Supreme Court of the United States

OCTOBER TERM - 1970

In the Matter of:

Docket No. 107

HAZEL PALMER, ET AL.,

Petitioners

vs.

ALLEN C. THOMPSON, MAYOR, CITY OF JACKSON, ET AL.,

Respondents.

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C O N T E N T S

ARGUMENT OF:	PAGE:
PAUL A. ROSEN, Esq., on behalf of Petitioners	3
WILLIAM M. KUNSTLER, Esq. On behalf of Petitioners	16
WILLIAM F. GOODMAN, Esq., On behalf of Respondents	27
REBUTTAL ARGUMENT OF:	
PAUL A. ROSEN, Esq., On behalf of Petitioners	43

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

HAZEL PALMER ET AL., Petitioners	vs.	No. 107
ALLEN C. THOMPSON, MAYOR, CITY OF JACKSON, ET AL., Respondents		

Washington, D.C.
Monday, December 14, 1970

The above-entitled matter came on for argument at 10:05 a.m.

BEFORE:

WARREN E. BURGER, Chief Justice
HUGO L. BLACK, Associate Justice
WILLIAM O. DOUGLAS, Associate Justice
JOHN M. HARLAN, Associate Justice
WILLIAM J. BRENNAN, Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HENRY BLACKMUN, Associate Justice

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On behalf of Petitioners

APPEARANCES, (continued)

WILLIAM M. KUNSTLER, ESQ.
New York City, New York
On behalf of Petitioners

WILLIAM F. GOODMAN, JR., ESQ.
Jackson, Mississippi
On behalf of Respondents

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We'll hear arguments in No. 107, Palmer against Thompson. Mr. Rosen, you may proceed whenever you're ready.

MR. ROSEN: If it please the Court.

My name is Paul Rosen, and I, along with Mr. William Kunstler will represent the Petitioners in this oral argument. I intend to discuss the Fourteenth Amendment issues in this case, Mr. Kunstler will follow and discuss the Thirteenth Amendment issues.

We raise section 1981 in our brief, and if time permits we will discuss it, although we feel that we have amply covered it in our brief.

This case represents but another attempt by the city of Jackson to nullify the 13th and 14th amendments to avoid the decision of Brown vs. Board of Education and to deny black people their rights as guaranteed by the Civil War amendments.

Until 1963, Jackson, Mississippi, operated its recreational facilities on a segregated basis. This is eight years after this Court in the Dawson case proclaimed that recreational facilities should no longer be operated on a segregated basis.

But despite this, the city of Jackson maintained this policy. And so, in 1962 and 1963, black citizens of Jackson Mississippi went to the Federal Courts and asked those courts to invoke the Brown decision to desegregate the recreational

1 facilities in Jackson, including the five municipal pools.

2 These five pools, one of which was leased from a YMCA

3 were operated on this basis for one third of the population,

4 the black population of Jackson, Mississippi, they have one pool.

5 For two thirds of the population, the white population,of Jack-

6 son, Mississippi, they have four pools. And so this was the

7 situation, and this was the situation which faced the court in

8 Clark vs. Thompson, and in Clark vs. Thompson the court ordered

9 that the pools and the other recreational facilities would be

10 desegrated. They must be integrated - this was the law of the

11 land.

12 And what did the city of Jackson, Mississippi do? Did they

13 attempt to integrate the pools? Did they make any effort what-

14 soever in good faith? No, they did not. Indeed the city of

15 Jackson followed what the Fifth Circuit Court of Appeals called,

16 in 1963, and took judicial notice of, an official, steel-hard,

17 inflexible policy of official segregation.

18 They closed the pools, rather than integrate them. And so

19 we have a new form of separation in Jackson, Mississippi.

20 Blacks and whites could not swim in the pools before Clark vs.

21 Thompson, blacks and whites do not swim in the pools after

22 Clark Vs. Thompson.

23 Now what the city did was in keeping with the statutory

24 scheme of the state of Mississippi. For the state requires city

25 officials to do everything in their power to avoid the mandate

1 of Brown and to prevent mixing, in recreational facilities,
2 including pools.
3 Now the court below found the respondents admit that the
4 purpose for closing the pools, the motive for closing the pools
5 was the integration order. That fact is not in dispute in this
6 case. Soley because they were told that black and white bodies
7 must touch, that was the catalyst, that was the action, which
8 closed these pools.
9 Now the city claims that the problem is that when you
10 integrate pools, there might have been violence, and there
11 might have been economic loss. This is pure speculation, for
12 they never operated the pools on an integrated basis. For
13 other recreational facilities had been integrated in a peace-
14 ful way. But pure simple speculation. And so the situation is
15 that four pools are now closed. The one pool that was leased
16 from the YMCA was returned to the YMCA, and now its being
17 operated on a white only basis.
18 Q Do you know what the status of the pools is, Mr.
19 Rosen, are they merely closed, or have they been de-facilitized,
20 so to speak? What is their status?
21 A My understanding, Your Honor, is that they are
22 closed. We have pictures, if the Court is interested which
23 were taken some two or three weeks ago which indicate, of
24 course that the water is out, there is a minimum of maintenance
25 necessary to get the pools back in operation. Of course,

1 the affadavits in this case, the city maintained that they were
2 maintaining these pools even though they were in a closed stat-
3 us.
4 Q There's a statement on page 11 of the Respondents'
5 brief that rather intrigued me. It's just a single sentence
6 and it's nowhere elaborated that I could see in the brief.
7 The statement is this, that there are integrated pools now
8 available in Jackson.
9 A Yes, Mr. Justice. I noted that statement and I
10 attemp^ed to check to see if that statement was correct. I
11 have no facts which suggest that it is correct. My only sug-
12 gestion to the Court is that it seems rather odd that the city
13 here who claims that there will be violence and that there will
14 be economic loss, if they, the city, integrate the pools,
15 suggest that a private individual has been willing to take on
16 this burden and has opened an integrated pool without violence
17 and without econinoc loss. But as I say I have no evidence---
18 Q --- to what the reference is, do you, or do you?
19 A No. I checked on that and I do not know. But it's
20 not supported in the record, I might add.
21 Q Is there any non-segregated pool, now, city operated,
22 non-segreaatdd pool, in Jackson?
23 A No, there isnt.
24 What the city has done is to continue its policy of seg-
25 regation, it has taken this dramatic opportunity to tell the

