

# A Tribute to William Augustus Bootle: Judicial Courage and the Rule of Law

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The remarkable career of William Augustus Bootle is chronicled elsewhere in this issue. The purpose of this article is to comment upon a few of the footprints Judge Bootle left in judicial history.

Trial judges occupy a difficult role. Federal trial judges in Southern States faced particularly difficult problems in connection with the school desegregation process. Seldom in our history have federal courts been required to enforce a law that has been received with such hostility. Judge Bootle is a distinguished example of a judge who courageously enforced desegregation decrees, even though they were unpopular and sometimes inconsistent with his own inclinations. Although Judge Bootle considered many desegregation cases, a discussion of two will illustrate his sound and careful judicial craftsmanship, his personal and judicial courage, and his devotion to the rule of law.

On August 14, 1963, a class action was filed in federal district court in Macon.<sup>1</sup> Plaintiffs were seeking the desegregation of the public schools in Bibb County, Georgia. Many hearings were held and Judge Bootle rendered many rulings. Several appeals were taken. On December 1, 1969, the Court of Appeals for the Fifth Circuit referred to Judge Bootle's treatment of the Bibb County case in the following terms:

This is a freedom of choice system on which a special course transfer provision has been superimposed. Special courses offered in all-Negro schools are being attended by whites in substantial numbers. This has resulted in some attendance on a part time basis by whites in every all-

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1. *Bivins v. Bibb County Bd. of Educ.*, No. 28407 (M.D. Ga. Aug. 12, 1969).

Negro school. Some three hundred whites are on the waiting list for one of the special courses, remedial reading. The racial cross-over by faculty in the systems is 27 percent. . . .

It is sufficient to say that the district court here has employed bold and imaginative innovations in its plan which have already resulted in substantial desegregation which approaches a unitary system. We reverse and remand for compliance with the requirements of *Alexander v. Holmes County* and the other provisions and conditions of this order.<sup>2</sup>

On remand, Judge Bootle construed this approbation as sanctioning the modified freedom of choice plan under which the Bibb schools were operating at that time. Judge Bootle responded with a reasoned and eloquent defense of freedom of choice:

Of course, freedom of choice is not unconstitutional or unlawful. It is the logical successor to the doctrine of "separate but equal" struck down in *Brown v. Board of Education*. . . . The segregation outlawed by *Brown* was enforced segregation based on race, the refusal because of race to permit a child to attend the school of his choice, and not segregation or separateness voluntarily chosen and preferred by the persons involved. The "separate" educational facilities said by *Brown* to be "inherently unequal" are those facilities with a *state-imposed* separateness. The question decided by *Brown* was succinctly stated by the Court as follows: "We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does. . . ."

Then *Brown II* placed upon school boards the responsibility "to achieve a system of determining admission to the public schools on a nonracial basis. . . ." Then in *Green v. School Board of New Kent County*, . . . the Court said: "We do not hold that a 'freedom of choice' plan might of itself be unconstitutional, although that argument has been urged upon us. Rather, all we decide today is that in desegregating a dual system a plan utilizing 'freedom of choice' is not an end in itself." A freedom of choice plan was formulated with meticulous care and spelled out in minute detail by the Court of Appeals for this Circuit in *United States v. Jefferson County Board of Education*. . . . Thus freedom of choice there received the full imprimatur of this Circuit first [sic] by panel and then en banc. This Circuit has never withdrawn that approval. . . .

Though as *Green* says freedom of choice is not "an end in itself" it is good that it is both constitutional and fully lawful. It has so much to commend it. The idea of forcing or compelling people to do something is completely unattractive and should be resorted to only when absolutely

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2. *Singleton v. Jackson Mun. Separate School Dist.*, 419 F.2d 1211, 1221 (5th Cir. 1969).

necessary. Freedom of choice, when fully free and unfettered, comports so much more beautifully with the American dream and with the concept of the worth and dignity of the individual than does the suggestion of lifting pupils from their schools and moving them to new schools regardless of their wishes and [sic] regardless of the wishes of their parents. This idea of force was the gravamen of the evil lying at the roots of the "separate but equal" doctrine struck down by *Brown*. Under that doctrine children were forced to attend and keep on attending a certain school, and this force was applied to them solely because of their race.

