

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF ALABAMA, NORTHERN DIVISION

FILED

CALIPH WASHINGTON, HOSEA L. WILLIAMS, JULIA ALLEN,)
individually and as mother and next friend of)
WILLIE ALLEN, a minor, WILLIE ALLEN, AGNES BEAVERS,)
individually and as mother and next friend of CECIL)
MCCARGO, JR., a minor, CECIL MCCARGO, JR., JOHNNIE)
COLEMAN, AND THOMAS E. HOUCK, JR., FOR THEMSELVES,)
jointly and severally, and for all others similarly)
situated,)

Plaintiffs,)

vs.)

FRANK LEE as Commissioner of Corrections of Alabama;)
JOHN F. BRITTON, CHARLIE CASHION, HERSCHELL LUTTRELL,)
DR. MAX McLAUGHLIN AND WILLIAM MITCH, as members of)
the Board of Corrections of Alabama; A. MELVIN)
BAILEY, as Sheriff of Jefferson County, Alabama and)
all other sheriffs of Alabama, jointly and severally,)
who are similarly situated; ROBERT K. AUSTIN, as War-)
den of the City Jail of Birmingham, Alabama, and all)
other wardens and jailers of city and town jails of)
Alabama, jointly and severally, who are similarly)
situated,)

Defendants.)

FEB 6 1967

R. C. DOBSON, CLERK

By
Deputy Clerk

CIVIL ACTION

NO. 2350-N

NOTICE OF APPEAL

TO THE SUPREME COURT OF THE UNITED STATES

A

I. Notice is hereby given that the defendant, Robert K. Austin, as
Warden of the City Jail of Birmingham, Alabama, in the above styled cause
hereby appeals to the Supreme Court of the United States from the final order
entered in this case on December 12, 1966.

II. This appeal is taken pursuant to 28 U.S.C. § 1253.

B

I. The Clerk will please prepare a transcript of the record in
this case, for transmission to the Clerk of the Supreme Court of the United
States, and include in said transcript all pleadings, motions and orders including,
but not limited to, the following:

✓ 1. Complaint filed February 18, 1966.

✓ 2. Motion for Preliminary Injunction filed February 18, 1966.

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- ✓3. Motion of defendant, Robert K. Austin, to dismiss filed April 25, 1966.
- ✓4. Order appointing three-judge Court filed March 22, 1966.
- ✓5. Motion to Amend Complaint filed April 2, 1966.
- ✓6. Order granting amendment to complaint filed April 5, 1966.
- ✓7. Order carrying motions to dismiss with case filed June 8, 1966.
- ✓8. Interrogatories to Defendant, Robert K. Austin, filed June 9, 1966.
- ✓9. Order setting case for trial on merits filed June 13, 1966.
- ✓10. Answer of Defendant, Robert K. Austin, filed June 17, 1966.
- ✓11. Answer of Robert K. Austin to Plaintiffs' Interrogatories filed June 25, 1966.
- ✓12. Order continuing case on merits to November 29, 1966, filed August 23, 1966.
- ✓13. Order on pretrial hearing filed November 22, 1966.
- ✓14. Order of Rives, Circuit Judge, and Lynne and Johnson, District Judges, entered December 12, 1966.
- 15. All pleadings, answers, motions to dismiss, and interrogatories of all parties to the cause in order to permit a complete record, including all exhibits.
- ✓16. Complete transcript of all evidence of all parties introduced in the case.
- ✓17. This notice of appeal.

II. If permitted under Rules of Court, it is requested that the transcript of the Record be prepared in connection with other appeals heretofore or hereafter taken in this case so as to include items set out in I above, but eliminate duplications and thereby reduce expense, as provided by Rule 74 of Federal Rules of Civil Procedure, but if such is not permissible, please prepare transcript in accordance with I above.

C

I. The following questions are presented by this appeal:

(1) Do state statutes which require the separation of white and Negro prisoners in state penal institutions and county and city jails violate the provisions of the Fourteenth Amendment to the Constitution of the United States?

(2) Are §§ 4, 52, 121, 123, 172 and 183 of Title 45, Code of Alabama, Recompiled 1958, violative of the Fourteenth Amendment to the Constitution of the United States to the extent that said statutes require the segregation of the races in the prisons and jails of Alabama?

