

ORTENBERG

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

CALVIN TURNER, et al.	)	
	)	
Plaintiff,	)	
	)	
UNITED STATES OF AMERICA	)	
	)	CIVIL ACTION NO. 1226
Plaintiff-Intervenor	)	
	)	
v.	)	
	)	
KENNETH GOOLSBY, et al.	)	
	)	
Defendants.	)	
	)	

PLAINTIFF-INTERVENOR'S
BRIEF IN OPPOSITION TO
DEFENDANTS' MOTIONS TO
DISMISS AND SEVER

DONALD H. FRASER
United States Attorney.

JOHN DOAR
Assistant Attorney General

DAVID NORMAN
CARL GABEL
JOHN HEDLAND
Attorneys
Department
of Justice

CONTENTS

	PAGE
STATEMENT	1
ARGUMENT	
Joinder of Claims and Parties Are Proper	10
A. The Requirement That All Claims Asserted Against Defendants Must Arise Out Of One Transaction Or Series of Transactions Is Satisfied.	10
B. There Are Questions Of Law And Fact Common To All Parties.	16
This Court has Jurisdiction to Hear and Decide All Issues in this Proceeding	19
A. This Court has Jurisdiction to Hear and Decide the Issues of the Unconstitutionality of State Statutes	19
B. A Three-Judge Court May Consider Issues Ancillary and Related to a Constitutional Attack on a Statute	20
Appendix A	i

STATEMENT

The Taliaferro County Board of Education maintained and operated a dual segregated school system for the 1965-1965 school year. Negro students attended one school, Murden, which was staffed exclusively by Negro personnel; white students attended another school, Alexander Stephens Institute, which was staffed exclusively by white personnel. Grades one through twelve were offered at each school. Alexander Stephens Institute had a gymnasium; Murden did not. Mrs. Lola Williams is the County Superintendent of Education. Her office is in the County Courthouse, on the town square.

During the Fall of 1964, a group of Negro adults and children requested that the one gymnasium be made available for their use; the School Board denied this request. Again, in May, 1965, a similar request was made and denied.

The hiring of teachers for the 1965-66 school year was conducted during the Spring of 1965. Teachers who would be assigned to Alexander Stephens Institute signed their contracts at this time; six of the teachers who had taught at Murden School in the 1964-65 school year were notified that their contracts would not be renewed for the 1965-1966 school year.

On May 3, 1965, the Taliaferro County Board of Education submitted a plan for desegregation of schools to the Office of Education, Department of Health, Education and Welfare. At the Board of Education meeting on August 2, 1965, the Board noted in its minutes that the Department of Health, Education and Welfare notified it to improve the plan but the Board decided to rely on its plan of May 3, 1965.

Groups of Negro and civil rights workers began holding demonstrations in May, 1965, and these demonstrations continued throughout the summer. On Sundays, the usual practice was for the protestors to meet at the Friendship Baptist Church, march to the town square, where they sang songs and prayed, after which they marched back to the church. On some occasions demonstrations occurred near the office of Mrs. Williams and at her home. Some of the songs which the demonstrators sang mentioned her name.

During July 1965, forms by which Negro children could transfer to Alexander Stephens Institute were made available by the school officials. On July 13, 14, and 15, the Board received 89 applications for the transfer of Negro students to Alexander Stephens Institute. Beginning on July 15, the last day for

the submission of transfer forms, the School Board attorney, Harold Richards, Sheriff Moore and agents of the Georgia Bureau of Investigation began an investigation of alleged irregularities in the submission of the 89 choice forms. Mrs. Williams consulted with Mr. Richards about this investigation. Also in July, 1965 Mrs. Williams contacted Mr. Ford Boston, the Superintendent of Greene County Schools, concerning the transfer of students to Greene County. At this time Mr. Boston thought that grades 8 through 12 would not be operated at Alexander Stephens Institute the following year. On July 22-23, 1965 the Warren County Board of Education received a large number of applications from students who previously attended Alexander Stephens Institute to attend schools in that county during the 1965-1966 school year. On August 5, the Warren County Board approved the hiring of four teachers who had taught at Alexander Stephens Institute in 1964-1965 and who had, in the Spring of 1965, agreed to teach in Taliaferro County the following year. On August 6, the Warren County Board approved the transfers of students who previously attended Alexander Stephens Institute.