1 white citizens of Jackson, Mississippi, that should they attem-
2 pt to have close contact in pools and elsewhere, that there
3 will be violence and there will be loss.
4 Q Did I understand you correctly when you said that
5 the city has continued its policy of segregation? I thought I
6 heard you say that it had no pools at all.
7 A It has continued its policy of segregation with
8 respect to the pools, yes, Mr. Justice.
9 Q Well, does it have any pools?
10 A Yes. The pools are there, the pools are being paid
11 for by our Respondents tax money, they sit there as a monument
12 to what has occurred in this case. It is no different, it seems
13 to me, that what existed before Clark vd. Thompson. Black
14 people and white people do not mix in the pools of Jackson,
15 Midsissippi.
16 Q Well, they don't mix in the squash courts, either,
17 if there are no sqhash courts.
18 A But, Your Honor, there are pools.This seems to me to
19 be no different than the argument in Plessey. It's like saying
20 that the coaches in Plessey for white people and the coaches
21 in Plessey for black people, that whites could not go into
22 coaches for blacks, and blacks could not go in coaches for
23 whites.
24 The problem is, whth this case, and with the way this has
25 been handled, is that it totally avoids what Brown has said
5

1 is the law of this land?

2 The closure of the pool, the admited motivation for clo-

3 sing the pool---

4 Q Mr. Rosen, may I ask you a question from another dir-

5 ection? Assume a city which nad no swimming pools at all, no

6 recreational facilities, baseball grounds for any of its citi-

7 zens. Would mandamous or some other comparable proceeding lie

8 to compel them to open such facilities?

9 A Well---

10 Q To create them?

11 Q On a totally non-segregated basis.

12 A I don't believe, Your Honor, that that would be re-

13 quired. It might be required (inaudible) to this Court if the

14 city were to have hearings, and it were indicated that they

15 had the money, they had everything they needed to open pools,

16 but they did not open pools. of course, that's not at issue

17 here.

18 But what I say in this case is that it seems to me that

19 when this Court said in Brown that the actions separating peo-

20 ple created feelings of inferiority as to the status of black

21 people, in the community but this action is no difference.Black

22 people know wha the pools are closed.

23 It's not to prevent white people from swimming with black

24 people; surely not the Respondents would stand here and say

25 that; it's to prevent black people from swimming with white

6

1 people.

2 It's the same thinking and the same thought that permitted

3 in Plessey, black and white to be separted on coaches. And

4 it creates the same feelings of inferiority.

5 Q You said, as I understood it, the closed pool was

6 formerly operated by the city, it's still being maintained?

7 A Yes, Your Honor, that---

8 Q What do you mean by that?

9 A Well, in the affidavits the city indicates that the

10 pools are still being maintained. That is, I assume that they're

11 being taken care fo for change of weather, that items arennot

12 permitted to rust. This is all in their affadavit. The only

13 thing that we could do, because obviously we could not go into

14 the pools, was to take pictures from the outside, and it ap-

15 pears to---

16 Q Does that mean somehting like mothballing a ship?

17 A I'm sorry --

18 Q Is that something like mothballing a ship, is that

19 what---

20 A I don't know what they mean - just looking at it

21 it would take very little work and the pools could be back in

22 operation.

23 And we'd be happy if the Court desires to show you

24 the pictures that we have taken just two or there weeks ago.

25 Q I suppose your argument would go to any publuc facil-

ity, not necessarily a pool. A zoo, park, any kind of facility previously maintained on any kind of a basis and then closed for the purposes and with the impact that you have described as probibitive.

A. That is correct, Your Honor, I think this Court said in Griffin, that for whatever non-racial reasons would permit their schools to be closed, the object must be constitutional and race and opposition to integration do not qualify.

It seems to me that that statement ,that rule of law applies to this case. There is no difference.

Q. Suppose they closed up all the pools they had?

A. Just closed them?

Q. Suppose that the city of Jackson had decided to abandon any pools? Would your argument be the same? All the pools.

A. Well, they have closed all pools, Your Honor---

Q. I thought you said they hadn't.

A. No. All pools had been closed except one pool which was transferred to the Y.

Q. Well, now, it wasn't transferred to the Y, was it? It was owned by a private owner, and was leased by the city, and then the city terminated the lease. It wasn't city property that was transferred to private hands. It was just the opposite. It was certainly not that, in any event.

A. That is correct---

Q. Higher property of which the city was lessee and then

1 the city terminated the lease, whan't that it?

2 A. That is correct.

3 Q. All the city owned and operated pools were closed,

4 and that's what this case is about, isn't it?

5 A. That's right. The city maintains, and the court below

6 found that the, while the motivation for closing the pools

7 was the ingegration order, that safety and economy would be

8 affected if the polls were integrated. Now there was no tes-

9 timony as to any violence, no testimony as to economic loss.

10 But it seems to me that all they are saying is that the manif-

11 estations of hatred and prejudice created by integration made

12 it in their minds a problem to integrate the pools, to do what

13 the Constitution requires.

14 Now this Court, since Brown, Watson, innumerable cases,

15 has said that opposition to integration does not afford a

16 sufficient excuse to justify the denial of constitutional rights

17 Q. Have any of the cases we've had held anything from

18 which it could be inferred that a state could not close up

19 facilities that it did not want to operate, whatever the motive?

20 A. I would say that whatever---

21 Q. Whatever the motive. If it has power not to operate

22 ceratin kind of facilities, have any of our casss held that

23 the courts can compel it to open them up?

24 A. Yes, Griffin, Your Honor.

25 Q. What did it hold?

1 A. Griffin, Your Honor.

2 Q. What did it hold?

3 A. Griffin held that where a state permits a county to

4 close a school, it may do so under certain curcumstances.

5 Q. But they didn't close all the schools did they?

6 A. No , they did not close all the schools, but they

7 dealt with the children in the county in the same way, and this

8 Court said that its not a question of counties, it's a question

9 of people.

10 Q. But it is a question of power, isn't it, as to whether

11 a state can operate said facilities?

12 A. The question of power, Your Honor, it seems to me that

13 the state does not have power to violate the constitution.

14 Q. (course not. Everybody knows that.

15 A. ıd that's what's at issue uere.

16 Q. wasn't asking you that. I was asking you if there

17 are any cases of this Court that have held where a state has

18 a right to supply or not supply certain facilities, it can be

19 prohibited by the courts from closing those facilities.

20 A. I would respectfully suggest that I believe that

21 that's the holding in Griffin.