(3) Do the plaintiffs in this case have standing to challenge any of the statutes or practices requiring segregation or relating to the segregation by race of the penal facilities of the City of Birmingham?

(4) Is the defendant, Austin, representative of other wardens and jailers of city and town jails of Alabama to the extent that plaintiffs may maintain this action through said Austin as representative of "the class" within the meaning of Rule 23, Federal Rules of Civil Procedure?


J. M. Breckenridge


Earl McBee

ATTORNEYS FOR DEFENDANT, ROBERT K. AUSTIN,
AS WARDEN OF THE CITY JAIL OF BIRMINGHAM,
ALABAMA.

600 City Hall
Birmingham, Alabama 35203

CERTIFICATE OF SERVICE

I, J. M. Breckenridge, one of the attorneys for the said appellant, Robert K. Austin, as Warden of the City Jail of Birmingham, Alabama, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 8th day of February, 1967, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States, mailing copies in duly addressed envelopes, with first class postage prepaid (airmail where necessary) to the following who together constitute the attorneys for the plaintiffs and of all other defendants:

Honorable Charles Morgan, Jr.
5 Forsyth Street, N.W.
Atlanta, Georgia

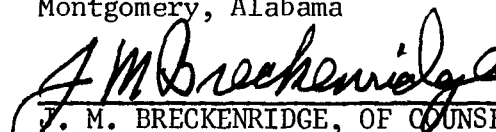
Honorable Orzell Billingsley, Jr.
1630 Fourth Avenue, North
Birmingham, Alabama

Honorable Melvin L. Wulf
156 Fifth Avenue
New York, New York

Messrs. Dominick, Fletcher and Yeilding
Attorneys for Melvin L. Bailey, Sheriff
927 Brown Marx Building
Birmingham, Alabama

Honorable MacDonald Gallion
Attorney General of the State of Alabama
Montgomery, Alabama

Honorable Gordon Madison, Assistant
Attorney General of the State of Alabama
Montgomery, Alabama


J. M. BRECKENRIDGE, OF COUNSEL FOR

APPELLANT, ROBERT K. AUSTIN, AS WARDEN
OF THE CITY JAIL OF BIRMINGHAM, ALABAMA.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF ALABAMA, NORTHERN DIVISION

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CALIPH WASHINGTON, HOSEA L. WILLIAMS, JULIA ALLEN,
individually and as mother and next friend of
WILLIE ALLEN, a minor, WILLIE ALLEN, AGNES BEAVERS,
individually and as mother and next friend of CECIL
McCARGO, JR., a minor, CECIL McCARGO, JR., JOHNNIE
COLEMAN, and THOMAS E. HOUCK, JR., for themselves,
jointly and severally, and for all others similarly
situated,

Plaintiffs,

vs.

FRANK LEE as Commissioner of Corrections of Alabama;
JOHN F. BRITTON, CHARLIE CASHION, HERSCHELL LUTTRELL,
DR. MAX McLAUGHLIN and WILLIAM MITCH, as members of
the Board of Corrections of Alabama; A. MELVIN
BAILEY, as Sheriff of Jefferson County, Alabama and
all other sheriffs of Alabama, jointly and severally,
who are similarly situated; ROBERT K. AUSTIN as War-
den of the City Jail of Birmingham, Alabama, and all
other wardens and jailers of city and town jails of
Alabama, jointly and severally, who are similarly
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Defendants.

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CIVIL ACTION

NO. 2350-N

NOTICE OF APPEAL

TO THE SUPREME COURT OF THE UNITED STATES

A

I. Notice is hereby given that the defendants FRANK LEE as
Commissioner of Corrections of Alabama; JOHN F. BRITTON, CHARLIE
CASHION, HERSCHELL LUTTRELL, DR. MAX McLAUGHLIN and WILLIAM MITCH,
as members of the Board of Corrections of Alabama, above named,
hereby appeal to the Supreme Court of the United States from the
final order entered in this case on December 12, 1966.

