employment of medical personnel. In addition, any hospital with one hundred or more employees had to comply with the Equal Employment Opportunity Act, which became effective on July 2, 1965. This law prohibited the hiring or firing of employees on the basis of race, color, religion, national origin or sex.²⁶

The final blow was struck against segregated medical facilities in Louisiana with the issuance of an injunction against the State Department of Hospitals and various hospital officials in December of 1965, for failure to comply with the Civil Rights Act of 1964. Defendants were enjoined by federal courts from continuing to maintain segregation in wards, clinics, diagnostic or treatment areas, or in any other hospital facilities.²⁷ Faced with a determined federal government, most of the medical institutions in the

²⁶ Ibid., June 25, 1965.

²⁷ Rax v. State Department of Hospitals, 11 RRLR 394 (1965).

state began at least partial compliance with federal guidelines, if for no better reason than to continue receiving lucrative federal funding and in order to participate in the new Medicare program.

Correctional Facilities

The state's segregated prison system was a more difficult problem to solve than other segregated public facilities. With the end of the convict-lease system in 1901, the state purchased the Angola plantation property and established a state penal farm near the Mississippi River in West Feliciana Parish. In 1900, the state legislature enacted laws requiring segregation in the state penitentiary, and required segregated facilities and accommodations in parish jails and prisons in 1918.²⁸ The de jure system was extended to black male juveniles in 1926 and 1928, with the creation of a separate prison farm for black juveniles (the State Industrial School for Colored Youths).²⁹ In 1938, the state legislature authorized the establishment in each parish of industrial schools for black males under eighteen years of age who were convicted for juvenile offenses. In addition, the legislature authorized judges in districts without separate prison farm facilities for blacks

²⁸ Acts of Louisiana, 1900, Regular Session, no. 70, 1918, Regular Session, no. 251.

²⁹ Acts of Louisiana, 1926, Regular Session, no. 203, 1928, Regular Session, no. 150.

to sentence black juveniles to any prison district in the state where such facilities were available.³⁰ However, while special correctional facilities were established for female white juveniles, none were ever created for female black juveniles.

It was not until 1968 that the United States Supreme Court ruled in Lee v. Washington that the operation of a racially segregated prison system in Alabama violated equal protection.³¹ In mid-1968, a federal judge in Louisiana commenced the cumbersome task of desegregating the state's correctional facilities. Citing Lee v. Washington, the court ordered state officials to begin working out an orderly desegregation plan for the state's jails, prisons and juvenile reformatories.³² About a month later, Orleans Parish prison officials began assigning inmates solely on the basis of their sex and status (women would be separated from men and first offenders would be separated from hardened criminals).³³

In 1969, major breakthroughs were made in the desegregation of correctional facilities within Louisiana. Three black inmates of Orleans Parish Prison filed a federal suit

³⁰Acts of Louisiana, 1938, Regular Session, no. 226, no. 127.

³¹Lee v. Washington, 390 U.S. 333 (1968).

³²New Orleans Times Picayune, June 22, 1968.

³³Ibid., Aug. 2, 1968.

against the prison's warden because of his failure to include them in a work program that would lead to their early release. White inmates were offered the opportunity to participate in a work program which offered "double good time," in which they could earn two days of sentence for each day working in the special program. The warden responded that he had already begun to desegregate the dining hall and recreation yard, but the federal court did not feel that this was sufficient. Therefore, it ordered the warden to provide work for all suitable persons regardless of race, and ordered the desegregation of all floors, cell blocks, cells and work details.³⁴

In the spring of 1969, a federal district judge abolished segregation in Louisiana's juvenile correctional facilities, after declaring that black reformatories were far inferior to those provided for whites. However, the court realized the problems inherent in integrating a juvenile correctional institution and did not order its immediate desegregation.³⁵ In September, the court became dissatisfied with the procrastination of the state director of correctional facilities in presenting an adequate desegregation plan, and ordered the desegregation of Louisiana Training Institute in Monroe, the State Industrial School

³⁴Pounds v. Theard, 230 So.2d 861 (1970); New Orleans Times Picayune, Apr. 16, 1969.

³⁵Major v. Sowers, 297 F.Supp. 664, 298 F.Supp. 1039 (E.D. La. 1969).

for Girls in Pineville and the State Industrial School for Colored Youth in Scotlandville. In the future, juveniles would be assigned to a facility on a geographic basis, while current inmates would be reassigned later on the same basis. All juvenile offenders in North Louisiana would be assigned to the Monroe and Pineville facilities by sex, while all offenders of both sexes in South Louisiana would be assigned to the Scotlandville reformatory. In addition, the court ordered the desegregation of faculties and staff at all facilities.³⁶

Not until the early 1970's were laws concerning segregated juvenile and adult penal facilities corrected by the state legislature. In 1972, the legislature repealed laws requiring separate detention facilities for black and white juveniles, and changed the name of the formerly all-black juvenile reformatory to the "Parish Industrial School for Youths." Three years later, the legislature deleted the portion of the laws which permitted judges to sentence black juveniles to any prison district that maintained a special section for black juveniles, and deleted all provisions of the laws requiring racial segregation in prisons.³⁷

³⁶Baton Rouge Morning Advocate, Sept. 4, 1969.

³⁷Acts of Louisiana, 1972, Regular Session, no. 372, 1975, Regular Session, no. 419, no. 420.

Recreational Facilities

New Orleans and Baton Rouge were the major battlefields in the fight to desegregate recreational facilities in Louisiana. During the 1950's and early 1960's, both cities operated public parks, playgrounds, pools, community centers, amusement parks, tennis courts and golf courses on a segregated basis. In order to forestall the federal courts from voiding segregation of its recreational facilities, many Louisiana parishes and municipalities embarked on a building program in the 1950's to make separate and "equal" facilities available to blacks, or leased public recreational facilities to private individuals in order to circumvent federal court orders to desegregate. However, litigation and the Civil Rights Act of 1964 brought about an end to de jure segregation in recreational facilities across the state.

The first case challenging the segregated operation of recreational facilities in Louisiana was an NAACP suit in 1949 to desegregate the City Park golf course and Audubon Park, both in New Orleans, on the grounds that there were no comparable facilities available for blacks. Mayor DeLesseps S. Morrison realized the city's error in failing to provide these facilities, and the threat it posed to the "white only" recreation system in light of recent court decisions on higher education declaring against unequal educational opportunities for blacks. Therefore, the mayor appealed to

segregation logic and persuaded the residents of Gentilly, a suburb of New Orleans, to agree to the location of a black park in their area. He emphasized strongly that their refusal would endanger the entire system of segregated recreational facilities, and would heighten chances for court-ordered desegregation. In 1956, Pontchartrain Park and Golf Course opened for the use of blacks, with picnic grounds, tennis courts and a baseball field.³⁸ During the interim before this park opened, an agreement was reached between city officials and black community leaders in 1952 at the request of United States District Court Judge J. Skelly Wright. Blacks would be permitted to use one golf course and three tennis courts on Tuesdays and Fridays, and they were allowed to frequent the zoo portion of Audubon Park but none of the park's other facilities.³⁹

Although New Orleans had been willing to temporarily appease black aspirations, many other municipalities in the South were not so willing to accommodate them, resulting in a flurry of federal desegregation orders. In 1951, federal courts voided Houston's policy of denying blacks the use of golf courses located within white city parks. The Supreme Court voided the policy of Louisville, Kentucky, which provided separate facilities for whites and blacks and excluded blacks from using an amphitheater located in a

³⁸Haas, Delesseps S. Morrison, 75-76.

³⁹New Orleans Times Picayune, Nov. 8, 1955.

white city park in 1954. Atlanta was ordered to desegregate its municipal golf courses and Baltimore its public beaches and bathhouses in 1955. At this time, New Orleans was in the process of building Pontchartrain Park and Baton Rouge had just completed construction of a separate golf course for its black residents. In the following year, the Supreme Court affirmed a lower court decision that voided a Virginia state park lease and extended the high court's ban on discrimination in leasing public property to include a ban on discrimination in selling public property, if negotiations included an attempt to continue segregation by the sale or lease of such property.⁴⁰

In 1956, state and local officials were alarmed at the Supreme Court's actions in banning segregation in public parks, playgrounds and golf courses outside of Louisiana. In April, park and recreation officials from New Orleans, Monroe, Zachary, Thibodaux, Baton Rouge, Arabi, Lake Charles, Lafayette and Shreveport met in Baton Rouge and adopted three resolutions designed to maintain segregated park facilities. Their proposals revolved around the issue of interposition, requesting the state legislature to enact

⁴⁰Holcombe v. Beal (1951); Muir v. Louisville Park Theatrical Association, 347 U.S. 951 (1954); Holmes v. Atlanta (1955); Dawson v. Mayor of Baltimore (1955); Department of Conservation and Development v. Tate (1956); New Orleans Times Picayune, Nov. 9, 1955.

a constitutional amendment withdrawing the state's consent to suit over parks and recreation.⁴¹

When the legislature met in the spring of 1956, it proceeded to enact four laws to interpose state authority behind the separation of the races in all parishes and municipalities. Thus far, the only state segregation law dealing with public accommodations was a 1914 act that required separate entrances and ticket offices for blacks and whites at circuses.⁴² Segregation in recreational facilities rested largely on custom and on parish or city ordinances. Now, the state legislature became determined to place its weight behind this form of segregation as part of its program of massive resistance to keep the federal courts at bay. The state's police powers, as interpreted by state authorities under the powers reserved to the states in the Tenth Amendment to the United States Constitution, were invoked to justify state segregation laws. A state mandate was established for the segregated operation of all "public parks, recreation centers, play grounds, community centers and other facilities at which swimming, dancing, golfing, skating or other recreational activities are conducted." Although mixed audiences were permitted at such facilities, separate seating and sanitary facilities had to be provided. With an eye to possible federal intervention in segregated

⁴¹New Orleans Times Picayune, Apr. 5, 1956.

⁴²Acts of Louisiana, 1914, Regular Session, no. 235.

public facilities, the legislature invoked the Eleventh Amendment to the Federal Constitution by proposing a state constitutional amendment withdrawing the consent of the state to suits against state agencies with recreational and educational activities. Included within its scope were the State Parks Commission, Recreational and Park Commission for East Baton Rouge Parish, and all recreational districts of the state. Essentially, the state legislature had attempted to interpose itself between the federal courts and parish and municipal authorities to continue the practice of discriminatory use of public recreational facilities.⁴³

An additional law enacted by the 1956 state legislature prohibited interracial participation in "dancing, social functions, entertainments, athletic training, games, sports or contests and other such activities involving personal and social contacts." Sponsors of such programs were required to provide separate seating, sanitary, drinking water and other facilities, and "to mark such separate accommodation and facilities with signs printed in bold letters." Neither race was permitted to use the facilities and seating of another race.⁴⁴

The segregated system of parks and recreation of New Orleans came under attack once again in 1957, when a federal

⁴³Acts of Louisiana, 1956, Regular Session, no. 14, no. 613; 1 RRLR 731-32 (1956).

⁴⁴Ibid., no. 579.

district court voided the state law and city ordinance that required the segregated operation of City Park. However, city officials declared that they would not stop enforcing segregation ordinances until all appeals were exhausted. In the following year, the Supreme Court upheld the lower court's desegregation order.⁴⁵ However, public parks, playgrounds, community centers, amusement parks, swimming pools and other public facilities remained segregated for several more years.

Beginning in late 1962, a new drive began to desegregate public facilities. In December, one hundred sixteen black children and their parents in New Orleans challenged the state law which required separate public parks and recreational facilities, and asked the federal courts to desegregate all of the city's public parks, playgrounds and community centers. At the time, the New Orleans Recreation Department (NORD) operated one hundred six playgrounds and centers (eighty-eight for whites and eighteen for blacks).⁴⁶

During 1963, the tempo of protest and litigation to desegregate public recreational facilities accelerated. In June, NORD facilities and a New Orleans amusement park came under attack. Faced with possible desegregation of its pools because of a pending NAACP suit, NORD announced that

⁴⁵Detiege v. New Orleans City Park Improvement Association, 252 F.2d 122 (1958); New Orleans Times Picayune, Oct. 21, 1958.

⁴⁶New Orleans Times Picayune, Dec. 21, 1962.

it would not open its seventeen swimming pools (eleven for whites and six for blacks) because of budget problems. However, its budget was actually \$6000 higher than in the previous year. When blacks attempted to integrate the all-white Pontchartrain Beach midway and beach two weeks later, they were denied access on the grounds that the property had been leased by the city to a private lessee earlier in the day. At the end of July, the federal courts declared that New Orleans facilities were segregated by state statute as well as by custom, and that facilities provided for black residents were far inferior to those for whites. Therefore, a preliminary injunction was granted and New Orleans officials were required to desegregate all public recreational and cultural facilities and activities, including all one hundred six parks, recreation centers and playgrounds administered by NORD. The city ordinance and state "Anti-Mixing Statute," upon which the segregation was based, were declared void. However, private groups could continue to use publicly-owned and operated facilities on a segregated basis if the use did not involve city or state action in continuing segregation. NORD officials declared that the court decision changed nothing, since 99 percent of its programs were operated by private groups anyway.⁴⁷

⁴⁷ New Orleans Times Picayune, June 11, Aug. 2, 1963; Baton Rouge State Times, June 24, July 15, Aug. 2, 1963; Barthe v. City of New Orleans, 219 F.Supp. 788 (1963), 376 U.S. 189 (1964).

Baton Rouge and East Baton Rouge Parish recreational facilities became the targets of charges of racial discrimination as early as 1953. At that time, officials admitted that they were operating a segregated system, but that the separate facilities provided for blacks were equal to those provided for whites. The court denied the motion in 1954, and no action was taken until plaintiffs requested a judgment on their pleadings in December of 1962. City and parish officials sought the right to maintain the dual system of recreational facilities on the grounds of possible loss of revenue, violence and the likelihood of closures of facilities in the event of forced integration. However, in 1964, the court overruled their actions and ordered the parish to immediately desegregate all of its public facilities. In May of 1964, facilities at Baton Rouge public golf courses and tennis courts were desegregated with few incidents.⁴⁸

With the advent of the public accommodations section of the Civil Rights Act of 1964, the question of de jure segregation and discrimination in the operation of tax-supported facilities was definitively settled. Neither the courts, Congress nor the executive branch would tolerate further delays in desegregating recreational facilities. Therefore, most cities of the South quietly removed all

⁴⁸ New Orleans Times Picayune, Dec.21, 1962; Baton Rouge State Times, Dec.11, 1963, May 28, 1964; Lagarde v. Recreation and Park Commission, 229 F.Supp. 379 (1964).

segregation signs and grudgingly admitted all races on a nondiscriminatory basis to all such institutions. A new issue that arose at this time was the legality of closing public facilities in order to prevent having to desegregate them, particularly in the case of swimming pools. Many areas in the South opted to close public pools rather than allow such a "horror" as an integrated swimming facility to offend the minds of whites. New Orleans had closed its pools in 1963, while Baton Rouge closed its nine pools a year later on the grounds of increased operating costs. The Recreation and Parks Commission then announced that it would look into the feasibility of leasing the pools to private operators as the City of Houma had done. When challenged in federal court, the commission was informed that a city and parish were not required to provide recreational facilities. However, if they were provided, they could not be operated on a segregated basis.⁴⁹

A suit was brought against Jackson, Mississippi, which had also closed its swimming pools, and this case reached the Supreme Court in 1971. Perhaps reflecting its more conservative composition, the high court upheld the right of people, for any reason, to choose to operate or to close a public pool, as long as no one group was granted benefits while others were denied them. Since all pools in Jackson had been closed, all groups were denied the use of public

⁴⁹Baton Rouge State Times, May 7, 9, 20, 26, 28, 1964.

facilities, so the actions of Jackson officials were constitutional.⁵⁰ Therefore, similar action taken in Louisiana was also legal.

In 1972, the State of Louisiana finally put to rest the issue of segregation of all recreational facilities. By act of the state legislature, all provisions relating to separate seating and sanitary facilities, and prohibitions of interracial personal and social contacts between blacks and whites at social functions, games, dancing and entertainment were deleted from the statute books.⁵¹ Although personal acts of discrimination still continued, all remaining de jure segregation had been outlawed finally by state action.

From the end of Reconstruction until 1956, the State of Louisiana had very limited involvement in de jure segregation of public facilities, with most of the regulations being enacted and enforced by local government bodies or custom. When it appeared that the federal courts would void municipal and parish segregation ordinances, the state legislature of 1956 decided to become actively involved in the struggle to retain segregated facilities that were state-owned, operated and maintained through interposition of the legislature between the federal courts and local government agencies. When this maneuver failed, municipal and parish officials resorted to leasing public facilities to private

⁵⁰Palmer v. Thompson, 403 U.S. 217 (1971).

