

4-2004

Museletter: April 2004

Caroline L. Osborne
University of Richmond

Follow this and additional works at: <http://scholarship.richmond.edu/museletter>

 Part of the [Other Law Commons](#)

Recommended Citation

Osborne, Caroline L., "Museletter: April 2004" (2004). *Museletter*. Book 78.
<http://scholarship.richmond.edu/museletter/78>

This Book is brought to you for free and open access by the Muse Law Library at UR Scholarship Repository. It has been accepted for inclusion in Museletter by an authorized administrator of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.

Museletter

THIS ISSUE:

<i>The ERA of Closed Schools</i>	1
<i>Suggestion Box</i>	4
<i>Summer Hours</i>	4

**THE ERA OF CLOSED SCHOOLS:
PRINCE EDWARD COUNTY, VIRGINIA**

**by John R. Barden,
Head, Reference & Research Services**

**Spring 2004
Regular
Library Hours**

Sunday
10:00 a.m. - Midnight

Mon.-Thurs.
7:30 a.m. - Midnight

Friday
7:30 a.m.- 9:00 p.m.

Saturday
9:00 a.m. - 9:00 p.m.

**Congratulations
Class of 2004**



In September 1959, the public schools of Prince Edward County, Virginia, did not open. Soon after the Fourth Circuit Court of Appeals ruled on May 5, 1959, that de jure segregation must end with the coming school year (see *Allen v. County Sch. Bd. of Prince Edward County, Virginia*, 266 F.2d 507 (4th Cir. 1959)), white community leaders organized the Prince Edward School Foundation to operate private segregated schools in the county. See *Allen v. County Sch. Bd. of Prince Edward County*, 28 F.R.D. 358, 363 (E.D. Va. 1961). On June 2, 1959, the Prince Edward County Board of Supervisors refused to allocate monies for the operation of the public school system. *Id.* at 364. At first, the private schools were supported by public donations. Later funding for the schools was siphoned out of public coffers by means of tuition grants offered under a state program, plus real property tax credits arranged by the Board of Supervisors. Approximately 1,400 white children in the county were able to continue with their educations at the private schools, where many of their former teachers had taken employment. However, no similar schools were opened for the black children of Prince Edward. *Id.*

In April 1961, the United States government, under the new attorney general, Robert F. Kennedy, filed a motion to intervene in the Prince Edward case, in order to prevent circumvention of the Federal court's orders and also sought to join the state of Virginia as a party to the suit. *Id.* at 360-61. The United States argued that Virginia had a positive duty to resolve the Prince Edward situation, and that public schools should not be provided anywhere in Virginia so long as the Prince Edward schools were closed. *Id.* at 364-65. The new district court judge in the case, Lewis, fearing further delay as a result of these complications, denied the U.S. government's motion to intervene. *Id.* at 366. However, the state of Virginia was increasingly being drawn into the Prince Edward morass.

In August 1961, Judge Lewis ruled that the use of tuition grants and tax credits was a violation of Virginia law and a circumvention and frustration of the anticipated orders of the district court. *Allen v. County Sch. Bd. of Prince Edward County*, 198 F. Supp. 497, 502 (E.D. Va. 1961). The ordinances in question, while not facially unlawful, "become unlawful when used to accomplish an unlawful end, (the perpetuation of segregated schooling in Prince Edward County)." *Id.* at 503.

About
(Continued from page 1)

The plaintiffs in the case next went to the Supreme Court of Appeals of Virginia, petitioning for a writ of mandamus directing the Prince Edward supervisors to appropriate funding for the public schools. On March 5, 1962, the justices responded that funding for public schools lay entirely within the discretionary authority of the supervisors, and that they might choose to spend or not. *Griffin v. Bd. of Supervisors of Prince Edward County*, 203 Va. 321 (1962). The Federal district court disagreed, citing language in the Virginia constitution (Sect. 129) requiring the state to maintain public free schools and concluding that state and local authorities had a joint responsibility to see that schools stayed open throughout the state, and that the Prince Edward County schools could not remain closed while other state public schools were open. *Allen v. County Sch. Bd. of Prince Edward County*, 207 F. Supp. 349, 352, 354-55 (E.D. Va. 1962).

