

## RESISTANCE TO BROWN V. BOARD OF EDUCATION – THE GARDENDALE EXPERIENCE

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### ABSTRACT

This article reflects on how the effects of *Brown v. Board of Education (1954)* have been avoided in the state of Alabama. It is a case study involving legal maneuvering which many have interpreted as being motivated by race to maintain school segregation in a changing environment. Yet, it is also an explanation of how other states have avoided compliance with the *Brown* case with the effect being that the American educational system is becoming more segregated than it has been in the past. It also shows that careful analysis of our educational system needs to be maintained by our judicial system if we are to prevent the factor of race from damaging our educational system which is the foundation of a better way of life for all Americans.

### INTRODUCTION

The landmark case of *Brown v. Board of Education* in 1954 has brought many favorable changes to American society especially in the area of equality. The case itself focused primarily on bringing educational equality to our citizens which had been absent primarily as a result of racial factors. Although resistance in the South to its implementation was very strong and lasted a long time, southern schools eventually progressed to a time when noticeable integration was characteristic. A source notes "... desegregation in the 1960s and 1970s led to improvements in educational attainment by black students and possibly greater achievement" (Levine, Daniel S.). Since 1971 federal courts have continued an oversight of school districts in reference to some of their policies. Many of these school districts have remained under a federal desegregation order until they have achieved "unitary status"--achieving the goals of becoming non-segregated. However, one source notes that in a series of decisions in the early 1990s, "...starting with Board of Education of Oklahoma City v. Dowell, the U.S. Supreme Court ruled that desegregation orders were intended to be temporary and eased the criteria required for release from court oversight" (Levine, Daniel S.). According to one study, however, "the average district released from a federal court order saw segregation levels grow faster than 90 percent of other school districts" (Levine, Daniel S.). This could demonstrate that a lack of federal monitoring lessens the chance of a more integrated American educational system.

In the South and in other parts of the United States educational statistics have indicated a return to a segregated system in our schools. This return to segregation seems to be due to a number of factors. One being that blacks have begun to dominate one part of a city or county with fewer Caucasians living there. Hence, the schools in these parts are becoming overwhelmingly black in student enrollment. Another factor is that some small cities with a large Caucasian population have been allowed under federal guidelines to leave a county wide school system and form their own school district. This particular article deals with the latter reason; namely, a city leaving a large county school system with the intention of establishing its own

educational district. In a very strong sense it is about a return to a segregated school system counter to the decision of the *Brown* case.

### **EDUCATION QUALITY IN ALABAMA**

Alabama is a poor state and a high percent of its citizens experience poverty. In addition, property taxes are very low in this state and this has resulted in Alabama's educational system having difficulties. As of 2019 new teachers start out at about \$41,000. Unfortunately, race and social class also determine the quality of education received by a student. A 2019 Alabama Failing School List indicated 76 schools are failing which is a similar rating to the years 2017 and 2018. In Montgomery, ten schools were on the failing list (Alabama Failing List, 2019). Perhaps this is just one reason why so many Caucasians are moving from Montgomery to a nearby suburb or to Auburn, Alabama which has a reputation for having a commendable school system. Auburn has what one would expect when explaining the success of its school system—a high percent of educated and affluent citizens. In addition, it has a nationally acclaimed university which probably has a major effect on the quality of education in its public schools. It is also a primarily Caucasian community. Other areas of the state which do not have these characteristics will probably not be able to match Auburn or some other Alabama communities in providing comparable educational opportunities.

### **CHARACTERISTICS OF GARDENDALE**

Gardendale is mostly a white suburb near Birmingham, Alabama which has one of the most heavily black populations in the country. Gardendale is quite different in terms of race which has a white population of about 88 percent whereas the black population of Birmingham, Alabama is about 75 percent. The conditions in each political entity are quite different not only in relation to race, but to income and housing conditions. They are also different in terms of who is attending public schools in each city. As expected the percentage of black students in Birmingham is quite high; the percentage of white students in Gardendale is also quite high. In reality the schools are segregated as a result of what is called de facto segregation which comes about because a majority of one race lives in one area and a majority of another race lives in another area. This is common throughout the United States and is not just limited to the South. It is a particular type of segregation that is not in violation of the *Brown* case. "That ruling specifically related to finding segregation of schools unconstitutional when it results from state action – when state government or agencies require or enforce school segregation. It did not, however, find segregation unconstitutional if it results from people deciding to live in segregated communities by choice" (Levine, Daniel S.).