Also, during July, 1965, County and School Board Attorney Harold Richards caused three warrants to be issued against Calvin Turner for violation of Georgia Code, Section 26-3914. Mr. Turner taught in the Murden School during the 1964-1965 school year but his contract was not renewed for the 1965-1966 school year. He is

one of the teachers who assisted Negro children in their request to use the Alexander Stephen Institute's gymnasium, during the 1964-1965 school year, he is a leader of the Taliaferro County civil rights movement, and is a parent who requested that his children attend Alexander Stephens Institute during the 1965-1966 school year. The warrants were issued for alleged forgeries concerning the filing of requests for four Negro students to attend Alexander Stephens Institute. Mr. Turner was released on bond pending the meeting of the Taliaferro County Grand Jury. The Grand Jury, on or shortly after August 31, 1965, returned three indictments, of four counts each, charging Calvin Turner with violations of the Georgia forgery statute, in connection with the school transfer application forms filed on behalf of Negro students to attend Alexander Stephens Institute. Calvin Turner is also a Notary Public and acted as such on the applications filed on behalf of Negro children to attend Alexander Stephens Institute.

On Sunday, August 22, 1965, about 125 Negroes and a few white civil rights workers marched together to the Taliaferro County Courthouse from the Friendship Baptist Church to protest racial inequalities in Taliaferro County. Another group led by Reverend Whitney Ward and a group of his white followers, were also at or near the Courthouse square. They had a loudspeaker over which records were played. Both groups conducted their programs simultaneously at different places on the square. On the following day,

County Attorney Richards met with Solicitor General Kenneth Goolsby and gave to Mr. Goolsby a copy of a letter that Reverend Ward had provided Mr. Richards. The letter concerned the alleged interference of Reverend Ward's meeting at the Courthouse on August 22, by the Negro demonstration. Later that day, Sheriff Moore arrested Calvin Turner, and the Reverend Joseph Cooney, a civil rights worker from the District of Columbia, for violation of Georgia Code 26-6901, disturbing divine worship.

The regular session of the Taliaferro County Grand Jury was scheduled to meet on August 23, 1965. It was not convened but met instead on August 30, 1965, after the names of Negroes were added to the jury list. The grand jury indicted nine persons for violating Georgia Code Section 26-6901, disturbing divine worship. The indictments charged that the conduct of the Negro demonstrators at the Courthouse square on August 22, 1965, disturbed a divine worship, conducted by Reverend Ward. The Grand Jury also indicted Calvin Turner, Clara and Dock Davis, and Edna Swain of five counts of forgery arising out of the submission of applications for transfer to attend Alexander Stephens Institute on behalf of Negro children, in July 1965. Mr. Calvin Turner was confined in jail from about August 31, 1965, until at least September 10, 1965, for failure to post \$17,750 bond which was set following his arrest for violating the Georgia divine worship and forgery statutes.

The 1965-66 school year began on August 30, 1965 in Taliaferro County, Georgia. No white students appeared at Alexander Stephens Institute. Taliaferro County provided public school bus transportation for the white students to attend classes in Warren, Wilkes, and Greene Counties, Georgia. Negro students who had requested transfers to Alexander Stephens Institute were unable to attend because the school was not operated. To protest the closing, Negro students, in September and October, 1965, attempted to board, and placed themselves in the path of the buses which transported the white Taliaferro County students to Warren, . Wilkes, and Greene Counties. Beginning September 10, and ending on October 12, 1965, a series of four demonstrations occurred at the Murden School, during one of which a list of grievances was presented to the principal by representatives of the Negro demonstrators.

Plaintiff filed the complaint in the instant action on September 10, 1965, alleging that Georgia Code 26-6901 concerning disturbance of divine worship, is unconstitutional, that Georgia Code 26-3914, the Georgia forgery statute, is unconstitutional, and in Count III, that, in general, defendants have conspired to deny plaintiffs their civil rights.

