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### **“You Can't Afford to Flinch in the Face of Duty”: Judge William Augustus Bootle and the Desegregation of the University of Georgia**

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# “YOU CAN’T AFFORD TO FLINCH IN THE FACE OF DUTY”\*: JUDGE WILLIAM AUGUSTUS BOOTLE AND THE DESEGREGATION OF THE UNIVERSITY OF GEORGIA

Patrick Emery Longan \*\*

## I. INTRODUCTION

On January 6, 1961, United States District Judge William Augustus Bootle granted a permanent injunction that required the University of Georgia to admit its first two black students, Hamilton E. Holmes and Charlayne A. Hunter.<sup>1</sup> The backlash began immediately. Newspaper editorials condemned the decision. The Governor of Georgia threatened to close the University. Students rioted. A man escaped from an insane asylum, armed himself and went looking for Charlayne Hunter at her dormitory. Judge Bootle received numerous critical letters, including some that were threatening. Yet Judge Bootle’s attitude was that he did no more than what his position as a judge required him to do. Late in his life, he sat for an interview as part of the Foot Soldier Project

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\* Maurice C. Daniels & Melissa Jones, *FSP Unsung Foot Soldiers: Federal Judge William A. Bootle 1903–2005*, THE FOOT SOLDIER PROJECT FOR C.R. STUD., [http://www.footsoldier.uga.edu/foot\\_soldiers/bootle.html](http://www.footsoldier.uga.edu/foot_soldiers/bootle.html) (last visited Feb. 23, 2019) (follow image hyperlink).

\*\* © Patrick Emery Longan, W.A. Bootle Chair in Ethics and Professionalism in the Practice of Law, Mercer University School of Law. Washington University (A.B., 1979); University of Sussex (M.A., 1980); University of Chicago (J.D., 1983). Member, State Bars of Georgia and Texas. This Article is dedicated to my friend and mentor Bruce Jacob, with admiration and appreciation. Bruce knew and admired Judge Bootle during Bruce’s time as dean of the Mercer Law School, and therefore I thought this subject would interest Bruce and be a fitting contribution to the *Stetson Law Review* issue dedicated to him. I wish to extend my thanks to Mercer University for the sabbatical leave during which much of the research for this Article was completed. My thanks also go to Laura Botts and Daniel W. Williams in the Special Collections department of the Mercer University Tarver Library for their help with Judge Bootle’s papers, to Professor Jim Fleissner, Dr. Mary Wilder, Rob Wilder, Mark Brown, Charles Adams, Manley Brown, and Gretchen Longan for their comments on drafts of the Article, and to Derrick Pope and Professor Oren Griffin for allowing me to share some of my research through the Arc of Justice project. *Home*, THE ARC OF JUSTICE INST., <https://www.onthearc.net> (last visited Feb. 23, 2019).

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

for Civil Rights Studies at the University of Georgia.<sup>2</sup> He summed up his actions and motivations by saying: “You can’t afford to flinch in the face of duty. . . . [I]t just happened to happen on my watch. I don’t deserve any credit. Don’t seek any. I did what any self-respecting honest judge would have done.”<sup>3</sup>

This Article tells the story of the desegregation of the University of Georgia from Judge Bootle’s perspective.<sup>4</sup> Several fine books describe the events largely through the eyes of Hamilton Holmes and Charlayne Hunter, and those are inspiring stories of bravery and perseverance.<sup>5</sup> But there are important lessons to be learned by examining Judge Bootle’s role. Not every judge could have or would have made the decisions that Judge Bootle made. It made a difference that these events just happened to occur on Judge Bootle’s watch.

The Article begins with a brief discussion of the specific events that led Charlayne Hunter and Hamilton Holmes to apply to the University of Georgia and then eventually to file suit in Judge Bootle’s court. It then gives a brief background of Judge Bootle, including his upbringing in rural South Carolina and Georgia, his attendance at Mercer University, his career as a lawyer, and his appointment to the federal bench. The Article next examines the proceedings that led to Judge Bootle’s order to admit Holmes and Hunter to UGA, followed by a discussion of the tumultuous events of the next few days and Judge Bootle’s reactions to them. Then, to bring some context to the courage it took for Judge Bootle to enter the order, the Article describes the contents of the files that Judge

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2. Maurice C. Daniels & Melissa Jones, *FSP Unsung Foot Soldiers: Federal Judge William A. Bootle 1903–2005*, THE FOOT SOLDIER PROJECT FOR C.R. STUD., [http://www.footsoldier.uga.edu/foot\\_soldiers/bootle.html](http://www.footsoldier.uga.edu/foot_soldiers/bootle.html) (last visited Feb. 23, 2019) (follow image hyperlink).

3. *Id.* at 00:30–00:47.

4. It is impossible to tell this story and capture the atmosphere of the times without quoting some deeply offensive language. No offense is intended, and of course I condemn the use of racial epithets and other racist language. I have striven to quote only so much of this material as is necessary to tell the story accurately. I have omitted the worst of what I encountered in the research for this Article.

5. See, e.g., CHARLAYNE HUNTER-GAULT, *TO THE MOUNTAINTOP: MY JOURNEY THROUGH THE CIVIL RIGHTS MOVEMENT* (2012) [hereinafter HUNTER-GAULT, *TO THE MOUNTAINTOP*]; CHARLAYNE HUNTER-GAULT, *IN MY PLACE* (1992) [hereinafter HUNTER-GAULT, *IN MY PLACE*]; ROBERT A. PRATT, *WE SHALL NOT BE MOVED: THE DESEGREGATION OF THE UNIVERSITY OF GEORGIA* (2002); CALVIN TRILLIN, *AN EDUCATION IN GEORGIA: THE INTEGRATION OF CHARLAYNE HUNTER AND HAMILTON HOLMES* (1964); see also *University of Georgia Integration*, C.R. DIGITAL LIBR., [http://crdl.usg.edu/events/uga\\_integration/](http://crdl.usg.edu/events/uga_integration/) (last visited Feb. 23, 2019) (displaying an extensive collection of materials on Civil Rights maintained by the University of Georgia).

Bootle kept regarding the reactions to this decision. The Article concludes with a brief discussion of Judge Bootle's handling of the University of Georgia case as matter of judicial craft.

## II. THE PLAINTIFFS APPLY TO THE UNIVERSITY OF GEORGIA

The University of Georgia is the oldest public university in the United States, having been founded in 1785. By 1959, it had never admitted a black student. In the aftermath of the decision by the United States Supreme Court in *Brown v. Board of Education*<sup>6</sup> that the United States Constitution required states to integrate their public schools, the Georgia legislature took steps to protect Georgia's state universities from integration. The legislature enacted the General Appropriation Act of 1956, a "poison pill" that required the Governor of Georgia to cut off all state funds "in the event that a Negro enters a formerly all-white institution whether as a result of voluntary or involuntary action or for any reason whatsoever."<sup>7</sup> The Governor was Ernest Vandiver, who had been elected after a campaign in which he promised "no, not one" black student would enter a white Georgia classroom.<sup>8</sup> While he campaigned for Governor, Vandiver was quoted as saying about school integration: "We have no thought of surrender . . . We will not knuckle under. . . . We will not capitulate."<sup>9</sup> Vandiver later made remarks about "mongrelization" after a visit to South America.<sup>10</sup>

In 1959, Hamilton Holmes and Charlayne Hunter were both outstanding students at the all-black Turner High School in Atlanta.<sup>11</sup> He was first in the class and co-captain of the football team. She was third in the class, editor of the school newspaper, president of the Honor Society, and homecoming queen. Holmes was planning to attend Morehouse College in Atlanta to begin his

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6. 347 U.S. 483 (1954).

7. *Holmes v. Danner*, 191 F. Supp. 394, 400 (M.D. Ga. 1961).

8. The Associated Press, *S.E. Vandiver, 86, Georgia Governor, Dies*, N.Y. TIMES (Feb. 23, 2005), <https://www.nytimes.com/2005/02/23/us/se-vandiver-86-georgia-governor-dies.html>.

9. *Three Governors Escaped Task—Vandiver Drew It* (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File University of Georgia Ruling – Correspondence & Newspaper Articles).

