

THE EDUCATION ISSUE

The Resegregation of Jefferson County

What one Alabama town's attempt to secede from its school district tells us about the fragile progress of racial integration in America.

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In 2013, a flier began making the rounds in Gardendale, Ala., a suburb of Birmingham. On it, a blond white girl wearing a red backpack and knee-high socks peered innocently at a question hanging above her head: “Which path will Gardendale choose?” Beside her was a list of communities in Jefferson County — Pleasant Grove, Center Point/Huffman, Adamsville/Forestdale, Hueytown — under the heading: “Places that chose NOT to form their own school system.” Below that was a list of four communities — Homewood, Hoover, Vestavia Hills, Trussville — that did form their own school systems and were “listed as some of the best places to live in the country.”

To outsiders, these names are meaningless, but local residents knew exactly what was being said. In Jefferson County, like in any other racially mixed metropolitan area in the country, the names of towns and neighborhoods can serve as code, a way of referencing race without being explicit. Homewood, Hoover, Vestavia Hills

and Trussville and their schools were heavily white. Center Point, Pleasant Grove and the others listed next to the girl all had large black populations — some had shifted from majority white to majority black.

The flier was produced and sent out by a group of parents calling itself Focus (Future of Our Community Utilizing Schools) Gardendale. Focus was created in 2012 with a singular purpose: to split off Gardendale's schools from the 36,000-student Jefferson County school district, where black students outnumber white ones. 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.

In Alabama, any town of more than 5,000 residents can vote to form its own school system, and over the years, members of Focus watched covetously as the neighboring white communities did just that. Gardendale, too, had considered secession for two decades but was deterred when feasibility studies showed that the town of nearly 14,000 could not support an independent school system, partly because the tax base could not generate enough revenue to replace its old and sagging high school. Gardendale lobbied Jefferson County to build a new multimillion-dollar high school, which opened in 2010, within the town's limits. In this community of modest homes and nondescript strip malls, Gardendale High, with its Grecian pillars and soaring, windowed foyer, spoke to the community's grander aspirations.

Gardendale High, which the county schools designed to draw students from several communities, ended up being one of the few truly integrated high schools in the county. Two years after the high school opened its doors, Gardendale activists made their move, starting a campaign for secession. “The question is, What are the possible benefits of forming a city school system?” David Salters asked in an October 2012 local news story. Salters is one of the Focus founders, and the father of four children, two of whom attend Jefferson County schools in Gardendale, “Can it be done better with local control and locally controlled funds?” he said. “Can we have an improved curriculum and provide a better educational experience?”

Salters, who grew up in Jefferson County and attended Mortimer Jordan High, which remains one of the whitest high schools in the county system, helped write the flier, and at a public meeting the group held in April 2013 to gather support for the secession, he stoked fears among the crowd of about 80. “It likely will not turn out well for Gardendale if we don’t do this,” he warned. “We don’t want to become what [Center Point] has.”

The implication was clear. Center Point, which did not secede, has undergone a significant demographic shift as white residents fled to the districts that did. In 1970, only 30 black people lived among Center Point’s nearly 16,000 residents and 12 black children went to Center Point Elementary. Today, the town is 63 percent black and its schools are 90 percent black.

The town of Gardendale is 88 percent white, but its schools are now 25 percent black, in part because students bused in from North Smithfield, a working-class black community a few miles away, are zoned to schools located in Gardendale. Gardendale’s secession would not eliminate black students from their schools, but by ensuring only students who lived in Gardendale could attend in the new district, it would significantly decrease their numbers.

After lobbying by Focus, in 2013, Gardendale's all-white City Council voted to create a separate school system. A few months later in November, a measure to implement a property tax to fund the new school system passed with 58 percent of the vote. The City Council then appointed an all-white school board and hired its own superintendent.

But there was just one thing: Jefferson County is one of a few hundred school systems in the country still bound by decades-old school desegregation court orders that came in the wake of the Supreme Court's landmark 1954 *Brown v. Board of Education* decision. Gardendale could not leave the district without the approval of the federal court in Birmingham. That court had been friendly to towns trying to secede, and the new school board apparently considered the desegregation order so inconsequential that it did not inform its new superintendent that it existed. So in February 2015, the Gardendale school board sent its lawyer to the federal court for what Gardendale secession supporters assumed would be a pro forma request to separate from the county schools. They were wrong.

School secessions, at least in the South, trace their roots to the arsenal of tools that white communities deployed to resist the desegregation mandate of the *Brown* ruling. While many border and non-Deep South Southern states reluctantly moved toward token desegregation, removing the legal barriers to integration and carefully selecting a handful of black students to enter formerly all-white schools, Alabama, among the most heavily black states in the nation, reacted to the *Brown* ruling with a full-on revolt both violent and tactical. In the year after *Brown*, the state passed a "pupil placement law" that gave local school boards the authority to deny black students entry into white schools based on racially biased intelligence and psychological tests or because of the

“psychological effect” desegregation had on white students. No black child was deemed fit, and the law became a model to other Southern states as a “constitutional” means of avoiding integration.