22 Now the excuses of the city have been dealt with before by

23 this Court in Watson, they've been dealt wigh before in Brown,

24 too, they were dealt with in Reed, they were dealt with in

25 Cooper vs. Aaron. Each one of these excuses are all pinned

1 to the same fact; that integration, so they speculate, will
2 cause violence and will cause some economic loss. Although this
3 has not occurred in other recreational facilities that have
4 been integrated, and although the city of Jackson never at-
5 tempted once in good faith, to follow the mandate of theCourt
6 to attempt integrated schools.
7 Now, the city argues, as the majority below argues that
8 the distinction in this case, between this and Griffin is that
9 schoola are essential and pools are not essential. It seems
10 to me that that argument is the same argument that was made in
11 Plessey between legal rights, and political rights and social
12 rights.
13 It's the same kind of giving black people a little this,
14 and a little that, doling out rights any right that the white
15 power structure determines is important for black people they
16 will give them, and what they determine is not important, they
17 will not.
18 The e sentialities argument is one which, if this Court
19 were to agree with, world create probably the most horrendous
20 problems and difficulties for black people. Let me just indicate
21 two areas where this is true.
22 A black and a white child go to school together, and as
23 they come home frmm school they go by a pool that's been closed
24 because the federal court ordered it integrated. Does the black
25 child have any doubt as to what his status in the community is?
11

1 Does the black child have any doubt that he is inferior?
2 And on the other hand, does the white child have any doubt
3 that he is superior?
4 The essentialities argument also creates another problem
5 in schools. What classes are essential and what classes are
6 not essential? What classes can be maintained on an integrated
7 basis because they're essential and what classes cannot be
8 maintained on an integrated basis because they are not essen-
9 tial?
10 I think in viewing this case---
11 Q Let me ask you this question, supposing one was to
12 agree with you on your basis argument. One of the factors as
13 I understood it, which was accepted by the majority of the
14 Court of Appeals in an opinion written by Judge Rives, was that
15 the city could not economically operate these pools on a de-
16 segregated basis, is that right?
17 A That is correct.
18 Q Now assuming we agree with you, has this Court got
19 power to order the local fiscal authority to appropriate state
20 money to implement a decision, which on the assumptions of my
21 question would be that it cannot close down this pool for the
22 reasons that you've given?
23 A I believe, Your Honor, in the Griffin case, that
24 the Court empowered the District Court to order it if necessary.
25 The collection of taxes for the operation of public schools.

1 And so my answer would be yes, this Court does have power
2 to order the city of Jackson to operate its pools in keeping
3 with its order in Griffin.
4 Q Do you see any other distinctions between Griffin, the
5 basis for the Griffin holding and the situation here?
6 A No, Your Honor, I do not. I recognize the language
7 in Griffin, talking about different counties, but it really all
8 gets back to Brown. It gets back to what is the letter of the
9 law, the feelings of inferiority , and I don't think anyone
10 could suggest that for black people in Jacknon, Mississippi,
11 after they go to court, to integrate their pools, and the city
12 closed them because they were ordered integrated, that they
13 have no doubt and it does not create feelings of inferiority
14 as to their status in the community.
15 It is Brown, who rules this case. It is Brown I think,
16 who answers all questions in this case.
17 This Court, in Brown, said that the law was that black
18 and white prople have a right to live together and that blacks
19 bad a fight to integrate public facilities. Let's look at the
20 situation. And let's look at what the Fifth Circuit Court of
21 Appeals has done.
22 Black people before Brown, went to the Comrt, and the
23 Court ordered that the pools would be integrated. At that point,
24 they had one pool. Under Plessey they had one pool. Now, because
25 of Brown, if the Fifth Circuit Court of Appeals decision stands,
13

1 they have no pools, they were better off with Plessey than
2 they are with Brown, and it seems to me that this Court could
3 never have intended that result.
4 Q Thank you, Mr. Rosen. Counselor?
5 ARGUMENT OF WILLIAM KUNSTLER, ESQ.
6 ON BEHALF OF PETITIONERS
7 MR. KUNSTLER: Thank you, Mr. Chief Justice. May it please
8 the Court.
9 I'm going to carry on from my brother Rosen to the 13th
10 amendment. I recognize that you could decide this case on the
11 14th amendment , without much problem but I want to make as
12 strong an argument as I can to go further than that.
13 And I'd like to pose my argument this way. I start from
14 the premise that the 13th amendment abolished slavery and ex-
15 tablished universal freedom, from Mr. Justice Bradley's comment
16 in the civil rights cases, and then go to Mr. Justice Stewart,
17 in Jones against Mayer where based on the 13th amendment and
18 writing for this Court, he indicated that Congress was authorized
19 by that amendment to pass all laws necessary and proper for
20 abolishing all badges and incidents of slavery in the United
21 States. And I remember, Mr. Justice Stewart, you emphasized
22 in the opinion, at least in my report those words.
23 Or again, as Mr. Justice Stewart put it in footnote 78 of
24 the Jones opinion that the amendment authorized Congress to
25 eradicate the last vestiges and incidents of a society half

1 slave and half free. But Mr. Justice Stewart left open the
2 question. He asked, really , did the amendment itself do any
3 more than that?
4 And I want to pitch my argument to the fact that it did,
5 in my opinion, do more than that. Our position today is a
6 fundamental one. It is essentially that the amendment puts
7 an affirmative duty on all branches of government, including
8 this Court, to eliminate all values and instances of slavery.
9 It is self-executing if all of the justices in the civil rights
10 case have any meeting, they agreed on one thing - that it was
11 a self-executing amendment, and I think Mr. Justice Bradley
12 used the word, by its terms, was applicable to any set of
13 circumstances.
14 We come here with one of those existing set of circumstan-
15 es. If the amendment did abolish shavery, truly, and it did
16 establish universal freedom, then our position is that it gives
17 this Court the power, independent of any act of Congress, the
18 power to ablish any incident of slavery.
19 In other wouds, it authorized all branches of government,
20 the executive, the legislative, and the judicial, to do every
21 thing, and I'll quote again, from the civil rights cases, "every-
22 thing necessary and proper for abolishing all badges and in-
23 cidents of slavery in the United States".
24 And I guess the question, Your Honors, comes down to
25 this, what is a badge and incident of slavery?