⁵¹Acts of Louisiana, 1972, Regular Session ,no. 254.

lessees. The courts voided this contrivance and demonstrated their determination in the early 1960's to insure that equal protection of the law was practiced and, along with the enactment of the Civil Rights Act of 1964, public officials in Louisiana were left with only three options. They could defy the courts and continue to provide segregated public facilities, close all or part of the facilities, or desegregate. Except in the case of swimming pools, defiance and closure were ruled out. Instead, municipal, parish and state officials decided to continue full operation of public facilities on a desegregated basis, since it was no longer possible to practice segregation by law.

Chapter VIII

DESEGREGATION OF TRANSIT AND PUBLIC ACCOMMODATIONS

Introduction

The federal government was the primary agent in the desegregation of transit as well as in the area of public accommodations. The federal courts initiated the first attacks on segregated railway, streetcar, bus and airline facilities, and were gradually followed by the Interstate Commerce Commission and Justice Department in the 1950's. However, not until the early 1960's were major strides accomplished, following a determined and coordinated federal drive to eliminate all remaining vestiges of de jure segregation in Southern transit. By 1965, all official municipal, parish and state policies requiring separation of the races in transportation were either abandoned or overturned by federal action, although the more difficult problem of de facto segregation remained to be resolved.

Unlike most areas that were desegregated, the source for desegregating privately-owned public accommodations in Louisiana was not the federal judiciary but Congressional legislation. Unquestionably, the courts played a key role in bringing down segregation, but, it was the Civil Rights Act of 1964, supported by the federal courts and the Justice

Department that ended discrimination in hotels, recreational facilities, restaurants and theaters. Until 1964, most public accommodations in the Southern states were still operated in a racially discriminatory manner, sanctioned by local custom and quasi-legal maneuvering. White Louisianians continued to practice private acts of segregation and denial in the use of facilities until ordered by the courts in the mid-1960's to cease such unlawful practices.

Segregated Transit Prior to 1940

Segregated transit began during the 1820's in Louisiana on New Orleans streetcars as a result of company policy rather than by ordinance or statute, and lasted until the advent of military Reconstruction in 1867. As early as 1833, "star cars" were designated for black passengers by placing a black star on special cars that were to be used by blacks. During the federal occupation of New Orleans (1862-65), their use was banned briefly on two separate occasions, but "star cars" remained in use on a continuous basis until 1867. Federal authorities halted the segregated policy on streetcars after blacks attacked white-only cars in the spring of 1867. This situation was not characteristic of Louisiana cities during Reconstruction, since most of them had no mass transit system similar to that of New Orleans, and no other city in the state contained a potent federal force to command obedience to an unpopular decree.

White New Orleanians appeared to have accepted streetcar desegregation fairly well, at least outwardly, because they were powerless to prevent it.¹

During Radical Reconstruction, the new Constitution of 1868 guaranteed blacks "equal rights and privileges upon any conveyance of a public character", while the state legislature enacted a civil rights law prohibiting racial discrimination on common carriers of passengers for hire in 1869.² When political Reconstruction of Louisiana ended in 1877 with the ousting of Radical Republicans from control of the government, no immediate change in the operation of public transit was in evidence.

The first sign of impending trouble for black civil rights came with the case of Hall v. DeCuir in 1878. The United States Supreme Court struck down Louisiana's civil rights act of 1869 as an unconstitutional burden on interstate commerce.³ Then, in the Civil Rights Cases (1883), the high court overturned the part of the federal Civil Rights Act of 1875 which had provided federal guarantees for black equality in public transit. The court determined that the Constitution prohibited the states from discrimination, but not private individuals.⁴ This ruling opened the door

¹Fischer, The Segregation Struggle, 30-32, 38-39.

²Constitution of 1868, Article 13.

³Hall v. DeCuir, 95 U.S. 485 (1878).

⁴Civil Rights Cases, 109 U.S. 3 (1883).

wider to segregation, a fact which Louisiana legislators recognized and exploited to prevent any further intermingling of the races in social situations. Their solution to the race problem became the doctrine of "separate but equal," beginning with railroads in 1890, waiting rooms in 1894, streetcars in 1902, and buses and taxicabs in 1928.

The first Louisiana statute providing for segregated transit was enacted in 1890. The law provided for separate but equal accommodations for white and black railroad passengers either by providing two or more coaches for each racial group or by dividing individual passenger coaches with a partition. Passengers were prohibited from occupying seats of members of the opposite race. Railroad employees were required to assign passengers on the basis of race and were authorized to deny service to anyone who refused to abide by this law.⁵ The act became the focus of the challenge to the new Southern principle of "separate but equal" in the Plessy v. Ferguson case in 1896. The United States Supreme Court found nothing unconstitutional in the Louisiana act requiring separate but equal railroad facilities for whites and blacks. If "separate" facilities were "equal," then the Fourteenth Amendment guarantee of "equal protection of the laws" would not be violated. Then, the court declared that the Fourteenth Amendment only promised blacks political equality, not social equality. However,

⁵Acts of Louisiana, 1890, Regular Session, no. 111.

the federal justices assumed erroneously that a state would accept the dictum that a segregation law would have to assure blacks of truly equal facilities in order to be valid. One justice correctly observed that "separate but equal" was a "thin disguise" for discrimination.⁶

Two other transit laws were enacted by the Louisiana State Legislature in 1894. One act ordered all railroad companies to post the segregation or "Jim Crow" railroad act of 1890 in a conspicuous place in each passenger coach and ticket office. In addition, it exempted from the transit laws black nurses attending to white children, and black prisoners in the care of white law enforcement authorities. Another act required all railway companies to segregate their waiting rooms by January 1, 1896. From that date, no person would be permitted to sit or remain in a waiting room other than the one assigned to members of his race.⁷

In 1902, the state legislature extended the policy of segregation to streetcars. Streetcar companies were ordered to provide two or more cars for blacks or to divide individual cars by wooden or wire screen partitions. As with railroads, penalties were outlined for noncompliance by passengers, employees and companies.⁸

⁶Plessy v. Ferguson, 163 U.S. 537 (1896).

⁷Acts of Louisiana, 1894, Regular Session, no. 177, no. 98.

⁸Acts of Louisiana, 1902, Regular Session, no. 64.

The legislature required buses and taxicabs to segregate in 1928. Bus companies were to designate separate seats or compartments for whites and blacks, and no one would be permitted to occupy seats or compartments of persons of another race.⁹ By now, all mass transportation facilities in the state had been brought under segregation guidelines by state statute or by local ordinances.

Nationwide, blacks saw little hope in halting, much less reversing, the trend toward segregation in transit prior to 1940. Between 1890 and 1910, they saw the futility of trying to stem the rising tide in the South toward isolation of blacks in society. In 1919, the NAACP failed to persuade Congress to outlaw discrimination on interstate railroads, and all of its attempts to halt the spread of segregation failed. Therefore, the equalization of accommodations became the major focus of black organizations since segregation could not be overturned at that time.¹⁰

Federal Transit Policy, 1940-1955

In the 1940's, the federal government took pivotal steps toward the eradication of segregation from interstate transit. The first major breakthrough in railroad desegregation occurred in the case of Mitchell v. United States in

⁹Acts of Louisiana, 1928, Regular Session, no. 209.

¹⁰Catherine A. Barnes, Journey from Jim Crow: The Desegregation of Southern Transit (New York: Columbia University Press, 1983) 16-17.

1941. The Supreme Court ordered public carriers to assure that accommodations provided for all passengers were "substantially equal," resulting in the integration of dining and pullman cars on interstate lines. However, it did not address facilities on intrastate railways.¹¹ Another breakthrough was made in bus desegregation in the case of Morgan v. Virginia in 1946, when the high court declared Virginia's bus segregation law to be an unconstitutional burden on interstate commerce, as well as an impediment to free interstate travel. However, state officials in several Southern states, including those in Louisiana, declared that the ruling did not apply to intrastate bus laws. To appease Southern officials, bus companies adopted their own segregation regulations to replace the voided state statutes. Therefore, nothing really changed in the Deep South following the Morgan decision.¹²

The Truman Administration inaugurated a brief campaign in the late 1940's to expand civil rights. Among the President's proposals to Congress was a request for a law prohibiting discrimination in interstate transportation. However, because the timing was too early for such legislative action, the President was unsuccessful. The federal government did triumph, though, in its challenge of the Southern Railroad's table-allotment policy on dining cars.

¹¹Mitchell v. United States, 313 U.S. 80 (1941).

¹²Morgan v. Virginia, 328 U.S. 373 (1946).

In Henderson v. United States (1950), the Supreme Court affirmed the government's assertion that the company had breached rules established by the Interstate Commerce Act. Although Plessy was not overturned, the court undermined de facto segregation in dining cars as well as in other forms of segregated transit.¹³

Railroad companies across the country immediately began complying with the Henderson case, except in the Deep South, where segregation on buses and railroads remained the norm for another decade. However, many public carriers began halting or modifying their segregation laws. In 1951, Greyhound Bus Company instructed its drivers to continue observing segregation, but not to employ force against or seek the arrest of any passenger who refused to take a seat in the segregated section of a bus. By the end of 1953, only the Deep South states continued to rigorously enforce and maintain transit segregation laws.¹⁴

On November 7, 1955, a new force was unleashed in the desegregation battle when the Interstate Commerce Commission (ICC) issued new regulations regarding railroads, buses and waiting rooms. The ICC overruled the practice of assigning separate accommodations by race in railway coaches, buses and waiting rooms "insofar as they pertain to interstate travel," because it subjected black passengers to undue and

¹³Henderson v. United States, 339 U.S. 816 (1950).

¹⁴Barnes, Journey from Jim Crow, 80-84.

unreasonable prejudice and disadvantage in violation of the Interstate Commerce Act. Section 3 (1) of the act made it unlawful for a rail carrier "to subject any particular persons . . . to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." In addition, the ICC held that travelers were "entitled to be free of annoyances . . . which inevitably accompany segregation," regardless of the intentions of carriers to provide truly separate but equal facilities for blacks and whites. Transit companies were ordered to discontinue segregation of interstate passengers on trains and in station waiting rooms, and on buses and in bus terminals by January 10, 1956.¹⁵

Desegregation of Bus and Rail Facilities in Louisiana

During the 1950's, Louisiana officials adopted a policy of massive resistance toward any efforts by the federal government to dismantle the de jure system of segregation in transportation facilities in the state. In the early 1960's, the federal government (with its vast resources) launched a vigorous, coordinated and sustained assault on all forms of segregation in transit and brought it to its inevitable conclusion.

The ICC ruling of 1955, which established January 9, 1956, as the deadline for the removal of segregation signs

¹⁵United States. Interstate Commerce Commission. Interstate Commerce Commission Reports 249 (Washington: Government Printing Office) 335, 347-48.

at railway and bus stations and at airports, injected the race issue into the Louisiana gubernatorial election of 1955-56, prompting each candidate to avow his unwavering support for segregation. One candidate, James McLemore, requested that Governor Robert Kennon call a special session of the state legislature to nullify the ICC regulation. Instead, the governor defied the ruling, ordering all state, parish and municipal authorities to continue rigid enforcement of segregated transportation facilities.¹⁶

When the state legislature of 1956 met, it enacted a statute requiring the continuation of segregation in transportation terminals. Transit companies were instructed to provide separate waiting room and other facilities (drinking fountains and restrooms) for white intrastate travelers and another waiting room "for all other passengers." Accommodations were to be equal for all passengers, and new signs were to be posted declaring: "Waiting, Interstate Passengers and Colored Intrastate Passengers," and "White Waiting, Intrastate Passengers."¹⁷ In order to meet the new ICC regulations, the state had simply changed the name of its segregated practices.

An historic moment occurred in November of 1956, when the Supreme Court upheld a lower court decision in Gayle v.

¹⁶New Orleans Times Picayune, Dec. 22, 1955; Little Rock Arkansas Gazette, Jan. 11, 1956.

¹⁷1 RRLR 741 (1956).

Browder, which involved the on-going Montgomery bus boycott. The high court affirmed the decision to void Alabama's intrastate bus segregation laws, yet failed to mention the Plessy case, which had originated over the issue of segregated transit.¹⁸ In her detailed study of the desegregation of Southern transit, Catherine Barnes declares that the Montgomery bus boycott and Browder decision resulted in the gradual elimination of segregation on buses in other Southern cities, brought Martin Luther King to national prominence, demonstrated to blacks that nonviolent resistance and economic power could be employed to negate segregation, and became a shining example for other black Southerners of what could be accomplished through concerted effort.¹⁹

In Louisiana, the general attitude was that the Browder decision applied only to Montgomery. White officials had no intention of voluntarily altering the segregated transit system unless ordered by the courts. However, black leaders in Baton Rouge and New Orleans were heartened by the decision and decided to challenge state and local transit regulations. In late December of 1956, Reverend T. L. Jemison headed a black group in forming the Baton Rouge Christian Movement, whose aim was to desegregate the city bus system.

¹⁸Gayle v. Browder, 142 F.Supp. 707 (M.D. Ala. 1956), 352 U.S. 903 (1956).

¹⁹Barnes, Journey from Jim Crow, 121-22.

Jemison contended that the state was in violation of a Supreme Court mandate in Browder to end segregation in intrastate transit, and that a Baton Rouge city ordinance requiring segregated loading and seating on buses was also unlawful. A brief boycott of city buses by blacks in 1953 had brought slight improvement, but leaders now demanded an end to all segregation in transit, threatening litigation if necessary. Officials of the Baton Rouge Bus Company responded that they were caught between the Supreme Court decision on one hand and state and local regulations on the other.²⁰

New Orleans Public Service, Inc. (NOPSI), which operated the city's bus services, responded that Browder only affected Montgomery, not other city bus systems. In January of 1957, eight black ministers who claimed to represent two hundred fifty churches and nearly two hundred thousand blacks in the New Orleans area, petitioned NOPSI to desegregate the city's buses and streetcars. They asserted that the Browder decision applied to Louisiana transit and that blacks were tired of riding behind screens and being treated like second-class citizens. Two black organizations, the New Orleans Inter-Denominational Ministerial Alliance and the New Orleans Improvement League, led by Reverend A. L. Davis and Dr. William R. Adams respectively, worked in

²⁰New Orleans Times Picayune, Dec. 29, 1956.

harmony to end segregated transit in New Orleans through litigation.²¹

In the face of mounting litigation by black groups, federal courts, the ICC and the Justice Department, interstate bus lines began to abandon segregation as a policy between 1957 and 1960. Continental Trailways abandoned segregation of local passengers entirely during this period, while Greyhound waited until 1961. Most of the segregation in Southern transit in the late 1950's occurred in terminals rather than on transit itself.²²

The first suit to end segregation in transit was filed in federal court in New Orleans in February of 1957. The suit contended that segregated transit in New Orleans caused blacks "great injury, inconvenience and humiliation" and denied their constitutional rights. In May, United States District Judge J. Skelly Wright declared void all state laws requiring racial segregation on buses, streetcars, street railways and trolley buses operating within New Orleans on the grounds that the laws denied blacks equal protection of the laws and due process of law as guaranteed under the Fourteenth Amendment.²³

New Orleans officials did not end segregation on city transit immediately, but decided to await appeals. Judge

²¹Ibid., Jan. 10, 1957.

²²Barnes, Journey from Jim Crow, 129-31.

²³Davis v. Morrison, 2 RRLR 996-97 (1957).

Wright delayed further action until the exhaustion of state and city appeals of his decision. Within a year, the Fifth Circuit Court affirmed the decision and the Supreme Court denied certiorari. Four days after the Supreme Court action, Judge Wright rejected a request by NOPSI to delay desegregation pending further federal appeals, and ordered the end of segregation on New Orleans transit, beginning after midnight on May 31, 1958. Early that morning, an eight-foot cross was burned on the judge's lawn.²⁴

By most accounts, the first day of integrated transit in New Orleans was "uneventful." Most black passengers, not wanting trouble, continued to sit in the back and whites in the front of buses and streetcars. On some buses, whites doubled up in seats so that blacks could not sit next to them, and shifted seats when whites exited. In most cases, passengers minded their own business and went about their own affairs. Thus, for the first time in the twentieth century, black New Orleanians were free to sit wherever they chose on city transit.²⁵

Because of the voiding of the state segregated transit law, the Shreveport City Council unanimously approved an ordinance that authorized an operator of a vehicle for hire

²⁴Morrison v. Davis, 252 F.2d 102 (5th Cir. 1958); 3 RRLR 424 (1958); New Orleans Times Picayune, May 31, 1958; Atlanta Journal, June 1, 1958.

²⁵Atlanta Journal, June 1, 1958; Little Rock Arkansas Gazette, June 1, 1958.

to place passengers wherever he desired "to insure proper weight distribution." Earlier in 1957, five black ministers rode in the white section on a city bus and read their Bibles. Knowing of their intentions in advance, the chief of police made no arrests but later commented that anyone following their example would be arrested.²⁶

During the late 1950's, the federal government did not move vigorously enough to take advantage of propitious opportunities to deliver a knock-out blow to the entire system of segregated transit. The ICC adopted a narrow scope of its jurisdiction in intrastate commerce, while the Justice Department and its Civil Rights Division were too cautious to advance very far. The Eisenhower Administration lacked the verve for an all-out attack on segregated transit, and Congress relied on the other branches of the federal government to take action. Therefore, the entire intrastate transit issue was delayed until the new, vigorous Kennedy Administration was inaugurated.