In 1956, Alabama passed a law allowing school boards to shutter public schools altogether rather than let a single black child sit in a classroom with white children. State officials helped establish taxpayer-subsidized private white schools, known as segregation academies. Gov. John Patterson, who swept into office in 1958 on a segregationist ticket, vowed that “if a school is ordered to be integrated, then it will be closed down” and that this would require sacrifices for white parents but it would hurt black families more because they “cannot finance private schools for [their] own children.” Not yet finished, Alabama also joined most Southern states in passing a so-called freedom-of-choice law that ostensibly gave parents the right to choose whatever school they wanted to send their child to, placing the onus on black parents to push for integration even as they and their children faced beatings and other violence and risked their jobs and homes for trying to enroll their children in white schools or daring to sign their names to desegregation lawsuits.

Like everywhere else in Alabama, Jefferson County resisted desegregation with all it had: By 1965 not a single county school had desegregated. That year, the N.A.A.C.P. Legal Defense Fund, which had been suing school systems across the South to force compliance with *Brown*, brought a lawsuit against the Jefferson County school district on behalf of Linda Stout, a high school student and the daughter of the head of the local chapter of the N.A.A.C.P., who wanted to leave her all-black school for an all-white one. Seybourn H. Lynne, a federal judge and a native Alabamian, reluctantly placed Jefferson County under a desegregation order that used an ineffective freedom-of-choice plan. And that plan worked as intended: By 1968, just 3 percent of the Jefferson County school district had desegregated. But in May of that year, fed up by the resistance across the South,

the Supreme Court struck down freedom-of-choice plans and ordered school systems to immediately take actions like rezoning students and reassigning faculty and staff to integrate schools. Compliance with *Brown*, the court wrote, meant you could look across a community and no longer see black schools or white schools, but just schools.





U.W. Clemon. Devin Yalkin for The New York Times

In light of the ruling, the Legal Defense Fund decided to challenge Lynne's order. They hired a recent law-school graduate named U.W. Clemon to help represent them. For Clemon, the case was deeply personal. He was a young black man born just a few miles west of Birmingham to a family of Mississippi sharecroppers who had migrated over so his father could trade the grueling work of picking cotton for the grueling work of feeding bricks into the kiln for United States Steel. The state of Mississippi didn't provide education for black children, and so his illiterate father never attended school; his mother's schooling at a black church ended after third grade. Clemon himself started his education at the Dolemite Colored School, a wood-frame structure with no indoor plumbing that was inferior in every way to the gleaming, modern school the white students in town attended. And though Clemon was only 11 in 1954 when the Supreme Court found segregated schools for black children unconstitutional, he never attended school with a white child.

Despite graduating from all-black Miles College as the class valedictorian in 1965, the year the Stout lawsuit was filed, Clemon could not go to the state's only law school at the University of Alabama. That's because the university refused, still, to

admit black students. To comply with a Supreme Court decision that forced states to provide equal access to graduate and professional schools for black residents, Alabama paid for students like Clemon to attend school out of state. He went to Columbia University in New York, a school far more prestigious and expensive than the University of Alabama. For the state, it was a calculated move. From the time when Alabama and other Southern states barred enslaved people from learning to read, there was an understanding that education led to resistance. In paying for its brightest black students to seek further education outside the state, Alabama bet that once those students lived away from Southern apartheid, they would never return. This calculation, however, did not account for people like Clemon, who graduated from law school and then immediately returned to Alabama to work to secure for thousands of Jefferson County's black children the constitutional rights that he had been denied.

In the fall of 1968, Clemon stood in the courtroom of Judge Lynne, a segregationist known for issuing the dissent in the ruling to integrate Montgomery's buses following the boycott. Wearing a cheap dark suit he purchased at an army surplus store, Clemon stood before Lynne, a good old boy from Decatur, and argued that the judge's freedom-of-choice school-desegregation order no longer passed constitutional muster and he needed to alter it to force actual integration in the Jefferson County school district.

It surprised no one, though, when Lynne ruled against the Legal Defense Fund. The group immediately appealed to the United States Court of Appeals for the Fifth Circuit, which the next year found in Clemon's favor. In a precedent-setting case, the Appeals Court approved, for the first time, a desegregation order that set out numeric ratios for black and white children in schools and required school officials to regularly report their progress toward integration to the court, setting the standard for school desegregation cases nationally.

Finally, 15 years after *Brown v. Board of Education*, the Jefferson County school district officials were forced to adopt a true desegregation plan, one that rezoned black and white students to the same schools. For the first time in the 120 years of public education in Alabama, large numbers of black students in the county began attending school with white children and getting the same education. As judges blanketed the former Confederacy with similar court orders, the South was being remade in once-unthinkable ways. In the course of a decade, it went from being the most segregated region of the country for black schoolchildren to the most integrated. In 1964, just 2 percent of black children in the South attended majority-white schools; by 1972, more than a third did. Clemon was barely 30, and elated. Progress seemed unstoppable.

It was, to a large degree, the geographic organization of Southern states that made court-ordered school desegregation there successful. Unlike the North, where metropolitan areas often include several independent school systems, the South tended toward single, countywide school systems that served cities, suburbs and rural areas. That meant that judges could order school desegregation across municipal borders and between black and white towns, and thus most white families seeking to avoid desegregation in the South could not simply pick up and move across an invisible line to a white community with a white public-school system. They had two choices: Pay private-school tuition or deal with desegregation.