1 Q I suppose your argument is that the school cases
2 that have gone under the 13th amendment rather than under
3 the 14th.
4 A Absolutely, there could be no more badge of slavery,
5 in fact that's so typical a badge of slavery, that black
6 people couldn't be educated at all was one of the elements
7 of the slave state.
8 In fact it was a crime, Mr. Justice Harlan, as you know
9 in many states, to educate black people. It was a crime pun-
10 ishable by death.
11 The question is what is a badge or incident of slavery
12 and I go to Mr. Justice Douglas because in Jones he lists a
13 whole number of things which he indicates are badges of slavery.
14 He talks about voting restrictions, exclusion from juries, ser-
15 regated Court rooms, segregated schools, denial of educational
16 benefits in higher institutions of learning, marriage, marrying
17 outside of ones race, living in segregated ghettos, riding in
18 segregated railroads, or enjoying life in segregated public
19 parks, restaurants, public beaches, municipal golf courses,
20 amusement parks, busses, public libraires, et cetera. And be-
21 ing referred to by ones first name as Mary Hamilton was in an
22 Alabama court, even though she happens to be an adult woman.
23 I would like to utilize what Mr. Justice Douglas included
24 in his concurring opinion in Jones, what Frederick Douglas
25 He said it, I think, and I have to speak from a black said.

1 mans viewpoint, here, and that's impossible, being a white
2 man. All I can say is what he said, and he said the black
3 man has ceased to be the slave of an individual but has in
4 some sense become the slave of society.
5 And that's where we are here. He is a slave of society -
6 he has an incident of slavery. He cannot swim in the pools
7 next to white people because of all the sexual and metaphisical
8 connotations of water and contact of bodies. What Mr. Justice
9 Douglas observed about motels which have swimming pools.
10 I think that the general definition which we would like
11 to urge upon this Court is that an incident of slavery is
12 anything that makes a black man reasonably feel inferior to
13 a white man. It's the opposite of what Mr. Justice Brown said
14 in Plessey. He said if the black race chooses to put that in-
15 terpretation on riding in segregated coaches, that's their
16 look at it, not ours. But I submit that it is your look
17 at it, our look at it.
18 Because this Court is really nothing more than an exten-
19 sion of the American personality. And an extension of the
20 American sociology.
21 I would put it another way, as a badge or incident of
22 slavery, anything that would downgrade the concept of national
23 citizenship, as envisioned in the wartime amendments, would
24 be a badge of slavery.
25 It's as Mr. Justice Douglas said, things that have remained
17

1 in the minds and hearts of many white men, and I think that
2 he's charitible by adding the adjective many in front of the
3 words white men.
4 Now what makes the black man feel inferior to a white man?
5 It's any act which he can reasonably construe as something
6 which stamps him with a badge of inferiority. And some of
7 these things I've indicated from Mr. Justice Douglas' con-
8 curring opinion in Jones, but they all have a common thread,
9 they emphasize unequal status. They remind black people that
10 they once were chattels to be bought and sold like cows and
11 sheep in the United States.
12 Now does the closing of the pools, the swimming and wad-
13 ing pools, do that? We say it does, and I set forth in my
14 argument a number of reasons why it does.
15 One, let's ask a few questions. What will a black person
16 put on the closing of the pools? It's a different construction
17 than a white person. The white person will be inconvenienced,
18 he won't swim, also, that's true, but to him it doesn't mean
19 that he was once a slave. It only means that because there is
20 an inferior race that some judicial system has said may swim
21 with him that that inferior race is not going to swim with him.
22 But for the black man, it has a totally different mean-
23 ing. It's means he's not good or clean enough to swim with
24 white people. In Judge Wisdoms dissent I think he perceptively
25 saw that, down in New Orleans with the flood of cases that have
18

1 come through the Fifth Circuit. He said we should recognize
2 the actual traumatic effect of the action on Negroes for what
3 it was - and I think unless this Court recognizes what these
4 things do to black people then I guess we're in for a very
5 hard time in the old United States.
6 No black person could fail to get the message of what
7 the closing of the pools meant. Mayor Thompson put it
8 very coldly:"We are not going to have any intermingling in the
9 pools." and as Juscice Douglas said in his concurrence in Jones
10 a vacancy sign at a motel doesn't mean what it says, especially
11 if the motel has a swimming pool.
12 Mr. Justice Douglas, as a white man, must understand what
13 it means to mingle in the pools, why there is such unholy op-
14 position to that contact.
15 The second question is who did it? And the white commun-
16 ity did it, just as the withe community segreaated the railroad,
17 that ran aroond Ponchitrain, in Plessey against Ferguson, so
18 the white community in Jackson closed the pools.
19 Why did they do it? No secret - to avoid integration.
20 Why avoid integration? Because black people are beings of an
21 inferior order and altogether unfit to associate with the
22 white race either in social or political relations.
23 That's just Chief Justice Charley. He saw it quite clearly.
24 Or he said it another way - this is the way we erect a perpetual
25 and impassible barrier between the races.

1 Or another way - we must separate the unhappy black race
2 from the white by indelible marks. Or, finally, we impress
3 deep and enduring marks of inferiority and degradation on
4 black people. And that is the heart of this case. That is
5 why I think the Court must take a stand, and say yes, the
6 closing of the pools violates the 13th amendment. That we,
7 as a Court, have just as much responsibility as Congress, just
8 as much responsibility as the Executive in wiping out these
9 badges because unless they are wiped out, no black person can
10 feel secure in the United States, and every black person will
11 begin, eventually, to build up a rage that is already sufficient
12 enough, he will build up a rage inside that he knows that in
13 white eyes, he is an inferior person.
14 Q Counselor, you referred to a co-equal duty of Con-
15 gress and the Courts. Would Congress have any power to reach
16 into a municipal situation such as this, absent grants on which
17 they could place conditions?
18 A Mr. Chief Justice, I think that they would, but I
19 think that there are some areas that are very diffucult, to
20 legislate on. Legislation is peculiarly proper for general
21 situations, but to pick out every badge of slavery and isolate
22 it by legislation is I think, impossible.
23 That's where I think this Court comes into the picture.
24 There are these areas, like the swimming pools in Jackson,
25 where I think the Court may have peculiar responsibility.

1 Where the Court is maybe the only barrier.

2 Q Isn't it true that the Civil Rights act, and var-

3 ious acts adopted by Congress have indeed reached into many

4 of these areas, not only with respect to Negroes, but min-

5 ority groups, and women, who are certainly not in a minority?

6 A That's true, Mr. Chirf Justice, but not the closing

7 of a swimming pool. You're talking about areas where they're

8 there and available and open. A swimming pool would be a

9 public accomodation under the Civil Rights Act of 1964..

10 Q Well could the city, any city, North, South, East,

11 or West, set up a system of swimming pools and provide that

12 men and women should be in separate pools?

13 A That's one that's a little harder for me to answer.

14 I would say No. I take the fact that that would be, if it were

15 any way of emphasizing any inforiority of women. I woudd

16 argue on that score.

17 Q I'm not assuming that anyone would declare that, if

18 they thought it, they certainly wouldn't declare, just assume

19 the factual situation. That the city maintains separate swim-

20 ming pools for men and women and forbids any intermixture.