Under freedom of choice as implemented and expanded by the *Jefferson*-type decree all objectionable force is completely eliminated. The only force remaining is that all students regardless of race are *required* to choose, to exercise their freedom of choice. Thus under a properly drawn *Jefferson*-type, freedom of choice decree the court places it in the hands of every student regardless of race to attend a bi-racial school if he so desires. It is difficult to see cogency in the argument that the student desiring bi-racial schooling is discriminated against by being required to exercise enough initiative to choose, and to make his choice known, to attend a school where there are students of the opposite race. All students are similarly required to choose the school they desire to attend. Thus under a properly drawn and properly *administered* freedom of choice decree there is no longer any racial discrimination. Its "vestiges" are gone. They are gone "root and branch. . . ."<sup>3</sup>

The Fifth Circuit reversed Judge Bootle's decision on February 5, 1970.<sup>4</sup> The Court stated that its previous opinion had approved Judge Bootle's " 'bold and imaginative innovations' which had resulted in some substantial voluntary desegregation," but that greater student desegregation was required.<sup>5</sup> The Fifth Circuit ordered the student desegregation plan be put into effect no later than February 16, 1970.<sup>6</sup> Judge Bootle entered an order directing the Board of Education to implement the plan for student desegregation on or before February 16, 1970.

This plan required that a substantial number of students be transferred in the middle of the school year, and the community confronted it with widespread hostility. Local citizens and politicians held meetings at which there was open defiance of the federal court order. White parents were urged not to send their children to the schools designated by the new plan, but rather to continue to send them to the school they had chosen under the previous freedom of choice plan. It was widely reported

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3. *Bivins v. Board of Pub. Educ. & Orphanage for Bibb County*, No. 1926 (M.D. Ga. Jan. 21, 1970)(quoting Judge Bootle's opinion in *Hilson v. W.B. Ouzts & Washington County Bd. of Educ.*, No. 2449, (M.D. Ga. Aug. 8, 1969))(emphasis in original)(citations omitted).

4. *Bivins v. Bibb County Bd. of Educ.*, 424 F.2d 97 (5th Cir. 1970).

5. *Id.* at 98.

6. *Id.* at 99.

that a prominent local politician exhibited a "stand-in-the-school-house-door" attitude by refusing to send his own child to the newly assigned school.<sup>7</sup> A mob of white citizens marched on Judge Bootle's home.

Judge Bootle, who had written his eloquent defense of freedom of choice less than three months before, responded swiftly and forcefully to the local climate of defiance. With characteristic understatement, Judge Bootle noted in a subsequent order that "[t]he Court is aware from news stories recently appearing in the local media that *questions* have been raised by some persons concerning the intent and effect of the Court's order."<sup>8</sup> Judge Bootle's February 24, 1970, order provided in part:

1. The Court's order[s] . . . are binding upon all citizens of Bibb County, Georgia, including the parents of students in the Bibb County public schools and elected and appointed public officials, as well as all other persons affected thereby. It is the fundamental duty of all citizens to comply with, and to refrain from violating the provisions of, such lawful court orders.

3. All citizens of Bibb County, including specifically the parents of all students in the Bibb County public schools and all elected and appointed public officials of the City and County, are hereby restrained and enjoined from interfering in any way whatever with the performance by the school board of its duty to implement the plan in accordance with the Court's orders. . . .