Following Boynton v. Virginia (1960), which declared that segregation of interstate passengers in dining facilities in rail and bus terminals violated the Motor Carrier Act, Greyhound announced in 1961 that it would remove all segregation signs from its company terminals and restaurants, and would abandon segregated seating on its buses.

²⁶Oklahoma City Daily Oklahoman, Aug. 27, 1958; New Orleans Times Picayune, June 16, 1957.

However, the ruling did not apply to privately owned facilities used by the bus company.²⁷

During the late spring and summer of 1961, "Freedom Rides" swept over the South. When local law enforcement officers failed to protect Freedom Riders from hostile and violent treatment, Attorney General Robert Kennedy decided to intervene in Southern transit. Utilizing the resources of the Justice Department in conjunction with the ICC, he enforced desegregation on interstate buses through pressure and threats of litigation. Four blacks who attempted a Freedom Ride from Shreveport to Jackson, Mississippi, were arrested in a white waiting room of the Continental Trailways terminal in Shreveport. In July, five other blacks, using interstate bus tickets, rode from Shreveport to New Orleans, stopping briefly in Alexandria and Baton Rouge. In Baton Rouge, two women in the group were refused service in the Continental Trailways restaurant, and were also asked to leave the white waiting area. However, in New Orleans, all five Freedom Riders were served at the bus depot lunch counter without incident.²⁸

In September of 1961, the ICC unanimously adopted new desegregation rules for interstate bus carriers that were to

²⁷Boynton v. Virginia, 364 U.S. 454 (1960).

²⁸Baton Rouge State Times, Aug. 4, 1961; New Orleans Times Picayune, Aug. 4, 1961.

take effect on November 1, 1961. Under the new guidelines, all segregation was banned on buses and in stations used by interstate passengers. Bus companies were directed to post signs on buses declaring that seating was without regard to race, color or national origin, and were prohibited from supplying or using stations that were racially segregated. The mere presence of a segregation sign was considered impermissible segregation, so only stations displaying the new ICC rules could be used by bus companies.²⁹ In order to comply with these regulations, bus companies cancelled or failed to renew agreements with establishments whose owners refused to abide by ICC rules.

Reaction to the new ICC regulations was swift in North Louisiana, where state action prevented their enforcement in early November of 1961. Police arrested the manager of the Continental Trailways terminal in Shreveport when he removed segregation signs on November 1. Then, local district attorneys in Monroe, Ruston and Alexandria obtained state court orders forbidding integration of bus and rail depots. The Louisiana & Arkansas Railway Company took down the segregation signs in its depots on November 6, then replaced them five days later because of the state restraining order. The state also obtained a temporary restraining order

²⁹Barnes, Journey from Jim Crow, 176-77.

prohibiting Greyhound and Continental bus companies from desegregating terminal waiting rooms and facilities in Baton Rouge.³⁰

The Justice Department did not waiver from its steadfast course of action, though. It promptly announced in mid-November of 1961 that the Justice Department would handle any interference by Southern authorities with ICC rules, while the ICC would handle noncompliance by bus companies. Suits were immediately filed against Monroe, Alexandria and Ruston to prevent state courts from enforcing segregation in bus and train terminals. In the following January, a three-judge federal panel (in United States v. Lassiter) voided Louisiana statutes requiring segregation of bus and train terminals because they imposed an undue burden on interstate commerce and denied equal protection. In addition, Louisiana officials, Continental Southern Lines, and Louisiana & Arkansas Railway Company were prohibited from requiring segregation in transit in the three cities.³¹

The Justice Department also sought an injunction of the state restraining order which prevented Greyhound and

³⁰ Washington Post, June 1, 1962; Baton Rouge State Times, Nov. 11, 1961; State v. Greyhound Corp., State v. Continental Southern Lines, Inc., 7 RRLR 233 (1961).

³¹ Barnes, Journey from Jim Crow, 179; Baton Rouge State Times, Nov. 23, 1961; United States v. Lassiter, 203 F.Supp. 20 (W.D. La. 1962); New Orleans Times Picayune, Jan. 26, 1962.

Continental bus companies from desegregating waiting rooms and facilities in Baton Rouge. In March of 1962, a three-judge federal court for Louisiana's eastern district voided state statutes requiring segregated transit facilities and dissolved the state court restraining order.³²

Despite the voiding of the state's segregated terminal laws in the Lassiter case, Shreveport police continued to enforce segregation in terminal facilities and to arrest blacks who attempted to cross the color line. Therefore, in November of 1962, federal courts enjoined the city and certain of its officials from enforcing segregation in transit because it imposed an undue burden on interstate commerce and violated the Motor Vehicle Act.³³ With this case, the last major stronghold of segregation in Louisiana bus terminal facilities succumbed.

Desegregation of Airport Terminals

Perhaps because so few blacks and whites used commercial airlines in Louisiana in the 1940's and 1950's, Southern states did not adopt as stringent segregation laws for airport terminals as they did in bus and rail transit. The most commonly practiced form of racial discrimination was not on board aircraft, but in terminal dining

³²United States v. Pitcher, 7 RRLR 223-24 (1962).

³³United States v. City of Shreveport, 210 F.Supp. 708 (W.D. La. 1962).

facilities, restrooms and waiting areas. Since most airports were owned by governmental bodies, they were subject to the ban by the United States Constitution on racial discrimination, and it was more difficult for states and cities to circumvent federal regulations.

The first significant federal case dealing with segregation in an airport terminal was Nash v. Air Terminal Services (1949), which involved segregated dining facilities in a dining and coffee shop in Washington National Airport. Federal courts declared that a privately owned cafe located in a federally owned airport was a public facility within the meaning of the Constitution, and that Air Terminal Services was presently operating dining facilities "in the place and stead of the Federal government."³⁴

In 1956, the Civil Aeronautics Administration banned the use of federal funds for the construction of segregated facilities in air terminals. However, the new rules were limited to segregated facilities within airports and to future construction using federal appropriations. It was possible, though, for a city to circumvent federal regulations by building segregated facilities with its own funds, thus remaining eligible for federal grants for other construction at the airport.³⁵

³⁴Nash v. Air Terminal Services, 85 F.Supp. 545 (E.D. Va. 1949).

³⁵Barnes, Journey from Jim Crow, 140.

In 1962, federal courts voided segregated practices at airport terminals in New Orleans and Shreveport. Moisant International Airport in New Orleans became a target of the Justice Department in June of 1961, because of segregated practices in its terminal. A suit was filed to bar the city and a private concession operator from refusing to serve blacks in the airport restaurant and coffee shop. Previously, airport officials had accepted \$1,125,000 for construction of the terminal, agreeing in the funding application to "operate the airport for the use and benefit of the public, on fair and reasonable terms, and without unjust discrimination." However, blacks were required to obtain food at a small snack bar without seating facilities in the terminal. The Justice Department cited instances of discrimination being practiced against members of the armed forces and diplomatic representatives of other nations, and food vouchers issued by airlines to black interstate and foreign passengers whose flights were delayed, were not being honored at the airport. In Adams v. New Orleans, the federal courts banned the continued operation of segregated facilities within the airport terminal in August of 1962.³⁶

The Justice Department filed a suit against the Greater Shreveport Municipal Airport in July of 1962 for practicing segregation within its terminal. In November, a federal

³⁶New Orleans Times Picayune, June 27, 1961; Adams v. New Orleans, 208 F.Supp. 427 (E.D. La. 1962).

judge ordered the removal of segregation signs from the airport terminal and prohibited segregated practices in terminal facilities and eating establishments.³⁷

Transit and the Civil Rights Act of 1964

The Civil Rights Act of 1964 brought Congressional sanction to a fait accompli by the federal executive and judicial departments in the desegregation of transit. Under its various provisions, de jure segregation in public facilities was prohibited (Title II), the Justice Department was permitted to initiate litigation against local and state government bodies which owned or operated segregated public facilities (Title III), discrimination was prohibited in programs or activities receiving federal funds (Title VI), and the Justice Department was permitted to initiate or join cases against segregated city carriers (Title IX). The threat of possible litigation or loss of needed federal funding was usually enough to force remaining transit companies and government agencies to desegregate. However, it was still possible to circumvent federal law by de facto means, such as by establishing virtually all-black or all-white bus routes which were enhanced by residential segregation.³⁸

³⁷United States v. City of Shreveport, 210 F.Supp. 36 (W.D. La. 1962); Shreveport Journal, July 27, Nov. 3, 1962.

³⁸Civil Rights Act of 1964; Barnes, Journey from Jim Crow, 192.

The last major Louisiana case involving segregated transit was settled in 1965. The suit involved a New Orleans ordinance that provided for segregation in the use of taxicabs. A federal court invalidated the discriminatory provisions of the ordinance, but allowed city officials time to bring about non-discriminatory compliance by city taxicabs, since New Orleans officials had not insisted on strict adherence to or enforcement of the ordinance in recent years. Within fifteen days of the court ruling, the Department of Public Utilities and the Taxicab Bureau were to notify holders of city taxicab permits that they would no longer be permitted to discriminate in the operation of their vehicles.³⁹

After 1965, all legal barriers to full and equal use of transit facilities on a nondiscriminatory basis in the State of Louisiana had fallen. De jure segregation was ended on all public and private transportation conveyances as well as in related facilities such as depot and terminal waiting rooms, dining areas, restrooms and ticket counters. Unfortunately, de facto segregation still remained in employment and in the use of transit, and numerous incidents of discrimination toward blacks using transportation facilities in the state could still be found for the next decade.

Because of allegations of continued racial discrimination being practiced in New Orleans in 1969, Mayor-elect

³⁹Bergeron v. City of New Orleans, 11 RRLR 945 (1965).

Maurice Landrieu introduced a public accommodations ordinance in the City Council at the request of the New Orleans Human Relations Committee. Under the proposed ordinance, city bars and taxicab companies were prohibited from practicing discrimination on the grounds of race, religion or national origin beginning January 1, 1970. Following its adoption on December 23, a state district court issued an order restraining its enforcement after a suit by bar owners. However, on January 15, 1970, a federal judge voided the state court order and upheld the public accommodations ordinance.⁴⁰

Segregated Public Accommodations in Louisiana

Segregation in public accommodations in Louisiana had its origins in the antebellum period. According to Louisiana historian Roger Fischer, the presence of large numbers of free blacks in New Orleans before the Civil War caused a collapse of racial discipline typical in rural areas of the state. Blacks residing in New Orleans enjoyed the use of segregated facilities to a degree unknown in other parts of the South. As early as 1816, theaters and public exhibitions were officially segregated by city ordinance, but blacks were denied access to white restaurants,

⁴⁰Heath v. Schiro, Heath v. City of New Orleans, 2 RRLS 35; New Orleans Times Picayune, Dec. 17, 30, 31, 1969, Jan. 16, 1970.

hotels, private white schools and "respectable saloons."⁴¹ However, it must be noted that New Orleans was only one part of Louisiana, and that these conditions were not the norm in smaller towns and remote areas of the state.

On first appearance, Louisiana seemed to have had one of the most radical of Reconstruction governments among the ex-Confederate States. Its Constitution of 1868 included a provision which prohibited "distinction or discrimination on account of race or color" in all "places of public business, or of public resort" that were licensed by a state, parish or municipal authority. An 1869 public accommodations law was enacted which prohibited discrimination by race or color in admission to or entertainment at any public inn, hotel or place of public resort in the state. The act was embodied in operating licenses, which subjected an operator to forfeiture of the license, closure of the business and liability for civil damages for violations.⁴² However, the attitudes of pre-Civil War whites remained, and areas that were beyond the reach of federal troops adamantly opposed all social aspirations of blacks.

Joe Gray Taylor, historian of the Reconstruction period in Louisiana, holds that there was no radical change in daily relations between whites and blacks during

⁴¹Fischer, The Segregation Struggle, 9-11.

⁴²Constitution of 1868, Article 13; Pauli Murray (ed.), States' Laws on Race and Color (1950), 172.

Reconstruction, irregardless of statutes on the law books. Physical segregation that occurred during slavery days continued afterward, and no serious thought was ever given to allowing blacks the use of public accommodations on a basis equal to that of whites. Taylor maintains that segregation was not required by law, but "was enforced by custom and public opinion just as effectively as by law."⁴³

After 1877, Louisiana officials gradually legislated segregation and denial in the use of public accommodations, with their actions increasingly upheld by the federal courts. The Constitution of 1879 omitted all references to segregation but deleted all sections relating to social equality. State leaders were still uncertain about how far the federal government would go toward enforcing the Fourteenth Amendment and the Federal Civil Rights Act of 1875. After 1879, these two federal documents were the only legal impediments to overt segregation in Louisiana.

The Civil Rights Act of 1875 made it unlawful to deny anyone "full and equal enjoyment of any of the accommodations, advantages, facilities and privileges of inns, public conveyances on land and water, theaters and other places of public amusement" on the basis of race and color. In the Civil Rights Cases of 1883, the United States Supreme Court held that racial discrimination was not a form of involuntary servitude prohibited under the Thirteenth Amendment,

⁴³Taylor, Louisiana Reconstructed, 434-35.

and that the Fourteenth Amendment did not authorize Congress to prohibit private acts of racial discrimination. A decade later, the high court crystallized its efforts to prevent the federal government from safeguarding the rights of blacks from state infringement in the Plessy decision of 1896. Racial discrimination by private action was now protected under the guise of "separate but equal" accommodations, and the door was opened wider to further acts of racial discrimination in Louisiana.⁴⁴

During the first six decades of the twentieth century, blacks were prohibited by law and custom from using most public facilities in Louisiana. In 1908, blacks and whites were prohibited from drinking in the same saloons, and in 1914, segregation was extended to circuses, shows and tent exhibitions.⁴⁵ By 1956, most of the segregation practiced across the state was due to custom, local ordinances or private regulations, rather than through state statute. As the national civil rights movement heated up during the 1940's and early 1950's, white leaders in Louisiana became concerned about the future of segregation. Therefore, in 1956, the state legislature enacted three new segregation

⁴⁴Robert F. Cushman. Cases in Constitutional Law (Englewood Cliffs: Prentice-Hall, 1975) 684; Civil Rights Cases, 109 U.S. 3 (1883); Plessy v. Ferguson, 163 U.S. 537 (1896).

⁴⁵Acts of Louisiana, 1908, Regular Session, no. 235, 1914, Regular Session, no. 235, 1916, Regular Session, no. 118.

laws that dealt with public accommodations. One law provided for the separation of whites and blacks in all recreational activities; another required employers to furnish separate sanitary, eating and drinking facilities for white and black employees; and a third law prohibited interracial participation in athletic events and social functions.⁴⁶

The first of these laws to confront federal litigation was the one which prohibited interracial participation between white and black athletes. Prior to its passage, the Board of Supervisors at Louisiana State University (LSU) voted not to ban interracial sporting events, despite pressure from the Baton Rouge City Council and several segregationist organizations. After the law went into effect on October 15, 1956, eight schools cancelled games planned with LSU because of the presence of blacks on their teams. A black prizefighter challenged the state statute and a regulation of the Louisiana State Athletic Commission when he was denied the right to fight because of his color. In 1958, federal courts declared that such segregation could not be justified under the state's police powers, so the commission and the state were restrained from enforcing their regulations because of their effect in violating equal protection.⁴⁷

⁴⁶Acts of Louisiana, 1956, Regular Session, no. 14, 395, 579.

⁴⁷Dorsey v. State Athletic Commission, 168 F.Supp. 149 (1958), 359 U.S. 533 (1959).

Sit-in Demonstrations in the Early 1960's

As 1960 began, the civil rights movement took a sharp turn from litigation to direct action in the form of sit-ins, most of which were targeted at lunch counters, restaurants, libraries, theaters, hotels, parks and beaches. However, they achieved only a modicum of success prior to the enactment of the Civil Rights Act of 1964.

During the late summer and early fall of 1960, New Orleans was the scene of numerous sit-ins and picketing at churches, lunch counters and stores that practiced segregation. In September, small groups of black and white students staged sit-ins at three white Protestant churches. At one of them, two blacks were denied entrance after being informed that the church's board of deacons had a policy not to admit blacks at that time. During the previous week, several stores in the city's downtown area were picketed and black protestors arrested. Mayor DeLesseps S. Morrison informed the public that demonstrations hurt "the community interest, the public safety and the economic welfare" of New Orleans, and that he had instructed the police not to tolerate any more sit-ins or pickets. However, the pickets, demonstrations and arrests continued into the next year. In January of 1962, the president of the Greater New Orleans Chamber of Commerce visited Atlanta and Dallas to see how they had handled desegregation. Secret meetings were then held in February between black leaders, merchants and civic

leaders in New Orleans. In September, by prearrangement, fifteen major drug, department and variety stores desegregated their branches within the city as two hundred blacks in small groups of three or four sat down and were served at formerly white lunch counters without incident.⁴⁸

Another major victory was scored in Baton Rouge over lunch counters in the following year. The city was the scene of demonstrations and sit-ins at several lunch counters in the spring of 1960, and of a major confrontation between police and demonstrators in December of 1961, which led to the Cox case and injunctions against further demonstrations, picketing or sit-ins in the city during 1962. When lunch counter sit-ins resumed in the spring of 1963, a coordinated effort was made between merchants and a biracial committee to quietly desegregate lunch counters at twelve major stores in August.⁴⁹

Elsewhere in the state, there was intense opposition to desegregation of any kind. Not until the enactment of the Civil Rights Act of 1964 did most of the segregation barriers to equal treatment come down across the state.