Or, in Alabama, they could leave. In reaction to the *Brown* ruling, Alabama passed its school-secession law, and in 1959 Mountain Brook, an all-white, wealthy Birmingham suburb, withdrew from the Jefferson County school district. But the feared mandated desegregation did not occur, and so the other white towns stayed put until Clemon and the Legal Defense Fund secured the rezoning of the county's schools by court order in 1969. Pleasant Grove, a white, working-class

town immediately moved to set up its own school district. The mostly-white towns of Homewood, Midfield and Vestavia Hills followed suit. Their strategy was simple: There could be no forced integration if there were no black children in the school system to integrate with.

As part of the Stout case, Clemon sued to stop the secessions. He argued that white communities should not be able to secede from districts placed under school desegregation orders in order to avoid integrating their schools. The judge in the case, Sam Pointer, had replaced Lynne, and in a 1971 order Pointer allowed the white communities to secede but forced them to bus in black children from other areas to maintain a ratio of at least one black child for every three white children in the new district. (Pleasant Grove lost its bid for refusing to bus in black students.) This, the judge believed, would keep splinter districts from remaining exclusively white and therefore would not hamper desegregation efforts. The ruling, however, still left these districts overwhelmingly white. The case became part of a group of cases known as *Wright v. City of Emporia* that went to the Supreme Court. The court's 1972 decision in *Emporia* confirmed the precedent in the Stout case that judges must deny the formation of splinter districts if those secessions would thwart the desegregation of the school district from which they wanted to break. Pointer's 1971 ruling governs the Jefferson County school district to this day.

By the 1970s, white communities changed tactics, this time claiming that they wanted to secede not because they were fighting integration, but because they wanted "local control." This race-neutral language championed the pursuit of individual rights and, importantly, freedom of association, which provided cover for their efforts to preserve the whiteness of their schools. Local control "was, in a sense, the individualized equivalent of arguing that the Civil War had been fought over states' rights and not slavery," Joseph Bagley, a professor at Georgia State

University, wrote in a dissertation about the Jefferson County school district. After all, school systems lost local control in the first place because they refused to integrate schools, forcing the courts to usurp their authority and dictate school attendance zones, assignment policy and teacher placement from the federal bench. This form of opposition “became all the more powerful,” Bagley wrote, “by denying its roots.”

The nation proved ripe for this race-neutral rebranding. Most white Americans were willing to ignore stark segregation and racial disparity as long as it came wrapped in so-called colorblind policy. Less than a decade after school desegregation began in earnest, the country had already grown weary of the Civil Rights movement, as had the courts, especially the highest one in the land. This was no longer the progressive Supreme Court of the Brown decision. President Richard Nixon appointed four justices who joined with a fifth conservative justice to immediately begin ruling against the expansion of school desegregation. In the mid-1960s, the Justice Department starting suing segregated school systems, but under President Ronald Reagan, it began trying to close out the court orders it had once championed, often siding with school systems over civil rights groups. School systems continued to fight court orders, and many cases dragged on for years and then decades. Others went dormant with no one pushing to ensure compliance — not judges, not the Justice Department, not even the Legal Defense Fund, which was overextended and underfunded.

When a new succession of heavily white towns sought to break off from Jefferson County, beginning in the late 1980s, they went unchallenged, even though each secession siphoned large numbers of white students from the district, which had yet to comply fully with the court’s mandate to desegregate. By 2005, Jefferson County was divided into 12 distinct and vastly disparate school systems, many of them either heavily black or heavily white, making the school-district boundaries

there among the most segregated in the nation. “State law required separate schools before Brown,” says Erica Frankenberg, an Alabama native and education policy professor at Penn State University who has studied Jefferson County secessions extensively. “Now it is district lines that maintain segregation.”

After decades of violent and brutal resistance, white Southerners largely acquiesced to the desegregation of other public places, of parks, restaurants, city buses and libraries. Contact in those spaces tended to be superficial, and if white people did not want to be around black people, they could simply avoid them. Schools were different. Nearly every American child, then and now, attended a public school. Schools were intimate. For hours each day, students sat next to one another, learned with one another, influenced one another. And also, most frightening, fell in love with one another. In the spring of 1954, as the Supreme Court was deliberating over the Brown case, President Dwight Eisenhower invited Chief Justice Earl Warren to dinner, where he attempted to explain that white Southerners “are not bad people. All they are concerned about is to see that their sweet little girls are not required to sit in school alongside some big overgrown Negro.” But even more than that, Americans saw schools as the primary drivers of opportunity and success, and white Americans had no desire to share access to the best schools and educational resources for which they’d always held the monopoly.