10. *Id.*

11. HUNTER-GAULT, TO THE MOUNTAINTOP, *supra* note 5, at 15; PRATT, *supra* note 5, at 71–72.

pre-med studies. Hunter had been accepted to Wayne State University in Detroit, where she would follow her dream to become a journalist. Both had outstanding academic credentials and excellent records of personal conduct. Calvin Trillin would later write that they seemed perfectly cast for the roles of the first black students at the University of Georgia (UGA), that they looked like “light-complexioned Negro versions of ideal college students, models for an autumn Coca-Cola ad in a Negro magazine.”<sup>12</sup>

Meanwhile, civil rights activists were using the courts to try to desegregate schools at all levels in the South. The Atlanta Committee for Cooperative Action (ACCA), a group comprised of young black professionals, came to Turner High School to recruit plaintiffs for a case to test the exclusion of black students from the all-white state universities in Georgia. Turner’s principal summoned Holmes and Hunter to his office to meet with the ACCA representatives. The Holmes and Hunter families were not strangers to the difficulties of being black in America in the 1950s. Holmes’ grandfather, father, and uncle had led the fight to desegregate Atlanta’s public golf courses.<sup>13</sup> Hunter’s father had been a chaplain in the army and had supported the rights of black soldiers in the segregated army during the 1940s and 1950s. Charlayne Hunter later wrote about that meeting at Turner High School: “We didn’t know much about the white schools in Atlanta, but without much deliberation, we told the men we would be interested. I don’t think at the time we had any idea what it would entail, but we felt a sense of responsibility to give it a try.”<sup>14</sup>

The plan initially was for Holmes and Hunter to apply to Georgia State College (now Georgia State University) in Atlanta. There, the lawyers could deal with discrimination in college admissions without the complicating issue of student housing. Holmes and Hunter visited Georgia State but, upon reviewing the thin catalogue of courses, did not think it had what they wanted, given their respective career ambitions in medicine and journalism.<sup>15</sup> Although it caused great apprehension among those

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12. PRATT, *supra* note 5, at 73.

13. *Id.* at 72; Gary Waleik, *In 1950s Atlanta, Alfred ‘Tup’ Holmes Fought to End Segregation in Golf*, WBUR (July 21, 2017), <http://www.wbur.org/onlyagame/2017/07/21/tup-holmes-desegregation-golf>.

14. HUNTER-GAULT, *TO THE MOUNTAINTOP*, *supra* note 5, at 16.

15. *Id.*; PRATT, *supra* note 5, at 72; HUNTER-GAULT, *IN MY PLACE*, *supra* note 5, at 127.

who recruited them, Holmes and Hunter decided that they wanted to apply to the University of Georgia instead.<sup>16</sup>

When their case went to court, Judge Bootle entered detailed findings of fact regarding how the University of Georgia handled their applications.<sup>17</sup> Those findings include the following events that led up to the filing of the lawsuit and provide the factual basis upon which his legal conclusions would be based.

On July 11, 1959, Holmes and Hunter applied for admission to UGA.<sup>18</sup> The front page of the Atlanta Constitution the next day contained the headline, “2 Negroes Try Doors at Athens.”<sup>19</sup> Their applications were promptly denied by Walter Danner, the University’s registrar, because, he said, “Due to the limited facilities of the University, we are not able to consider your application at this time.”<sup>20</sup> On August 21, 1959, Hunter wrote Danner and asked for her application to be considered for the Winter Quarter of 1960.<sup>21</sup> Danner responded that “[a]t the present we are not considering any applications for future quarters.”<sup>22</sup> Rather than wait for the University of Georgia to consider her application, Hunter entered Wayne State University in Detroit that fall as a freshman.<sup>23</sup>

On December 7, 1959, Hunter wrote to ask Danner of the “exact requirements” she would have to meet in order to enroll in the Winter Quarter and, if the University’s position was that no new students would be admitted, she asked when the University would start accepting applications such as hers again. Danner replied three days later: “Due to limited facilities we are not able to consider your application at this time. We are denying admission to a number of qualified students who desire to transfer.”<sup>24</sup> Danner also stated that all applicants must submit a transcript and submit to a personal interview. The personal interview requirement would later become an important issue in the case. Hunter wired Danner on December 15, 1959 and asked him to arrange an interview while she was home from Wayne

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16. PRATT, *supra* note 5, at 72.

17. *Holmes v. Danner*, 191 F. Supp. 394, 414–15 (M.D. Ga. 1961).

18. PRATT, *supra* note 5, at 73.

19. HUNTER-GAULT, IN MY PLACE, *supra* note 5, at 129.

20. *Holmes v. Danner*, 191 F. Supp. 385, 386 (M.D. Ga. 1960).

21. *Id.*

22. *Id.* at 386–87.

23. *Id.* at 388.

24. *Id.* at 387.

State, between December 18, 1959 and January 4, 1960. Danner replied the same day: "As I advised you in my letter of December 10th, we are not able to consider your application at this time."<sup>25</sup>

On December 31, 1959, Hunter went with Holmes' father and met with Danner in Danner's office for ten or fifteen minutes.<sup>26</sup> Danner did not consider this to be Hunter's required interview. He later testified about this meeting:

I did not interview—complete our formal interview sheet on her because at that time I told her she would need an interview, and when we could consider her application I would advise her when to come for an interview, and to my knowledge she has—she admitted to me then that she knew she had to return for an interview.<sup>27</sup>

On February 11, 1960, Hunter wrote Danner to seek admission for the Spring Quarter of 1960 and to say that she had asked the Wayne State registrar to send her Wayne State transcript to the University of Georgia, noting, "You stated that my college transcript was the only requirement other than the interview that I had not complied with."<sup>28</sup> Danner replied, "Due to limited facilities we are not able to consider your application at this time."<sup>29</sup>

Meanwhile, Holmes' application had been proceeding along a similar track. He wrote to Danner on August 18, 1959 to ask that his application be considered for the Winter Quarter of 1960.<sup>30</sup> Danner replied that no applications for future quarters were being accepted. On November 17, 1959, Holmes wrote Danner to ask when the University would be accepting applications for the Winter Quarter, to ask what steps were necessary for him to be eligible for enrollment, and to seek a new application form if a new application was necessary.<sup>31</sup> As he had done with Hunter, on November 24, 1959, Danner replied: "Due to limited facilities we are not able to consider your application at this time. We are denying admission to a number of qualified students who desire to

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25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.* at 388.

30. *Id.*

31. *Id.* at 389.

transfer.”<sup>32</sup> Danner also informed Holmes that the University of Georgia needed his transcript and needed to conduct a personal interview.<sup>33</sup>

Danner apparently gave a radio interview around this time in which he said that three hundred students would be dropped from the University and that would make room for additional students for the Winter Quarter of 1960. Holmes wrote Danner on December 10, 1959 to ask what applicants would be eligible for these new spaces. Holmes also asked for guidance on whether he should apply as a freshman or as a transfer (as planned, he had been attending Morehouse College), how to arrange for the required personal interview, and whether he needed to file a new application. Holmes also asked Danner whether his high school record and test scores met the requirements of the University of Georgia. On December 14, 1959, Holmes wired Danner to request a personal interview “at a time and place of your choosing.” On December 15, 1959, Danner responded, “we are not able to consider your application at this time.” He explained that the University was admitting “a few transfer students from our Junior Colleges” and “a large number of former students who we could not accommodate for the Fall Quarter.”<sup>34</sup>

Holmes wrote Danner on February 1, 1960 to apply for admission for the Spring Quarter.<sup>35</sup> Danner replied on February 5:

Due to limited facilities we are not able to consider your application at this time. I advised your father when he was in my office last December that we were denying admission, because of limited facilities, to a number of qualified students who desired to transfer. This condition still exists and we are continuing to deny admission to qualified students.<sup>36</sup>

Holmes’ Morehouse College transcript arrived in Danner’s office the next day.<sup>37</sup> On June 2, 1960, Hunter’s mother wrote Danner to ask him to consider her letter as a “continuation and renewal” of Hunter’s application, now for the Fall Quarter of 1960.

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32. *Id.*

33. *Id.*

34. *Id.* at 389–90.

35. *Id.*

36. *Id.* at 390.