Yet, Gardendale provides an opportunity to explain the presence of a resurgence of segregated schools in this country. In addition, its legal ramifications provide an interesting commentary about how our society is reacting to a more pluralistic society. As a city it had requested federal approval to set up its own school district and separate itself from the Jefferson County School System which has a large black student enrollment of about 44 percent. The reality that could come about is a new school district which is heavily white in population separated from a county system which is heavily black.

## LEGAL APPROVAL IN FEDERAL DISTRICT COURT

When Gardendale attempted to secede from the Jefferson County School District some might have thought that it was a “done deal.” Perhaps it could have been viewed as another attempt to improve educational quality for students in that entity. One source notes:

This process of breaking off is known as secession, and school secessions have become fairly common. Laws in 30 states explicitly allow communities to form their own public-school systems, and since 2000, at least 71 communities across the country, most of them white and wealthy, have sought to break away from their public-school districts to form smaller, more exclusive ones, according to a recent study released by EdBuild, a nonpartisan organization focused on improving the way states fund public education (Jones, Nikole-Hannah).

Yet there was opposition to the separation of Gardendale from the Jefferson County School System and this resulted in the attempt being disputed in federal district court with representatives of both sides presenting their case. Federal district court Judge Madeline Haikala, an appointee of President Obama, presided over the case and would have to decide if indeed it was permissible for the white suburb to secede from the county school district since Jefferson County was still under a federal court desegregation order.

A view of the secessionists was presented by a number of sources. One noted:

There will be no credible evidence in this trial of racial animus motivating the Gardendale Board of Education, ... ‘What the evidence will show is that the citizens of Gardendale cared so much about the education of their children that they raised their own taxes to enable their city to operate the schools their kids attend, and that is all that Gardendale is asking the court for today, to be allowed to operate its own school system for the sake of their children’s education (Jones, Nikole-Hannah).

Basically, the secessionist view arguing for separation was that race was not a factor but that a desire to improve educational experiences was the major reason for their request as well as local control. A source notes:

Those who wanted to break off had some legitimate complaints about their schools — in some cases, children attended classes in trailers because of overcrowding, roofs sometimes leaked, textbooks could be in short supply and technology was too often outdated and broken. But the organizers also acknowledged in court testimony that they were satisfied with their children’s teachers and that they had never complained to the district about conditions and were, in fact, pretty happy with how their children were performing (Jones, Nikole-Hannah).

Not everyone agreed that race was not a factor. One source described it this way:

The people organizing Gardendale’s secession effort were too obvious about their reasons. They cited how their schools “looked” different from their local churches

and community events. A flyer even asked locals if they would “rather live in an affluent white city or a formerly white city that now is well-integrated or predominantly black.” That flyer, featuring a white little girl in a backpack, listed four integrated cities and four mostly white cities in the area and asked Gardendale residents “which path” they would choose (Green, Sara).

What is so interesting about the case is the finding by United States District Judge Haikala and what she did. Even though Judge Haikala found that: “Gardendale’s motives were based on the idea that the school’s district’s black students were inferior; even though she noted that it would set back the county’s desegregation efforts to make schools equal; and even though it would negatively impact the black students who already attend Gardendale schools, she allowed Gardendale to move forward anyway” (Harriot). It would seem that the finding of racial motivation would be enough to deny the request for secession. In addition, one should remember what the Supreme Court noted in the *Brown* case:

Such segregation of white and black children in public schools has a detrimental effect upon the black children, an impact that is greater when it has the status of law. It “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way ever to be undone.... We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal (*Brown v. Board of Education*).

However, Judge Haikala added some stipulations to her allowance of secession. For example, she required the appointment of an African-American to serve on the schoolboard, meet requirements set out by the court, and abide by a desegregation plan formulated by the Justice Department for the new school district (Palma, Bethania). Perhaps this was a balancing act on her part which might be viewed as some sort of a compromise. On the one hand it satisfied the secessionists and on the other hand the requirement of a desegregation plan approved by the Justice Department might suggest that the new school district would not be a segregated one. Yet the reality of the situation would be the continuation of a segregated school system at least temporarily since the overwhelming majority of citizens living in Gardendale are white. In its simplest form—this is called “de facto” segregation—segregation that comes about because a majority of one race resides in a particular area of a city or county.