An exasperated Fourth Circuit now told the district court to hold back while the Supreme Court of Virginia inquired into the constitutionality of the tuition grants and tax credits in question. *Griffin v. Bd. of Supervisors of Prince Edward County*, 322 F.2d 332, 339-40, 343 (4th Cir. 1963). However, Judge J. Spencer Bell, in a vehement dissent, said that abstention "would be a humble acquiescence in outrageously dilatory tactics." *Id.* at 344. The closure of one county's schools in a state system constitutes discrimination. The failure of the Federal courts to adjudicate the plaintiff's asserted constitutional rights "weigh[s] heavily against the rights of these children." *Id.* at 348.

In December 1963, the Supreme Court of Virginia weighed in strongly on the side of the county and state officials, affirming a lower court ruling tailored to validate all the actions taken to date, including the closing of the schools and the extension of state scholarship grants. *County Sch. Bd. of Prince Edward County v. Griffin*, 204 Va. 650, 655-56, 671 (1963). A majority of the justices offered in a concurring opinion that it was not their business to rewrite the Virginia Constitution to give the judiciary a role in the distribution of tax funds. "Rather, we should observe the command [of the state Constitution] that the legislative and judicial functions should not encroach upon each other but be kept apart." *Id.* at 582. However, Chief Justice Eggleston disagreed strongly: "The refusal of the highest court of this State to recognize here the rights of the citizens of Prince Edward county, guaranteed to them under the Constitution of the United States, is a clear invitation to the federal courts to step in and enforce such rights. I am sure that that invitation will be promptly accepted. We shall see!" *Id.* at 584.

One month after the Virginia Supreme Court ruling (and *not* coincidentally), the United States Supreme Court granted certiorari to the appeal from the Fourth Circuit's 1963 decision. The Court put the appeal on a fast track, scheduling arguments for March. *Griffin v. County Sch. Bd. of Prince Edward County*, 375 U.S. 391, 391-92 (1964). On May 25, Chief Justice Eggleston's prophecy was fulfilled when Justice Black delivered an opinion affirming the power and wisdom of the Federal district court using injunctive relief to void the tuition grants and tax credits that kept the Prince Edward private schools going, to require the county to levy taxes for the public school system, or, alternatively, to issue a direct order for the schools to be reopened. *Griffin v. County Sch. Bd. of Prince Edward County*, 377 U.S. 218, 232-34 (1964). "The time for mere 'deliberate speed,' has run out," Justice Black wrote, "and that phrase can no longer justify denying these Prince Edward County school children their constitutional rights to an education equal to that afforded by the public schools in the other parts of Virginia." *Id.* at 234.

Backed by this opinion, the District Court on June 17 ordered the Board of Supervisors to appropriate funds for the public schools for the coming school year. The Board responded with a proposal to fund schools for 1,600 pupils, being the number of African-American children in the county. The Board

the same time, the State Board of Education allowed retroactive reimbursement to Prince Edward County parents for private tuition paid during the 1963-64 school year. Alarmed by these evasive maneuvers, the plaintiffs asked the court to enjoin further processing of tuition grants. On July 9 the District Court examined some of the issues in play, enjoining payment of retroactive grants but not future tuition grants, judging that such future prohibitions did not come within the Supreme Court's recent opinion. The plaintiffs appealed.

The Circuit Court sought a stipulation from the defendants that they would not pay out any scholarship funds while the case was pending. The request for the stipulation was filed with the Attorney General of Virginia on August 4. That night, in special session, the Prince Edward Board of Supervisors voted increases in tuition grants for the coming year, to be paid out immediately. While some officials worked all night to write the checks, others in the community contacted all the white parents. The next morning, approximately \$180,000 in tuition checks were cashed at the local bank within minutes of its opening. *Griffin v. Board of Supervisors of Prince Edward County*, 339 F.2d 486, 489-90 (4th Cir. 1964).

The Board of Supervisors' action marked the beginning of the end of the Prince Edward County school closing story. In 1966 the Fourth Circuit found the Prince Edward County Supervisors guilty of civil contempt for their disbursement of funds in the face of a pending appeal and ordered the members to make restitution of the monies dispersed. *Griffin v. County Sch. Bd. of Prince Edward County*, 363 F.2d 206, 212 (4th Cir. 1966). The tuition grants supporting the Prince Edward School Foundation were found illegal in 1965 because they were intended to prop up a segregated school structure. *Griffin v. State Bd. of Education*, 239 F. Supp. 560 (E.D. Va. 1965). Four years later the District Court revisited the issue and declared the entire tuition grant plan in violation of the United States Constitution. *Griffin v. State Bd. of Education*, 296 F. Supp. 1178 (E.D. Va. 1969).

