

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

St. John Dixon,  
Bernard Lee,  
Marsette Watts,  
Edward English Jones,  
Joseph Peterson,  
Elroy Embry

vs

Civil Action

No. 1634-N.

Alabama State Board of Education,  
Governor John Patterson, Ex-Officio  
Chairman of Alabama State Board of  
Education, Montgomery, Alabama,  
Robert R. Locklin, Mobile, Alabama,  
J. T. Albritton, Andalusia, Alabama,  
J. P. Faulk, Jr., Samson, Alabama,  
Harry M. Ayers, Anniston, Alabama,  
J. J. Sanford, Albertville, Alabama,  
E. W. Skidmore, Tuscaloosa, Alabama,  
W. C. Davis, Fayette, Alabama,  
Cecil Word, Scottsboro, Alabama,  
Chester Austin, Birmingham, Alabama,  
As Members of the Alabama State Board  
of Education, Alabama State College,  
H. Council Trenholm, President of  
Alabama State College, Montgomery,  
Alabama

Before Hon. Frank M. Johnson, Jr., Judge, at Montgomery,  
Alabama, May 30, 1962.

A p p e a r a n c e s:

For the Plaintiffs: Fred D. Gray.  
For the Defendants: Gordon Madison.

(The above case coming on for hearing at Montgomery,  
Alabama, on May 30, 1962, before Hon. Frank M.  
Johnson, Jr., Judge, a hearing was held, at the  
conclusion of which the following occurred:)

THE COURT: The court's position in this case,  
insofar as Edward English Jones' application is concerned, is that, as  
made necessary by the mandate of the Fifth Circuit Court of Appeals and  
the opinion of that Court that was made and entered in this case in  
August, 1961. I am going to at this time enter the order of the court  
in this case insofar as it may be appropriate to accomplish what  
justice requires in this case, and in an effort to be fair to all  
concerned. If you will, begin with that sentence, Mr. Reporter, and  
transcribe and file this in the case:

Upon this submission of the motion for additional relief filed with this court on March 19, 1962, by Edward English Jones, and upon the answer and reply of the defendants filed herein on March 23, 1962, after consideration of all of the pleadings in this case, the background of this particular case, the testimony and the comments of counsel to the court in an effort to assist the court in this case, this court now makes and enters the following order:

The action of the Alabama State Board of Education, insofar as it ordered and directed the expulsion of St. John Dixon, Bernard Lee, Marzette Watts, Edward English Jones, Joseph Peterson, and Elroy Embry, that action having been taken by that body in March of 1960, was unconstitutional, in that it violated the due process provision of the Constitution of the United States; that lack of due process growing out of the expulsion of those named students without proper notice, and without an opportunity to be heard. For those reasons, and pursuant to the mandate of the Fifth Circuit Court of Appeals, made and entered in this cause, this court now orders, adjudges, and declares that that order of expulsion as to those students was unconstitutional; it is hereby declared to be void, and it is rescinded. Now, that is designed and it is made appropriate and made necessary by the appellate court's opinion. It has the effect of relieving the State Superintendent of Education insofar as any order hanging over his head that was made insofar as this case is concerned by the Alabama State Board of Education; it has the effect of relieving the proper officials at the institution of being hampered insofar as their action in processing these applications are concerned.

This court further orders that the defendants, particularly the appropriate officials of the Alabama State College, process, without regard to the order of expulsion that was made and entered in this case in March of 1960 by the Alabama State Board of Education, the application of Edward English Jones, and any other application of either of the six individuals heretofore named by the court, provided such applications are submitted timely and in good

faith. This court further orders that upon the processing of such applications, particularly the application of Edward English Jones, that the defendants in this case take such action within sufficient time to admit these or those students for the summer quarter commencing June 11, 1962.

This court further orders and directs and declares that no refusal to readmit either or all of these students shall be made by the defendants in this case unless and until a hearing has been afforded the students and notice of such hearing -- due and adequate notice to such student -- has been afforded, and an opportunity made for the student or students to present any defense he may have to any allegations or charges that are made against him, or any allegations or charges that form the basis for the refusal, if there is a refusal, to admit him. The court further orders and directs that such notice of such hearing be in writing. The court further orders and declares that if there is notice and a hearing, and if there is any refusal to readmit either or all of these six named students, then such notice and such hearing, and particularly such refusal, must be in accordance with the constitutional principles declared by the United States Court of Appeals for the Fifth Circuit in its opinion in this case.