II. This appeal is taken pursuant to 28 U.S.C. §1253.

B

I. The Clerk will please prepare a transcript of the record
in this case, for transmission to the Clerk of the Supreme Court of
the United States, and include in said transcript all pleadings,
motions and orders including, but not limited to, the following:

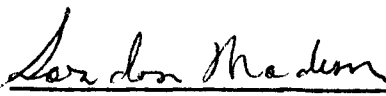
- ✓(1) Complaint filed February 18, 1966.
- ✓(2) Motion for Preliminary Injunction filed February 18, 1966.
- ✓(3) Motion to Dismiss filed March 4, 1966.
- ✓(4) Order appointing three-judge court filed March 22, 1966.
- ✓(5) Motion to Amend Complaint filed April 2, 1966.
- ✓(6) Order granting Amendment to Complaint filed April 5, 1966.
- ✓(7) Order carrying Motions to Dismiss with the case filed June 8, 1966.
- ✓(8) Interrogatories to defendant Frank Lee filed June 9, 1966.
- ✓(9) Order setting case for Trial on Merits filed June 13, 1966.
- ✓(10) Answer of above-named defendants filed June 14, 1966.
- ✓(11) Defendant Frank Lee's Answer to Plaintiffs' Interrogatories filed June 14, 1966.
- ✓(12) Order continuing hearing on the merits to November 29, 1966, filed August 23, 1966.
- ✓(13) Order on pretrial hearing filed November 22, 1966.
- ✓(14) Order of Rives, Circuit Judge, and Lynne and Johnson, District Judges, entered December 12, 1966.
- (15) All pleadings, answers, motions to dismiss, and interrogatories of all parties to the cause in order to present a complete record, including all exhibits.
- ✓(16) Complete transcript of all evidence of all parties introduced in the case.

C

I. The following questions are presented by this appeal:

- (1) Do state statutes which require the separation of white and Negro prisoners in state penal institutions and county and city jails violate the provisions of the Fourteenth Amendment to the Constitution of the United States?
- (2) Does a prisoner serving a penitentiary sentence have the constitutional right to question the validity of state statutes requiring the separation of prisoners by race?
- (3) Does the District Court have jurisdiction and authority to require the defendant Commissioner of Corrections of Alabama to supervise the desegregation of all penal state facilities, including cities of under ten thousand population where state statutes invest authority in the said Commissioner only as to cities over ten thousand population?
- (4) Are §§4, 52, 121, 123, 172, and 183 of Title 45, Code of Alabama, Recompiled 1958, violative of the Fourteenth Amendment to the Constitution of the United States to the extent that said statutes require the segregation of the races in the prisons and jails of Alabama?
- (5) Does the District Court have authority to order the defendant Frank Lee as Commissioner of the Board of Corrections to make reports to the court every three months, beginning March 15, 1967, as to the steps taken and progress made to eliminate segregation in the state penal institutions and the county and city jails in the State of Alabama?


MacDONALD GALLION/As
Attorney General of the
State of Alabama


GORDON MADISON, As Assistant
Attorney General of the
State of Alabama

Attorneys for above-named
Defendants

CERTIFICATE OF SERVICE

I, Gordon Madison, one of the attorneys for the said appellants, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 6th day of February, 1967, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States, mailing copies in duly addressed envelopes, with first class postage prepaid (airmail where necessary), to the following who together constitute the attorneys for the plaintiffs and of all other defendants:

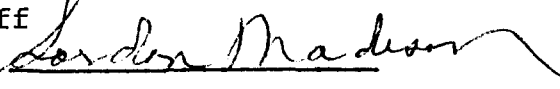
Hon. Charles Morgan, Jr.
5 Forsyth Street, N. W.
Atlanta, Georgia

Hon. Orzell Billingsley, Jr., 1630 Fourth Avenue, North,
Birmingham, Alabama

Hon. Melvin L. Wulf, 156 Fifth Avenue,
New York, New York

Hon. J. M. Breckenridge, Attorney at Law
600 City Hall, Birmingham, Alabama

Messrs. Dominick, Fletcher and Yeilding
Attys. for Melvin L. Bailey, Sheriff
927 Brown Marx Bldg.
Birmingham, Alabama


GORDON MADISON, As Assistant
Attorney General of the
State of Alabama