None of it would go as Gardendale secession activists planned. When the town’s lawyers first told the court of Gardendale’s desire for its own school system in 2015, activists expected things to move quickly. In the recent past, when Jefferson County towns wanted to break away, no one objected. But now things were different. The black children in the county were represented by a new Legal Defense Fund lawyer, Monique Lin-Luse, who as a child was inspired to become a lawyer after reading about Thurgood Marshall arguing the Brown case in front of

the Supreme Court. The civil rights division of the Justice Department had been reinvigorated under President Obama and was actively trying to force compliance in desegregation cases. And Jefferson County had recently hired a new superintendent who was determined to honor the mandate to desegregate. All agreed that splitting off would harm the desegregation efforts of Jefferson County, the second-largest school system in the state, by taking away a significant percentage of the white children that remained. In 2000, before the recent wave of secessions began, the then-41,000-student county system was 76 percent white, but 15 years later, after losing thousands of white students to these new school systems, its white population had plummeted to 43 percent.

So instead of a quick hearing, Gardendale found itself taking part in what would be a five-day trial. On a crisp Alabama day in December 2016, the black witnesses filed into Birmingham's Hugo L. Black federal courthouse, named for the former Klansman who became a surprisingly liberal Supreme Court justice, and took seats on the benches behind the plaintiff's table. They sought, still, the fulfillment of the constitutional rights secured for black children of the county more than 60 years ago. On the defense's side, the secession supporters filed into their seats. Almost entirely white, they felt, as Gardendale's lawyers argued in their court filings, that "things have changed" and that federal courts "were tired of school-desegregation litigation" and so "courts must open their eyes to the conditions of the present." The desegregation order, they believed, had outlived its usefulness and was a relic from another time with no place in a modern world where black and white had the same rights before the law.

The center aisle of the courtroom served as a physical divider between those in favor of the secession and those who were against it but also a metaphor for a much more impenetrable divide: On one side sat those who sought to be free of a

past they do not want to remember; on the other sat those bound to a past they can never forget.

If any one of them needed a reminder of how far this country had traveled toward living up to its creed, and how far it had still to go, they could look just a few feet ahead to the plaintiff's table. There U.W. Clemon sat, once again, to argue in the continuation of the very first school-desegregation case he worked on.

It had been almost five decades since Clemon first stood in front of Lynne. His hair has thinned and turned white; his stride, slower. He has traded the army-surplus suits for finer Brooks Brothers threads. In a city once so hostile to black civil rights that it earned the nickname Bombingham, two streets now bear his name. When Clemon first entered the courtroom as a young lawyer, all the judges were white, but in 2008 he retired as the first black federal judge in the history of the state — turning in his resignation precisely two hours after the inauguration of the nation's first black president.

It's something we Americans like to call coming full circle. But a circle returns to its beginning, and so, as is almost always the case when it comes to race in America, the victories would not be complete, nor would they be permanent. Nowhere is this more true than when it comes to schools.

Clemon, who watched with growing despair as the integration efforts in the Jefferson County school district stalled and then eroded through the years, believed that Gardendale's attempt to break off mattered not just for Jefferson County but for the nation, where schools are resegregating at an alarming pace. Nationally, black children are more segregated today than they were a half century ago, in part because mostly-white well-off communities are separating themselves from diverse and poorer school systems.

And so Clemon decided to volunteer as a lawyer on the Gardendale case. Of course, his old adversary, Judge Lynne, was long gone, as was Pointer. So was the judge who rubber-stamped the other recent secessions. Judge Madeline Hughes Haikala now presided over the case. Haikala was born in New Orleans just four years after Ruby Bridges, under escort of U.S. marshals, became the first black child to integrate an elementary school in the South when she entered the city's William Frantz Elementary. Haikala was appointed by Obama three years earlier and had already made an impression on civil rights lawyers and activists. (Haikala declined to be interviewed.) She inherited her predecessor's desegregation cases and issued, two years earlier, a scathing ruling against another school system under a desegregation order, criticizing it for failing to turn in the required progress reports and for the marked disparities between schools serving mostly white children and those serving mostly black ones. She also reproached the Justice Department for failing to be "proactive" in the case.

Gardendale's lawyers opened the trial, arguing first that Gardendale was not bound by the desegregation order at all because Jefferson County's schools had not been segregated for decades and so the order no longer mattered. But if the court did decide Gardendale was bound by the order, they said, its separation plan, which would allow them to take over the two elementary schools, the middle school and the high school located in Gardendale, would not hurt Jefferson County's desegregation efforts and so should be allowed.

"There will be no credible evidence in this trial of racial animus motivating the Gardendale Board of Education," Aaron McLeod, a Gardendale lawyer, told the court. "What the evidence instead 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."

Gardendale called to the stand organizers of the effort. Chris Lucas, who works in banking and now sits on the Gardendale school board, moved to Gardendale after he had his first child because he could not afford the wealthier Birmingham suburbs that had already formed their own school systems. He said when he compared Jefferson County's schools with Mountain Brook and some of the state's other high-achieving school systems, the schools his children would go to just weren't up to par. Lucas said he had always figured he and his wife would move when their children became school-age. But then, he started having conversations with Salters, his friend, and others about how they did not want to leave and maybe they should do what those other communities had done.

“At the end of the day, we want to provide a better education for the children so that they are prepared to go through life,” he said from the witness stand. “There is no intention to harm any child,” he said, adding, “we have a community that decided to pull itself up and provide a better education for its children. I'm just flabbergasted that somebody would say, ‘How dare you.’ It blows my mind, frankly.” (Lucas, Salters and other secession activists, along with all the Gardendale school-board members, the superintendent and all the City Council members, declined to be interviewed for this article.)