21 A I would see a little different situation, there,

22 despite what Women's Liberation Movement feels, women were not

23 true slaves in this country. They had a lot of the incidents,

24 I think, but they weren t true slaves, as black people were.

25 Theres a whole difference in the fact that if you do it, do keep

21

1 black people from swimming with white people because the black
2 people are inferior, that's a little different than separating
3 the sexes as they do, for example, Mr. Chief Justice, where
4 people swim nude. They do separate the sexes, in one pool
5 or another, or have different hours. That's a logical disting-
6 tion to make. It's reasonable, that's not the inferiority of
7 anybody, that a mores question.
8 But if you did it where people wore bathing suits, unless
9 it were in the area of the inferiority of women being proclaimed
10 in some way, then I think it's a different picture than we
11 have here.
12 Everything here comes out of the historical, mammoth fact
13 that black people were slaves, and if you do this, if you
14 close these pools this way, which is not covered by theCivil
15 Rights Act because there are no pools to be integrated. There
16 is an unusual situation. This is closing the facility for every-
17 body because you don't want one element of the population to
18 swim with another. And I think that's a peculiar area for this
19 Court.
20 I think it's an important area for this Court. I thought
21 Mr. Justice Stewart was pointing the way by his unanswered ques-
22 tion. I'm trying to get the Court to answer the question that
23 Mr. Justice Stewart posed in Jones, and I think it's a question
24 that has to be answered, I realize that the tendency of the
25 Court is to go into a such explored area, which would be the

22

1 14 th amendment, ceratinly. But I'm indicating that there are
2 responsibilities of the Court, as well.
3 But I think that this is an area where the case that Mr.
4 Justice Stewart might have been imagining has now arrived at
5 the Court. You have 2 or 3 reads which you could take. I'm
6 asking you essentially to take the road of the broad sweep
7 of judicial power and to declare that the Court, independently
8 of Congress moving, and it may never move in this area, indeed
9 as Mr. Chief Justice Burgers' question has indicated it may
10 be an area in where you can't legislate. It may be a unique
11 area and there are many unique areas of this sort that can't be
12 imagined.
13 I would like to indicate just briefly in closing that I
14 thought that the first Mr. Justice Harlan saw clearly what
15 courts should do in situations like this.
16 He made a, both a poetic and an accurate observation in
17 the Civil Rights Dissent. He said it is not the words of the
18 law, but the internal sense of it that makes the law, the letter
19 of the law is the body and the sense and reason of the law is
20 the soul. And I am appealing to the soul of the law, both for
21 practical, humanitarian, and ethical and philosophical con-
22 siderations.
23 He went on to add that there cannot be in this republic
24 any class of human beings in practical subjection to another
25 class with power in the latter to dole out to the former just
23

1 such priveledges as they may choose to grant.

2 The class that has won in subjection has withdrawn the

3 facility which was open to all, one pool segregated, for blacks,

4 four for whites. They have, as Mr. Justice Stewart indicated,

5 gotten rid on one and we can leave that out of consideration,

6 the leasor, Leavell Woods. But they have taken the other

7 four and closed them , maintained them, and they are determined

8 that black and white bodies shall not mingle in them.

9 That is putting black people in practical subjection to

10 another class. And that is what, under our law, this Court, I

11 feel very personally and emotionally, that this Court must

12 say, answers the question that your brother posed in Jones.

13 What is the full extent of the 13th amendment? That amendment

14 started in such fire and flambouyance, and with such high hopes

15 and is now taken almost a hundred years just to rescusitate, as

16 you did in Jones one portion of it, the right to buy a home in

17 Paddock Woods, it goes much further than that.

18 It must make black people feel that they have the same

19 status as white people and truly feel that in the deepest heart.

20 Unless they do, I am certain that the rage will consume the

21 body. Thank you very much.

22 Q Thank you, Mr. Counselor. Mr. Goodman?

23

24

25

1 ARGUMENT OF WILLIAM F. GOODMAN, JR., ESQ.

2 ON BEHALF OF RESPONDENTS

3 MR. GOODMAN: Mr. Chief Justice, and may it please the

4 Court.

5 q On the belief, if the Court please, that we still hear

6 lawsuits on the record, I would like to take just a moment

7 at the outset, if I may, and talk about Clark vs. Thompson,

8 The case back in 1962 that preceded all of this discussion.

9 Because I'm not certain in the references in the briefs

10 to Clark vs. Thompson, that all of the members of the Court

11 might understand precisely what happened in Clark vs. Thompson.

12 Where in 1962, the District Court in Jackson, Mississippi,

13 declared that certain individual plaintiffs were entitled to

14 the unsegregated use of all public recreational facilities.

15 Now this included zoos, parks, auditoriums, libraries, golf

16 courses, all public recreational facilities.

17 Now that was a declaratory judgement proceding. No injunction

18 was issued. Now what happened? From the way that case is cited

19 in the briefs, I'm afraid you would draw the conclusion that the

20 city appealed. The city accepted Clark. The plaintiffs appealed,

21 seeking the sweeping injunction that had not been granted by

22 the Dsitrict Court and no injunction was granted by the Fifth

23 Circuit, then the plaintiffs sought Certiorari here, and again

24 were unsuccessful. My point simply being at the outset that from

25 the moment the Clark decision was made by District Judge Myers,

25

1 the city of Jackson accepted it, and from that day to this,
2 every public facility in the city of Jackson, Mississippi,
3 whether recreational or otherwise, if it's open it's fully
4 segregated.
5 Q Fully what?
6 A Fully integrated, excuse me. I appreciate that, sir.
7 And while we are getting our words straight, if the Court
8 please, I am a little nervous, in fact I'm scared. I would like
9 to mention to the Court a few of the things that I think we
10 can agree on, between Counsel, so that perhaps when some of
11 my nervousness subsides I can get down to the key things that
12 we do not agree on.
13 Now we can agree on this. The decision in Clark vs. Thomp-
14 son was correct. It has never been questioned by the city of
15 Jackson. And we can agree on this, and I'm sure that you're going
16 to ask me, so I'll go ahead and say it at the outset. The ad-
17 ministrative decision by the city of Jackson, Mississippi, to
18 close the swamming pools came after the Clark case.
19 It came after the declaratory judgement had been issued,
20 it came as a result of it. And I would not stand here as an
21 officer of this Court, a brand new one at that, and tell you
22 otherwise. It came after the Clark case and as a result of it.
23 But if the Court please, here's where we get to the difference,
24 and here's where we get to the heart of this lawsuit.
25 The decision to close the swimming pools in Jackson, Miss-