In 1978, the Prince Edward School Foundation's tax exemption was revoked due to its failure to publicly adopt and administer a racially nondiscriminatory admissions policy. *Prince Edward School Found. v. Comm'r*, 478 F. Supp. 107, 109-10 (D.D.C. 1979). Although the Foundation argued that the claim was ungrounded, since no black person had ever applied for admission in order to be denied, the court found that the school's history told against it and that its discriminatory origins provided a credible framework for the present claim. *Id.* at 112. The U. S. Supreme Court denied certiorari in 1981. *Prince Edward School Found. v. United States*, 450 U.S. 944 (1981).

Today the Prince Edward County public school system enrolls approximately 2,800 students. Black students outnumber whites by about a 60:40 ratio, though the county is predominately white (63:36). See Virginia Dep't of Education 2003 Fall Membership Report, available at <http://www.pen.k12.va.us/VDOE/dbpubs/>; Table QT-P5. Race Alone or in Combination: 2000, for Prince Edward County, Va., available at <http://factfinder.census.gov>. Fuqua School, successor to the Prince Edward School Foundation, enrolls approximately 500 students; the first African-American student was admitted there in 1986. Over the past decade, the student population has included an average of twenty African-Americans at any given time. Interview with administrative assistant to the president, Fuqua School (Apr. 13, 2004).

The story of school desegregation was repeated many times throughout Virginia and the rest of the country. However, the Prince Edward County experience has special meaning because of its nearness to us and its role in the historic *Brown* decision. We hope that this series of articles has provided some context for understanding the establishment and implementation of the constitutional right to nondiscriminatory public education.

SUGGESTION BOX

Suggestion: Could you clarify the library's closing processes, specifically what time do you lock the doors and when are the lights turned off?

Response: The library staff locks the front doors of the Law Library at midnight on Sunday through Thursday nights and 9:00 p.m. on Friday and Saturday nights. Students and other library users must be out of the library when the doors are locked. A member of the library's staff walks around the library near closing time to give users notice that the library will close shortly. The staff also sends out pop-up messages to those logged onto the network, alerting them that the library will close thirty minutes prior to close and fifteen minutes prior to close. After locking the doors, the library staff turns off the lights.

Summer Hours — 2004**Spring Intersession (Friday, May 7—Sat., May 15)**

Friday, May 7	7:30 a.m. — 6:00 p.m.
Saturday, May 8	9:30 a.m.— Noon
Sunday, May 9	CLOSED
Mon., May 10—Fir., May 14	7:30 a.m. — 6:00 p.m.
Saturday, May 15	CLOSED

Summer Session / Exam Week (Sun., May 16—Fri., July 9)

Sunday	10:00 a.m.— 10:00 p.m.
Mon.—Thurs	7:30 a.m.— 10:00 p.m.
Friday	7:30 a.m.— 8:00 p.m.
Saturday	9:00 a.m.— 5:00 p.m.
Closed	Mon., May 31 and Sun., July 4

Bar Exam Study Period (July 10—July 25)

Sunday	11:00 a.m.—7:00 p.m.
Mon.—Thrus.	7:30 a.m.—10:00 p.m.
Friday	7:30 a.m.—8:00 p.m.
Saturday	11:00 a.m.—7:00 p.m.

Summer Intersession (Mon. July 26— Sun., Aug. 15)

Mon.—Fri.	7:30 a.m.— 6:00 p.m.
Sat and Sun.	CLOSED
Fri., Aug. 6	7:30 a.m.— Noon

Caroline L. Osborne Editor
 Museletter
 Law Library, School of Law
 University of Richmond
 Richmond, VA 23173

The Museletter is the official newsletter of the
 William Taylor Muse Law Library at the School of
 Law of the University of Richmond, Richmond,
 VA 23173.

Editor: Caroline Osborne
 Contributors: John Barden