Desegregation of Hotels and Motels

The struggle to desegregate hotels and motels did not create much controversy. New Orleans was the central focus

⁴⁸ New Orleans Times Picayune, Sept. 13, 18, 19, Oct. 6, 1960; New York Times, Sept. 13, 1962.

⁴⁹ Baton Rouge State Times, May 30, Aug. 7, 1963.

of early efforts to desegregate lodgings in the state prior to the Civil Rights Act of 1964. Since it was difficult to disguise a hotel or motel in order to escape coverage under this act, most Louisiana lodging proprietors quietly desegregated without much contention.

Economic pressure and civic pride played major roles in the desegregation of New Orleans hotels in the early 1960's. In May of 1963, a three-judge federal panel voided the state law that sanctioned segregated hotels. However, the court declared that the state could not compel a proprietor to segregate or integrate his establishment. Only the owner could decide that question for himself.⁵⁰

Because New Orleans was one of the few Southern cities that still practiced segregated lodging, it was avoided as a convention site by many integrated organizations. In 1963, the American Legion convention, which was expected to bring fifty thousand persons and \$7,000,000 to New Orleans, cancelled its plans to meet in the city because Louisiana Legionnaires could not guarantee unsegregated facilities for all delegates. It was estimated that approximately 80 percent of large national conventions had black members and that all would be integrated within a few years. Therefore, in September, four of the most prominent hotels in the city (Sheraton-Charles, Jung, Royal Orleans and New Orleans

⁵⁰McCain v. Davis, Bates v. Sheraton Corporation of America, 217 F.Supp. 661 (E.D. La. 1963); New Orleans Times Picayune, May 19, 1963.

Airport Hilton Inn) decided to admit some blacks rather than risk losing big conventions. However, the Roosevelt and Monteleone remained segregated for another year. Despite the absence of blacks in its delegations, a trade conference relocated its convention from the segregated Roosevelt Hotel to the integrated Jung in May of 1964, in order to avoid losing its key speakers, who opposed segregation. The owner of the Roosevelt responded that he would not integrate until required to do so under the civil rights bill pending before Congress.⁵¹

The Civil Rights Act of 1964 inflicted a mortal blow on segregated public accommodations in Louisiana, by imparting to the federal executive and judicial branches the authority necessary to crush all remaining vestiges of de jure segregation, and placing an enormous burden of proof for de facto segregation on proprietors who engaged in private acts of discrimination. Title II of the act, particularly Sections 201 and 202, became the main instrument used by the federal courts in Louisiana to eradicate segregation and discrimination in public accommodations. Section 201 prohibited discrimination or segregation on the grounds of race, color, religion or national origin in the denial of anyone "to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of

⁵¹ New Orleans Times Picayune, May 21, 1963; Baton Rouge State Times, Sept. 10, 1963, May 13, 1964.

accommodation." It also established a definition of what constituted a "place of accommodation" that "serves the public." Section 202 prohibited the use of any statute, ordinance or regulation by a government body in requiring a proprietor to operate a business on a racially discriminatory basis.⁵²

The first major challenge to Title II of the Civil Rights Act occurred before the end of 1964 in the case of Heart of Atlanta Motel v. United States. The Supreme Court not only held that Congress was within its powers to enact this legislation, but expanded its interpretation of the interstate commerce power of Congress to include the regulation of local activities that might have a substantial and harmful effect on commerce. Section 201 (c) of Title II specifically targeted "any inn, hotel, motel, or other establishment which provided lodging to transient guests" as affecting commerce.⁵³

In most cases, lodging proprietors in Louisiana quietly desegregated their establishments after 1964, with one noted exception: the United States brought action against the operator of two motels in the state because of their refusal to admit, accommodate or provide services or privileges to blacks on racial grounds. In 1966, they were restrained by

⁵²Civil Rights Act of 1964.

⁵³Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964).

federal courts from such discriminatory practices in the future.⁵⁴ With this test case, it was thereafter unnecessary to resort to litigation in order to gain compliance with the Civil Rights Act in Louisiana in regard to hotel and motel lodgings.

Desegregation of Restaurants

Restaurants presented a form of close social mixing that alarmed many whites because of its implications for the future of segregated public accommodations and struck at the heart of the doctrines of white supremacy. It was the Civil Rights Act of 1964 that brought about the actual desegregation of most dining establishments in Louisiana. Except for the earlier desegregation of lunchrooms in transit terminals or lunch counters in New Orleans and Baton Rouge, Louisiana restaurants had remained almost untouched by integration prior to 1964. However, the provisions of Title II of the Civil Rights Act of 1964 made de jure and de facto segregation in the operation of privately-owned dining establishments in the state untenable, despite attempts at various ruses to forestall compliance with the law.

Sections 201 and 202 of the Civil Rights Act covered restaurants and cafeterias and became the subject of a challenge in Katzbach v. McClung. The Supreme Court quickly

⁵⁴United States v. Happy Hosts, Inc., 11 RRLR 1503 (1966).

declared that Title II covered any eating establishment which "principally engaged in selling food for consumption on the premises . . . if . . . it serves or offers to serve interstate travelers or a substantial portion of the food which it serves . . . has moved in commerce."⁵⁵

In July of 1964, there was no immediate influx of blacks into formerly all-white restaurants. Within two weeks of the passage of the Civil Rights Act, several major Shreveport businesses with branches outside the state desegregated their lunch counters, but most of the restaurants and clubs in and around the city removed their "white only" signs and went "private", in an attempt to bypass the requirements of the federal act. Other restaurants in northern and western Louisiana took similar action. In the Baton Rouge area, a few major restaurants immediately admitted blacks, while others continued to deny their patronage or went private. In New Orleans, blacks were told by their leaders to use accommodations when they wanted to, not just as test cases. While the mayor warned outsiders not to come to New Orleans to test the accommodations law, blacks were reportedly served at various cafeterias in the city, and major restaurants were taking reservations by blacks. Outside the city, in Jefferson Parish, blacks were refused service at several drive-in and indoor restaurants. In Plaquemines Parish, segregation leader Leander Perez, Sr.

⁵⁵Katzenbach v. McClung, 379 U.S. 294 (1964).

called on all Southerners to refuse to heed the Civil Rights Act and to snarl the federal courts with litigation.⁵⁶

The most noted attempt to circumvent the Civil Rights Act was to transform a restaurant into a "private club" that was not open to the public, in order to meet an exemption provided for in Section 201 (e) of the act. The largest such attempt was the formation of the Northwest Louisiana Restaurant Club of Shreveport and Bossier City, which was joined by nearly one hundred restaurants in the state. The organization had a ninety-nine year charter which provided that non-voting membership cards would be distributed to "acceptable" customers and patrons. It issued 160,000 membership cards and had plans to issue another 100,000. However, the United States brought suit alleging that club members were practicing racially discriminatory acts in violation of Title II. Federal courts determined that all of the restaurants belonging to the club had practiced racial segregation prior to the passage of the Civil Rights Act, and that the club existed for the sole purpose of avoiding compliance with federal law. While professing to be a private club, ample evidence was presented that membership cards were issued to any white customer but denied to all blacks. Declaring the club to be a sham, the courts permanently enjoined club members from denying blacks equal

⁵⁶ Burton, On the Black Side, 108; Baton Rouge State Times, July 10, 23, 1964; New Orleans Times Picayune, July 7, 1964.

access to and use of their restaurants and other facilities on racial grounds.⁵⁷

Desegregation of Bars, Theaters and Recreation Facilities

The desegregation of bars and lounges was brought about gradually under various provisions of Title II of the Civil Rights Act, as federal courts expanded its meaning to cover any discrimination sanctioned by law, government or law enforcement officials. Under the original construction of the act, bars were only included for coverage if they were located within a covered establishment that was under the jurisdiction of Title II. Otherwise, private drinking establishments were free to determine their clientele, within reason. However, the burden of proof was on the proprietor to manifest that the discrimination being practiced was not illegal.

Because of hazy provisions of Title II in regard to bars, several suits were filed in federal courts in the latter half of the 1960's alleging racial discrimination. The courts held in 1965, that Section 202 applied only if discrimination by an establishment was required by law, rather than because of the private preferences of proprietors who practiced discrimination on their own initiative. In a 1967 case, the federal courts voided a New Orleans city

⁵⁷Baton Rouge State Times, July 3, 1964; United States v. Northwest Louisiana Restaurant Club, 256 F.Supp. 151 (W.D. La. 1966).

ordinance that required racial segregation in establishments selling drinks for consumption on the premises. The court held that this measure was in violation of Section 202 because it was an attempt by a governmental agency to compel segregation in the operation of a business.⁵⁸

When the New Orleans City Council enacted a public accommodations ordinance regarding bars and taxicabs in 1969, eighty bar owners immediately brought suit on the grounds that they would suffer a substantial loss of white customers if their establishments were integrated. The council had passed the ordinance following the negative image portrayed during the summer and fall of 1969, when black delegates of conventions in New Orleans were denied service in several local bars. In November, delegates to the Head Start and Child Development Conference meeting in New Orleans adopted several resolutions charging the city with racial discrimination and urging a convention boycott of the city and relocation of the 1970 Super Bowl (expected to gross \$4,250,000 for New Orleans) to another city unless conditions improved for blacks. Therefore, civic and business leaders of the city pressed for reform, resulting in the enactment of a new public accommodations ordinance.

⁵⁸Tyson v. Cazes, 238 F.Supp. 937 (E.D. La. 1965); Pania v. City of New Orleans, 262 F.Supp. 651 (E.D. La. 1967).

After federal courts negated a state court restraining order, the ordinance took effect in January of 1970.⁵⁹

By 1972, the reasoning of the federal district courts had broadened to include almost anything bordering on racial discrimination in bars and lounges. In that year, the courts held that a bar that provided a juke box and pool table for the entertainment of its patrons came under Section 201 of Title II as a "place of amusement." The court sensed that the Civil Rights Act should be afforded a liberal construction to eliminate the inconvenience, unfairness and humiliation of racial discrimination.⁶⁰

As with other forms of segregation, private acts of discrimination in the operation of movie theaters in Louisiana were voided by the Civil Rights Act under Section 201 (b) of Title II, which specifically covered "any motion picture house." Following the enactment of the law, most theaters in the state decided to comply voluntarily. However, a suit ensued when the owner of a theater in Mamou, Louisiana, continued to restrict blacks to balcony seating and whites to the lower section of his movie house. The courts held that films customarily shown in the theater moved in interstate commerce, making the establishment a "place of public accommodations" as defined in Title II.

⁵⁹New Orleans Times Picayune, Aug. 14, Sept. 24, Nov 21, Dec. 31, 1969, Jan. 16, 1970.

⁶⁰United States v. Vizona, 342 F.Supp. 553 (W.D. La. 1972).

Therefore, the proprietor's seating practices constituted segregation and was prohibited by federal law.⁶¹

Most of the public recreational facilities such as parks, playgrounds, gyms, swimming pools and auditoriums in Louisiana were state or locally owned and had already come under federal regulations proscribing their segregation as "state action." After 1964, Title II was used to desegregate private recreational facilities that offered the sale of food or entertainment to the general public and which were practicing racial discrimination in violation of federal law.

The major case dealing with segregated recreational facilities was Miller v. Amusement Enterprises, Inc., which involved a Baton Rouge amusement park that provided mechanical rides for the entertainment of children, and which operated an ice skating rink during the winter. In 1966, the federal district court in Baton Rouge decided that the park, dance studios and bowling alleys did not fall under Title II because they did not offer exhibitions for the entertainment of spectators. However, on a rehearing in 1968 by the Fifth Circuit Court (which had affirmed in 1967), the appellate court decided that the amusement park was covered by Title II as a "place of amusement."⁶²

⁶¹Bryant v. Guillory, 11 RRLR 426 (1965).

⁶²Miller v. Amusement Enterprises, Inc., 259 F.Supp. 523 (E.D. La. 1966), 391 F.2d 86 (5th Cir. 1967), 394 F.2d 342 (5th Cir. 1968).

In 1967, the federal courts achieved the desegregation of a bowling alley in the New Orleans suburb of Algiers in a roundabout way. Although the Civil Rights Act of 1964 did not cover bowling alleys, the establishment contained a lunch counter that served bowlers and spectators. The courts concluded that the refreshment counter came under Section 201 of Title II, which encompassed a business that was located on the premises of a covered establishment, served interstate patrons and whose food moved in interstate commerce. In addition, the snack bar was an adjunct to the bowling alley and thus, was not exempt from the act.⁶³

Title II was also used by the federal courts to prevent subterfuges in the realm of sports facilities. The United States brought suit against the Slidell Youth Football Association, which operated a youth football league and owned a sports facility where league teams competed. After 1964, the organization deleted "white only" from its bylaws and added a restrictive membership clause, under which applicants were required to obtain a two-thirds vote of voting members of the association in order to participate in its football program. In 1974, a federal district court held that its operations constituted a "pattern and practice" of racial discrimination, its sports facility was a "place of entertainment," its operations affected commerce,

⁶³Adams v. Fazzio Real Estate Co., Inc., 268 F.Supp. 630 (E.D. La. 1967).

and that it was not a private club. Therefore, the association was subject to provisions of the Civil Rights Act.⁶⁴

By 1974, there were few traces of overt discrimination still being practiced in transit or public accommodations across the state. Prior to 1964, de jure segregation had been voided by the federal courts, and various state services were ordered to desegregate and cease discriminatory operation, particularly in the cities of New Orleans and Baton Rouge. After Congress enacted the Civil Rights Act of 1964, privately-owned accommodations felt the brunt of federal determination to end segregation. Most of the proprietors of public accommodations submitted because of mounting lawsuits and after realizing that many of the fears expected to accompany desegregation had not materialized.

During the late 1960's, Governor John J. McKeithen adopted a neutral posture on desegregation outside of the field of education. The new administration under Edwin Edwards enjoyed a large measure of black support and proceeded to push for the repeal of segregationist laws in the 1972 state legislature. Repealed were requirements for segregated sports and social events, transit, sanitary facilities, drinking fountains, and waiting rooms.⁶⁵ In 1973, various civil rights measures to protect equal public

⁶⁴United States v. Slidell Youth Football Association, 387 F.Supp. 474 (E.D. La. 1974).

⁶⁵Acts of Louisiana, 1972, Regular Session, no. 254, no. 262, no. 263, no. 266.

access to public accommodations were incorporated in the new state constitution, which was approved on April 20, 1974, and took effect that same year. Under it, special provisions were included prohibiting the denial of equal protection of the laws or passage of laws which discriminated against anyone "because of race or religious ideas, beliefs, . . . birth, age, sex, culture, physical condition, or political ideas or affiliations." In another provision, everyone was granted "access to public areas, accommodations, and facilities" free from discrimination based on race, religion, national ancestry, age, sex or physical condition.⁶⁶

Not only did the executive and legislative branches of the state government undergo a change of attitude by 1974. The state courts became vigilant and ready to forestall any attempt to maintain discrimination in transit and public accommodations. Louisianians had come a long way since the Brown decision of 1954 and the Civil Rights Act of 1964. Although traces of discrimination continued to exist in scattered areas of the state in the form of de facto segregation, these attempts, like dinosaurs, were doomed to extinction in light of the changes in both attitudes and law within the state by 1974.

⁶⁶State of Louisiana, Constitution of 1974, Article 1, Sec. 3, Sec. 12.

Chapter IX

DESEGREGATION IN FAMILY RELATIONS, EMPLOYMENT AND HOUSING

Introduction

Among the most difficult areas to desegregate were family relations, employment and housing. All three were rooted in both de jure and de facto segregation, and provided the core for separate white and black societies. The weight of culture, heritage and personal preferences assured that desegregation would be only limited successes in all three areas.

De jure regulations had been provided in the area of family relations since the end of Reconstruction to maintain and to safeguard white heritage, both past and future, from black intrusion. In the name of white supremacy, laws were adopted in Louisiana restricting blacks from claiming white status on legal documents, or from cohabitating with whites. In addition, blacks were later threatened with denial of state benefits if they chose or encouraged others to defy segregation.