37. *Id.*

That same day, Holmes wrote Danner to apply for admission for the Fall Quarter.<sup>38</sup>

On June 3, 1960, Holmes and Hunter officially retained attorney Donald Hollowell, a leading civil rights lawyer in Atlanta, as their counsel.<sup>39</sup> State law provided an appeal process if a student believed that he or she had been improperly denied admission to a state university.<sup>40</sup> The student could appeal to the president of the university, the chancellor of the university system, and ultimately to the state Board of Regents. The appeal process had been created soon after Horace Ward became the first black applicant to the University of Georgia Law School, and it was used (along with other tactics) in Ward's case to delay his admission so long that eventually he obtained his law degree from Northwestern University.<sup>41</sup> Ward would join Hollowell as co-counsel in Holmes' and Hunter's case and would later become the first African American to sit as a United States District Judge in Atlanta.<sup>42</sup>

On June 3, 1960, Hollowell wrote to O.C. Aderhold, the President of the University of Georgia, to initiate the appeal of the denials of his clients' admission applications.<sup>43</sup> On June 8, Aderhold responded that Danner had informed him that the Morehouse and Wayne State transcripts had not been received, and that Danner would advise Holmes and Hunter regarding their applications once the transcripts arrived.<sup>44</sup> Holmes' updated Morehouse transcript arrived on June 15, 1960.<sup>45</sup> On June 21, without having received Hunter's Wayne State transcript, Danner wrote to Hunter, "[W]e will not be able to consider her application for the Fall Quarter due to limited housing facilities. We stopped accepting women students for the Fall Quarter over a month ago."<sup>46</sup> Hunter's Wayne State transcript arrived in Danner's office on June 24, 1960. Danner wrote Holmes on June 28, 1960 to acknowledge receipt of his application and to report that it would

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38. *Id.* at 388.

39. *Id.* at 385, 390.

40. *Holmes v. Danner*, 191 F. Supp. 394, 398 n.1 (M.D. Ga. 1961).

41. *Id.* at 401; Destiny Peery & Horace Ward, *Session IV: A Conversation with Judge Horace Ward: Dr. King's Lawyer in Georgia*, 10 NW. J. L. & SOC. POL'Y 657, 658 (2016).

42. Peery & Ward, *supra* note 41, at 658.

43. *Holmes*, 191 F. Supp. at 390.

44. *Id.*

45. *Id.*

46. *Id.* at 388.

be processed when Holmes completed a residence certificate and had a personal interview with an official representative of UGA.<sup>47</sup>

Hollowell wrote another letter to Aderhold on July 13, 1960, and Aderhold responded that there was nothing for him to consider regarding an appeal related to Holmes because Holmes had not completed “certain admissions procedures” (presumably submission of the residence certificate and the personal interview), and therefore Danner had not accepted or rejected Holmes’ application.<sup>48</sup> With respect to Hunter, Aderhold stated that he could not determine “what course you and your client are pursuing” because of an “apparent conflict” between Hollowell’s letter to Aderhold on June 3 and Hunter’s mother’s letter to Danner on June 2.<sup>49</sup> Aderhold wrote that he needed clarification.

On July 26, 1960, Hollowell appealed the “denials” of Holmes’ and Hunter’s applications by Danner to Dr. Harmon Caldwell, the Chancellor of the University System of Georgia, and described the denials as having been “sustained by the non-action” of Aderhold. On July 28, Caldwell responded that he had asked Aderhold for the relevant records and a statement of the “present status of the applications,” and that thereafter he would study the matter and respond.<sup>50</sup>

On August 10, 1960, Caldwell responded to Hollowell that he had carefully reviewed the records and found nothing to justify the admission of Holmes or Hunter. He stated that the University had not been able to complete consideration of the applications because Holmes and Hunter had not completed all of the admission requirements (again, presumably the personal interviews). Because Caldwell’s letter did not specify which requirements had not been fulfilled, Hollowell wired Caldwell the next day to ask which requirements had not been met. On August 15, Caldwell’s secretary wrote to Hollowell that Caldwell was out of the city and would reply when he returned. Also, on August 15, Hollowell took the next step in the appeal process and sent a letter to Robert O. Arnold, chairman of the Board of Regents of the University System of Georgia, asking that a special meeting of the Board be called to consider Holmes’ and Hunter’s appeals. On August 17, Caldwell replied to Hollowell’s August 10 telegram but noted that he had

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47. *Id.* at 390.

48. *Id.* at 391.

49. *Id.*

50. *Id.*

received a copy of the appeal to the Board of Regents. Caldwell cited that letter and appeal as a reason why “any comments by me on my ruling in the Holmes and Hunter cases would be out of order.”<sup>51</sup> On August 30, 1960, Arnold wrote Hollowell to say that the next regular meeting of the Board of Regents was scheduled for September 17, 1960, and that it would be impossible to assemble a quorum before then.<sup>52</sup>

By the late summer of 1960, the attorneys for Holmes and Hunter were ready to file the case. The legal team of Hollowell and Ward now included Constance Baker Motley, who had been working with the NAACP Legal Defense Fund since 1946 and had been lead counsel in numerous civil rights cases in the South ever since.<sup>53</sup> Hollowell had come to know Judge Bootle in other cases, and after a routine hearing in another matter Hollowell asked to speak with the judge.<sup>54</sup> Hollowell told Judge Bootle that he was planning to file the case to desegregate the University of Georgia in his court, in the Middle District of Georgia, which encompasses Athens and where venue would lie over Danner. Judge Bootle later recalled, “I immediately said to him, half jokingly and half seriously—I knew him well by that time—I said, ‘Haven’t you caused me enough trouble for one day?’”<sup>55</sup> Judge Bootle suggested, more seriously, that venue would be proper over the Board of Regents in Atlanta, in the Northern District.<sup>56</sup> After conferring with co-counsel Motley, Hollowell told Judge Bootle that they would be filing the case in his district. Judge Bootle later commented: “I wasn’t trying to shirk a responsibility, not at all, but I wanted to be sure it was my responsibility before I tackled it.”<sup>57</sup> The case was filed on September 2, 1960. The decision whether to desegregate the University of Georgia after 175 years of operation had landed in the lap of Judge William Augustus Bootle.

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51. *Id.* at 392.

52. *Id.*

53. *Constance Baker Motley Biography*, BIOGRAPHY (Apr. 2, 2014), <https://www.biography.com/people/constance-baker-motley-9416520>.

54. Manley F. Brown & Edward Lukemire, *An Oral Interview with Judge W.A. Bootle Part II*, 8 J.S. LEGAL HIST. 95, 97–98 (2000) [hereinafter *Oral Interview Part II*].

55. *Id.* at 99.

56. *Id.*

57. *Id.* at 100.

### III. JUDGE BOOTLE'S BACKGROUND

There was nothing in Judge Bootle's background to suggest that he would become a central figure in the struggle for civil rights for African Americans.<sup>58</sup> He was born 1902 in a tiny cabin at Round O, South Carolina, in the lowlands between Walterboro and Charleston.<sup>59</sup> "Gus" Bootle grew up in South Carolina and Georgia and, in June 1918 at age fifteen, finished high school as valedictorian in Reidsville, Georgia.<sup>60</sup> As a youth, Bootle became interested in studying law.<sup>61</sup> He later said, "I lived in a small community and didn't get to go to court much, but heard a few cases tried and thought I would do a better job of it."<sup>62</sup> But in 1918 there did not seem to be any way that could happen. He later reflected, "I had some ambition, I wanted to do something, I wanted to be a lawyer, but I knew that was impossible. I couldn't go to college. All I could do was think about it."<sup>63</sup>

The next two years saw Gus serve as an apprentice acid maker in a fertilizer plant, as a second-class shipfitter in a shipyard, and then as a worker for his father back in Reidsville at the shingle factory.<sup>64</sup> Then he had a fateful meeting on the street with a local businessman, Mr. Josh Beasley. Judge Bootle later told the story this way:

One day in Reidsville, Mr. Beasley and I just happened to meet on the sidewalk. . . . Mr. Beasley said to me out of the blue, "why don't you go to college?" I said, "well, Mr. Beasley, it's just a matter of finance. We don't have the money." We were right close by the Tattnell Bank. He said, "well, I happen to be administrator of an estate and I've got \$300 lying in the bank drawing interest. And it will be a long time before I need that money. I don't see why I can't lend it to you and let you pay the interest instead of the bank paying it, if you can get good endorsers."<sup>65</sup>

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58. See Manley F. Brown & Edward Lukemire, *An Oral Interview with Judge W.A. Bootle Part I*, 7 J.S. LEGAL HIST. 117 (1999) [hereinafter *Oral Interview Part I*].

59. *Id.* at 121–22.

60. *Id.* at 129–30.

61. *Id.* at 131.

62. Debbie Rhyne, *Man of a Century*, MACON TELEGRAPH, Aug. 19, 2002, at 1A.

63. *Oral Interview Part I*, *supra* note 58, at 131.

64. *Id.* at 132–36.

65. *Id.* at 138–39.