Count III incorporates by reference the allegations of Counts I and II, alleges that the acts of defendant Goolsby were committed in furtherance of a conspiracy in violation of 28 U.S.C. 1985(3), and alleges that the Taliaferro County Sheriff, Milton Moore, the County

Attorney, Harold F. Richards; the County Superintendent of Schools, Mrs. Lola Williams; the members of the County Board of Education; and the Solicitor General of the Toombs Judicial Circuit, Kenneth E. Goolsby, are co-conspirators, who have combined and conspired under color of state law to deprive the plaintiffs and the member of their class of the equal protection of the laws or of privileges and immunities under the federal Constitution and statutes. Specifically, it is alleged that, among other things, the Taliaferro County school officials refused to rehire six teachers who assented to a request on behalf of Negro students to use the one gymnasium in the county; that the Taliaferro County school officials arranged for the education of white students, but not Negro students, in the schools of the surrounding counties; that certain defendants caused civil rights workers to be chased, to be deprived of guaranteed rights, and threatened; that defendant Richards caused warrants to be signed by Negro citizens against Calvin Turner on the charge of forgery, in furtherance of the conspiracy; and that defendant Goolsby by presenting evidence to the grand jury caused indictments to be returned against Calvin Turner and the Reverend Joseph Cooney for violating Georgia Code 26-6901 and by participating in the transfer of the 112 white students to schools in the adjoining counties acted to further the conspiracy.

Plaintiffs seek to enjoin the enforcement of Georgia Code Sections 26-6901 and 26-3914; and that

the defendants, be enjoined from, among other things, conspiring to use or in any way using their authority to harass, intimidate, impede or prevent the plaintiffs from exercising their rights, privileges and immunities as citizens of the United States; that certain defendants be enjoined from interfering by violence, threats, or arrests and threats of arrest or prosecutions with plaintiff's assembling, marching and demonstrating at reasonable times; and that defendant Sheriff Moore be enjoined from failing to provide demonstrators with adequate police protection and that the defendants Lola Williams and the Taliaferro County Board of Education be enjoined from using public monies to support students residing outside of Taliaferro County unless all students have the privilege of attending these schools.

Count **IV** was added by amendment on October 11, 1965. It adds several Negro students and parents as plaintiff and adds the superintendents and members of the Boards of Education of Warren and Greene Counties as defendants. Plaintiffs allege that the newly added defendants agreed and arranged with certain other defendants to enroll the former Alexander Stephens Institute students in their respective school systems. Plaintiff seeks to enjoin the Taliaferro County School officials from operating a segregated school system and from continuing to educate white Taliaferro County students in schools in the surrounding counties and seeks to enjoin the other defendants from accepting and educating these students. In the alternative, plaintiff

requests that the court require the reorganization of the Taliaferro County school system into a unitary non-racial system, including the assignment of children, staff, and faculty on a non-racial basis.

The United States of America, on January 12, 1966 filed a motion to intervene under the provisions of Section 902 of the Civil Rights Act of 1964 and Rule 24 (a) of the Federal Rules of Civil Procedures. Limited leave to intervene was granted at the hearing on February 23, 1966.

ARGUMENT

JOINDER OF CLAIMS AND PARTIES IS PROPER

- A. The Requirement That All Claims
Asserted Against Defendants Must
Arise Out Of One Transaction Or
Series of Transactions Is
Satisfied.

Defendants have filed several motions in this action regarding the propriety of the three-judge court to hear and decide issues relating to the desegregation of the public schools of the four counties along with the questions of the constitutionality of the two sections of the Georgia Code. Attachment A to this brief contains a synopsis of the motions on these issues.

Ths issues raised are whether there is proper joinder of the several parties and claims under Rule 18, Federal Rules of Civil Procedure, and whether the three-judge court should hear and decide the matters raised in the four counts of plaintiff's complaint. In order to determine whether, in this instance where there are multiple parties to an action and multiple claims, if each are properly joined, it is necessary to determine if the requirements of Rules 18 and 20, Federal Rules of Civil Procedure, are satisfied.