Discrimination in employment in Louisiana was primarily based on custom and tradition, having its origins in the antebellum period. Prior to 1964, strides were made mainly by federal executive decree, which outlawed the application

of racial discrimination in federally-funded construction contracts. However, Title VII of the 1964 Civil Rights Act was most effective in eradicating de jure and overt practices of discrimination, along with sympathetic federal court action that established affirmative action programs to overcome the influence of past practices of racial discrimination.

As with employment, housing discrimination was particularly difficult to manage. Both were rooted more in custom than in law, making it difficult to distinguish where law ended and custom began. Although housing segregation originated during Reconstruction, it was not until 1968 that housing received the full attention of the federal government, when both Congress and the Supreme Court decided to actively participate in the destruction of racial discrimination in housing. However, as with employment, much of the discrimination was imbedded within the bedrock of society and could not be uprooted by normal means of legislation, prosecution or litigation. In the final analysis, only time could temper personal choices to discriminate in both employment and housing.

Desegregation in Family Relations

Among the most serious threats to "racial purity," white supremacy and the entire segregated way of life in the South was the issue of family relations. Encompassing marriage and divorce laws, birth and death certificates, and

laws dealing with children and inheritance, the area of family relations was steeped in de jure safeguards to prevent any possibility of intrusion by blacks into a white world.

One of the primary fears of the Negrophobic South was the "pollution" of the blood and heritage of the white race by blacks through miscegenous relationships. Although culture could have accomplished the task fairly well, the leaders of Louisiana felt that it was crucial to bestow the sanction of law on these social taboos, resulting in the enactment of a wide range of statutes before 1900 to outlaw interracial sexual contacts in and out of marriage.

By 1960, with the acceleration of the national civil rights movement outside of the state, many Louisianians sought a way to prevent the collapse of segregation. Legislators hardened the state's position on miscegenation as well as on attempts to change the racial designation on birth certificates to "white," and employed scare tactics by serving notice on needy blacks that their identification with the civil rights movement could jeopardize continued use of free state institutions or participation in state public assistance programs. Not until the 1970's was an atmosphere established that was conducive to equal access to state benefits on a nondiscriminatory basis, or was it possible to expunge discriminatory legislation regarding marriage, vital records and children from state law.

The subject of marriage clearly came under state action, since society felt the need to place restrictions

on who could perform marriages and on who could marry. In addition to regulations on marital procedure, race was taken into consideration for marriage in Louisiana prior to 1967. Miscegenation, or intermarriage between people of different races, was still prohibited in Louisiana and fifteen other states when the United States Supreme Court voided them in 1967.

Miscegenation laws were plainly state action since they prohibited interracial marriages and cohabitation, and attached criminal penalties for violation. This was a particularly difficult subject to broach because of the apprehension among whites of the "mongrelization" of the white race and the propagation of half-breed outcasts who would be unable to fit into either white or black societies. While racial mixing was one of the greatest fears of most white Southerners, most black Southerners did not view miscegenation as a major concern. Gunnar Myrdal observed in his landmark study of black social and psychological conditions that whites placed miscegenation at the top of their list of priorities for maintaining segregation, while blacks saw it with scant significance as a barrier to equal rights.¹ However, blacks were opposed to miscegenation laws because of their psychological impact in implying that they were not fit to marry whites. A Ford Foundation study conducted

¹Gunnar Myrdal, An American Dilemma: The Negro Problem and Modern Democracy (New York: Harper, 1944) 60-61.

among several black families in Chicago in the early 1960's, attested that there was very little proclivity within the group studied to promote miscegenation.²

Prior to the Civil War, it was not uncommon for wealthy white Louisiana men to take black mistresses, many of whom were set up in apartments in New Orleans. At that time, it was relatively easy to keep blacks and whites separated socially, so there were few fears that blacks would infiltrate white society through blood lines. However, white imagination and fears of domination by blacks grew by leaps and bounds with white perceptions and fantasies acquired during Reconstruction. All social contacts between the races became circumspect, and blacks became socially ostracized, except on an employer-servant level.

During Reconstruction, conservative whites were unable to enact or to enforce legislation restricting social contacts between the races. In fact, the Radical legislature was able to enact a law in 1870 legitimizing the natural children of persons who had been prohibited from marrying during slavery.³ Meanwhile, whites awaited the opportunity to pass legislation that would prevent the occurrence of their greatest fear--racial mixing of the white blood line.

Between 1894 and 1960, the Louisiana legislature enacted a series of laws to check sexual contact between

²Bell, Race, Racism and American Law, 267-68.

³Acts of Louisiana, 1870, Regular Session, no. 68.

whites and blacks. In 1894, "miscegenation" was defined and all marriages between whites and blacks were voided. Then, in 1900 and in 1902, mixed marriages of Louisiana citizens who had married outside of the state, then returned to Louisiana to live as husband and wife, were nullified. The legislature addressed the subject of "concubinage" in 1908 and 1910, prohibiting such unions between whites and blacks, and providing penalties for violations of the laws. In 1920 and 1942, miscegenous marriages were prohibited again, and a penalty of imprisonment with or without hard labor for up to five years was provided for persons found guilty of engaging in miscegenation.⁴

The state miscegenation laws came under attack in the 1950's, when a state district court voided the statutes. However, the state supreme court overturned the decision in 1959, upholding the acts as a constitutional use of the police powers to maintain "purity of race" and to prevent the "propagation of half-breed children."⁵ Thus far, the federal courts had avoided ruling on the issue of interracial marital relationships, but this situation was altered

⁴Ibid., 1894, Regular Session, no. 54, 1900, Regular Session, no. 120, 1902, Regular Session, no. 9, 1908, Regular Session, no. 87, 1910, Regular Session, no. 206, 1920, Regular Session, no. 220, 1942, Regular Session, no. 43.

⁵State v. Brown, 108 So.2d 233 (1959); Robert J. Sickels, Race, Marriage and the Law (Albuquerque: University of New Mexico Press, 1972) 97-98.

during the 1960's by the expansion of the civil rights movement along with more liberal attitudes among federal judges.

In 1963, the United States Supreme Court voided the cohabitation law of Florida, but left its miscegenation law intact.⁶ The high court did not invalidate a state miscegenation law until Loving v. Virginia in 1967. It concluded that the Fourteenth Amendment protected the right of a citizen to freely marry without restrictions "by invidious discrimination," and that "the freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State."⁷

Louisiana did not immediately repeal its miscegenation laws, but awaited a federal ruling. As late as 1964, its miscegenation laws were still being strictly enforced. In that year, a nineteen year old black man and a thirty-two year old white woman were arrested in Baton Rouge on one count of miscegenation. During the same year, a national controversy erupted when the acting warden of the state prison at Angola, Louisiana, declared that black inmates were not allowed to correspond with whites. At issue was a three-year correspondence between a black prisoner on death row and a white woman in Sweden. A state official later explained that the real reason for denying the correspondence was because of state policy to allow only the

⁶McLaughlin v. Florida, 379 U.S. 184 (1964).

⁷Loving v. Virginia, 388 U.S. 1 (1967).

immediate family, prison officials, attorneys, ministers and spouses to have access to prisoners.⁸

Two months after the decision in Loving, the Supreme Court decided the case of Zippert v. Sylvester. A white man and a black woman had filed suit asking a federal court to compel the clerk of court of St. Landry Parish to issue a marriage license to them. Citing Loving, the court voided the state's miscegenation law because it violated the couple's rights to equal protection. The local clerk of court was then ordered to issue a marriage license, if the couple was eligible to marry under other valid state qualifications for marriage. A license was granted and they were married in Lafayette in August of 1967.⁹

Despite alterations in marriage laws throughout the United States after 1967, changes in thinking did not progress very far. Two opinion polls taken in 1970 found that 56 percent of persons surveyed nationwide were opposed to laws prohibiting marriages between whites and blacks, but that 72 percent of whites were opposed to marriage between a white close friend or relative and a black.¹⁰

In 1972, the Louisiana State Legislature enacted several laws to repeal discriminatory marriage laws. Among the

⁸Baton Rouge State Times, Dec. 9, 21, 1964.

⁹Zippert v. Sylvester, 12 RRLR 1445 (1967).

¹⁰Bell, Race, Racism and American Law, 284-85.

statutes repealed were those prohibiting interracial marriages, making miscegenation a crime, and requiring a parish clerk of clerk to list the race of litigants in the docketing of divorce proceedings.¹¹

Another problem that concerned many Louisianians was the designation of race on a birth certificate. Racial listing on a birth certificate was a determining factor in deciding who a person could marry, where his children could attend school and whether he could participate in various state programs. With the numerous concubinage situations existing in Louisiana prior to the Civil War, the issue of racial designation became a serious problem once miscegenation laws were enacted and whites became determined to preserve purity of the white race from infiltration by blacks.

In the absence of sufficient medical, scientific and geneological data, it was difficult for the state to determine blood lines except through birth certificates and court testimony from reliable witnesses. Unfortunately, many poverty-stricken and isolated rural residents of the state had few, if any, documented records of births. Therefore, it was necessary to obtain "delayed issuance" of birth certificates in order to meet legal requirements for entrance to schools, marriage, employment or the like. To

¹¹Acts of Louisiana, 1972, Regular Session, no. 256, no. 397, no. 258.

be accepted as a member of the white race meant greater opportunity and the possibility of a better life for one's children. To be classified as black meant the denial of all but menial economic opportunities, subjection to a rudimentary education, a stigmatized existence, and few opportunities for improvement in the lives of succeeding generations.

Without a birth certificate, it often became necessary to determine race on the basis of testimony from members of the community or from living relatives or friends of the petitioner seeking the issuance of a delayed birth certificate. The major problem encountered was the presentation of sufficient proof to substantiate the claim that a person was indeed white. The decision about a person's racial classification was often made arbitrarily by local or state records officials, leaving the state courts as the only recourse for persons who were dissatisfied with the official verdict. Then, it was the responsibility of the state judiciary to weigh the evidence and determine whether the petitioner was entitled to the coveted racial designation of "white" and all of the privileges attendant upon it.

In 1910, the state courts defined "colored persons" as "all persons with any appreciable mixture of negro blood," and placed the burden of proof on the person challenging state records.¹² Once a public document was issued, the

¹² Lee v. New Orleans Great Northern Rail Co., La., 51 So. 182 (1910); State v. Treadway, La., 52 So. 500 (1910).

petitioner assumed the responsibility of proving "beyond any doubt at all" that a mistake in race had been made by the recorder. In a 1957 case, a woman brought suit after a New Orleans official changed the racial designation on her father's death certificate from "Negro" to "white" and then back again after receiving additional evidence concerning his race. Because of the enormous burden of proof necessary to change the racial listing, along with ambiguous judicial and statutory definitions of race, both district and appellate state courts upheld New Orleans records officials.¹³

A similar case arose from a 1956 statute that prohibited interracial participation in sporting events. In order to be able to compete with white boxers, a black professional boxer requested that New Orleans officials issue him a delayed birth certificate listing his place of birth as "New Orleans" and his race as "white." After succeeding in district court, he lost in the court of appeals, which side-stepped the racial issue and voided the lower court decision on the grounds that the plaintiff had not proved that he had been born in New Orleans. Thus he was not entitled to be issued a delayed birth certificate.¹⁴

In order to prevent blacks from using loopholes in state laws to desegregate white facilities, the state

¹³State ex rel. Rodi v. City of New Orleans, La., 94 So.2d 108 (1957).

¹⁴State ex rel. Dupas v. City of New Orleans, 3 RRLR 510 (1958).

legislature in 1960 tightened laws relating to legal documents. One statute denied the issuance of delayed birth certificates unless the petitioner had a letter from the State or New Orleans Bureau of Vital Statistics attesting that no previous file existed for him. Another law required children applying for admission to a public or private school for the first time to present an official copy of their birth certificates to school authorities. If race or age were not listed, local school boards were empowered to require additional proof of both factors.¹⁵

During the 1960's, state courts continued to apply strict interpretation procedures to persons seeking changes on birth certificates. In 1962, a state appellate court overturned a lower court ruling concerning a man who was granted the right to have his race changed to "white," although he was one-sixteenth black. The court of appeals reversed because the evidence presented confirmed that the defendant had a "traceable amount" of Negro blood, and that he had failed to meet the burden of proof of showing "beyond any doubt at all" that he was white, or tracing his genealogy far enough to satisfy legal requirements."¹⁶ As late as 1967, state courts continued to require a petitioner to establish "beyond a reasonable doubt" that the racial

¹⁵Acts of Louisiana, 1960, Regular Session, no. 410, no. 541.

¹⁶State ex rel. Cousin v. Louisiana State Board of Health, La., 138 So.2d 829 (1962).

designation on a birth certificate was incorrect. If traces of Negro blood could be found, the appellate courts denied requests for changes by petitioners.¹⁷

The state legislature did not define "traceable amount" of Negro blood until 1970. Under the new statute, no one with "one-thirty-second or less of Negro blood" could be designated by any public official in Louisiana to be "colored," "mulatto," "black," "negro," "griffe," "Afro-American," "quadroon," "mestizo," "colored person" or "person of color." In 1973, a state appellate court voided the act because it was based on "wholly irrational and scientifically insupportable foundations," and "was so vague as to be incapable of meaningful application." However, the state supreme court reversed this decision in 1974, upholding the 1970 statute as neither vague nor "invidiously discriminatory." Despite judicial support for it, the law was later repealed.¹⁸

Since 1974, state courts have altered their position from requiring proof "beyond a reasonable doubt" to a lesser standard of "preponderance of the evidence" in proceedings regarding the alteration of vital records. They presently

¹⁷State ex rel. Encalde v. City of New Orleans, State ex rel. Encalde v. Louisiana State Board of Health, La., 188 So.2d 88 (1967); State ex rel. Pritchard v. Louisiana State Board of Health, La., 198 So.2d 490 (1967).

¹⁸Acts of Louisiana, 1970, Regular Session, no. 46, 1983, Regular Session, no. 441; State ex rel. Plaia v. Louisiana State Board of Health, La. App., 275 So.2d 201 (1973), La., 296 So.2d 809 (1974).

subscribe to the belief that "race designations are purely social and cultural perceptions," and recognize the difficulty in applying a racial label. In addition to birth certificates, the courts have admitted into evidence other factors such as physical appearance, self-perception, heredity, community recognition and cultural bias before making a final determination on racial designation.¹⁹

The first mention of children in state legislation on a racial basis in Louisiana occurred in 1870, when a law was enacted legitimizing the natural children of persons who were formerly prohibited from marrying during the antebellum period.²⁰ Thereafter, it was unnecessary to single out children for discrimination, since segregation applied to all residents of the state regardless of their age.

One of the ways in which the state legislature of 1960 sought to discourage blacks from engaging in civil rights activities was through threats aimed at their children, by targeting illegitimate children and persons on public assistance programs. One act made it a crime to give birth to two or more illegitimate children and placed guilt on both the mother and father. Another act redefined "dependent child" and set new guidelines for state assistance. A home situation in which parents or other relatives were living together as husband and wife without benefit of marriage was

¹⁹Doe v. State, La. App., 479 So.2d 369 (1985), La. 485 So.2d 60 (1986).

²⁰Acts of Louisiana, 1870, Regular Session, no. 68.

declared an unsuitable environment for a dependent child. In addition, no state assistance would be granted to any dependent child living with a mother who had given birth to an illegitimate child after having received a welfare payment. As a follow-up, the legislature prohibited such a child from receiving state financial assistance until proof was presented that the mother had "ceased her illicit relationship," and was maintaining a suitable home for the child.²¹ Later, the state attorney general declared that this act operated retroactively and applied to any mother during the past who had given birth to an illegitimate child after having received public assistance.²²

The legality of the 1960 child dependency and illegitimacy laws was open to question. They were intended more as a threat to blacks than anything else, and remained on the statute books until 1972. At that time, the state legislature prohibited the use of race, color, religion or national origin to deny citizens the right to participate in or receive benefits from any state-assisted program or activity.²³

Two other areas of concern dealing with children and race in Louisiana were adoptions and inheritances. In 1948,

²¹Ibid., 1960, Regular Session, no. 75, no. 251, no. 306.

²²5 RRLR 906 (1960).

²³Acts of Louisiana, 1972, Regular Session, no. 540.

the state legislature provided that a single person or any married couple jointly could petition to adopt children "of his or their race." This law stood until voided by a federal district court in 1972, when a white couple petitioned to adopt a black child. The court recognized the difficulties inherent in an interracial adoption, and justified taking race into consideration in the best interests of the child. Because the 1948 state law forbade all interracial adoptions and did not serve a legitimate state aim, it denied equal protection and was regarded as arbitrary and "invidious discrimination."²⁴ In 1975, the legislature deleted the provisions of the 1948 statute restricting adoptions on racial grounds, and enabled natural fathers and mothers to legitimate their natural children by simply stating their intention to do so, and without regard to the race of either parents or children.²⁵

In 1966, a state district court handled the issue of inheritance and race, when it disinherited the natural brothers and sisters of the decedent because they were the products of a miscegenous union. The estate then passed to the state in the absence of a legitimate heir.²⁶ The Loving

²⁴Ibid., 1948, Regular Session, no. 228; Compos v. McKeithen, 341 F.Supp. 264 (E.D. La. 1972).