1 issippi was not out of spite or hatred or any of the other in-
2 sidious motives asserted in the briefs filed in this Court by
3 the Petitioners.
4 While the decision to close the swimming pools came after
5 the Clark case, it was not from a desire to crush black people,
6 or to reinstate badges of slavery, for goodnes sakes, or to
7 discriminate against black people.
8 Here's what the record shows. The record shows, if the
9 Court please, that the Clark decision brought new problems.
10 Now here's the City Council, in the city of Jackson, Mississippi
11 in 1963, right ot wrong, and I contend that in all difference,
12 it makes no difference, right or wrong the City Council of
13 the City of Jackson honestly felt that the personal safety of
14 some of its citizens and the maintenance of law and order
15 could be endangered if swimming pools were integrated in that
16 city at that time. Right or wrong.
17 Right or wrong.
18 Q What was that, in 1965?
19 A No, sir, 1963.
20 A 1963?
21 A 1963. Right or wrong the city of Jackson felt it
22 auld not justify the economic 19ss which would result from the
23 operation of pools on an integrated basis.
24 Q The city had charged admission when these pools were
25 operating, they were not free, were they?

1 A It was a minor admission but they did charge ad-
2 mission, and I'll frankly say to Your Honor that they lost
3 money then, operating on a segregated basis, but they felt
4 that---
5 Q Well, of course---
6 A when they---
7 Q In those terms, I suppose all public parks lost
8 money---
9 A Exactly.
10 Q How many did you have?
11 A I'd like to talk about that and I was going to get
12 to it because you've asked some questions about it and I want
13 there to be no misunderstanding.
14 Now here's what we had in Jackson in 1962. We had one
15 lake. Now it's called a pool, but one large lake, Livingston
16 Lake, which had been in existence for many years, it is still
17 there.
18 Q Is it from a natural stream?
19 A No, sir, it was a lake which had been used for swim-
20 ming for a long time, but it---
21 Q There was no stream there?
22 A No, sir and it would be, this is out of the record,
23 but it would be almost impossible to convert it now into a
24 swimming facility unless you just started over, because it's
25 been there sitting in its present condition for so long, but
28

1 anyway, one lake. Then there was one pool in what had been a
2 black neighborhood, in Jackson. And incidentally, that is the
3 one pool which has never ceased to operate and is operating
4 today for the benefit of the black community. And here's why.
5 That one pool was sold by the city of Jackson to the YMCA and
6 I'm not talking about the leased one, now, this is a different
7 one.
8 This is what was formerly in the black neighborhood. It
9 was sold by the city to the Y. The YMCA opened it up and the
10 black people boycotted so it wasn't being used, then the YMCA
11 sold it to Jackson State College, Jackson State now owns it
12 and operates it, so that's what happened to the pool that
13 was in theblack neighborhood.
14 Q And Jackson State is a predominantly black insti-
15 tution?
16 A Predominantly, yes.
17 Q Is it a state institution?
18 A Yes, sir. No, no I don't believe it is, I think it's
19 a private institution, but I'm really not certain, I'm sure
20 these gentlemen do.
21 Q And predominantly Negro, and it operates this pool.
22 Is it open to the general public, or only to the students at
23 Jackson?
24 A I think its used for the students at Jackson State a
25 and their guests, I'm not sure what the rules are, but it is
29

is wholly segregated?

q A I don't think so.

Q Well, I thought you said the pool was.

A What I menat to say, sir, is that when that pool was sold to the Y, of course it was in a predominantly black neighborhood, and when the YMCA attempted to operate the pool----

Q I'm talking about the leased one that was given back.

A Excuse me, sir, the leased one----

Q Is that one all white?

A It's my understanding that it is.

Q And the YMCA excludes Negroes?

A It's my understanding that the YMCA does not, but that out of practice and custom that particular YMCA pool is all white.

Now that's, I have no personal knowledge of that, sir, but I want to give you a frank answer, and I think those are the facts.

Let me quickly, if the Court please, try to get down to the heart of the case. Now Counsel, respectfully, they are searching to make this a constitutional case. And they throw out endless arguments in the hope that one of them will catch fire in the heart of this Court. They say, if the Court please, and they say this without authosity, and they say it all the way through their briefs, that the city of Jackson, Mississippi, has the burden of prooving that the closing of the pools was not for a

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1 discriminatory purpose.

2 You see, being the Plaintiffs below, and having made
3 no such proof they, to get in the Appellate Courts, switch and
4 say well, the burden was on the city to proove that it did not
5 have an improper motive, when it closed the pools. And they
6 cite time and again and refered to it the moment they reached
7 the floor this morning a statement from another Fifth Circuit
8 case in 1963, I believe, to the effect that Jackson,Mississippi
9 has maintained a steel-hard, inflexible, undeviating official
10 policy of segregation.

11 Now here's what they're really saying. What they're really
12 saying is that whenever Jackson, Mississippi is involved in a
13 lawsuit no matter what the proof is, this Court must assume that
14 there was a discriminatory purpose. That's what they're say-
15 ing.

16 You see, the argument appeals to the past. The argument
17 appeals to the popular criticism of the Court in years gone
18 by . I submit to the Court that the argument is an attempt to
19 pin the badge of slavery that Counsel so distresses upon Jack-
20 son, and cities of the deep South to ask you today and I guess
21 forever, to judicially assume no matter what the proof is,
22 That the motive of Jackson , Mississippi was to discriminate.

23 Now I have no purpose, before this honorable Court, to
24 attempttto justify any of the constitutional priveledges which
25 were denied blacks in the past, both in Jackson, Mississippi,

1 and elsewhere throughout this country. But I say to the Court
2 that Jackson, Mississippi accepted the Clark desision.
3 Jacksons' public facilities are integrated. Totally. I
4 think you're well aware that Jackson, Mississippi has the most
5 integrated school system in the United States.
6 Jackson should not now, or forever, unlike other litigants,
7 have to proove itself not guilty. Have to proove that it was
8 not acting out of discrimination.
9 Now, while arguing that we're trying to pin a badge of
10 slavery on somebosy, Counsel is really saying, keep Jackson,
11 Mississippi in line. Assume it to be wrong, even though we have
12 made no proof whatever to that effect in this case.
13 In addition, to trying to shift the burden to the city,
14 the Petitioners are persistently saying that the closing of the
15 swimming pool reflects upon the black people. And if the Court
16 please, there's no testimony to this effect. But Counsel says,
17 well, here's the way a black person would feel. And this is the
18 appeal to your heart.
19 Now let's look at the facts from the record. The city
20 officials right along feared friction between the races. Swimming
21 pools present hazards, drowning, injury, hazards unknown to most
22 recreational facilities.
23 Q Assuming that's all you had, economic thing here,
24 would that be a constitutional defense?
25
A If the Court please---

1 Q What do you do in Buchanan against Warley, way back?

2 A I think that when you are dealing with a recreational

3 facility, a facility which the state or the city is not required

4 to furnish that frankly, the city had the power, no matter

5 what its motive was, but in this instance the record reflects

6 genuinely what its motive was.