Rule 18, Federal Rules of Civil Procedure, provides that a plaintiff may join, either as independent or as alternate claims as many claims as he may have against an opposing party. Similar joinder of claims is permitted when there are multiple parties if the requirements of joinder of parties are met. Rule 20, Federal Rules of Civil Procedure, permits joinder of defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any question of law or fact common to all of them will arise in the action.

In order to properly join claims and to properly join parties it must be shown first, that there is asserted against the multiple defendants a right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences. In this proceeding, the common transaction or series of transactions are the acts of the several defendants to prevent Negro students from attending desegregated schools. These acts are alleged in Count III to constitute a conspiracy.^{1/} There is no requirement that the transaction or series of transactions be limited to a particular span of time; the determination of

^{1/} Clearly the conspiracy and the acts of each individual pursuant to it arise out of "the same transaction, occurrence, or series of transactions or occurrences." See Eastern Fireproofing Co., v. United States Gypsum Co., 160 F.Supp. 580 (D.C. Mass., 1958).

whether the acts of the defendants are part of the same transaction or series of transactions must be determined from the facts in each case.

In this proceeding, the four counts of the complaint, as amended, all relate to a same transaction or series of transactions, the acts of the several defendants to prevent or discourage Negro citizens of Taliaferro County from exercising certain constitutionally guaranteed rights, including the right to attend desegregated schools. Count III of the complaint incorporates the allegations of Counts I and II and in Count IV, it is alleged, in essence, that by maintaining segregated schools, the defendants continued to give force and effect to the events which occurred which prevented Negro students from attending desegregated schools.

The events which show the existence of the common transaction or series of transactions, as set forth in the facts above are:

1. The defendants, Mrs. Williams,
and the members of the
Taliaferro County Board of
Education in the Spring of
1965 refused to rehire six
Negro teachers at Murden
School;

2. The defendants, Mrs. Williams, and the members of the Taliaferro County Board of Education during the 1964-1965 school year refused to permit Negroes to use the Alexander Stephens Institute gymnasium;
3. The defendants, Mrs. Williams, the members of the Taliaferro County Board of Education, and Mr. Richards, Mr. Goolsby, and Sheriff Moore, in July 1965, instituted an investigation of applications for transfer by Negroes to Alexander Stephens Institute, and investigated and initiated the prosecution of Calvin Turner for forgery, under Georgia Code 26-3914;
4. The defendants, Mrs. Williams, the superintendents of the Greene, Warren, and Wilkes County Boards of Education and the Boards of Education of Warren, Wilkes, Greene, and Taliaferro Counties arranged for the transfer

of white students who attended Alexander Stephens Institute in 1964-1965 to the schools in Warren, Wilkes, and Greene Counties for the 1965-1966 school year;

5. The defendants, Sheriff Moore, Mr. Richards, and Mr. Goolsby sought indictments for violation of the divine worship statute (Georgia Code 26-6901) of members of the civil rights movement who were promoting, among other rights, the desegregation of Taliaferro County Public Schools;
6. The defendants, the superintendents and the members of the Boards of Education of the Warren, Wilkes, Greene, and Taliaferro Counties, while arranging for the transfer of white students to the schools in Warren, Wilkes, and Greene Counties, failed to notify Negro students residing in Taliaferro

County of their right
and of the opportunity to
make such transfers;

7. All of the defendants have
perpetuated the racial segregation of the public school
system of Taliaferro County.

Thus, it is clear that the claims in this case
arise out of common occurrence or series of transactions,
namely the efforts of the defendants to avoid the de-
segregation of public schools in Taliaferro County.

B. There are questions of law and fact common to all parties.

In our view, the Federal Rules of Civil Procedure, Rules 18 and 20, authorize the joinder of multiple claims and multiple parties when the claims arise "out of the same transaction or occurrence or series of transactions or occurrences" and there is a question of law common to all defendants.^{2/}

It is clear from the evidence in this proceeding that, apart from the question of a conspiracy, there is at least one question of fact in this case which is common to all defendants. This question is whether the defendants sought to prevent Negro children from attending desegregated public schools in Taliaferro County. This question of fact is common to all of the parties.