²⁵Acts of Louisiana, 1975, Regular Session, no. 421, no. 422.

²⁶Hibbert v. Mudd, La., 187 So.2d 503 (1966).

and Zippert cases of 1967 placed this decision in jeopardy because of the distinction it made between races. It is now illegal in Louisiana to treat illegitimate children differently from legitimate ones, much less to place discriminatory obstacles in the way of inheritances.

Employment

Prior to 1964, the executive branch of the federal government was the principal source of opposition to racial discrimination in employment. Largely as a result of presidential executive orders, beginning with Franklin D. Roosevelt, race differentials in federal government employment began slowly to disappear after 1940. During the late 1940's and early 1950's, President Harry Truman made several additional efforts to end racial discrimination in federal civilian employment and in the armed forces. After a period of relative stagnation during the Eisenhower years, efforts to desegregate employment increased under the Kennedy and Johnson administrations. The forces of antidiscrimination in employment triumphed with the enactment of Title VII of the 1964 Civil Rights Act, which brought the federal courts into active involvement in ending job discrimination in both the public and private sectors.

Employment discrimination in Louisiana prior to 1964 was primarily de facto rather than de jure, based mainly on custom and tradition. Although no state law existed requiring a distinction in employment, discrimination clearly

existed in practice. After Title VII took effect, several unions and companies operating in the state became test cases in the federal courts to bring an end to invidious means of racial discrimination in the work place. By the 1970's, affirmative action programs had been established in several companies in order to bring an end to the effects of previous discriminatory policies.

Prior to the Civil War, most blacks were engaged in agricultural pursuits, although a few served on plantations as artisans. The free black population in New Orleans was employed principally in such non-agricultural vocations as day laborers, small shopkeepers and tradesmen. With the end of slavery, black artisans outnumbered white artisans in the South five-to-one. However, changes in the employment sector began almost immediately as new caste requirements sanctioned a system in which jobs were separated into certain ones for whites and others for blacks.²⁷

A study conducted on the employment situation of blacks in Baton Rouge between 1870 and 1880 uncovered a situation that was probably typical among blacks across the state during and shortly following Reconstruction. With the end of slavery, black employment did not undergo radical changes, but continued to be based primarily on menial positions. However, by 1880, a noticeable decline had occurred in the number of blacks in trades such as masonry,

²⁷C. Vann Woodward, Origins of the New South, 1877-1913 (Baton Rouge: Louisiana State University Press, 1951) 360.

blacksmithing and carpentry. Counterbalancing this trend was a sharp increase in the number of blacks serving as cooks, servants, and day and farm laborers. Most blacks were unable to move into better jobs because of their lack of capital, opportunity, training and education. As in most areas of the state at this time, Conservative Democrats in Baton Rouge used economic pressure to control black votes, so that "Democratic" blacks were hired first by Conservative planters and businessmen.²⁸

In 1889, a racist solution to the problem of black employment was offered in the guise of the "Shreveport Plan," sponsored by the Daily Caucasian, the most racist newspaper in Louisiana. The plan suggested that blacks be treated essentially as sub-humans. Perhaps, this attitude reflected the mood of the average white Louisianian who feared economic competition with the free black laborer. Blacks were not to be employed in "easy" jobs such as cooks, waiters or porters, but were to be given "the hardest and most degrading tasks" for earning a living.²⁹ However, after 1890, "Negro-job" industries in the South expanded to include work in sawmills, coal mines and railroad construction and maintenance. In the meantime, whites forced blacks

²⁸Terry L. Seip, "Municipal Politics and the Negro: Baton Rouge, 1865-1880," Readings in Louisiana Politics, 261-62.

²⁹Hair, Bourbonism and Agrarian Protest, 190-91.

out of better paying and more attractive occupations, and farther down the job ladder.³⁰

After 1910, blacks were excluded from all "white work." They were not allowed to work in the manufacturing of textiles and furniture; electricity, oil and gas, paper and pulp, and chemicals; and urban service occupations--buses, streetcars, telephone and telegraph, trade, banking, insurance and brokerage. Blacks were still able to work in agriculture, tobacco and fertilizer industries and as longshoremen. While the number of whites employed in agriculture decreased, blacks working in non-agricultural pursuits declined from 26.7 percent in 1910 to 21.1 percent in 1930. To compound problems for blacks in employment, labor unions limited the number of blacks who could enter the building trades or work for railroads, and secured the passage of laws that all but eliminated the possibility of blacks becoming plumbers and steamfitters. However, blacks could belong to separate unions for bricklayers, plasterers and longshoremen.³¹

Most of the limited progress made by blacks between 1940 and 1964 in reversing discrimination in employment occurred outside of the South and resulted from efforts by the executive branch. Congress did not begin to exert

³⁰Woodward, Origins of the New South, 360.

³¹George B. Tindall, The Emergence of the New South, 1913-1945 (Baton Rouge: Louisiana State University Press, 1967) 162-64.

itself in this field until 1964, and only then did the federal courts begin to seriously challenge de facto racial discrimination in employment throughout the nation. Of all types of racial prejudice met by blacks, employment and housing were probably the most widespread in all areas of the country. Laws and court rulings on employment were not designed exclusively with the South in mind, as in the fields of education, elections, transportation and public accommodations. National prejudice in employment was more difficult to eliminate since it was not based on law but on custom and usage, and because it was exceedingly difficult to persuade white employers, employees and unions to cease arbitrary treatment of minorities.

During the 1940's, the Roosevelt Administration took the first steps in modifying the employment situation for blacks through executive orders. Beginning in 1940, discrimination was ended in the Federal Civil Service by law. In 1941, the President required the holders of defense contracts to refrain from discrimination on the grounds of race, creed, color or national origin. Another executive order granted broad contract powers to the War and Navy Departments and to the Maritime Commission, with a stipulation that contracts include a nondiscrimination clause. Then, in 1943, President Roosevelt required the addition of

an antidiscrimination clause to all government contracts, not only those for defense.³²

The Truman Administration continued the efforts of its predecessor, but its major victory was the order to desegregate the military in 1948. By May of 1950, the navy and air force were almost entirely integrated, while the army began desegregating in the summer of 1950 as the Korean Conflict began. To minimize domestic racial incidents, desegregation was initially extended to occupation and garrison troops overseas. Lastly, it was extended to military posts within the United States, including the South, and into civilian employment within the armed forces.³³

It was during this time that the New Orleans police force became integrated. No blacks had been employed as police officers since 1915. In 1949, black applicant Carlton H. Pecot brought suit in state district court when he was denied employment after receiving one of the highest scores on the police civil service examination. The court directed the mayor and the superintendent of police to show cause why Pecot should not be employed. After meeting with his advisors, the mayor decided in June of 1949 to begin hiring blacks on the police force. When Pecot and another

³²Ramspect Act of 1940; Executive Order Nos. 8802, 9001, 9346.

³³Executive Order Nos. 9664, 10210, 10308, 9981; C. Vann Woodward, The Strange Career of Jim Crow (New York: Oxford University Press, 1974) 136-37.

black officer were hired in 1950, it became the intention of the mayor to limit their use as police officers by posting them to black neighborhoods, as undercover police and in juvenile cases.³⁴ Despite this limited use of black officers, their hiring was a promising start in eradicating employment discrimination throughout the state as a whole.

Advances in employment protection for minorities during the 1950's languished nationally under the Eisenhower Administration. However, the federal contract and employment policies of Roosevelt and Truman were continued. During this time, the first Louisiana case involving employment discrimination arose in the federal courts, which approved a consent decree for Celotex Corporation in Marrero, a suburb of New Orleans. Under the decree, all parties agreed to eliminate racial discrimination in the use of seniority lists and for jobs that became available. In addition, the courts authorized the continuation of the present employment system within the company as long as current employees held the same jobs.³⁵

Under the Kennedy and Johnson administrations, a vigorous program to attack discrimination in employment was conducted. Shortly after taking office, John F. Kennedy issued an executive order creating the President's Committee on Equal Employment Opportunity, which had the authority to

³⁴Haas, Delesseps S. Morrison, 77-78.

³⁵Butler v. Celotex Corporation, 3 RRLR 508 (1958).

impose sanctions for violations of nondiscrimination clauses in federal government procurement contracts. In addition, government contractors were required to take affirmative action in order to insure that job applicants and current employees were treated without regard to race, creed, color or national origin. In mid-1963, President Kennedy amended his 1961 order to require the inclusion of nondiscrimination clauses in all federally assisted construction contracts.³⁶

In early 1961, the Civil Rights Commission requested state agencies and businesses in Louisiana to complete questionnaires concerning their pattern of black employment. Most of the forms were submitted to the state attorney general for a legal opinion or discarded by those receiving them. J. D. Deblieux, Chairman of the Louisiana Advisory Committee to the Civil Rights Committee, declared that a five-year study of civil service employees revealed that about 20 percent of the total were blacks, who were employed in state institutions in professional, educational and technical jobs. It was also pointed out that Louisiana had been the first Southern State in 1950 to equalize black and white teacher pay, basing it on comparable education and experience. During the same year, New Orleans Public Service, Inc. acceded to threats of a black boycott of buses

³⁶ Bell, Race, Racism and American Law, 803; Executive Order Nos. 10925, 11114.

and streetcars, and agreed to hire qualified blacks when additional transit operators were needed.³⁷

A Public Affairs Research Council study was announced at the end of 1961, indicating that working age blacks were migrating out of Louisiana in large numbers because of a lack of equitable employment opportunities with whites. The non-white population of the state had declined from 50 percent in 1900 to 32 percent in 1960.³⁸

In early 1963, state officials were required to respond to charges of discrimination in the hiring of civil service workers in agencies receiving federal assistance. This followed the issuance of revised HEW guidelines prohibiting discrimination in the "recruitment, examination, appointment, training, promotion, retention or any other personnel action, because of political or religious opinions or affiliations or because of race, national origin or other non-merit factors." State agencies that came under the new HEW regulations included welfare, highways, education, employment security, hospitals, public works, colleges and universities, civil defense, adjutant general's office and department of health. In March, W. W. McDougall, state civil service director, reported that Louisiana was meeting HEW standards for nondiscrimination in employment and had banned discrimination based on "non-merit factors." However, four

³⁷ New Orleans Times Picayune, Mar. 22, Aug. 11, 1961.

³⁸ Ibid., Dec. 19, 1961.

months later, the Labor Department reported that blacks were not receiving equal employment opportunities at the Michoud Saturn rocket plant outside of New Orleans.³⁹

At an open meeting of the Louisiana State Advisory Committee in July of 1963, charges were leveled of widespread racial discrimination in employment opportunities and in technical training in New Orleans. The committee was informed that both New Orleans and Louisiana economies were suffering because many blacks who were unable to find suitable employment equal to their training were leaving the state to use their talents elsewhere. While the population of New Orleans in 1960 was 37.8 percent non-white, the labor force was only 28.8 percent black. Of non-white males, about 13 percent had white collar and technical jobs while 63 percent had unskilled positions. By comparison, 48 percent of whites had white collar and 39 percent had unskilled jobs. Speakers before the civil rights committee cited Bell Telephone and Telegraph, NOPSI and the Orleans Parish School Board as the areas of major concern in New Orleans. Blacks were only able to secure employment parking cars, caddying on golf courses, working on soft drink trucks or in other low-paying menial labor. Because of a lack of training, blacks were also unable to secure skilled employment in the space industry or at Kaiser Aluminum, both of which claimed

³⁹Baton Rouge State Times, Feb. 21, Mar. 23, 1963; New Orleans Times Picayune, July 29, 1963.

to be equal opportunity employers. In New Orleans, blacks were allowed to attend only one overcrowded trade school that offered only six courses. On racial grounds, they were barred from attending Delgado, which offered thirty-five different training courses. Compounding black problems was the failure of the governor to implement the Federal Manpower Resources Training Act, which provided federal aid in technical training on a nondiscriminatory basis. Louisiana was the only state that did not take advantage of this program by 1963.⁴⁰

Following a threat of racial strife if no action was taken on their demands, black leaders of New Orleans announced in August of 1963 that an agreement had been reached with city officials to hire blacks as sanitation workers and firemen. In addition, city leaders agreed to work with the New Orleans Civil Service Commission to assure that blacks would be hired on the basis of their qualifications. A month later, the city hired ten blacks as garbage collectors and confirmed that blacks were being hired under civil service as firemen.⁴¹

During the first half of 1964, a few government contract industries attempted to hire blacks, but were unable to find many who were qualified for available technical positions. The Michoud rocket plant hired three blacks as

⁴⁰New Orleans Times Picayune, July 10, 1963.

⁴¹Ibid., Aug. 13, Sept. 10, 1963.

clerks and one as a documentation specialist, but could not find other qualified blacks for technical openings. Among its 9200 employees, Chrysler Corporation and Boeing Company employed 434 blacks. However, only forty of them were in scientific, technical or engineering jobs, while the rest were in unskilled or clerical jobs. The primary reason for the lack of black applicants was the failure of the educational system to train them despite the willingness of some businesses to hire them.⁴²

In Baton Rouge, the scene of several demonstrations in the early 1960's because of racial discrimination in hiring practices, a few stores began hiring blacks as clerks and in other positions after meetings between local merchants and a biracial committee. By mid-1964, blacks already employed who had undergone special training programs several months earlier were being upgraded and promoted.⁴³

The enactment of Title VII of the Civil Rights Act of 1964 brought the legislative and judicial branches of the federal government into active protection of the right of employment without racial discrimination. Along with the weight of an energetic administration, an assault by the combined forces of the federal government on employment discrimination severely weakened the opposition and

⁴²New York Times, Apr. 26, 1963.

⁴³Baton Rouge State Times, June 30, 1964.

established the foundations for equitable employment opportunities for minorities.

Title VII, officially entitled the Equal Opportunity Employment Act, took effect on July 2, 1965. Employers, employment agencies and labor organizations were prohibited from discriminating in employment or training programs on the grounds of race, color, religion, sex or national origin. The heart of the act was the creation of the Equal Employment Opportunity Commission (EEOC) with the power to receive individual complaints of discrimination from private employers, to investigate and file complaints of discrimination on behalf of individuals, and to serve as a conciliative body to obtain voluntary compliance with Title VII guidelines prior to litigation in federal courts.⁴⁴

Because the EEOC lacked any mandatory enforcement power, Title VII was amended in 1972. The commission received enforcement powers; was empowered to file suits after the failure of its efforts at conciliation; and had its provisions extended to educational institutions, government agencies, and employers and unions with fifteen or more employees or members as of March 24, 1973.⁴⁵

There was no immediate rush by federal courts or by individuals in Louisiana to expunge racial prejudice from the job market in 1964. Several companies and unions within

⁴⁴Civil Rights Act of 1964.

⁴⁵Equal Employment Opportunity Act of 1972.

the state became test cases and were brought under federal scrutiny for programs that reflected past policies of employment discrimination. When it appeared that lengthy and costly federal intervention and litigation were the alternatives, most employers terminated overt prejudice in hiring, promotions, payment and layoffs.

An early promise of improvement in employment practices in the state occurred when the New Orleans City Council adopted an ordinance terminating discriminatory employment practices in 1966. Because of continued pressure from black organizations, the city officially declared that all agencies, boards and departments of the city would fairly consider all qualified applicants for employment regardless of race, religion or nationality.⁴⁶

Beginning in 1967, federal courts began implementing affirmative action plans in areas where past discrimination had produced a lingering effect on employment. The question of inverse discrimination quickly arose to challenge affirmative action programs, while the courts became preoccupied with company and union policies that had detrimental effects on victims of past discrimination in employment.

The first major employment case decided in federal courts in Louisiana after Title VII took effect, was a suit against Local 53, International Association of Heat and Frost Insulators and Asbestos Workers. After the failure of

⁴⁶₉ RRLR 1578 (1966).

the EEOC to conciliate, two suits were filed in federal court accusing the local of refusing to consider blacks for union membership or to refer blacks for employment. Combining the two cases in 1967, the court ordered the union to accept the four black plaintiffs for membership and to eliminate three discriminatory prerequisites for union membership: kinship to a current member, sponsorship and approval of a member by a majority of the union, and work experience prior to the date of the court injunction.⁴⁷

In 1968, Congress and the Supreme Court strengthened federal efforts to assure equal employment with the enactment of Title I of a new Civil Rights Act, and in the case of Jones v. Mayer. Title I prohibited anyone from injuring, intimidating or interfering on the grounds of race, color, religion or national origin with the right of a person seeking or holding employment in either private or public sectors.⁴⁸ Although the Jones decision dealt primarily with housing discrimination, the Supreme Court indicated that the right to contract for employment was protected by 42 U.S.C., Section 1981, which subjected violators to the same laws and penalties as persons who practiced housing discrimination. Subsequently, the Fifth Circuit Court of Appeals declared that Section 1981 created a "cause of action" for racially

⁴⁷Vogler v. McCarty, United States v. Local 53, International Association of Heat and Frost Insulators and Asbestos Workers, 12 RRLR 2062 (1967).