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. In court transcripts of the trial, it is clear that several years after the secession effort began, Lucas and others struggled to come up with specific ways that forming

their own school system would improve education for their community. “Local control is also, I think, very important,” Lucas said, echoing what other witnesses had said. “And I also think that it’s a known fact, whether you look in Jefferson County or whether you look across the state of Alabama or you look across the nation, that the better-performing public-school systems are city-based systems and they’re smaller.”

But there is no evidence that smaller school districts are better. In fact, they often have fewer resources because, as EdBuild’s study shows, breakaway systems rack up significantly higher administrative costs, up to 60 percent more per pupil than larger systems. In addition, if Gardendale activists were focused only on the quality of the education, they would be concerned that Gardendale students who now have access to one of the best schools in the nation, an International Baccalaureate school in a nearby town, would have to pay out-of-district tuition to attend the school, if Gardendale broke off.

Clemon pointed out that Lucas’s statement simply did not match the facts. He asked Lucas if he knew that there were plenty of small city districts that performed poorly. “Would that change your opinion?” Clemon asked.

“No,” Lucas responded. “It wouldn’t.”

Kymiyah Reeves is a shy girl who lives in North Smithfield and did not know anything about the nearly-half-century-old desegregation order that gave her the right to attend Bragg Middle School in Gardendale. Petite, with mahogany skin and her hair in a swirl of braids, the 13-year-old liked her school and she liked her teachers. And she had no idea what Gardendale’s secession supporters had planned for the children from her community.

But her grandparents, Rickey and Alene Reeves, who adopted her in 2011, did. And that's why, with Linda Stout, the original plaintiff, long dead, Reeves and his wife added themselves, on behalf of Kymiyah and all the black children in the county system, to the lawsuit in order to try to stop them. Unlike most of the younger parents lined up on the Gardendale side, the couple were old enough to have a long view of the school system and the fight for equality. As Gardendale presented its case, Rickey Reeves's mind kept flicking back to his own experience with the degradation of segregation. He thought about how his wife had lived two blocks from the nice, white high school, but how, carrying her books, he walked her each day two miles to the broken-down black school. He reflected on how his own school got only hand-me-down textbooks that were no longer good enough for white children. He mused about how although he and his wife graduated more than a decade after the heady and hopeful days following the Brown v. Board of Education ruling, neither of them experienced the integration they were promised by the Supreme Court.

He and his wife had to battle against discrimination their entire lives, and they watched as many of the gains they fought for have eroded. They knew that behind Birmingham's new skyscrapers and fancy restaurants that served polenta instead of grits, the Old South still lurked. Racism had gone underground but not away. Reeves marched across the Edmund Pettus Bridge in Selma on Bloody Sunday in 1965 to achieve voting rights, only to watch decades later as the Supreme Court used a case from his home state to strike down key provisions of the Voting Rights Act, which the march had helped secure. As school systems across the South and the nation have resegregated, the Reeveses understood that the federal court order from 1971 was the only reason their own children, and now their grandchild, were able to attend integrated schools.

Rickey Reeves anxiously waited for Clemon and the other lawyers representing the plaintiffs to make their case. Their argument was simple. Clemon had helped establish a precedent that secessions were not permissible if they undermined court-ordered desegregation. Judges had looked the other way and allowed other towns to leave. But if Gardendale seceded, it would take with it a substantial number of the white students left in the Jefferson County school district, and most likely more, if it annexed additional white communities as others had done. The fewer white children who remained in the system, the harder desegregation would become. The lawyers presented expert witnesses who explained how, if Gardendale left, too, Jefferson County would become even more black and how students who had once been assigned to Gardendale's integrated schools would, as a result of the separation, be rezoned to heavily segregated ones.

The Legal Defense Fund also argued that it was racism, not the desire for local control, that was behind the secession effort. They pointed to a Facebook page that Focus activists had created. The very first post stated that forming their own school system would give Gardendale "better control over the geographic composition of the student body." In another post, an organizer noted that the Jefferson County school district was busing children into "our schools ... from as far away as Center Point" and that "a look around at our community sporting events, our churches are great snapshots of our community. A look into our schools, and you'll see something totally different." In another post, an organizer wrote that "nonresident students are increasing at a [sic] alarming rate in our schools. Those students do not contribute financially. They consume the resources of our schools, our teachers and our resident students, then go home."

Secession supporters had argued that their tax dollars should go to educate their own children instead of children who lived outside their community, that their shared responsibility stretched no further than the arbitrary borders of their town, even though for the vast history of the state, black taxpayers paid for white

schools that their own children could not attend. The activists did not acknowledge that the public schools in Gardendale do not belong to Gardendale. They are paid for by the tax dollars of the entire county, including the parents of black children bused in. Moreover, students from neighboring Mount Olive also attended Gardendale schools, but Gardendale residents voiced no concerns about these students leaching resources or looking different from the community that showed up at Gardendale's sporting and church events. Instead, the conversations among Gardendale activists revolved around whether the town should annex Mount Olive so that its children would remain in the system. Mount Olive is 98 percent white.