Because the defendants in this proceeding are all agents of the State and have all acted with a common purpose, they must be deemed to have acted in concert.

^{2/} Indeed, the proposed revision of the Federal Rules makes this principle explicit. See Amendments to Rules of Civil Procedure for the United States District Courts, United States Supreme Court, February 28, 1966, Rules 18 and 20. This is also the position taken in 2 Barron and Holtzoff, (Wright ed.) §533.1. But see Moore, Federal Practice 1810-13 (§18.04 [3]).

This is not a case involving private individuals unrelated in fact or law to each other; it is a case involving a group of local officials who are agents of the State of Georgia carrying out a single purpose in a related series of acts. There is a question of law common to all defendants -- whether their action in seeking to prevent Negroes from attending desegregated public schools in Taliaferro County are in violation of the Constitution. It makes no difference that there are some questions of law, such as the validity of the divine worship statute, which are not common to all defendants and are not common to all plaintiffs. Rule 20 provides that the relief need not be the same for or against all parties. It states, . . . "A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more of the defendants according to their respective liabilities."

The prosecution of Negroes engaged in desegregation activities and the defendants' dodging of desegregation by sending white children to other counties are related acts and a part of an overall policy. If any one of these defendants was sued for his role in this scheme, the evidence of the related acts of all the other defendants would be essential to proof of the claim.

This is a class action and private plaintiffs are all members of class. They assert in Count III that all defendants have acted in concert to deprive them and the members of their class of rights secured under the Constitution and laws of the United States. Thus, this claim involves a question of law common to all parties.

THIS COURT HAS JURISDICTION TO HEAR AND
DECIDE ALL ISSUES IN THIS PROCEEDING

- A. This Court Has Jurisdiction To Hear
And Decide The Issues Of The Uncon-
stitutionality Of State Statutes

When a complaint seeks an injunction against the enforcement of a state statute on the grounds of unconstitutionality the case must be heard and determined by a three-judge court pursuant to 28 U.S.C. 2281 et. seq., e.g. Florida Lime and Avocate Growers, Inc. v. Jacobson, 362 U.S. 73 (1960); Ex Parte Bransford, supra. The Court in its order of October 22, 1965, held that Georgia Code 26-6901, the divine worship statute, is unconstitutional as applied, and reserved the question of facial unconstitutionality for final hearing. It enjoined prosecution under Georgia Code 26-3914, the forgery statute, and the ultimate determination of its constitutionality is pending before the Court.

B. A Three-Judge Court May Consider
Issues Ancillary and Related to
A Constitutional Attack on A
State Statute.

The Supreme Court has held that "[w]here a complaint seeks to enjoin a state statute on substantial grounds of federal unconstitutionality, then even though nonconstitutional grounds of attack are also alleged, we think the case is one that is 'required by . . . Act of Congress to be heard and determined by a district court of three judges.'" (Emphasis by the court). Florida Lime and Avocado Growers, Inc., v. Jacobsen, 362 U.S. 73, 85 (1960). See also Zemel v. Rusk, 381 U.S. 1 (1965). In Sterling v. Constantin, 287 U.S. 378 (1932,), the court stated that the jurisdiction of a properly constituted three-judge court "extends to every question involved, whether of state or federal law, and enables the court to rest its judgment on the decision of such of the questions as in its opinion effectively dispose of the case." 287 U.S. at 393. Thus, it is clear that a three-judge court which is properly convened can hear and determine issues which do not in themselves justify a three-judge court.^{3/}

^{3/} The I.C.C. three-judge court cases are not in point. They arise under 28 U.S.C. §2325, which has been construed to prohibit the joinder with a valid three-judge claim with a one-judge claim seeking the same relief. E.g., Pittsburgh & W.V.R. Co. v. United States, 281 U.S. 479 (1930). See also New York Securities Co. v. United States, 287 U.S. 12 (1932) and Powell v. United States, 300 U.S. 276 (1937). It is clear that three-judge courts convened

Moreover, a Section 2281 three-judge court is not limited to considering constitutional and non-constitutional claims which both seek relief from enforcement of a statute. In White v. Crook, Civil Action No. 2263 (N.D., Ala., 1966) a three-judge court consisting of Judges Rives, Allgood, and Johnson, heard and determined a constitutional challenge to an Alabama statute limiting jury service to men, joined with a claim that the defendants had systematically excluded Negroes from jury service. The latter claim did not seek an injunction against a state statute's enforcement, and would not therefore justify a three-judge court in its own right.