I believe that gives you the relief that you want and that you are entitled to, and I believe that --

MR. MADISON: Would you mind clarifying one other thing?

THE COURT: All right, sir.

MR. MADISON: In your letter, any interested party could appeal from the decision by the college officials, State Board of Education; are you eliminating that or continuing it, or I wish your honor would clarify it one way or the other?

THE COURT: The letter that I wrote, to which you gentlemen have referred, and witnesses have referred in your testimony today, dated May 8, was in response to that part of the defendants' "Reply" requesting that this court give it some instructions, as to the

proper person or authority to pass upon the plaintiffs' application for readmission. It was an informal thing, and it was an effort to get this matter straightened out without the necessity for this hearing. It did not accomplish its intended purpose, and I don't think the purpose that the Attorney General intended it to have; because it wasn't timely transmitted further than the Governor's office, it appears to me, within time for appropriate action to be taken. I think that the processing of the applications, to answer your question, should be in the normal and regular course. If the processes in the Alabama State College make a provision for appealing, then that is the route to go; but I do not think these applications should be treated any way other than the normal and regular way. I would say this; that I do not think the findings by this court in its order, as to the court's attitude relative to the conduct of these students immediately preceding the time they were expelled, should be determinative of this matter, insofar as the college officials or State Board of Education is concerned. That portion of the court's -- this court's -- opinion was not reversed by the appellate court; the reversal was based strictly upon this court's misinterpretation of the law when this court decided that constitutional guaranties did not require notice and hearing before expulsion, and that is the only thing the appellate court concerned itself with in this case upon this appeal; but I don't think it would be fair to the students, I don't think it would be fair to this court, for the comments and conclusions that this court made in its opinion to be determinative of this matter, because if those comments are determinative, and if they are given any weight, then I think maybe you have violated the due process again under the Fifth Circuit's opinion, because they weren't given notice that that was to be determined at that hearing. It would be a hearing and an adjudication without notice and without hearing as to those students.

MR. MADISON: Is -- your honor, is there anything now in your honor's order which would prohibit the Board of Admissions

or the college officials from determining independently the facts surrounding those things and making their own conclusions with reference to it?

THE COURT: Oh, no; no, the appellate court stated very explicitly that they were not deciding the college officials, and in this case the Alabama State College officials, didn't have the right to admit and expel and refuse to admit, but they emphasized that they had to do it upon constitutional grounds, upon constitutional bases, and it doesn't take a man that is too smart to read this opinion and read between the lines here and determine that the Fifth Circuit Court of Appeals or any other Federal Court that acts in good faith wouldn't tolerate the expulsion merely because they went in the lunch room over here; that won't justify it; that won't justify it. Now, there may be other circumstances and other things, and of course all of you know how I felt, how I feel, about the case; I went into great detail in the opinion I wrote, and I feel like that, and that is the reason I am emphasizing that it should not be given any weight in this matter, because those students weren't, insofar as that aspect of the case is concerned, represented, and they weren't put on notice that that would be inquired into and adjudicated.

MR. MADISON: May I ask another question?

THE COURT: All right, sir.

MR. MADISON: What you mean to say, your honor, that what you said and what you did is not to be given any weight, not what they did nor what they said?

THE COURT: That's right.

MR. MADISON: Okey.

THE COURT: I am not telling them that they cannot expel them; if I did, I -- Judge Lynn or Judge Groves would have to tell the University of Alabama they couldn't expel Leonard Wilson in the Arthurine Lucy case, and I don't think you can take that away from the institution; but I want you to know that I haven't determined that

you would be justified in not admitting them, and if it comes back to this court, I don't want -- I don't want you to be throwing back what I said in my face as being a prior adjudication of the matter, because I am going to approach it with an open mind and determine whether or not you are justified in doing it under all the facts and all the circumstances.

MR. GRAY: Your honor, there is one question, now, that I have; it seems to me that the admission, the readmission, is one thing, and if they wanted to expel them legally that is an entirely different matter, as I see it.

THE COURT: Well, I have ordered that that expulsion order be set aside and declared void.

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Done, this the 30th day of May, 1962.

FRANK M. JOHNSON, JR.  
UNITED STATES DISTRICT JUDGE