The lawyers for the black children of Jefferson County laid out a chronology that showed that when Gardendale secession advocates started working on secession, they assumed that breaking off would allow them to exclude from their schools all black children from outside Gardendale, including the children in North Smithfield. But after Gardendale's lawyers first announced their plan to the court in February 2015, the advocates discovered that Judge Pointer's 1971 desegregation order required all splinter districts to maintain a certain percentage of black students and that there were not enough black children in Gardendale's city limits to comply. The new district would have to include North Smithfield after all. The plaintiffs's lawyers presented emails and Facebook posts written by Gardendale residents saying they would never have supported secession if they knew that their new school district, paid for by taxing themselves, would still include the students who did not live in Gardendale.

When it was Reeves's turn to testify, he walked from the gallery to the witness stand, raised his right hand, spelled his name for the court reporter, then looked at Clemon. The two men were of the same generation and had seen many of the same things. Law school had been Clemon's escape from segregation. Reeves chose the armed services.

In a Black Belt accent clipped by the precision of the military, he talked about serving in the Air Force in Vietnam and then joining the National Guard, where he retired as a senior master sergeant after 24 years. He'd worked as a telephone technician and in his free time tried to build up the North Smithfield community that some Gardendale residents had disparaged — joining its civic league, helping it get a charter and a fire district.

Reeves spent his whole life serving his country and his community, and now, like Clemon, he found himself in his twilight years, doing it again. This fight was not for his family. “My duty, as I see it,” he told the court, “is to represent the blacks in Jefferson County.” The secession, he believed, would be an injustice in a legacy of injustices.

“I was raised up in a segregated system, and I knew what could happen,” Reeves told me in July, as we sat in his R.V. outside the second home he was renovating in his hometown Gadsden. “We didn't get the same education they got, and I didn't want to see that happen again. I didn't want these children, any of our children, going through what we went through.”

Reeves said he watched as other white communities left the Jefferson County school district, and now the secession had come to his doorstep with Gardendale's effort to exclude his community's children from its schools. “I understand you are just trying to make your community better, but why hurt me to make yours better?” he asked. “I could just see it all reverting back. We have to draw a line in the sand and stop it. Somehow.”

If there is a benefit to having to fight for civil rights over so many decades, it's that it makes you presciently aware of the way that racism does not so much go away but adapts to the times. And so Clemon, first as a lawyer, then as a judge and then as a lawyer again, knew how hard it was, especially these days, to prove

the racial motivations of people who knew enough to keep them hidden. He believed that one of Gardendale's witnesses might provide him with that rare opportunity.

During the second day of the trial Stephen Rowe, one of Gardendale's lawyers, called Sharon Porterfield Miller to the stand. "It's Dr. Miller, isn't it?" Rowe asked the petite, well-dressed woman in her 60s. The gallery peered on with interest. Miller has a doctorate in educational leadership, lives in Gardendale and supported Gardendale's effort to break away because she thought that smaller systems were generally better and may improve test scores. But most important for the defense, she is black.

Court transcripts show Rowe expertly led her through her testimony. She moved to Gardendale 16 years ago because it was a quiet and older community. "Have you and your husband enjoyed being residents of Gardendale?" the lawyer asked.

"Yes, we do."

Then it was Clemon's turn to cross-examine Miller. Standing, he looked at her and gave her a warm smile. Clemon knew the witness — each Sunday they sat near each other during services at Sixth Avenue Baptist Church in Birmingham. His questions highlighted her experience with desegregation as one of the three black students allowed into a white high school in Aliceville, Ala. He pulled her through her biography, relaxing her: She'd been a teacher and a principal in Jefferson County, earned her Ph.D. and serves as a chairwoman of the education department at his alma mater, Miles College.

Then, casually, he turned to the fact that she had applied to sit on the Gardendale school board but had not been selected.

“Do you think you are qualified to be a member of the Gardendale Board of Education?” he asked her.

“Yes, I do.”

“Highly qualified?” he asked.

“The answer to your question is yes.”

What Clemon and everyone in the courtroom knew very well was that the all-white City Council had appointed an all-white school board. Miller told me later that when Gardendale announced the new board, she was dismayed to learn that only one of its members had any experience in K-12 education — a teacher who had worked directly under Miller during her tenure as a principal.

Clemon asked Miller if she’d felt disappointed when she was not chosen.

“Yes, I was,” she answered. “I was.”

“And you don’t think it had anything to do with your race?” Clemon asked.

“Well, I can’t say that.” she replied. “Your question was, ‘Was I disappointed.’ Yes, I was really disappointed.”

Clemon rephrased his question: “Let me put it another way. Do you know of any reason which would justify your not being chosen other than your race?”

One of Gardendale’s lawyers objected. But instead of ruling on the objection, Judge Haikala restated the question directly to the witness.

“Do I feel race was part of the consideration?” Miller asked.

“Yes, ma’am,” the judge responded.

“Yes,” Miller said. “I do.”

Clemon sat back down. “That’s all.”