Even though the secessionists were successful on the district court level there were expressions of disappointment. One reason for the disappointment was the belief that the media had used the idea of race to project a negative picture of Gardendale residents. For example, one person felt that: “The media has twisted and turned this issue to make everyone think this is about race.” “The people who live in this community and love this community know that nothing is further from the truth. But the fact is that damage has been done” (Felton, Emmanuel).

However, U.W. Clemon who represented in court those opposed to secession noted that the decision set back 50 years of integration effort. A number of his quotes reflect some interesting views: “If you can create a school system with racially inspired motivations, there is nothing stopping the return of segregation.” “We’ve always had problems with Gardendale. It was a sundown town-blacks didn’t even buy gas there,” (Felton, Emmanuel).

At this time Mr. Clemon was a retired black federal district judge from Birmingham, Alabama with extensive first-hand experience with segregation resulting from his background in Jefferson County, Alabama. As an impressive undergraduate at Miles College he was not allowed to enter the University Of Alabama School Of Law but later graduated from Columbia University's prominent law school. He then returned to Alabama and became a successful attorney and prominent jurist. He was a representative of opposition to the secession of Gardendale from the Jefferson County School District.

It is also possible that the ruling could have drastically reduced funding for the Jefferson County School system since it would lose some taxes paid by the Gardendale citizens regarding education. Of course, funding affects the quality and quantity of educational resources. Shortly after Judge Haikala made her decision a number of published commentaries which were critical of it came about. For example one source had the headline: "Did Alabama Just Bring Back School Segregation?" (Palma Bethana). Another headline read: "Judge Allows White Ala. Town to Return to Segregation."(Harriot, Michael) Monique Lin-Luse, an assistant counsel of the NAACP Legal Defense and Educational Fund who represented the black plaintiffs in the Gardendale secession case also said: "it's a real question of fairness and equity, and it really leaves some students behind by virtue of where they live,"(Camera, Lauren). However, Judge Haikala's decision was appealed to the United States 11<sup>th</sup> Circuit Court for a review.

### **THE VIEW OF THE 11<sup>th</sup> CIRCUIT COURT**

This time there was a different result. This court did not approve of the secession. The opinion was written by Judge William Pryor, a former Alabama Attorney General, who cited a number of cases to justify this court's different conclusion. The general perception of racial motivation on the part of Gardendale seemed to be the main reason for the reversal by the 11<sup>th</sup> Circuit Court.

The district court (Haikala) found that the Gardendale Board acted with a discriminatory purpose to exclude black children from the proposed school system and, alternatively, that the secession of the Gardendale Board would impede the efforts of the Jefferson County Board to fulfill its desegregation obligations," "Despite these findings, the district court devised and permitted a partial secession that neither party requested. ....

We conclude that the district court committed no clear error in its findings of a discriminatory purpose and of impeding the desegregation of the Jefferson County schools, but that it abused its discretion when it sua sponte (own her own) allowed a partial secession. We affirm in part, reverse in part, and remand with instructions (to Haikala) to deny the motion to secede''(Gardendale Will Cease Efforts To Create New School System).

Apparently, one factor influencing the 11<sup>th</sup> Circuit Court was the content of certain social media posters from which one might imply a racial motivation. Judge Pryor noted that the intent of social media posters was clear. Such posters pointed out the advantages of having a new school district as opposed to what could happen to students who had to remain out of it. A message that might have been implied in the posters was that those students who remained in the

Jefferson County School District would be primarily black and those who attended the new Gardendale School District would be primarily white. The 11th Circuit Court noted that the comments in some of the posters shed light on the motivation behind the creation of a new school district in Gardendale. The appeals court concurred with the district court, which found, “The Gardendale Board not only failed to disavow those messages of inferiority but instead reinforced them”(Court Blocks Predominantly White Alabama City from Creating Its Own School System). Yet, Judge Pryor did leave open the possibility that in the future Gardendale might be able to secede from the Jefferson County School System:

If the Gardendale Board, for permissible purposes in the future, satisfies its burden to develop a secession plan that will not impede the desegregation efforts of the Jefferson County Board, then the district court may not prohibit the secession," according to the ruling. ‘We do not belittle the ‘need that is strongly felt in our society’ to have ‘[d]irect control over decisions vitally affecting the education of one’s children,’ according to the ruling that cites a previous case. ‘Indeed, the ‘local autonomy of school districts is a vital national tradition,’.’ We hold only that the desire for local autonomy must yield when a constitutional violation is found and remains unremedied,’ (Court Rules Gardendale Can’t Form School System...).