Bootle obtained the endorsers and signed a \$300 note to Mr. Beasley, payable at 8% interest, on October 1, 1920.<sup>66</sup>

With the \$300, Gus was able to begin his college education. He had to choose between the University of Georgia in Athens and Mercer University in Macon.<sup>67</sup> He chose Mercer because its term started two weeks later than Georgia's, and that enabled him to work two extra weeks for his father at the shingle mill.<sup>68</sup> Many years later, the judge said, "I'm so glad it was Mercer. Mercer was a small, little school where you got more attention. You could be a big fish in a little pond."<sup>69</sup>

Gus spent five years at Mercer and obtained a bachelor's degree in 1924 and a law degree in 1925.<sup>70</sup> He supported himself by waiting tables and along the way met Virginia Childs, who, in 1928, would become his wife.<sup>71</sup> Gus was very successful at Mercer and won the medal for high scholarship in his senior year and had the highest average in the law school in 1925.<sup>72</sup> He was elected to the extremely prestigious position as that year's "Master Mercerian."<sup>73</sup> In 1925, Gus was admitted to the Georgia Bar without examination because he had graduated from Mercer's law school, which was accredited by the American Bar Association.<sup>74</sup> He went to work for the firm of Jones, Park & Johnston in Macon in 1925.<sup>75</sup>

In 1926, Congress reorganized the federal courts in Georgia and created the Middle District of Georgia, which includes Macon.<sup>76</sup> Gus left private practice in 1928 and became the assistant United States Attorney.<sup>77</sup> The U.S. Attorney soon left for another job, leaving Gus effectively in charge of the office at the age of twenty-six.<sup>78</sup> Bootle later said he did not have the confidence to

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66. *Id.* at 139.

67. *Id.* at 141.

68. *Id.*

69. Rhyne, *supra* note 62, at 8A.

70. *Oral Interview Part I*, *supra* note 58, at 149.

71. Rhyne, *supra* note 62, at 8A.

72. *Oral Interview Part I*, *supra* note 58, at 147.

73. *Id.* at 148.

74. *Id.* at 153.

75. Don Schanche, 'Drum Major for Justice'—Civil Rights Giant Dies in His Sleep, *MACON TELEGRAPH*, Jan. 26, 2005, at 6A.

76. *Oral Interview Part I*, *supra* note 58, at 161; United States District Court for the Middle District of Georgia, *Court History*, [GAMD.USCOURTS.GOV](https://www.gamd.uscourts.gov), <https://www.gamd.uscourts.gov/court-history> (last visited Feb. 23, 2019).

77. *Oral Interview Part I*, *supra* note 58, at 160–62.

78. *Id.* at 162.

believe that he could be appointed by the president to be the U.S. Attorney, but Congressman Carl Vinson encouraged him and told him he needed to go to Washington, D.C. to meet with the Attorney General.<sup>79</sup> Gus married Virginia in late November 1928 and combined his honeymoon trip to New York City with a trip to Washington, D.C., where he met with the Attorney General.<sup>80</sup> He learned soon thereafter that he had the appointment, which was signed by President Calvin Coolidge because Herbert Hoover was waiting to be inaugurated.<sup>81</sup> It obviously helped that Gus Bootle was one of the very few Republicans in middle Georgia at that time.<sup>82</sup>

Gus Bootle stayed in office as U.S. Attorney for the Middle District of Georgia until 1933, after Franklin Roosevelt had been elected and inaugurated. Much of his work as a U.S. Attorney was comprised of trying “whiskey” cases in which the defendants were accused of circumventing Prohibition.<sup>83</sup> Bootle then went into private practice with the firm of Carlisle & Bootle in 1933.<sup>84</sup> During his first four years at that firm, 1933–1937, Bootle also served “part-time” as the interim dean of Mercer University Law School, which almost closed during the depression due to declining enrollment.<sup>85</sup> The prior dean had resigned, and all the members of the faculty resigned soon thereafter. Those events left Bootle to teach and recruit new faculty, which he was able to do. The Mercer Law School remained open. One of Bootle’s students during this time was Brainerd Currie, who would go on to become one of the most influential legal scholars of the twentieth century at Mercer, the University of Chicago, and Duke University, among other law schools.<sup>86</sup>

From 1933–1954, Bootle was in private practice in Macon.<sup>87</sup> Nothing about Bootle’s private practice indicated any disagreement with the prevailing views on segregation in the South. He was not active in promoting or, for the most part, in

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79. *Id.* at 162–64.

80. *Id.* at 164.

81. *Id.* at 167.

82. *Id.* at 163, 166.

83. *Id.* at 167.

84. *Id.* at 175.

85. *Id.* at 157–58.

86. *Id.* at 158–60; Brainerd Currie, DUKE LAW, <https://law.duke.edu/history/faculty/currie/> (last visited Feb. 23, 2019).

87. *Oral Interview Part I, supra* note 58, at 175.

resisting integration. The one exception is a case in which he represented clients who wanted to ensure only whites could use a new city swimming pool. Andrew Manis, history professor at Middle Georgia State University and author of *Macon Black and White*, a book on race relations in Macon, quoted a prominent black Maconite as saying at the time: "I don't know of anything . . . Mr. Bootle . . . ever did for the advancement of Negroes."<sup>88</sup>

In 1954, an opening occurred for the appointment of a United States District Judge for the Middle District of Georgia.<sup>89</sup> Judge Bootle wanted the appointment, but at the time he was not optimistic that he would get it. He recalled years later that three Republican Party officials were charged with making the selection and his name was at the bottom of the list because he had not been as politically active as the other candidates.<sup>90</sup> An influential Macon lawyer organized the Macon Bar to advocate for Bootle's appointment. Elbert Tuttle was one of the three Republican Party officials, and he later said "the lawyers in the district just pounded his ears until he had to surrender."<sup>91</sup>

The competition for the nomination apparently was fierce. When Bootle's nomination was announced, the Macon Telegraph editorialized:

The selection of Mr. Bootle by Georgia Republican leaders and his nomination Monday came after a long, and sometimes bitter, intra-party dispute which sometimes left the GOP state organization looking as ridiculous as the state[s] Democratic organization looks. But Mr. Bootle conducted himself with absolute propriety during the controversy. He adopted the dignified position that he would consider it an honor to be tendered the appointment but he refused to lower himself into a knock-down-drag-out scramble for the job.<sup>92</sup>

Perhaps the various contestants would not have been as anxious to get the job if they had realized what was on the horizon. Gus attended his hearing before the Senate Judiciary Committee on May 12, 1954.<sup>93</sup> The United States Senate confirmed Bootle's

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88. ANDREW M. MANIS, *MACON BLACK AND WHITE* 167 (2004).

89. *Oral Interview Part I, supra* note 58, at 197.

90. *Id.* at 198.

91. *Id.* at 199.

92. *Gus Bootle's Appointment*, *MACON TELEGRAPH*, 1954.

93. In this handwritten letter Bootle wrote:

appointment on May 18. The day before, the Supreme Court had decided *Brown v. Board of Education*, which held that segregation in public schools was unconstitutional.<sup>94</sup> Seven years later, *Holmes v. Danner*<sup>95</sup> was filed in Judge Bootle's court, and by then Elbert Tuttle was on the United States Court of Appeals for the Fifth Circuit.<sup>96</sup> Their paths were about to cross again.

#### IV. HOLMES V. DANNER AND THE DESEGRETATION OF THE UNIVERSITY OF GEORGIA

##### A. From Filing to Trial: Preliminary Injunction and Discovery

After Holmes and Hunter filed their case on September 2, 1960, they sought an expedited hearing on their motion for a preliminary injunction.<sup>97</sup> Twelve days after the complaint was filed, on September 14, Judge Bootle held a hearing from 9:00 a.m. to 6:30 p.m., during which Danner and Aderhold testified and documentary evidence was introduced.<sup>98</sup> The documents included the correspondence described above between the plaintiffs and various University officials, the plaintiffs' files, and the files of numerous white applicants.<sup>99</sup>

Judge Bootle denied the preliminary injunction for two reasons. First, Holmes' and Hunter's appeals to the Board of Regents were both still pending at the time of the hearing. Judge Bootle held that they needed to exhaust their administrative remedies before he would issue an injunction.<sup>100</sup> Second, Judge Bootle wrote that "an issue of this importance can be more

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The Senate Committee takes up my nomination on May 12th at 10 am and their rules require all judicial nominees to be present. I will be there the 11th. As Mama always said "[I] don't want to catch the last train." Keep your fingers crossed for me. With lots of love to you, Gus.

Letter from W.A. Bootle, Partner, Carlisle & Bootle, to Father & Sister (May 7, 1954) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 1, File: Correspondence – Sent).

94. 347 U.S. 483, 495 (1954).

95. 191 F. Supp. 394 (M.D. Ga. 1961).