4. In connection with the foregoing, the attention of all citizens is directed to the provisions of Title 18 of the United States Code, Section 401, which reads in part:

"A court of the United States shall have power to punish by fine

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7. On February 26, 1970, a group of white parents filed a civil action in state court on behalf of all white parents and children similarly situated. These parents sought to enjoin the school board from assigning plaintiffs to particular schools for the purpose of affecting the racial balance. That action was dismissed, but a substantially similar civil action was filed on April 13, 1970. The white parents contended that the school board's desegregation plan violated a recently enacted Georgia law that had been signed by the Governor of Georgia on February 23, 1970. The law provided in pertinent part that: "No student shall be assigned to or compelled to attend any school . . . for the purpose of achieving . . . increased attendance or reduced attendance, at any school, of students of one or more particular races." 1970 Ga. Laws 89, 90. Judge Bootle enjoined these plaintiffs from further prosecution of the state court action. The Judge reasoned that the Constitution is the supreme law of the land and that the Supreme Court of the United States is the final arbiter of the meaning of the Constitution. He concluded that the purpose and effect of the state court suit would be to interfere with the school board's compliance with the federal court orders. *Bivins v. Bibb County Bd. of Educ.*, No. 1926 (M.D. Ga. May 22, 1970).

8. *Bivins v. Bibb County Bd. of Educ.*, No. 1926 (M.D. Ga. Feb. 24, 1970)(emphasis added). This was an order clarifying and supplementing the orders of February 11, 1970, and February 13, 1970.

or imprisonment, at its discretion, such contempt of its authority . . . as—

. . . .  
 (3) Disobedience or resistance to its lawful writ, process, order, rule, decree or command.”

and also to Section 1509, which reads in part:

“Whoever, by threats or force, willfully prevents, obstructs, impedes, or interferes with, or willfully attempts to prevent, obstruct, impede, or interfere with, the due exercise of rights or the performance of duties under any order, judgment, or decree of a court of the United States, shall be fined not more than \$1,000.00 or imprisoned not more than one year, or both. . . .”

. . . .  
 6. The school board shall request the newspapers and the television and radio stations in Bibb County to give widespread and extensive publicity to this order so that all citizens of Bibb County and other persons affected thereby will be fully informed of its contents.

7. This order shall be binding upon all persons who learn the substance of what is contained herein in any manner whatever, just as fully as if there had been personal service of the order upon them.<sup>9</sup>

Judge Bootle's order calmed the turbulent waters and the reassignments were accomplished without violence. The Bibb County school desegregation case illustrates that our judicial system is profoundly strong and that the rule of law is the foundation upon which our society rests. Judge Bootle had initially proposed that a student's genuine freedom to choose any school the student wishes to attend fully satisfied the Constitutional requirement of equal protection. However, when the appellate court disagreed and required further student body desegregation, Judge Bootle promptly enjoined defiant parents and public officials from disobeying that mandate. Judge Bootle was eloquent and forceful in applying the law of the land, notwithstanding his personal concept of equal protection. In an order entered in the same case about a year and a half later, the Judge acknowledged:

This court then thought and still thinks that when school facilities are truly equal, when faculties, administrative staff, extracurricular activities and transportation all are fully desegregated, and when every child is genuinely free to attend any school it wishes to attend, regardless of race or economic status in life there simply is no discrimination.<sup>10</sup>

Judge Bootle then quoted the contrary opinion of the Fifth Circuit, and

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9. *Id.*

10. *Bivins v. Bibb County Bd. of Educ.*, 331 F. Supp. 9, 10 (M.D. Ga. 1971).

concluded that: "Of course, we are bound by the law as written. . . ." <sup>11</sup> Citizens, parents, political leaders, and judges alike are all bound by the rule of law.

Judge Bootle had courageously applied this fundamental tenet ten years earlier when two black students, Hamilton E. Holmes and Charlayne A. Hunter, brought suit to gain admission to the University of Georgia. Judge Bootle stated that,

While the complaint in this suit seeks, as its objective, results never heretofore existent in this state, nonetheless, the problem, procedure and routine here, as in all law suits, must be and are the ascertainment of the law, the determination of the facts, and the application of the one to the other.<sup>12</sup>

Judge Bootle then focused upon the applicable rule of law in the very next sentence of his opinion.