3/ (con't.) pursuant to 28 U.S.C. §2281 are not subject to the limitations of three-judge courts convened pursuant to 28 U.S.C. §2325, since a 28 U.S.C. §2281 Court may hear all challenges to a statute, non-constitutional as well as constitutional. Florida Lime and Avocado Growers v. Jacobsen, 362 U.S. 73 (1960). However, the most recent case dealing with the jurisdiction of a §2325 Court, held that a three-judge court could consider both a claim seeking review of an I.C.C. rate order (a three-judge claim) and an issue arising under the anti-trust laws. There the non-three-judge claim did not seek the same relief as the three-judge claim. The Court held that since the issues in the two claims were "inextricably emmeshed" it could hear them both. Cf. also Chicago Junction Case, 264 U.S. 258 (1924).

The only case cited by defendants which is similar in its facts to the case at hand and arises under the same jurisdictional statute is Public Service Commission of Missouri v. Brashear Freight Lines, 312 U.S. 621 (1941). There a three-judge court acted upon a claim of unconstitutionality of a state tax law and a counter-claim for assessment of money damages. The court did not hold that the three-judge court did not have jurisdiction to try the case but held that the non-three-judge claim was properly appealed to the Court of Appeals on the merits. This indicates that the three-judge court's exercise of jurisdiction was permissible. See generally, Kurland, The Romero Case and Some Problems of Federal Jurisdiction, 73 Harv. L. Rev. 817, 836-41 (1960).

Defendant's reliance on Hurn v. Oursler, 289 U.S. 238 (1933), and related cases involving the doctrine of pendant jurisdiction is unfounded. The pendant jurisdiction rule as outlined in these cases is concerned with the issue of a federal court hearing and deciding state causes of action. Under the rule of those cases a federal court has jurisdiction over a state cause of action only if it is predicated upon the same fact pattern which gave rise to the federal claim before the court. Thus, a federal court is without jurisdiction to determine a state cause of action not predicated upon a set of facts which also gave rise to a federal claim. The rationale of this rule is founded

upon constitutional notions of federalism and the hesitancy of the federal courts to invade the domain of state law. See generally, Hart and Wechsler, The Federal Courts and the Federal System, pp. 794, 797-809. In this proceeding this Court is presented with an entirely different issue. A state claim is not alleged and problems of federalism and abstention are not present.^{4/}

^{4/} Even if the analogy urged by defendants is appropriate, defendants have too strictly construed the distinction between "two distinct grounds in support of a single cause of action" and "two distinct causes of action." Applying the rule of Hurn v. Oursler, the 7th Circuit has upheld the joinder of claims alleging 1) patent infringement, and 2) breach of a covenant not to infringe the patent. Even though the patent was held invalid, the Court said that the second issue should be decided on the merits. It held the patent relevant to the second claim (arising under state law) only to describe the article not to be "infringed" by the defendant. The "single cause of action" requirement was satisfied here by the overlapping of the evidence which had to be presented on each claim. United Lens Corp. v. Doray Lamp, Inc., 93 F. 2d 969 (7th Cir. 1937) (alternative holding).

In the three-judge court situation, the primary consideration is that of judicial economy. It is apparent that severance as requested by the defendants would place an added burden on the court system. Counts I and II would be heard by a three-judge court, Counts III and IV by a single judge. Assuming each case ran the gamut of review, the latter would be appealed to a circuit court. Two separate appeals to the Supreme Court would be necessary. Moreover, as has been discussed previously, much of the proof relevant to Counts I and II would be repeated in the hearing on Count III, since I and II are alleged as part of the Count III conspiracy. Also, much of the other evidence adduced under Count III would be duplicated on the trials of Counts I and II, to show the purpose of the application of the statutes. Clearly the case in its present posture prevents needless duplication and repetition.