96. *Tuttle, Elbert Parr*, FED. JUD. CENTER, <https://www.fjc.gov/history/judges/tuttle-elbert-parr> (last visited Feb. 23, 2019).

97. *Holmes v. Danner*, 191 F. Supp. 385, 385 (M.D. Ga. 1960).

98. *Id.* at 386.

99. *Id.*

100. *Id.* at 392.

appropriately decided after a full and final trial than after only a preliminary hearing.”<sup>101</sup> The judge left no room, however, for the Board of Regents to delay matters by refusing to meet or rule on the appeals.<sup>102</sup> He gave the Board thirty days from the date of his order—September 25, 1960—to rule, and he wrote that “in the event it should fail to do so, this court will deem said appeals denied.”<sup>103</sup>

On October 21, 1960, the Committee on Education of the Board of Regents reported to the full Board on Holmes’ and Hunter’s appeals.<sup>104</sup> The Board adopted the committee’s report, which found that Holmes and Hunter had “failed to complete the required procedures, and that consequently the University authorities have been in no position to consider their applications.”<sup>105</sup> The “required procedures” that Holmes and Hunter allegedly had not completed were the personal interviews.<sup>106</sup> The Board denied the appeals “without prejudice to the rights of the applicants to renew and pursue their applications.”<sup>107</sup>

Judge Bootle’s opinion made it clear that he expected the University to proceed expeditiously if the Board of Regents denied the appeals. “If such action [of the Board] should be unfavorable, presumably the defendants will proceed immediately to interview plaintiffs, if plaintiffs still desire to be interviewed.”<sup>108</sup> The University apparently got the message. Danner finally interviewed Hunter on November 5 and Holmes on November 18. After Hunter’s interview, in which she made a positive impression, Danner wrote to her that for the Winter and Spring Quarters of 1961 “we are accepting students only within the same categories as we did last Winter and Spring. It might be that some applicants who come within these categories cannot be accepted due to limited

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101. *Id.*

102. *Id.* at 393.

103. *Id.*

104. *Holmes v. Danner*, 191 F. Supp. 394, 397 (M.D. Ga. 1961).

105. *Id.* (quoting the Committee on Education’s report).

106. *Id.* at 406.

107. *Id.* at 397 (quoting the Committee on Education’s report); *WSB-TV Newsfilm Clip of a Member of the Committee on Education of the Board of Regents of the University System of Georgia Reading from a Prepared Statement Regarding Applications of African American Students Charlayne Hunter and Hamilton Holmes to the University of Georgia, Atlanta, Georgia*, 00:36–00:42 (WSB-TV television broadcast Oct. 21, 1960), [http://crdl.usg.edu/cgi/crdl?query=id:ugabma\\_wsbn\\_43771](http://crdl.usg.edu/cgi/crdl?query=id:ugabma_wsbn_43771) (follow “Click here to view the item” hyperlink).

108. *Holmes v. Danner*, 191 F. Supp. 385, 393 (M.D. Ga. 1960).

facilities.”<sup>109</sup> Danner told Hunter that the University “will consider you, along with other applicants, for the 1961 Fall Quarter if it is your desire to transfer.”<sup>110</sup> After Holmes’ interview (which is described in more detail below), Danner wrote Holmes that “[f]rom a review of your records and on the basis of your personal interview, we are of the opinion that you do not qualify as a suitable applicant to the University of Georgia and you are hereby denied admission.”<sup>111</sup>

Meanwhile, on November 13, 1960, Hollowell had written a letter to Mr. B.D. “Buck” Murphy, a private practitioner who served in this case as Deputy Assistant Attorney General and lead counsel for the University of Georgia. In that letter, Hollowell informed Murphy that the plaintiffs’ counsel were “desirous of inspecting the files of all students who are presently enrolled in the undergraduate school of the University of Georgia at Athens, Georgia, beginning November 29, 1960.”<sup>112</sup> Hollowell asked for Murphy’s approval of this request and for cooperation in having the University notified and the documents prepared for inspection. That cooperation was not voluntarily forthcoming.

On November 18, Judge Bootle held a pretrial conference at which the University argued that it ought not to be compelled to produce the records, which included the paperwork for about seven thousand applicants.<sup>113</sup> Judge Bootle overruled the objection and ordered that review of the files could begin immediately.<sup>114</sup> Hollowell sent Horace Ward and a young unlicensed law school graduate, Vernon Jordan, to pore over those records to see if they showed the University was treating white applicants differently than Holmes or Hunter.<sup>115</sup> Sure enough, a thorough review of the records revealed several pieces of crucial evidence, including documents that showed a white female transfer applicant with

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109. *Holmes*, 191 F. Supp. at 397.

110. *Id.*

111. *Id.*

112. Letter from Donald Hollowell, Plaintiff’s Counsel, to Honorable B.D. Murphy, Lead Counsel for Univ. of Ga., *Re: Civil Action No. 450 Holmes, et. al., v. Danner, et. al.* (Nov. 18, 1960) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File University of Georgia Ruling – Correspondence & Newspaper Articles).

113. PRATT, *supra* note 5, at 78.

114. *Id.*

115. *Id.* at 78. Vernon Jordan would go on to a distinguished career as a lawyer, as president of the National Urban League, and as a close advisor to President Bill Clinton. *Vernon Jordan Jr. Biography*, BIOGRAPHY, <https://www.biography.com/people/vernon-jordan-jr-9358120> (last updated May 22, 2015).

comparable credentials had been admitted when Hunter was told there were no facilities available.<sup>116</sup> When Jordan found the document, he said to Motley, “this is it.”<sup>117</sup>

### B. Trial and Ruling

Judge Bootle held the trial on *Holmes v. Danner* in Athens from December 13–17, 1960. Holmes and Hunter were represented by Hollowell, Ward, and Motley.<sup>118</sup> Hunter recalled that the lawyers “scored big points with their evidence of the university’s duplicity and deception.”<sup>119</sup> But Hunter also felt pessimistic about the result, given her impressions of Judge Bootle:

The thing is, he was a man who was hard to read. In that courtroom, day after day, I never saw him smile. I never saw him look in my direction, so I formed certain opinions about him, based on the kind of society that he came out of. And so when I heard that he had come down with the decision that he did, I was happy but I was really surprised.<sup>120</sup>

Hunter later wrote that Bootle “seemed not to be intimidated by, or to favor, either side. He’d just sit there, behind his black horn-rimmed glasses, seemingly at ease in his empowering black robes as he listened for evidence that could lead him to go against every tradition in his Southern upbringing and culture.”<sup>121</sup> At the end of the trial, Judge Bootle set a briefing schedule that would have all the papers submitted to him by January 4, 1961.<sup>122</sup> Two days after that, on January 6, Judge Bootle ordered the immediate admission of Holmes and Hunter to the University of Georgia.

In his opinion, Judge Bootle first had to deal with the University’s argument that any ruling was premature because Holmes and Hunter had not exhausted their administrative remedies by prosecuting another appeal from the University’s most recent actions, the denial of Holmes’ application, and the deferral of Hunter’s in light of the allegedly inadequate facilities.<sup>123</sup>

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116. HUNTER-GAULT, TO THE MOUNTAINTOP, *supra* note 5, at 33.

117. HUNTER-GAULT, IN MY PLACE, *supra* note 5, at 157.

118. *Id.*

119. HUNTER-GAULT, TO THE MOUNTAINTOP, *supra* note 5, at 33.

120. Schanche, *supra* note 75, at 6A.

121. HUNTER-GAULT, IN MY PLACE, *supra* note 5, at 162.

122. *Id.* at 164–65.

123. *Holmes v. Danner*, 191 F. Supp. 394, 401 (M.D. Ga. 1961).

Judge Bootle noted that the administrative “remedy” itself had dubious origins, in that it was created just six weeks after Ward’s application to the University of Georgia Law School. The judge found the administrative remedy inadequate because the appeal process did not require ruling on an appeal within a prescribed period of time or even a reasonable time. The result was that the University probably could run out the clock on a student’s “normal four-year college attendance period before securing any final administrative action.”<sup>124</sup> Judge Bootle noted that the first appeal had taken 122 days. Bootle also found that the administrative remedy was inadequate because the administrative officials who would consider the appeal were not truly free to grant admission to Holmes or Hunter or any other black applicant, given that under the General Appropriation Act of 1956 the result would be the automatic cut-off of all state funds to the University. Having disposed of that argument, Judge Bootle turned to the question of discrimination.<sup>125</sup>

At the trial, Aderhold, the President of UGA, flatly denied under oath that there was any policy to exclude black applicants from the University of Georgia.<sup>126</sup> Judge Bootle found to the contrary:

After a careful consideration of all of the evidence admitted at the trial, the court finds that, had the 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. . . . 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>127</sup>

Judge Bootle made these findings based upon inferences from the evidence he heard, particularly about the alleged “limited facilities” and about the personal interview requirement.<sup>128</sup>

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124. *Id.*

125. *Id.* at 401.