Gardendale then called the newly appointed superintendent, Patrick Martin, to testify. Gardendale had hired him away from a small, nearly all-white school system in rural Illinois. Under questioning from a Department of Justice lawyer, Martin said that he had not read the school desegregation order until a few months earlier, and he later acknowledged that he declined to meet with concerned black parents from North Smithfield. Eventually, Martin admitted a fact that surprised many in the courtroom: In nearly two decades as an educator, Martin had never hired a single black person for any position, nor worked with a single black teacher.

It was late in a day that had felt very long, and everyone wanted to go home. Clemon and Lin-Luse recall Haikala’s calling for a break. When Haikala returned to the bench, she turned to Martin, the superintendent, and asked a simple question:

“Have you read the *Brown v. Board of Education* decision from 1954?”

At Haikala’s words, Clemon looked up sharply.

“I’ve read about the decision, yes, your honor,” Martin answered.

“Have you read it?” the judge asked.

Martin said he hadn’t read the entire ruling. Haikala handed him a copy. “What have you read about it?” she asked. “This isn’t a test. I’m curious to know what your understanding is.”

If Gardendale won, Martin would oversee a school system located in the very cradle of the Confederacy, one that is still under a school-desegregation order. Martin fumbled a bit, struggling to describe what is considered by many the most important Supreme Court ruling of the 20th century, the ruling at the center of

why they were all gathered in the courtroom that day. “I’m not doing a very good job of showing I was a history teacher, am I, your honor?” Martin said. “I apologize.”

“I told you it is not meant to be a test,” Haikala replied. She then proceeded to go through the ruling. She voiced concern about the black students that Gardendale residents had talked so openly of excluding, emphasizing how the justices in *Brown* struck down segregation in large part because it stigmatized and demeaned black children.

Then she read out loud part of the *Brown* opinion that focused on how segregation made black children feel inferior: “Segregation of white and colored children in public schools has a detrimental effect upon the colored children,” she read. “The impact is greater when it has the sanction of the law. For the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn.”

Without warning, tears started to stream down Clemon’s face. “It was one of the most emotional moments of my life,” he told me months later from the dining-room table of his Birmingham home. “She wanted to impress upon the superintendent the serious ramifications of *Brown*. I had never in my lifetime seen a judge read *Brown* in court, and I am more than threescore and 10.” He added, “I never expect to see it again.”

Clemon lives in a palatial home, with an elevator and his name etched in the cornerstone, perched atop a hill in a gated subdivision overlooking Birmingham. The house stands a few miles and a world away from the two-room wood-frame house of his childhood, where each night he squeezed between his four brothers and a cousin on two twin beds pushed together. Clemon himself is eminently dignified — he wore a suit for our interview in his home — but decades of fighting

for the equal rights of black people have given him a wry sense of humor about the racism he has faced. He loves telling stories of his legal tussles with the good old boys, punctuating them with a laugh that comes out like a wheeze. Sometimes it is dizzying to imagine how far he has come. And yet, all his personal successes are tempered by the knowledge that so many black children today still struggle against the same injustices he had suffered.

Still, Clemon and the other lawyers representing the black children of Jefferson County felt the trial went exceptionally well. After it was over, Clemon went home, culled from the transcript the passage where Haikala read the Brown decision to the superintendent and emailed it to colleagues all over the country, with a note: Can you believe this?

And then this past April, several months after the hearing, Clemon was bent over his desk amid his book-strewn home office, writing a brief for another case, when he received a notice of Haikala's just-released opinion. He started reading the ruling, which was unusually long. The first 173 pages, he said, were "indeed, remarkable."

In painstaking detail, Haikala laid out the 62-year history of school-desegregation case law and then each and every important fact of the current case. Within the first five paragraphs, she dismissed Gardendale's assertion that these court orders were inconsequential after all these years and also laid out the linchpin of her ruling. "The Court's desegregation order is designed to remedy the injury that institutionalized racial segregation causes," she wrote. "The Supreme Court's holding in Brown is simple and unaffected by the passage of time: When black public-school students are treated as if they are inferior to white students, and that treatment is institutionalized by state or municipal action, the resulting

stigma unconstitutionally assails the integrity of black students. That racial stigma is intolerable under the 14th Amendment.” She added, “That was true in 1954, and it is true today.”

Haikala pointed out how the organizers of the Gardendale secession movement gave “evasive responses” about why they wanted to form their own system but that they wanted “general improvements of education.” None had ever contacted the Jefferson County school district about their complaints, and she noted that one organizer said that his own children were doing well. The school-board president, she wrote, acknowledged that he was not even involved in his children’s schools.

She wrote about the testimony of one North Smithfield parent who said it felt bad that Gardendale wanted to exclude children from her community, until they found out that they had to include them, if they wanted to secede, and that she feared North Smithfield children would be scrutinized and treated like outsiders in the new system. Then Haikala wrote that if Gardendale splintered off, it would hurt the desegregation of the larger district, just as other secessions had. That alone, because of the precedent Clemon helped set in the Stout case decades earlier, was enough to put an end to the secession effort.

Then on Page 138 of her opinion, Haikala went further than anyone expected. The Gardendale school board had argued that the dispute over the secession “is not about segregation. ... Nor is this dispute about racism.” With one sentence, she eviscerated that assertion: “The Court finds that race was a motivating factor in Gardendale’s decision to separate from the Jefferson County public school system.”