The basic law applicable here is now generally known and, in fact, is not in dispute in this case. Simply stated, it is that any citizen of the State of Georgia applying for admission as a student to any public, tax-supported college or university of the State, if otherwise qualified, cannot be denied admission solely because of his race or color.<sup>13</sup>

Judge Bootle carefully considered the manner in which the University handled the plaintiffs' applications. He then contrasted that procedure with the University's treatment of applications from white students and made the following findings:

After a careful consideration of all of the evidence admitted at the trial, the court finds that, had plaintiffs been white applicants for admission to the University of Georgia, both plaintiffs would have been admitted to the University not later than the beginning of the Fall Quarter, 1960. It is the further finding of the court that plaintiffs, citizens of the State of Georgia applying for admission as students to the University of Georgia, a public, tax-supported university of the State, are otherwise qualified, but have been denied admission solely because of their race and color. The court further finds that, although there is no written policy or rule excluding Negroes, including plaintiffs, from admission to the University on account of their race or color, there is a tacit policy to that effect, and that defendant Danner has pursued such policy in denying the plaintiffs' applications for admission.<sup>14</sup>

On January 9, 1961, Georgia Governor S. Ernest Vandiver announced

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11. *Id.* at 11.

12. *Holmes v. Danner*, 191 F. Supp. 394, 396 (M.D. Ga. 1961).

13. *Id.* at 396.

14. *Id.* at 401-02.

that all funds to the University would be cut off pursuant to the requirements of the Georgia Appropriations Act of 1956, which provided for a cutoff of state funds in the event that a black student enters a formerly all-white institution by virtue of a court decree.<sup>15</sup> Judge Bootle entered an *ex parte* temporary restraining order on January 10, 1961, that enjoined the proposed curtailment of funds, and on January 12, 1961, he entered a preliminary injunction based upon the following conclusions:

Subsections (a), (b), (c), (d) and (e) of Section 8(a) of the General Appropriations Act of 1956 . . . are clearly unconstitutional on their face. The United States Supreme Court has recently held that similar provisions fail to meet the tests of constitutionality required by the United States Constitution as construed by the decisions of that Court.<sup>16</sup>

Hamilton Holmes and Charlayne Hunter enrolled as students on January 11, 1961. That night there was a demonstration in front of Hunter's dormitory that became violent at times. Shortly after the demonstration was suppressed, University officials suspended Holmes and Hunter and removed them from the campus. Again Judge Bootle responded immediately and forcefully. He issued an order that reinstated Holmes and Hunter on the grounds that "[t]he constitutional rights of [plaintiffs] are not to be sacrificed or yielded to . . . violence and disorder. . . . Nor can the lawful orders of this court be frustrated by violence and disorder."<sup>17</sup>

A month later Judge Bootle was faced with an attempt by University officials to deny Charlayne Hunter access to the institution's dining hall. Judge Bootle held a hearing on the day the motion was filed and ruled from the bench: "I construe . . . the law to mean, that the defendants, with respect to the opportunities and facilities which it extends and offers to white students, cannot deny such facilities and opportunities to these plaintiffs solely on the basis of their race and color."<sup>18</sup>

Judge Bootle was not distracted by the highly charged emotions of the particular time and place in history. Rather, he searched diligently for the applicable law, carefully and fairly sifted the evidence to determine the facts, and made the rule of law work.

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15. 1956 Ga. Laws 753, 758.

16. *Holmes v. Danner*, 191 F. Supp. 394, 416 (M.D. Ga. 1961).

17. *Id.* at 417.

18. *Holmes v. Danner*, No. 450 (M.D. Ga. Mar. 9, 1961)(proceedings in open court).