126. PRATT, *supra* note 5, at 81.

127. *Holmes*, 191 F. Supp. at 401–02.

128. *Id.* at 402.

Judge Bootle reviewed the evidence regarding the alleged overcrowding of the University's residential facilities. He noted that several white students, some of whom would require housing, were accepted for the Fall Quarter of 1959 even though they applied after Holmes and Hunter. There were fifteen vacancies in University housing in the Winter Quarter of 1960 and forty-one vacancies in the Spring Quarter, but Holmes and Hunter were nevertheless denied admission because of "limited facilities." There were many vacancies for the Summer Quarter of 1960. The University claimed that neither Holmes nor Hunter had applied for admission for that quarter, but Judge Bootle rejected that contention in light of the clear documentary evidence that Holmes and Hunter had expressed their desire to enter the University at the earliest possible time. For the Fall Quarter of 1960, Hunter was denied admission because of limited facilities, allegedly because her application came in after a "cut-off date" established by President Aderhold on May 18, 1960. However, there were white female students who were accepted after the alleged cut-off date.<sup>129</sup>

Judge Bootle had to make an inference about the real reason behind the denial of Holmes' and Hunter's applications. He could have done so solely based upon the unfilled vacancies and the disparate treatment of white and black applicants, but his job became easier when a letter from Caldwell, the Chancellor of the University System of Georgia, to Aderhold, the UGA President, came into evidence. In June 1960, a powerful member of the Board of Regents, Howard Callaway, had written to Caldwell for help getting a white student admitted. In a handwritten letter, Caldwell told Aderhold, "I have written Howard that it is my understanding that all of the dormitories for women are filled for the coming year. I have also indicated that you are relying on this to bar the admission of a Negro girl from Atlanta."<sup>130</sup> Judge Bootle concluded that "the reason behind the 'limited facilities' preventing plaintiffs' admission is probably best expressed" in this letter.<sup>131</sup> There was similar evidence in a letter from a white transfer applicant who wrote that he had been told he had been denied admission due to policy decisions based upon "segregational

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129. *Id.* at 405.

130. *Id.* at 406.

131. *Id.*

problems.” Judge Bootle found this letter was further evidence that the purpose of the “limited facilities” position of the University was to keep the University of Georgia all white.<sup>132</sup>

Judge Bootle also found evidence of discriminatory intent in connection with the University’s requirement of a personal interview with Hunter and Holmes. He described extensive evidence that with white applicants the interview requirement was “loose” and in some cases dispensed with. In contrast, Hunter was interviewed for forty-five minutes by three University officials who treated her as a “difficult case” because she came from an all-black high school. Among other things, they asked Hunter whether she “had any apprehension concerning being the first Negro to enter the University of Georgia.”<sup>133</sup>

Holmes’ interview by the same three officials was outrageous. Judge Bootle listed questions that Holmes was asked that “had probably never been asked of any applicant before”:

- 1) Have you ever been arrested?
- 2) Have you ever attended inter-racial parties?
- 3) What is your opinion concerning the integration crises in New Orleans and in Atlanta?
- 4) Give some insight into the workings of the student sit-in movement in Atlanta.
- 5) What are some of the activities of the student sit-in movement, and have you ever participated therein?
- 6) Do you know of the tea houses (or coffee houses or Beatnik places) in Atlanta, and have you ever attended any of them?
- 7) Do you know about the red light district in Athens?
- 8) Have you ever attended houses of prostitution?
- 9) Since you are interested in a premedical course, why have you not applied to Emory University, since it is in Atlanta?<sup>134</sup>

The chief interviewer commented that there was doubt about Holmes’ truthfulness because Holmes said he had never been arrested and Danner had “heard” Holmes had been arrested. Holmes had in fact never been arrested. His only brush with the law had been a fine for a traffic violation. Judge Bootle concluded

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132. *Id.*

133. *Id.* at 407.

134. *Id.* at 406–07.

that Holmes' interview had not been conducted in the same way as the interviews for white applicants. He further found, "from the evidence as a whole and particularly from Holmes' appearance as a witness at the trial, . . . Holmes would have been found 'to be an acceptable candidate for admission to the University'" if his interview had "been conducted and evaluated in the same manner as the interviews of white applicants."<sup>135</sup>

Judge Bootle noted several other crucial bits of evidence that contributed to his finding of discrimination. He observed that Danner had not answered many of the questions Holmes and Hunter had asked about the admission process, and Danner never gave the kind of helpful advice he often gave to white applicants.<sup>136</sup> The example Judge Bootle gave was one of the products of Horace Ward's and Vernon Jordan's exhaustive review of University admission records in November 1960:

In the summer of 1960 both Miss Hunter and Miss Brumby had completed one-year's work at out-of-state liberal arts colleges. Both are interested in studying journalism, and the colleges at which both completed their first year's work offer major studies in journalism. Both were denied admission to the Fall Quarter, 1960 because of "limited facilities." However, Miss Brumby was advised to attend the Marietta University Center of the University of Georgia for the Fall Quarter, 1960 and has now been accepted for admission to the University at the Winter Quarter, 1961. Miss Hunter was given no advice, and has been denied admission because of "limited facilities."<sup>137</sup>

From all of this evidence, Judge Bootle made his finding that the University in fact had denied admission to Holmes and Hunter because it had a policy of not admitting any black students.<sup>138</sup>

Although the trial took most of a week, the judge said much later, "Well, it didn't take much evidence. I had common sense. I could see—I could see—they were black. And I knew what was going on, as everyone else did. It didn't take much evidence to convince me that they were denied admission solely because they were black."<sup>139</sup> These comments, made so many years later, do not

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135. *Id.* at 408.

136. *Id.*

137. *Id.* at 407–09.

138. *Id.* at 410.

139. Daniels & Jones, *supra* note 2, at 0:00–0:22.

accurately capture the complexity of the judge's task. As we have seen, he had to deal with the complex issue of exhaustion of remedies and with voluminous conflicting evidence about the motives of University officials. Nevertheless, Judge Bootle persisted many years later in his view that it was an easy case. When Judge Bootle and Charlayne Hunter reminisced about the trial in 2004, Judge Bootle (then one hundred years old) could not remember how long the trial had taken. When Hunter told him that it had taken a week, Judge Bootle asked her, "what took so long?"

Some people were surprised that Judge Bootle ruled so quickly, only two weeks after the trial concluded and two days after the last brief had been due. Many were even more surprised by the remedy he ordered.<sup>140</sup> The University of Georgia was "enjoined from refusing to permit the plaintiffs to enroll in and enter said University as students therein immediately for the now beginning Winter Quarter, 1961, or at the appropriate time for the approaching Spring, Summer or Fall Quarter, 1961, as each plaintiff may elect . . ." <sup>141</sup> To register for the Winter Quarter, Holmes and Hamilton would need to be in Athens to register less than seventy-two hours later, on Monday January 9, 1961.

Reaction to Judge Bootle's order was swift. The day it was issued, about 150–200 students gathered at the archway entrance to the University and, among other things, hung a blackface effigy of Hamilton Holmes and serenaded it with "Dixie."<sup>142</sup> Other students tried to burn a fifteen-foot high cross at the home of Aderhold.<sup>143</sup> The reaction in Macon was no better. An effigy of Judge Bootle was burned on the Mercer campus.<sup>144</sup> The atmosphere in Georgia was tense, as those in favor of and opposed to the desegregation of the University of Georgia waited to see if Holmes and Hunter would choose to enter the University immediately.

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140. PRATT, *supra* note 5, at 83.

141. *Holmes v. Danner*, 191 F. Supp. 394, 410 (M.D. Ga. 1961).

142. PRATT, *supra* note 5, at 84.

143. *Id.* at 85.

144. Rhyne, *supra* note 62, at 8A; Schanche, *supra* note 75, at 6A.

## C. Events Following the Order

1. *Monday, January 9, 1961*

Holmes and Hunter decided not to wait for the Spring Quarter. Holmes went to the University on Saturday, January 7, to collect some of the necessary paperwork.<sup>145</sup> On Monday morning, January 9, 1961, Holmes and Hunter arrived together on the University of Georgia campus with Holmes' father, Hunter's mother, Vernon Jordan, and Horace Ward.<sup>146</sup> They were met by a large crowd that Hunter later described as "raucous," saying things like "there go the n\*\*\*\*\*" and "n\*\*\*\*\* go home."<sup>147</sup> Holmes and Hunter proceeded to the registrar's office, where things proceeded more smoothly.<sup>148</sup> They then went to the journalism building to complete the next step of registration, and while they were there they heard a loud cheer from outside. Judge Bootle had just stayed his own ruling by issuing a "supersedeas"—an order suspending the judgment in favor of Holmes and Hunter—pending resolution of the University's appeal.