⁴⁸18 USCA Sec. 245, Civil Rights Act of 1968.

discriminatory acts by private employers, and proposed that federal district courts encourage the use of EEOC conciliation pending action under Section 1981.⁴⁹

Beginning in 1968, litigation in federal courts on employment suits increased dramatically. Crown-Zellerbach in Bogalusa was in the forefront of civil actions for past and present policies of discrimination by the company and its unions, and became a test case for the judiciary. More than likely, the company's problems convinced other businesses operating in Louisiana to comply with federal employment laws or face similar litigation.

Crown-Zellerbach, as well as many other companies in Louisiana, had existing promotion and layoff policies based on the time served in a particular job or department rather than in the company as a whole. The Bogalusa plant had two separate lines of progression for whites and blacks prior to 1965. White lines were for more desirable and higher paying jobs, while black lines were for "left-over," menial and poorly paying positions. In 1965, Crown-Zellerbach eliminated the black progression list and placed blacks who had worked at the mill prior to 1965 at the bottom of the white progression list, along with new employees. When EEOC efforts to conciliate failed, the Justice Department brought

⁴⁹Bell, *Race, Racism and American Law*, 754; *Jones v. Mayer*, 392 U.S. 409 (1968); *Boudreaux v. Baton Rouge Marine Contracting Company*, 437 F.2d 1011 (5th. Cir. 1971).

suit against the company and Local 189, United Papermakers and Paperworkers. In 1968, federal courts enjoined the defendants from discriminating against blacks; required them to abolish any seniority system that discriminated against blacks hired before 1966 in promotions, demotions, or selections for training; and ordered them to replace the "job seniority" system with a "mill seniority" system. The "job seniority" system subjected blacks to past discrimination because the existing seniority, transfer and promotion policies were rooted in a system that had denied blacks access to lucrative and prestigious positions formerly reserved for whites. The courts held that Crown-Zellerbach and its white union had violated Title VII by insisting on policies that had the effect of "carrying forward exclusion of a racially-determined class."⁵⁰

Several weeks later, another suit was settled against Crown-Zellerbach. Federal courts ordered the company to abandon its practice of awarding promotions on the basis of job seniority because it perpetuated the effects of past discrimination. Furthermore, the court ordered that black union members be admitted to the white local and that the separate black local be dissolved.⁵¹

⁵⁰United States v. Local 189, United Papermakers and Paperworkers, and Crown-Zellerbach Corporation, 1 RRLS 38, 219 (1968, 1969).

⁵¹Hicks v. Crown-Zellerbach Company, 310 F.Supp. 536 (1970).

In 1970, Crown-Zellerbach's testing procedures for employment, promotions and transfer became the target of another employment discrimination suit. Federal courts determined that the test results led to a large number of job openings for whites but excluded nearly all blacks, and that the tests were not related to the lower and middle level jobs for which they were being used. The courts overruled the use of the tests, the continued existence of dual lines of progression, and requirements that blacks take a pay reduction in order to enter formerly white lines of progression. To overcome the effects of past discrimination practices, the court ordered the establishment of an affirmative action plan in which blacks would be offered vacancies in formerly white-only jobs on a seniority basis and in preference to other employees.⁵² In the following year, the Supreme Court upheld the section of Title VII that overruled discriminatory testing for employment purposes, because Congress had decided that tests "must measure the person for the job, not the person in the abstract."⁵³

Following the affirmative action decree, white workers appealed the decision on the grounds that the federal district court had exceeded its jurisdiction under Title VII to provide a remedy that would prevent discrimination in

⁵²Hicks v. Crown Zellerbach Corporation, 319 F.Supp. 314 (E.D. La. 1970), 321 F.Supp. 1241 (E.D. La. 1971).

⁵³Griggs v. Duke Power Company, 401 U.S. 424 (1971).

employment. However, the Fifth Circuit Court of Appeals affirmed the lower court's actions in altering the rights of white employees in order to most effectively protect and redress the rights of black employees who had been victims of past discrimination.⁵⁴

Other suits followed in the early 1970's to bring employers in Louisiana into compliance with federal laws barring racial discrimination in employment. However, by 1972, there was a noticeable change in the efforts of the executive and judicial branches to vigorously prosecute discrimination cases. Beginning in 1972, the Justice Department and the federal courts adopted a more conservative approach toward discrimination suits. By then, most of the overt means of racial prejudice had been eliminated through court action, threat of litigation or voluntary compliance with federal law. Because the type of bias that still existed in the business community was more difficult to prove, the burden of proof shifted to the government and its agencies, placing them under closer scrutiny by the courts and narrowing the scope of Title VII and the EEOC.

By 1974, it appeared that the federal courts in Louisiana had completely reversed direction. In 1972, the federal district court in New Orleans declared that the maintenance of separate local unions for white and black

⁵⁴Vogler v. McCarty, United States v. Local 53, 3 RRLS 189 (1971).

employees violated Title VII, but that the EEOC lacked the power of adjudication.⁵⁵ Then, federal courts held that a litigant could only file a suit under Title VII if he was a victim of unfair practices or discrimination based on race.⁵⁶ In a case against New Orleans Public Service, Inc., the courts held that the power of the EEOC to investigate evidence involving an alleged charge of discrimination did not give it the right to search through an employer's records on a "fishing expedition" in hopes of discovering violations of the law. The charge of employment discrimination did not require detailed evidence of discriminatory behavior, but had to be based on facts. The EEOC lacked power to allow it to explore "potential" discrimination regardless of its connection with the original charges.⁵⁷

Although racial discrimination remained a major problem in employment in Louisiana in the 1970's, the federal courts had brought about an end to overt acts of prejudice. With orders to unions to abolish separate black unions and to admit blacks into formerly white-only unions, some progress was made. The courts also ordered the abolition of any employment program sanctioned by unions or by businesses that projected past policies of discrimination into present

⁵⁵Williams v. New Orleans Steamship Association, 341 F.Supp. (E.D. La. 1972).

⁵⁶Marshall v. Plumbers and Steamfitters Local Union 60, 343 F.Supp. 70 (E.D. La. 1972).

⁵⁷New Orleans Public Service, Inc. v. Brown, 369 F.Supp. 702 (E.D. La. 1974).

or future employment. In addition, federal courts and the Justice Department kept vigilance over company and union regulations for possible bias, and over such procedures as employee testing, hiring practices and layoff policies. As an inducement to gain voluntary compliance, the courts expressed their willingness to grant back pay and attorney's fees to successful litigants, and to order affirmative action plans when they were necessary to rectify past practices of discrimination.

Housing

Residential segregation was not a phenomenon peculiar to the South, but was a national problem of major concern throughout America. Prior to 1900, it was primarily a de facto situation without the sanction of law. Thereafter, housing patterns were codified in the South, as well as in other parts of the nation. The difficulty in dismantling this type of segregation lay in the fact that culture and economics were primary factors that dictated where individuals resided.

Prior to 1960, the federal courts were largely inactive in housing unless evidence of state action existed to sanction, enforce or encourage racial discrimination. With the enactment of Title VI of the 1964 Civil Rights Act and the Fair Housing Act of 1968, housing became one of the few areas where Congress took an active stand against private discrimination in advance of judicial and executive action.

Federal courts followed the legislative lead with a determined stand against private discrimination in housing in Jones v. Mayer in 1968. Thereafter, the entire national housing industry came under tighter scrutiny by the federal courts and the Justice Department for indications of private acts of racial discrimination.

In the area of housing discrimination, Louisiana generally followed the lead of other states and of the federal government. Economics and personal preferences played primary roles in segregated residential patterns in the state. Overt de jure segregation was not as influential in the development of segregated residential areas as custom or de facto patterns. Nearly every Louisiana municipality had its enclaves of black residents in little more than overcrowded shantytowns, surrounded by a less dense pattern of white dwellings. After 1970, residential patterns in Louisiana changed very little. Although there were no legal constraints on residential location, the continued presence of economic facts of life and personal preference dictated an individual's choice of area for settlement. By 1974, few blacks lived outside of nearly all-black concentrations, while white flight decimated central parts of cities, leaving them to poorer elements of society. Meanwhile, whites followed the national trend and resettled in the "lily-white" suburbs.

Before the Civil War, whites and blacks lived in close proximity to one another primarily because of the nature of

slavery. New Orleans, with its large free black population, had black and white residences within close range throughout the city. Even there, though, a de facto pattern of residential segregation existed through economic, cultural and personal preference. After the Civil War, blacks streamed into the cities, primarily as a symbolic act of rejection of plantation life and what it represented for them.

A study that was conducted on Baton Rouge using the censuses of 1870 and 1880, suggests that residential segregation developed during the 1870's. Physical contact between whites and blacks in the town decreased as the number of black domestic servants living in white households declined sharply. At the same time, predominantly white and black residential concentrations were developing. However, de facto segregation in housing did not become a statewide phenomenon until much later.⁵⁸

As early as 1866, the federal government recognized the importance of freedom of residence. Part of the Civil Rights Act of that year granted all citizens the right to inherit, purchase, lease, sell, hold and convey real property, and to have full and equal benefits of all of the laws for the security of persons and property as enjoyed by whites. These housing provisions were codified later as

⁵⁸Seip, "Municipal Politics," 263-64.

42 U.S.C., Sections 1981 and 1982 and are still in operation.⁵⁹

Unfortunately, the initial enthusiasm and determination of Congress to protect the rights of the freedmen did not endure, and the federal courts failed to share the same convictions about safeguarding the personal rights of blacks. The Civil Rights Cases of 1883 undid much of the civil rights legislation of Congress during Reconstruction, and it was not long before this case was being used to justify discriminatory devices such as residential zoning ordinances to keep the races apart. When federal courts invalidated this artifice in 1917, buyers and sellers across America resorted to the use of "racially restrictive housing covenants," which prohibited selling or leasing of property to blacks or "Mongolians" in perpetuity, and insured the continuation of all-white neighborhoods. In 1926, the Supreme Court unanimously upheld restrictive covenants, declaring that the Fifth Amendment placed limitations only on the government, not on the action of individuals."⁶⁰

Prior to 1930, the Louisiana State Legislature enacted a series of laws to restrict housing and enforce segregation in order to codify a de facto situation. In 1912, the legislature gave municipalities the power to deny building permits to anyone seeking to build a home in an area

⁵⁹Civil Rights Act of 1866; 42 USCA, Sec. 1981, 1982.

⁶⁰Corrigan v. Buckley, 271 U.S. 323.

principally inhabited by members of a different race. This law was strengthened by a new statute in 1921 that provided penalties for housing blacks and whites in the same dwelling, except for black employees such as maids. The act prohibited any person or corporation from renting any part of an apartment house or tenement house already inhabited by persons of one race to those of another. In 1924, the legislature reserved to the state the power it had entrusted to municipalities in its 1912 act, and defined a black or white "community" as an area in which all residences for three hundred feet on either side of the property in question belonged to either blacks or whites. Of course, whites in the state found additional ways, legal or otherwise, to keep blacks out of their neighborhoods.⁶¹

During the late 1940's, a few glimmers of change began to appear in the nation's housing practices. The Federal Housing Administration (FHA) responded to pressure from the NAACP by eliminating a recommendation from its manual for the use of restrictive covenants. Then, President Harry Truman's Committee on Civil Rights recommended that states outlaw restrictive covenants, that Congress outlaw them in the District of Columbia, and that the federal courts refuse to enforce them. However, it was still too early for most of the committee's recommendations to receive serious

⁶¹ Acts of Louisiana, 1912, Regular Session, no. 117, 1921, Extraordinary Session, no. 106, 1924, Regular Session, no. 118.

consideration. As late as 1948, the Supreme Court ruled that federal law did not preclude "private restrictive agreements so long as the purposes of those agreements are achieved by the parties through voluntary adherence to the terms." Once again, the court had indirectly upheld the validity of restrictive covenants by deciding that government sanction was illegal, but that private acts of discrimination were not.⁶²

In 1947, Mayor DeLesseps S. Morrison began a New Orleans program that included slum clearance and construction of public housing for blacks. His biographer, Edward F. Haas, reports that he made limited progress because of the tremendous increase in demand for new dwellings, and because of fierce opposition by the building industry and white property owners who abhorred the idea of locating black housing projects near them. These problems seriously undermined the progress of the mayor, who was a political realist and who strictly operated the city's housing programs on a segregated basis.⁶³

During the 1950's, housing was relegated to a minor position as the nation became preoccupied with de jure segregation in education, voting and transportation. Only the federal courts took any action in 1953, extending the ban on judicial enforcement of restrictive covenants to

⁶²Wasby, Desegregation from Brown, 37.

⁶³Haas, DeLesseps S. Morrison, 68-72.

suits for damages against a co-covenantor who broke such an agreement.⁶⁴ In the meantime, minorities were excluded or confined by overt discriminatory housing practices, by the lack of sufficient housing, and through laws and government policies that allowed local governments to exercise arbitrary control over public housing within their jurisdiction, often in a racially discriminatory manner.

During the mid-1950's, a \$15,000,000 subdivision was built around Pontchartrain Park in the Gentilly section of New Orleans. A thousand homes were constructed and sold for \$9800 to \$25,000 each to minorities in the middle and higher income brackets, the first homes being ready in 1955. In the same year, Bunche Village opened as a 7000 unit low-income housing project near New Orleans.⁶⁵

The 1960's produced a breakthrough in the termination of segregated housing through overt private actions. A combined assault by Congress with the Civil Rights Acts of 1964 and 1968, along with the Supreme Court decision in Jones v. Mayer in 1968, cracked the foundations of private discrimination in housing. The legal effort to obtain equality for minorities during the 1960's was directed toward the goals of protection against discrimination,

⁶⁴Barrows v. Jackson, 346 U.S. 249 (1953).

⁶⁵New Orleans Times Picayune, Nov. 23, 1954, Apr. 4, June 27, 1955.

creation of additional low-income housing and placement of public housing outside of minority and poverty centers.

In 1962, the Kennedy Administration began a shift in the course of executive policy on federal housing by mandating equal opportunity and prohibiting discrimination in federally-financed housing. However, because it exempted housing financed by FHA or VA loans prior to 1962 and housing financed through private banks or savings and loan associations, only about 18 percent of new construction was affected.⁶⁶

At this time, the Housing Authority of New Orleans (HANO) operated thirteen white and black projects in the city on a segregated basis, providing housing for 10,275 low-income families (15,604 adults and 27,696 children). HANO operated under congressional act, state law and city ordinances. Although receiving federal subsidies, actual operation of the projects was left up to HANO, which was subject to local authorities. In 1961, HANO received rent revenues of \$3,890,615 from all thirteen projects and federal subsidies of \$2,700,000. Rent varied from \$16.75 to \$62.75 per month. Occupants had to keep apartments clean, be law-abiding and get along well with their neighbors. The main objective of HANO under Public Housing Authority guidelines was "to provide decent, safe and sanitary

⁶⁶Executive Order No. 11063.

dwellings and to lessen public expense by lowering the incidence of crime and disease attributed to slums."⁶⁷

Lake Charles had the second largest number of low-rent public housing units in the state. Begun in 1942, the city's housing program now had over six hundred units, with plans to build additional ones. Average cost of housing in the projects was \$32.00. However, organized opposition to the building of new units came from realtors and home builders who filed suits to halt expansion of the public housing program.⁶⁸

Title VI of the Civil Rights Act of 1964 was the first major attempt by Congress in the twentieth century to protect the right to nondiscriminatory housing. It prohibited discrimination in programs or activities receiving federal financial assistance, and directed all federal departments and agencies to use federal funds in a nondiscriminatory way. Any activity or program being conducted in violation of federal law would have its funds terminated.⁶⁹

As a direct result of Title VI, New Orleans and Baton Rouge housing authorities decided in 1965 to operate all of their housing units on a nondiscriminatory basis. In March, HANO announced that it had ended its segregated policy and would admit all qualified applicants to any housing project

⁶⁷Baton Rouge State Times, Jan. 16, 1962.

⁶⁸Ibid., Mar. 13, 1962.

⁶⁹Civil Rights Act of 1964.

regardless of race, creed or color. At the time, nine thousand blacks occupied nine housing projects and three thousand whites occupied five all-white projects in New Orleans. In May, the East Baton Rouge Parish Public Housing Authority agreed to operate its one hundred seventy existing units and all future units on a nondiscriminatory basis in order to clear the way to receive \$2,800,000 in federal funds for the construction of two hundred new units. Of the existing units, one hundred twenty were for blacks and seventy were for whites.⁷⁰

The Department of Housing and Urban Development, in 1967, required a balance of sites for public housing within and outside of ghetto areas, and required federally-funded housing authorities to assign tenants on a "first-come, first-served" plan that would prevent racial segregation in projects.⁷¹ In the next year, Congress enacted a new Civil Rights Act that included a fair or open housing section, and the Housing and Urban Development Act.