What these comments simply seem to mean is that secession could occur unless there is a violation of a constitutional right or protection. Hence, future movements comparable to Gardendale’s attempt to become an independent district must be careful about conforming to federal guidelines. This is where the Justice Department can play an important role by overseeing such a movement to determine its legality or compliance with federal law. In addition, the comments also recognize the value at times of local control over certain educational policies.

### **GARDENDALE’S REACTION TO THE 11<sup>th</sup> CIRCUIT COURT**

The advocates of secession for Gardendale initially did not give up after the 11th Circuit Court’s opinion by Judge Pryor came out. The question could possibly been brought before the United States Supreme Court for a final decision. They had some interesting views of the 11th Circuit Court’s opinion. One source reflected their views:

We know the heart and intent of this board and of the residents of Gardendale as a welcoming community, and we believe our actions reflect just that, “This is not the result we deserve, and the fight is not over.” “A decision that blames Gardendale for the comments of private citizens on social media is both contrary to the Constitution and a fundamental miscarriage of justice-and is one we will continue to appeal,” (McLaughlin, Elliot G.)

Yet the advocates of a new Gardendale School District did not appeal to the United States Supreme Court. Apparently, there were multiple factors affecting this decision. Gardendale Mayor Stan Hogeland cited some of them such as a belief that the circuit court was their best chance, the chances of winning on an appeal to the Supreme Court were low, and many citizens of Gardendale were ready for this to be over with.”(Gardendale Will Cease Efforts to Create New School System).

## **POSSIBLE FUTURE EDUCATIONAL RAMIFICATIONS**

Unfortunately, however, for the advocates of school integration the future may not be optimistic. One source notes: “With Trump in office, it’s probably only a matter of time before the number of desegregation orders drops again, possibly to zero. Trump’s team is opposed to using consent decrees to keep the pressures on school district and make sure they’ve fulfilled their promise to erase the legacy of Jim Crow, arguing that the court and the Justice Department need to get out of these local matters.”(Felton, Emmanuel).

Hence, the future does not look good for minorities in terms having an integrated educational experience in the United States and in Alabama. One source notes that “the number of students of color in segregated schools in Alabama has grown significantly since the mid-‘90s, when the formation of white school districts gained momentum. Southern schools are more segregated today than they were 40 years ago.”(Felton, Emmanuel). Yet, Alabama is not alone in having a segregated school system. Other states are not that impressive in terms having an educated school system. For example, New York State has the most segregated school system in the country. (New York State Singled Out for Most Segregated Schools).

However, “Today the percentage of black students in intensely segregated schools in the South is on the rise. More than one in three (35.8 percent) now attend such schools. But Southern school segregation no longer concerns just black and white students. Latino enrollment is at 27 percent, while black enrollment is at 24 percent.”(Kirk, Mimi). As the percent of Latinos increase in our society there will be an increase in segregated schools in terms of race. Of course, American society in the future will look quite different in terms of race and ethnicity. Most studies indicate that by the year 2042 Caucasians will be a minority in the country. The majority of citizens will be different in terms of race. It will be comprised primarily of African-Americans, Hispanics, and Asians.

## **CONCLUSION**

The attempt by Gardendale to secede and institute its own school district is nothing new in American society. It has been going on since the Brown case and probably will continue to be present in American society. Unfortunately, it will be just one factor inhibiting the integration of our educational system. Perhaps what we learn from their attempt is that race is an important factor in the American educational system, and that it should be taken more seriously when considering the establishment of a new school district. We also learn from the Gardendale attempt that it will be necessary for our federal court system to closely monitor movements which concern the establishment of new districts and to focus on the reason why such a movement is advocated and what the possible effects would be. Specifically, if the motivation is racial and the effect is educationally detrimental to one group of students, the judicial system must not allow it to take place. It is also interesting to note how the presence of social media even when it is used by private individuals or especially those who have some connection to a school board can affect a school policy because it seems that both Judge Haikala and Judge Pryor used some of their content to believe it showed race as a motive for Gardendale’s request for secession (Richter, Jeremy W.).

Yet, let’s be realistic. Economic conditions of citizens have always affected educational opportunities in this country. The wealthy can afford to live in those parts of an environment which have the better schools and resources. Too often the poor are forced by economic

conditions to remain in areas where educational benefits are few and less rewarding to children. Until minorities have the economic means to leave a poor part of a city or a county and move to a different part where the schools are more advantageous for students we will be faced with a segregated educational system.

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