Judge Bootle later recalled that he was not sure he even knew Holmes and Hunter were already on the campus to enroll.<sup>149</sup> The lawyers for the state had come to his office that morning and asked for the supersedeas. Judge Bootle said, "I rather routinely granted the motion. I say routinely; that was my custom."<sup>150</sup> In his order, he wrote that "every litigant has the right of an appeal, and this court is entirely hospitable to the exercise of that right with respect to any and all of its rulings . . . ."<sup>151</sup> The granting of the supersedeas, however, might not have been entirely routine. The judge recalled, "I thought this case particularly cried out for supersedeas. Think of it. We were upsetting a precedent that had

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145. PRATT, *supra* note 5, at 85.

146. WSB-TV Newsfilm Clip of the Arrival of Charlayne Hunter and Hamilton Holmes, the First African American Students at the University of Georgia, in Athens, Georgia, (WSB-TV television broadcast Jan. 9, 1961), [http://crdl.usg.edu/cgi/crdl?query=id%3Augabma\\_wsb\\_n\\_43084&\\_cc=1&Welcome](http://crdl.usg.edu/cgi/crdl?query=id%3Augabma_wsb_n_43084&_cc=1&Welcome) (follow "Click here to view the item" hyperlink).

147. HUNTER-GAULT, TO THE MOUNTAINTOP, *supra* note 5, at 38; HUNTER-GAULT, IN MY PLACE, *supra* note 5, at 173.

148. WSB-TV Newsfilm Clip of African American Students Charlayne Hunter and Hamilton Holmes Registering for Classes at the University of Georgia in Athens, Georgia (WSB-TV television broadcast Jan. 9, 1961), [http://crdl.usg.edu/cgi/crdl?query=id:ugabma\\_wsb\\_n\\_43223](http://crdl.usg.edu/cgi/crdl?query=id:ugabma_wsb_n_43223) (follow the "Click here to view the item" hyperlink).

149. *Oral Interview Part II*, *supra* note 54, at 102.

150. *Id.*

151. *Holmes v. Danner*, 191 F. Supp. 394, 411 (M.D. Ga. 1961).

lasted for 175 years, not making a little change in it, reversing it at an angle of 180 degrees. I wanted the support of the Court of Appeals.”<sup>152</sup> When word of the stay reached the campus, Holmes and Hunter got in a car and left, and Hollowell told a reporter that they would be filing an application to lift the stay with the Court of Appeals in Atlanta that afternoon. As they drove off, a student could be heard saying, “have a nice trip to Africa.”<sup>153</sup>

Holmes and Hunter went to the home of a local businessman to wait while Hollowell and Motley sought to have the Court of Appeals overturn the stay.<sup>154</sup> Hunter fell asleep while they were waiting, but she was awakened by the phone ringing.<sup>155</sup> Judge Elbert Tuttle—the same Elbert Tuttle who had played a major role in selecting Judge Bootle for the federal bench—had overturned Judge Bootle’s stay at 2:30 p.m. Judge Tuttle wrote that the University officials made no showing “that there is any substantial likelihood of a reversal of the decision of the District Court,” and that “the quickest disposition that can be made of this case, so far as granting these plaintiffs their right to an education in a State institution, as the trial court has clearly found that they are entitled to, is the best solution not only for them but for all others concerned.”<sup>156</sup> The injunction that permitted Holmes and Hunter to register was back in effect, and they returned to campus to complete the registration process.

Governor Vandiver wasted no time in sending his Attorney General to Washington to ask Justice Hugo Black, the Circuit Justice for the Fifth Circuit Court of Appeals, to overturn Judge Tuttle’s order and grant the supersedeas pending appeal. The Governor also sent a letter to the Lieutenant Governor and the Speaker of the Georgia House of Representatives to inform them about the Attorney General headed to Washington. He also noted that the General Appropriation Act of 1956 had been triggered, and, as the “saddest duty of my life,” he would sign an order to

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152. *Oral Interview Part II*, *supra* note 54, at 103.

153. *WSB-TV Newsfilm Clip of African American Lawyers Commenting on the University of Georgia’s Integration, Students’ Replies to a Reporter’s Questions, and African American Students at the University of Athens, Georgia* (WSB-TV television broadcast Jan. 9, 1961), [http://crdl.usg.edu/cgi/crdl?query=id:ugabma\\_wsbn\\_43781](http://crdl.usg.edu/cgi/crdl?query=id:ugabma_wsbn_43781) (follow the “Click here to view the item” hyperlink).

154. HUNTER-GAULT, *IN MY PLACE*, *supra* note 5, at 174.

155. HUNTER-GAULT, *TO THE MOUNTAINTOP*, *supra* note 5, at 38.

156. *Text of Judge Tuttle’s Edict Setting Aside Entry Stay*, *ATLANTA J.*, Jan. 10, 1961, at 14.

follow that law and cut off all state funds to the University of Georgia.<sup>157</sup> In the same letter, however, he urged the legislature to repeal the law because the effects of its continuance would be “to close the doors of Georgia’s hallowed halls, to cease bringing learning and enlightenment to over 7,500 young men and women . . . create unrest among one of the most outstanding faculties in America and otherwise create harmful results without accomplishing anything.”<sup>158</sup> Governor Vandiver made a televised statement to the same effect.<sup>159</sup> Meanwhile, University of Georgia students were circulating a petition asking the Governor not to cut off funds.<sup>160</sup>

That night, in a prelude of what was to come two nights later, about one thousand students came out to protest the integration of the University.<sup>161</sup> Students burned crosses near the University’s tennis courts. Others unfurled Confederate flags and chanted racist slogans.<sup>162</sup>

## 2. *Tuesday, January 10, 1961*

The next morning, Judge Bootle was having breakfast with his wife when he received a call from Motley and Hollowell to ask if he would be in his office at 9:00 a.m.<sup>163</sup> They brought the judge affidavits quoting the Governor’s televised remarks and asked for a temporary restraining order to prevent him from cutting off funding of the University. Judge Bootle granted the motion *ex parte* and without notice. He ordered “that S. Ernest Vandiver . . . [is] hereby restrained from cutting off or refusing to furnish any

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157. Text of Vandiver Letter to Assembly Officers (copy filed with Mercer Univ. Library in W.A. Bootle Papers, Box 3, File: University of Georgia Ruling—Correspondence Concerning Court Case & Newspaper Articles).

158. *Id.*

159. *WSB-TV Newsfilm Clip of Georgia Governor Ernest Vandiver Reading a Statement Sent to State Officials Regarding the Integration of the University of Georgia from the Governor’s Mansion in Atlanta, Georgia* (WSB-TV television broadcast Jan. 9, 1961), [http://crdl.usg.edu/cgi/crdl?query=id:ugabma\\_wsbn\\_41372](http://crdl.usg.edu/cgi/crdl?query=id:ugabma_wsbn_41372) (follow the “Click here to view the item” hyperlink).

160. *WSB-TV Newsfilm Clip of White Students at the University of Georgia Signing Petitions Requesting that the State Legislature Keep the School Open After Court-Ordered Integrations in Athens, Georgia* (WSB-TV television broadcast Jan. 8, 1961), [http://crdl.usg.edu/cgi/crdl?query=id:ugabma\\_wsbn\\_43205](http://crdl.usg.edu/cgi/crdl?query=id:ugabma_wsbn_43205) (follow “Click here to view the item” hyperlink).