7 The point that I'm trying to make, Your Honor, is that

8 the decision was no more a reflection upon black people than

9 it was a reflection upon a certain class of white people, in

10 Jackson, Mississippi.

11 It was not a reflection on black people, it was unfor-

12 tunately a reflection on the few rednecks that speak among

13 the white population of the city of Jackson. To fear friction

14 between the races is not the same thing as discrimination.

15 And I'd like to give you one quick illustration , if I might.

16 Since the so-called freedom rider incident in Jackson in

17 the early 1960's to my knowlege our city has had no violence

18 other than the unfortunate Jackson State incident with which

19 you are familiar.

20 Recently, following the Jackson State incident, Lynch

21 Street, a public street in the city of Jackson, which goes

22 through the heart of that institution, was closed by order of

23 the City Council. It was closed. It was closed to black people

24 and it was closed to white people, just as the swimming pools

25 were closed. And if the Court please, it was closed because of

1 fear between, of friction between the races. And it was closed,
2 incidentally, at the request of the black community.
3 Now I mention this simply to point out that no one finds
4 any discrimination from the perfectly proper and legal act of
5 the city of Jackson in closing a public street which formerly
6 existed. No one finds that this is an attempt to degrade any-
7 body.
8 It was a perfectly proper act arising out of fear of fric-
9 tion between the races, but not tantamount to discrimination,
10 and the same thing is true here.
11 The Fifth Circuit put its finger on the answer in its
12 opinion in this case, when it said the equal protection clause
13 does not promise economic equality. If a badge of equality has
14 been taken from anyone by the closing of a few swimming
15 pools in Jackson, Mississippi, it's been taken from the poor
16 people, the poor black people and the poor white people.
17 Q I believe that amendment promisses equality of
18 opportunity, though, doesn't it?
19 A Yes, sir. It certainly does, but there is simply no
20 way for a city or a state, for that matter, to provide re-
21 creational opportunity of all sorts for all of its citizens,
22 white or black, and when we step into the recreational area,
23 if the Court please, this could be endless, because I could
24 have my feelings hurt if a certain facility is not provided,
25 if it's provided in some other city. And on and on.

1 I think what the Fifth Circuit was trying to say, and
2 what I'm trying to say is, that this decision to close the
3 pools, back in 1963, has unfortunately kept a few black people
4 and a few white people from swimming, but this has penalized
5 the poor people, and not the more affluent, and that's not
6 a 14th amendment question.
7 Nor a 13th amendment question, and I think it's interesting
8 that the United States chose to file an amicus curiae brief in
9 this Court, an excellent brief, and did not mention the 13th
10 amendment question which has been argued here this morning,
11 did not mention it.
12 And I think it was ignored by the United States because
13 this is obviously not a 13th amendment question.
14 Finally, if the Court please, I would like to briefly
15 touch on what could happen if this landmark decision went the
16 way Petitoners would like for it to go and that's what it would
17 be - that's what they're asking you to do.
18 They're asking you to take a sentence from Jones and a
19 phrase from the 13th amendment, and a sentence back from another
20 decision here and branch out, as he said, in a sweeping judicial
21 file, a landmark decision into non-essential, non-governmental
22 purely recreational functions of a municipality in thic country.
23 Now I submit in all deference that if the federal courts
24 in this country get into the swimming pool business I don't
25 think it can stop with Jackson, Mississippi, because as I said

1 a minute ago, these folks are not going to be satisfied with
2 an order to reopen two, probably deteriorated pools in pre-
3 dominantly white neighborhoods, they're going to want other
4 pools built, they're going to want to maintain them, they're
5 going to want tax monies levied if necessary, they're going
6 to want them supervised, they're going to want people there,
7 they're going to say there are not enough in the black neigh-
8 borhoods and on and on.
9 And finally, if by freedom of choice, people go to pools
10 so that the result is still, as he says, segregated instead of
11 integrated then further litigation will come from that.
12 Q Mr. Goodman, what was the year that this pool was
13 closed?
14 A 1963, sir.
15 Q Why has it taken so long for this case to get here?
16 A I mentioned at the begining, the history of Clark,
17 and the fact that Jackson accepted it immediately. I don't
18 know, sir, except to say that as I understand it, the Fifth
19 Circuit held this case over two years----
20 Q Doesn't Judge Gewins concurring opinion---
21 A He mentions that, sir.
22 Q Indeed what he says is---
23 A They held it two years until dissent---
24 Q But he says that none of the delay is attributable to
25 the parties, it was all court produced. This not to attribute

1 the long delay to the parties - it is court produced. And
2 then Judge Clayton died, meanwhile, didn't he?
3 A Yes, sir.
4 Q Apparently that made a---
5 A I think what happened is that when the majority
6 opinion was rendered in the Fifth Circuit that other judges
7 reserved the right to file a dissenting opinion and this act
8 alone took two years, so that's part of the reason---
9 Q What we're getting at are, of course the record is
10 the record, but could you say there have been any changes
11 in the situation between 1963 and 1970, in the last 7 years?
12 A I was going to touch on that, and I'm glad you asked
13 me. It may be, if the Court please, that some day the city of
14 Jackson will decide to reopen these pools or build others.
15 We have a new city administration in Jackson. We don't have
16 a single person on the council that was on the council when this
17 decision was made. It may well be that the city of Jackson will
18 on its own decide to change this policy. On the other hand it
19 may not.
20 This is something which I am not prepared to say, but I
21 am prepared to say that since Clark the city of Jackson is
22 fully integrated, it has fully accepted Clark. Every public
23 facility is in full compliance with the laws of the United
24 States and the decisions of this Court. And I have no reason
25 to believe but that the city officials in their discretion will
38

do the proper thing at the proper time with regard to swimming pools as well as any other recreational facility in that city.

Q But what do you consider to be the proper thing?

A What do I consider to be the proper thing?

Q What do you mean by that, I'm not asking for your personal opinion.