Thus, it is apparent that this Court has jurisdiction not only to decide the questions of the constitutionality of the state statutes, but has jurisdiction to decide all issues in the proceeding.

CONCLUSION

It is our contention that the claims and parties were properly joined under the provisions of Rules 18 and 20, Federal Rules of Civil Procedure. The requirements of joinder have clearly been satisfied. It is also clear that this Court, a Three Judge District Court must, under 18 U.S.C. 2281, hear and decide the questions of the constitutionality of the Georgia criminal statutes, the disturbance of divine worship statute (Georgia Code 26-6901) and the Georgia forgery statute (26-3914). It is likewise clear that this Court should hear and decide all of the issues and matters alleged and presented in this proceeding.

Respectfully submitted,

JOHN HEDLAND,
CARL GABEL,
Attorneys,
Department of Justice,
Washington, D. C. 20530

APPENDIX A

Motions concerning the issues of joinder and jurisdiction of the Three Judge District Court to hear and decide the issues raised in the four counts of the Complaints.

1. October 5, 1965

Defendants Kenneth B. Goolsby and Milton B. Moore moved to require plaintiffs to file an amended complaint stating in separate counts each of seven alleged claims for relief in Count III of the complaint and for an order severing the claims sought to be asserted against Goolsby and Moore from the claims sought to be asserted against other defendants. They contended that defendants Goolsby and Moore have no authority over the operation of schools in Taliaferro County, that the alleged claims against Goolsby and Moore do not arise out of the same transactions as claims against other defendants; that undue expense to Goolsby and Moore would occur and that the issues will be confused by joint trial of claims against two groups of defendants.

2. October 5, 1965

Lola Williams, Superintendent of Schools, Taliaferro County, and members of the Board of Education Taliaferro County, moved for an order dropping them as parties defendant or in the alternative for an order severing claims asserted against them from claims asserted against defendants Goolsby, Moore and Richards.

3. November 16, 1965

The members of Wilkes County Board of Education and Wilkes County Superintendent of Schools, M.A. Guill moved to dismiss the complaint because:

1. The complaint fails to state a cause of action upon which relief can be granted, and
2. Trial was held on October 12, 13, 14 when defendants were not present; had not been served with process; and were without notice the matter was proceeding against them,

The defendants additionally moved:

1. To dismiss and strike Counts I and II of the complaint in that said counts relate wholly to matters concerning Taliaferro County,
2. To dismiss Count III in that Count III contains a multiplicity of actions,
3. To dismiss Counts III and IV of complaint in that defendant had no opportunity to defend and had no notice of trial of the case, and
4. To dismiss and vacate the order of the Court dated October 19, 1965 as to them, in that said order was granted ex parte when they had no notice advising that they were parties.

4. February 15, 1966

The members of the Wilkes County Board of Education and its Superintendent moved to:

1. Sever claims and parties set forth in Counts I and II of plaintiff's complaint from claims and parties set forth in Counts III and IV and that Counts I and II be proceeded with separately from Counts III and IV, and
2. That Counts I and II be heard by a district court consisting of three judges and Counts III and IV by a district court consisting of a single judge for the reason that a three-judge court does not have jurisdiction over Counts III and IV which are the only counts involving Wilkes County defendants.

5. February 15, 1966

A Motion by Wilkes County defendants to strike portions of numerous paragraphs in the complaint as being irrelevant and immaterial.

6. February 23, 1966

Motion by Warren County defendants to:

1. Sever Counts I and II from Counts III and IV and that Counts I and II be dealt with separately from Counts III and IV.
2. Sever parties between the parties' plaintiff and defendants of Counts I and II with parties plaintiff and

defendant in Counts III and IV
so that claims in Counts I and II
will be handled separately from
those of Counts ~~III and IV~~,

3. Dismiss Counts III and IV of the
complaints as a three-judge Court
does not have jurisdiction in such
matters with regard to Warren County
Board of Education, and
4. To have Counts III and IV be heard
by the resident judge for the
Southern District of Georgia.