She went on: “More specifically, a desire to control the racial demographics of the four public schools in the City of Gardendale and the racial demographics of the city itself motivated the grass-roots effort to separate and eliminate from the Gardendale school zone black students whom Jefferson County transports to Gardendale schools under the terms of the desegregation order.”

Clemon paused over those words. These days, he knew, you have about as a good a chance of winning the lottery as getting a federal judge to make a new finding of intentional discrimination in school cases. “I was deeply impressed,” he said. “The compelling evidence of racism was there, but she could have just stuck with the other issue.”

But then, on Page 181 of the 190-page order, Clemon read these words: “Given these findings, the Court would be within its discretion if it were simply to deny Gardendale’s motion to separate. Were it not for a number of practical considerations, the Court would do just that.”

He sped through the remaining pages. Haikala had, despite her finding of intentional discrimination, decided to give Gardendale ownership over the county’s two elementary schools located in Gardendale for the coming school year. In order to do so, she required the appointment of a black school-board member and for Gardendale to work with the plaintiffs and the Justice Department to come up with a desegregation plan to govern the new district. Gardendale would also either have to relinquish the high school that Jefferson County residents had paid for and that served students from several other communities or repay the county \$33 million for the school. After doing that and then operating the two schools “in good faith” for three years, Haikala said she would reconsider their motion for a full separation.

When Reeves read the ruling, he felt shock and then confusion. How could the judge find that Gardendale's residents had been motivated by racism and still allow them to create a separate school system? "I felt all along she was going to rule against them, and then in the end, she said we're going to give them a chance," he told me, slightly shaking his head. "I think she was trying to please everyone. I was let down."

Clemon believes Haikala's ruling is legally wrong, that it flies in the face of the precedent as well as the equal-protection clause of the Constitution. The Legal Defense Fund has appealed (as has Gardendale, which is still fighting for full secession). But Clemon, who told me Haikala is "the most committed federal judge to desegregation that I've known in my career," also thinks Haikala was trying to craft the best solution she could in an environment that has grown increasingly hostile to efforts to address past and ongoing racial wrongs.

In her original ruling, and then in an unusual second, clarifying one that she issued two weeks later, Haikala made it clear she was attempting a Solomonic solution. If she ruled against Gardendale, Haikala worried that Gardendale residents would place the blame on the black students bused in because of the desegregation order, and those students could face marginalization and mistreatment. She also said that not every Gardendale resident who supported the secession did so for racist reasons and that a flat-out denial would be unfair to them.

Last, and most critical, she wrote that the Jefferson County school district could very well make enough progress toward desegregation in the next few years to be released from its court order because the Supreme Court has determined that school districts have to prove to a court only that they have integrated "to the extent practicable." Once that was the case, Haikala worried, then Gardendale would be free to break off without the oversight of the court.

Evidence shows that Haikala has reason to be concerned. A 2011 Stanford University study showed that a wave of resegregation has flowed across the South as courts have released school districts from their desegregation orders. An example of just this sort of resegregation existed not even 70 miles down Interstate 20, in Tuscaloosa. After years of resistance, the Legal Defense Fund and the Justice Department managed to integrate most of the city's schools by the late 1980s — every black and white student in Grades 6-12 attended the same middle and high school. That success led to the closing of the court order in 2000, and then Tuscaloosa officials, freed from judicial oversight, immediately set about resegregating the schools. Tuscaloosa is now among the most rapidly resegregated school systems in the country, with large numbers of its black students spending their entire public-school education in schools that made it look as if the *Brown v. Board of Education* decision never happened. U.S. Department of Education data shows that segregated black schools receive inferior resources just as they did before 1954.

Haikala was surely aware of this when she wrote: “History teaches that communities, left to their own devices, resegregate fairly quickly. ... In doing the complicated work of dissolving a desegregation order, a court must ensure that the dying embers of de jure segregation aren't once again fanned into flames.”

Haikala understood that if she allowed Gardendale to create its own district, she could place the town under its own separate desegregation order and monitor the school system for a longer period of time.

When the Supreme Court handed down its ruling in *Brown*, which laid the foundation for the destruction of legal segregation not just in schools but in every other aspect of American life, it considered segregation a vestige of slavery. There is this beautiful phrasing taken up by the court in a 1968 school-desegregation opinion that says all these vestiges of slavery had to be eliminated “root and

branch.” The history of school desegregation has shown that getting rid of the branches is the easier part. You can chop a tree down to the stump, but if the roots run deep enough, it will grow again. Clemon knows this better than most. The legal barriers fell and for a fleeting moment, during the prime of his life, the nation seemed poised to right its wrongs. His own children never knew the degradation of segregation. But too many of the grandchildren of Brown have known nothing but.

What the Gardendale case demonstrates with unusual clarity is that changes in the law have not changed the hearts of many white Americans. As the historian Bagley wrote, when it comes to school segregation, “there would be no moral awakening.”

“I never envisioned that I would be fighting in 2017 essentially the same battle that I thought I won in 1971,” Clemon, who can recite the Stout case number from memory, told me. “But the battle is just not over.”