Title VIII of the Civil Rights Act of 1968 was the first federal legislation specifically targeted against housing discrimination and expanded federal coverage of the housing market from 18 percent in 1962 to 80 percent when

⁷⁰New Orleans Times Picayune, Apr. 2, 1965; Baton Rouge State Times, May 14, June 4, 1965.

⁷¹Fair Housing and Exclusionary Land Use (Washington: Urban Land Institute, 1974) 8.

the law became fully effective on January 1, 1970. The law prohibited discrimination by race, color, religion or national origin in the sale, rental or advertisement of the sale or rental of a dwelling; prohibited lending institutions from discriminating in loans; forbade "blockbusting;" and prohibited discrimination by real estate brokers' organizations. Exempted from coverage were single-family houses sold or rented without the services of a real estate agent and which did not use discriminatory advertising. Title IX of the 1968 act made it a criminal offense to threaten or to use force to willfully injure, intimidate or interfere with anyone who was complying with or exercising rights under Title VIII.⁷²

The Housing and Urban Development Act of 1968 expanded the supply of lower-income federal housing by providing for two massive building programs: one for rental housing and one for opportunities for private homeownership. Under the act, Congress intended to establish twenty-six million housing units over the next ten years, six million of which would be designated for low-income families.⁷³ Of course, most cities in the nation would be eager to obtain lucrative contracts to provide housing for the urban poor, and would have to submit to new federal regulations to operate them on a nondiscriminatory basis.

⁷²Civil Rights Act of 1968.

⁷³Fair Housing, 9.

The Supreme Court began to change its view of housing discrimination in the private sector in 1967, when it affirmed a California State Supreme Court decision that had voided a constitutional amendment prohibiting the state from interfering in the sale or rental of property in California. The federal high court ruled that such an action violated the Fourteenth Amendment by expressly authorizing and making constitutional the right to discriminate on racial grounds, and involving the state in a discriminatory action.⁷⁴

The Jones v. Mayer decision of 1968 provided the capstone of efforts by the federal government to bring an end to de jure and overt private acts of discrimination in housing. The Supreme Court voided government enforcement of restrictive covenants that were the result of purely private racial discrimination unsupported by legal action. Private owners as well as public officials were now prohibited from discriminating in the buying and renting of both public and private property because of race and color.⁷⁵

In follow-up cases, the Supreme Court broadened the Jones decision to allow recovery of damages in 1969. Thus, discrimination was not only illegal but could be fairly costly to practice. In addition, the Department of Housing and Urban Development was required to consider the impact of site selections for housing projects on racial integration.

⁷⁴Reitman v. Mulkey, 387 U.S. 369 (1967).
⁷⁵Jones v. Mayer (1968).

In 1971, federal courts held that the Fourteenth Amendment's Equal Protection Clause was violated when a building permit was denied by county officials for housing in which low-income black families would live. Then, in 1973, the Supreme Court broadened the scope of Title VIII of the 1968 Civil Rights Act by declaring that its purpose was "to replace the ghettos by truly integrated and balanced living quarters." Thus, the court came to view the role of the federal government in guaranteeing equal housing to extend beyond mere nondiscrimination to actual integration.⁷⁶

After 1968, despite the combined efforts of the three branches of the federal government to equalize housing, other barriers still existed to deny blacks access to housing outside of ghetto areas. Local government bodies often enacted exclusive land use ordinances, established zones which excluded multi-family housing, adopted lot size and square footage regulations that excluded all but expensive housing, denied building permits with excuses such as inadequate water or sewer facilities, prohibited construction of low-income housing without community voter approval, and

⁷⁶Sullivan v. Little Hunting Park, 396 U.S. 229 (1969); Shannon v. Department of Housing and Urban Development, 305 F.Supp. 205 (E.D. Pa. 1969), 436 F.2d 809 (3rd Cir. 1970); Crow v. Brown, 332 F.Supp. 382 (N.D. Ga. 1971), 457 F.2d 788 (5th Cir. 1972); Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205 (1973); Otero v. New York City Housing Authority, 344 F.Supp. 737 (S.D. N.Y. 1972), 354 F.Supp. 941 (S.D. N.Y. 1973).

selected sites and assigned tenants to projects in such a way as to insure racial segregation. ⁷⁷

In Louisiana, similar ploys were used to restrict the location of public housing. As in most parts of the nation, de jure segregation in housing was a dead issue by 1968, and de facto segregation had become a major problem. Although the state did not repeal its statute prohibiting renting an apartment or room to blacks in buildings occupied by whites until 1972, it was a moot question by then.⁷⁸ With the exception of a few scattered cases heard in federal court, housing in Louisiana proceeded much as it did elsewhere. By 1968, the resistance of most Louisianians had been broken irrevocably by other desegregation battles, chiefly by those in education. As was the norm, it was easier to move from the central city to the "lily-white" suburbs as blacks gravitated to the central city. In the suburbs, most white children were able to attend predominantly white neighborhood schools that were the product of cultural and economic forces rather than by decree. This type of segregation was more difficult to handle and baffled the federal courts after court-ordered busing had provoked a national outcry.

In the three areas of family relations, employment and housing, both de jure and de facto segregation played a

⁷⁷Fair Housing, 10.

⁷⁸Acts of Louisiana, 1972, Regular Session, no. 255.

significant role. Culture, heritage and personal preferences weighed heavily on all three, making desegregation particularly limited. It was relatively easy to void laws that restricted equal protection and equal access of blacks, but it was more difficult to legislate or pronounce upon ingrained prejudices in the matter of marriage, adoption, employment or housing patterns. In these areas, the federal government could only provide legal protection for blacks who challenged the status quo, but could do little to overcome cultural and economic obstacles met by non-whites in seeking employment. Even with affirmative action programs in place, many blacks were unable to qualify for higher paying jobs because of a lack of the skills and training necessary for available jobs.

During the 1970's, blacks were often shut out of virtually all-white neighborhoods because of economics and encountered white flight to the suburbs when they moved into better residential areas. Once abandoned by whites, the inner cities faced erosion of the tax base, removal of white children from city public schools, and a steady deterioration of inner city neighborhoods. Attempts to improve housing for low-income groups were besieged by litigation, inflated land prices, and interminable delays and excuses by local officials. Because of expediency, lower site costs and personal preference among many blacks to live near urban centers and other blacks, housing projects were often constructed near heavily black concentrations. Blacks who

remained dependent on public housing saw little hope of improving their condition, but those who were able to receive training and education, were often able to improve their economic situation and may eventually be able to overcome present housing problems through private home ownership in the future.

Chapter X

SUMMARY

The State of Louisiana was vastly different in 1974 from what it had been in 1954. In two decades, it had progressed from a closed, white-dominated society to an open, multi-racial society with legal safeguards in place to assure equal protection and equal opportunity for all regardless of race or color. Although private acts of discrimination continued, de jure or government-sanctioned segregation had been removed from all areas of social contact in the state. However, the weightier problem of custom, or de facto segregation, remained to be resolved.

In 1954, Louisiana had a stratified caste system with blacks on the bottom. Under the principle of "separate but equal," black citizens were subjected to continued humiliation, ostracism and rejection in every instance where they might come into social contact with the white majority. Instead of abiding by the Plessy doctrine, white leaders chose to exclude blacks from most of the privileges enjoyed by white Louisianians. As a result of meager state appropriations, the few existing public facilities prior to 1930 were constructed only for whites, while blacks were generally excluded from all services. Later, when funds became

available for the construction of separate facilities for blacks, they were often inadequate.

Black Louisianians were unable to protest their ill-treatment at the hands of state and local officials because of their lack of political and economic power. Following the disfranchisement movement, few blacks were able to vote after 1900. Prior to 1950, the only way blacks could effectively protest their conditions and improve their lives was to leave the state and to try their luck outside the South. Many blacks who remained in Louisiana were oppressed and broken in spirit, benignly submitting to their outcaste status. With few defenders within or outside of the South before 1954, they had little hope for improving their lives or those of their children.

In general, blacks were discriminated against in every aspect of life before 1954. They were unable to vote, serve on juries, buy homes in decent neighborhoods, use publicly-owned facilities, or frequent hotels, restaurants and other public accommodations. Separate public parks, playgrounds, swimming pools, elementary and secondary schools, colleges, waiting areas and correctional institutions were often provided by the 1950's in hopes of appeasing blacks so that they would not seek to desegregate white facilities. Blacks were permitted the use of courtrooms and transit facilities along with whites, but on a separate seating basis.

White leaders used the state's police powers to subdue blacks and to instill a humble and demeaning attitude within

them. After decades of being denied the vote, few blacks bothered attempting to register following the removal of some franchise restrictions after 1930. Consequently, few were able to qualify for jury duty, which was drawn from the list of registered voters. Blacks were also subjugated through economic means and by the inadequate educational system provided for them. While a network of colleges, vocational and trade schools was provided for whites across the state, blacks were forced to attend a few meagerly funded, overcrowded and far-flung institutions, to leave the state for training or to abandon hope for additional education and training. Even if businesses in Louisiana wished to hire blacks, few were able to qualify for available jobs because of insufficient education and training. Thus, only menial and low-paying jobs were left for blacks to perform, notwithstanding the refusal of many employers to hire them even if they had training and education. Therefore, economic circumstances required blacks to live in squalor in shantytowns and ghettos or to seek public housing.

The Brown decision of 1954 had a profound impact upon the system of segregation in Louisiana, although it took more than a decade to break the color barrier. The court ruling galvanized white racists into action in the mid-1950's because of the implications of this judgment for the future of the closed, white society of the South. A program of massive resistance was adopted as the answer to federal intrusion into Southern race relations. By the late 1950's,

the racists had mobilized, seized control of the consciences and emotions of the white populace, and persuaded the state legislature to erect a bulwark of segregation laws to embroil the federal courts in litigation for decades. The state assumed the burden of protecting segregation by enacting legislation to prevent cracks in the white line, and by interposing the state's authority and immunity from suits between the federal courts and state agencies.

During the late 1950's, the civil rights movement grew slowly but progressively in Louisiana. Beginning in New Orleans and Baton Rouge, blacks organized under the urging of the NAACP to redress past grievances. By the end of the decade, several former white colleges had been integrated, the state had resorted to leasing its publicly-owned facilities, systematic exclusion of blacks from juries was curtailed and the state's segregated transit law was voided.

In early 1960, the first nonviolent sit-ins began in Baton Rouge and New Orleans under the auspices of CORE to bring state and national attention to racial discrimination being practiced by local businesses. Although only a few college students took part in them, hundreds of thousands of black Louisianians watched silently but hopefully, too timid to take action themselves because of cultural training and possible economic consequences. In the same year, the first major confrontation occurred over desegregation with the integration of New Orleans public schools. From November until February of 1961, national attention was focused on

the state as white supremacists in the state legislature endeavored to prevent the desegregation of any public school system. The state's leaders devoted themselves to every conceivable effort to use legislation and litigation to thwart the intentions of the federal government but, in the end, capitulated to federal court orders.

As 1964 approached, the civil rights movement accelerated nationally. Federal courts and the Justice Department worked in concert to bring down segregation in transit, public facilities, and colleges and universities through threats of prosecution and litigation. Congress capped federal efforts with the enactment of the sweeping Civil Rights Act of 1964. Touching upon every aspect of de jure segregation--voting rights, public accommodations, public facilities, public education and employment--the law provided a crushing blow to Southern whites that the current desegregation effort could be weathered as it had during Reconstruction. However, federal forces, undaunted by Southern opposition, forged ahead and swept away futile opposition to constitutional requirements of equal protection of the laws.

Between 1963 and 1965, all public colleges and universities and vocational and technical schools in Louisiana were desegregated, segregated practices in courtrooms were ended, medical facilities began operation free of racial discrimination, public accommodations were desegregated, and most of the public school systems in the state underwent

limited integration in the form of freedom of choice. The impact of the Civil Rights Act of 1964 was phenomenal, particularly Title VI, which prohibited the discriminatory use of federal funds. It was now virtually impossible to escape the watchful eyes of federal courts and of the Departments of Justice and HEW if racial discrimination was being practiced in federally funded programs. Following the enactment of the Voting Rights Act of 1965, blacks began to register in record numbers and to resume their places within the political process.

From 1965 to 1969, most of the remaining institutions still under segregated operation were integrated. The major desegregation battle occurred over public schools. Local school boards were denied the authority to continue operation under a dual system of white and black schools with provisions for transfers under a freedom of choice basis. Federal courts left no doubt of their determination to establish unitary systems throughout Louisiana, voiding freedom of choice in 1968 as a viable alternative. Federal efforts also began the desegregation of all correctional facilities for adults and juveniles, prohibited racial discrimination in the private housing industry, provided safeguards for equal employment opportunities and voided miscegenation statutes.

As the 1970's approached, a more conservative mood swept over the nation. The militant bent of the civil rights movement and the court ordered busing issue helped to

harden national public opinion, as federal courts entered a new phase in the elimination of discrimination. Focus was shifted from de jure segregation in the South to de facto discrimination that was widespread across America. All branches of the federal government adopted a slower approach toward civil rights, alert to discriminatory laws but less concerned with the effects of purely customary practices of discrimination.

Within Louisiana, unitary public school systems were instituted between 1969 and 1971 through federal court orders. Thereafter, desegregated school systems were closely monitored to prevent resegregation and to eliminate the effects of past racial segregation. A more acute problem existed in the state's system of higher education, where a dual system continued to function. Despite various attempts by federal and state authorities, this enigma has yet to be resolved.

Another problem encountered in Louisiana was white flight from inner cities to the suburbs. In the case of large cities, this often meant taking up residence in another parish and thus in a different school district. Inner city schools became predominantly black, while schools in outlying areas reflected the community's black-white ratio and became virtually all-white. Compounding the problem was the tendency of white parents in New Orleans and Baton Rouge to enroll their children in available private and parochial schools that were primarily white also.

Attendant upon these problems was continued discrimination in employment and housing. Admittedly, employment conditions and opportunities for blacks improved remarkably during the 1970's. However, when many blacks were finally able to acquire the education and training necessary for more advanced and better paying positions, they often found that the types of jobs for which they had prepared were still being denied to them by covert racial prejudice or were nonexistent in Louisiana. Those who did succeed were no longer content to remain confined to poor black neighborhoods and sought housing in lower middle class sections. Unfortunately, they quickly discovered that racial discrimination was still rampant, and means were found to deny their relocation despite federal protections. However, with the dismantling of the de jure system of segregation, the passing of time and the weathering of de facto prejudices, the promise for a brighter future was held out to the next black generation, if not immediately for their parents.

With the return of blacks to the polls and to appointive and elective public offices in the early 1970's, black citizens were able to assume an active role in safeguarding their rights in the future. As black electoral strength in cities increased in proportion to their numbers, blacks acquired municipal offices and were sent to the state legislature, where they took steps to insure that segregation by law would never again raise its head. In 1971, Edwin Edwards actively solicited and received a majority of black

votes for governor. Taking office in March of 1972, his administration supported the repeal of existing segregation statutes, and succeeded in writing a new state constitution in 1973 that was free of discrimination and included guarantees of equality and equal protection for all citizens of the state.

Although many problems remained to be resolved and old prejudices still existed, the "second Reconstruction" became a permanent feature in the State of Louisiana. The fabric of society had been altered to reflect the changes wrought by the federal government, and a new attitude of tolerance, harmony and cooperation took root. A minority of white racists was no longer able to overtly discriminate against blacks by law, or to succeed in persuading state authorities to support private or public acts of discrimination. Old cultural prejudices were at least tempered to the point of allowing blacks the opportunity to participate actively in state programs and activities on an equal basis with whites. They were now free to vote, hold public office, send their children to the closest available public schools, seek equal opportunities in employment and housing, serve on juries, and use public and private facilities and accommodations on a nondiscriminatory basis. De jure segregation was dead and blacks had the means to assure that its demise was permanent. With its end, there was hope that the thornier issue of de facto segregation could be eradicated one day.

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VITA

Carroll Joseph Dugas was born September 13, 1948, in Houma, Louisiana. He is the son of Wilfred Joseph Dugas and Adenise Pichauffe Dugas, all natives of Terrebonne Parish. Mr. Dugas graduated from Terrebonne High School in 1966; received a Bachelor of Arts degree from the College of Education at Nicholls State College in 1970, with a major in social studies and a minor in English; and received a Master of Education degree from Nicholls State University in 1972, with a major in education and a minor in social studies.

In 1969, Mr. Dugas began teaching in the public schools of Terrebonne Parish, where he has taught various courses in social studies on the secondary level during the past twenty years. His professional memberships include National Council for the Social Studies, Louisiana Council for the Social Studies, National Education Association, Louisiana Association of Educators, Terrebonne Association of Educators, Southern Historical Association, Louisiana Historical Association and Phi Delta Kappa.

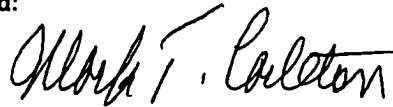
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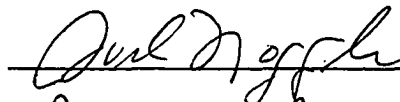


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