A I think that what that simply means is what the situation in Jackson, Mississippi is at the particular time, both insofar as friction is concerned, insofar as money is concerned, and insofar as its overall recreational program is concerned.

Q How many voters are there in Jackson?

A Jackson is now about 175,000 people.

Q How many white, how many colored?

A Approximately 60% white. Back when this suit was filed I think the record showed the city was 150,000. 100,000 white, 50,000 black.

Q Do they have any colored officials now, in the city?

A On the Council?

Q Yes.

A No, sir.

Q Anywhere in the city?

A Well, we only have a mayor and two commissioners that are elected officials. We have----

Q The others are appointed.

A The others are appointed. We certainly have colored

1 people working for the city---

2 Q And the county. What about the county?

3 A No, sir. The county is operated by a five-man board

4 of supervisors, and that board at the moment is all white.

5 Q What about the police force?

6 A Well, we've had blacks on the police force for many

7 years and certainly since the time that this all originated.

8 Finally, if the Court please, what I'd like to leave with

9 you is that there is a limit to which this Court can reasonably

10 go under the Constitution. We can't make constitutional questions

11 where no constitutional issue exists. This lawsuit has been

12 handled from the time it was filed up until the present time

13 by my senior partner. He was unable to appear here and argue

14 it because of a conflict. It's been an honor for me to appear

15 before this Court and I hope that the Court will not penalize

16 the city of Jackson because we sent the second team. This is

17 a serious case to the city of Jackson for it honestly felt at

18 the time this decision was made and honestly feels today that

19 there was no constitutional question presented. An

20 And in conclusion, let me remind the Court that this case

21 was filed on a 14th amendment theory, the 13th amendment argu-

22 ment came as an afterthought. That afterthought has been ignored

23 by the United States, but now the afterthought seems to be the

24 primary thrust of the Petitioners who are simply grasping for

25 some way to find a constitutional issue where none exists. We

1 submit the judgement below should be affirmed.

2 Q Thank you, Mr. Goodman. Mr. Rosen, you have five

3 minutes.

4 REBUTTAL ARGUMENT BY PAUL A. ROSEN, ESQ.

5 ON BEHALF OF PETITIONERS

6 MR. ROSEN: Thank you. Just to go outside of the record in

7 terms, I believe Justice Harlans question concerning the status

8 of the pools and what has occured I might say that the black

9 citizens did ask the Council this summer to open the pools on

10 an integrated basis, but request was rejected.

11 Moreover, the citys position in this case stated very

12 clearly in the affadavits in the proof, this is not a transitory

13 situation. The city says that the city therefore decided not

14 to offer that type of recreational facility to any of its

15 citizens and it has not done so, and does not intend to open

16 any of said pools.

17 Now we----

18 Q Mr. Rosen, if you were to prevail here, would the

19 city of Jackson be locked in to operating the pools irrespective

20 of the economic consequences of that operation?

21 A If the question is forever. If it was purely an

22 economic problem, having nothing to do with race, or opposition

23 to integration, they could handle that problem the way any com-

24 munity handles that problem, if it is purely an economic decision

25 But if it becomes a consideration of race, which creates the

1 economic difficulties, then it seems to me that this Court in
2 numerous decisions has answered that question.
3 It answered it in Watson, it answered it in Brown, and
4 it answered it in Green.
5 Q Well, this is in the premise of my question, for you
6 to prevail here, this racial overtone, I will assume, you
7 must concede must be present. Now suppose you prevail, and
8 suppose they loose economically year after year by increasing
9 amounts. My question is, are they locked in forever?
10 A If the question is, are they locked in forever be-
11 cause of racial problems which cause a rise in economic dif-
12 ficulties in operating the pool, my answer is that they would
13 be locked in.
14 Our hope in this country is that if we can get white men
15 to accept blacks as equal, that the threats that Respondent
16 talked about will soon leave us. This is what the Kerner
17 Commission says, this is what this quote really said in Brown.
18 We know that there are difficulties, but the solution is not
19 repression, the solution is not closing facilities, the solution
20 is to abide by the constitution, and to say once and for all that
21 black men are free men, having the same rights that white men
22 have---
23 Q Speaking to the Constitution, then, of your reference
24 to free men, is there any 13th amendment claim made throughout
25 this ligigation until we got here?

1 A Yes, Your Honor.

2 Q There was?

3 A It was not made in the complaint. It was, however,

4 ugged---

5 Q Not in the complaint, you say?

6 A That's correct. 1981 was, in the Fifth Circuit Court

7 of Appeals and bank the brief did deal with the 13th amendment

8 and the 14th amendment.

9 Q I couldn't find any reference to the 13th amendment

10 in either opinion in the Court of Appeals and bank, but maybe

11 I read it too fast.

12 A I believe, if you'll look at the concluding para-

13 graph of Judge Wisdoms opinion, I believe it's the one, you

14 will see that he talks about the 13th, 14th, and 15th amend-

15 ments.

16 Q Yes, well he talks about, I think, the Civil War

17 Amendments doesn't he, or something? I have the Appendix, wait

18 a minute. Toward the end of the Appendix it would be?

19 A Page 72 and 73. He talks about Dred Scott.

20 Q Yes, I saw that.

21 A He talks about subordinate, or inferior beings, he

22 talks about members---

23 Q Then he talks about the 13th, 14th, and 15th amend-

24 ments. That's the only reference, is it?

25 A That's correct.

1 Q And not in the Court opinion?

2 A Not in the Three Judge---

3 Q Court opinion---

4 A Court opinion. That's correct.

5 Q Right.

6 A The city has maintained that we have not sustained

7 the burden of proof in this case. Proof in this case is that

8 the city was motivated by the integration order. That's all

9 we need to show. The decision of this Court in McLaughlin,

10 the decision of this Court in Watson, and the decision of this

11 Court in Green, the decisions of many lower courts have all

12 said when that proof in the context of this case, they have

13 the burden of coming forward, and showing that it was not

14 discrimination which caused the closing of the pools.

15 Thank you.

16 Q Thank you, Mr. Rosen, thank you gentlemen, your

17 case is submitted.

18 A Mr. Chief Justice Burger, may I introduce, we have

19 two young men at the table, it may be a little unusual, but they

20 did work very hard. Jim Reef worked in the amicus brief, that

21 I referred to before, and William Hoads was co-counsel with us

22 on the appellate brief.

23 Q Very well.

24 A And then William Goodman, over there, worked with

25 us from the Detroit end.

Q Thank you.

A Thank you.

Q The case is submitted.

(Whereupon argument in the above-entitled matter was concluded at 11:20 a.m.)