161. PRATT, *supra* note 5, at 90.

162. *Id.*

163. *Oral Interview Part II, supra* note 54, at 104.

and all funds heretofore or hereafter to be appropriated or apportioned to the University of Georgia at Athens under or in accordance with the General Appropriations Act of 1956.”<sup>164</sup> Judge Bootle said later that he realized “the gravity of the situation” and that the “governor of a sovereign state ought never be enjoined by a court order except in case of absolute necessity, and I regarded this as such a case.”<sup>165</sup>

Governor Vandiver responded by telegram at 3:15 p.m. that day. He wrote in part, “While my respect for lawful processes and my oath as Governor of the State of Georgia preclude any act of defiance on my part, I must register . . . the strongest possible protest of . . . what amounts to usurpation of the legislative prerogatives of the General Assembly of Georgia.”<sup>166</sup> The temporary restraining order that forbade the Governor from cutting off funds was not the only bad legal news for the Governor that day. In response to the State’s application to overturn Judge Tuttle’s reversal of Judge Bootle’s order to stay the injunction, Justice Black had taken the matter to the entire Court.<sup>167</sup> The Supreme Court of the United States unanimously backed Judge Tuttle. Thus was born the jingle that described Judge Bootle’s supersedeas order: “From Bootle to Tuttle to Black.”<sup>168</sup> Judge Bootle, who had said that he wanted the support of the Court of Appeals, later reflected, “I got all that I wanted and much more than I could hope for and I got it all with record-breaking speed.”<sup>169</sup>

Meanwhile, Hunter and Holmes continued the process of becoming University of Georgia students. Holmes made arrangements to live off campus. Hunter was required to live on campus, and the University cleared out space that had been dedicated for student government offices in Center Myers Hall, a

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164. *Holmes v. Danner*, 191 F. Supp. 394, 413 (M.D. Ga. 1961).

165. *Oral Interview Part II*, *supra* note 54, at 104–05.

166. Telegram from Governor Vandiver (n.d.) (copy on file with Mercer University Tarver Library in William August Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence Concerning Court Case & Newspaper Articles).

167. PRATT, *supra* note 5, at 90–91.

168. The phrase is a play on the famous double-play combination for the Chicago Cubs of “Tinker to Evers to Chance,” who were immortalized in a 1910 poem by Franklin Pierce Adams. FRANKLIN PIERCE ADAMS, *BASEBALL’S SAD LEXICON* (1910). Cartoonist Clifford H. Baldowski (Baldy) created a cartoon on January 11, 1961 showing a baseball player labeled “school appeals” being put out by three black-robed infielders with the caption, “. . . Bootle to Tuttle to Black!” Clifford H. Baldowski, Editorial Cartoon, *Bootle to Tuttle to Black!*, (Jan. 11, 1961), <http://dlg.galileo.usg.edu/cgi/bald?query=id:am-912>.

169. *Oral Interview Part II*, *supra* note 54, at 103.

women's dormitory, for her to live in. She would be housed alone on a separate floor from the white students.<sup>170</sup> The University provided her with a suite that had a kitchenette in the hope that she would cook for herself rather than eat in the University dining hall with the white students.<sup>171</sup> Hunter recalled that in those first days on campus on January 10 and 11, professors and students did not acknowledge her presence. From a distance, students would yell racist names.<sup>172</sup> She received racist and threatening letters.<sup>173</sup> On the night of January 10, she could hear students chanting outside her window "[t]wo, four, six, eight. We don't want to integrate."<sup>174</sup> They also chanted "[e]ight, six, four, two, we don't want no jigaboo."<sup>175</sup> That conduct was disgusting, but the action outside her window the following night would take a more violent turn.

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170. HUNTER-GAULT, TO THE MOUNTAINTOP, *supra* note 5, at 41.

171. PRATT, *supra* note 5, at 91. These arrangements particularly offended one correspondent, who sent Judge Bootle a handwritten letter dated January 23, 1961, in which she described "the darkest blot on Georgia history – a negro hussy with a private suite in the Dormitory at the University of Ga." Letter to Hon. W.A. Bootle, Judge, M.D. Georgia (Jan. 23, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

172. HUNTER-GAULT, TO THE MOUNTAINTOP, *supra* note 5, at 41.

173. In the course of doing the research for this Article, I contacted a man who, as a student, had written a letter to Judge Bootle. He did not recall that letter, but he did recall these events:

I was a certifiable racist at the time, as were most of the white people I knew. . . . At some point, maybe that first week that Hunter and Hamilton was on campus -- this is where the story gets really embarrassing --I wrote a nasty and anonymous letter to Charlayne Hunter. I don't recall what I said, but what I said was probably more than just nasty -- most likely it was threatening. . . . In 1977 I became a Christian. By the early 1990s, I was feeling guilty about some sins in my past that I had not fully come to grips with, and I was seeking to make amends, as best I could. . . . I tried to track down Charlayne Hunter-Gault; since she was a high-profile journalist, I thought it would be easy, but it took longer than I imagined. Finally, I found an address for her and wrote her a long letter. I confessed my prior bigotry, confessed to writing a nasty and probably threatening letter to her, expressed the hope that someone with her best interest to heart had actually shielded her from seeing it . . . and asked for her forgiveness. . . . It was quite a few months before I received a reply. She explained that she had not received my letter promptly because she was in Africa on assignment. She graciously accepted my apology and wished me well.

Email to Patrick Longan, *UGA Desegregation* (Oct. 7, 2010) (copy on file with Author).

174. HUNTER-GAULT, TO THE MOUNTAINTOP, *supra* note 5, at 42.

175. PRATT, *supra* note 5, at 92; HUNTER-GAULT, IN MY PLACE, *supra* note 5, at 179.

## 3. Wednesday, January 11, 1961

Holmes and Hunter attended classes for the first time on January 11, but there was open talk around the campus of an organized protest to be held that night outside Hunter's dormitory.<sup>176</sup> Students were sure enough about what was to happen that some arranged dates to the basketball game against Georgia Tech scheduled for that night and the planned riot afterwards.<sup>177</sup> As early as 6:00 p.m., the Athens police chief conferred with the state police about his fears of what might happen that night.<sup>178</sup> The University lost the basketball game to Georgia Tech in overtime, and after the game at about 10:00 p.m., a crowd of hundreds of students assembled outside Hunter's dormitory in what was described as a "howling, cursing mob."<sup>179</sup> One student said, "We got beat by Georgia Tech and we got beat by the n\*\*\*\*\*."<sup>180</sup> White students unfurled a bed sheet that read, "N\*\*\*\*\* GO HOME!!!"<sup>181</sup> The white girls had been told to turn off their lights, so that those outside could be sure which windows were Hunter's. The crowd began throwing rocks and bottles at the dorm, and about sixty window panes in the dorm were broken.<sup>182</sup> Students chanted, "one, two, three, four, we don't want no n\*\*\*\*\* whore."<sup>183</sup> A brick and a Coca-Cola bottle crashed through Hunter's window and landed in her open suitcase.<sup>184</sup> To one police officer, it seemed as if the crowd was trying to enter the dormitory.<sup>185</sup> But Governor Vandiver would later describe the situation that night as

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176. PRATT, *supra* note 5, at 97. See also Joe Parham, *Tension Mounted, Word Spread; Crowd Grew After Tense Game*, S. SCH. NEWS, Feb. 1961, at 9.

177. TRILLIN, *supra* note 5, at 52.

178. WSB-TV Newsfilm *Clip of Statements by Georgia Governor Ernest Vandiver, Athens Mayor Ralph M. Snow, Georgia State Treasurer George B. Hamilton, Lieutenant Governor Garland T. Byrd, and Mrs. Alice Stancil Regarding Integration of the University of Georgia, Georgia* (WSB-TV television broadcast Jan. 1961), [http://crdl.usg.edu/cgi/crdl?query=id:ugabma\\_wsbn\\_38256](http://crdl.usg.edu/cgi/crdl?query=id:ugabma_wsbn_38256) (follow the "Click here to view the item" hyperlink).

179. PRATT, *supra* note 5, at 93.

180. Parham, *supra* note 176, at 9.

181. *Id.*

182. WSB-TV Newsfilm *Clip of African American Students Hamilton Holmes and Charlayne Hunter as well as White Students Rioting Over Integration at the University of Georgia in Athens, Georgia* (WSB-TV television broadcast Jan. 11, 1961), [http://crdl.usg.edu/cgi/crdl?query=id:ugabma\\_wsbn\\_41998](http://crdl.usg.edu/cgi/crdl?query=id:ugabma_wsbn_41998) (follow the "Click here to view the item" hyperlink).

183. PRATT, *supra* note 5, at 94.

184. HUNTER-GAULT, IN MY PLACE, *supra* note 5, at 182.

185. PRATT, *supra* note 5, at 103.

“bad” but not “terrible.”<sup>186</sup> His executive secretary, Peter Zach Geer, praised the rioting students as being “possessed with the character and courage not to submit to dictatorship and tyranny.”<sup>187</sup>

Eventually the students were driven away from the building by police using tear gas. The dean of students arrived at the dorm and informed Hunter that she and Holmes—who was off campus and knew nothing of the riot—were both being suspended from the University “for their own safety.”<sup>188</sup> Hunter was escorted out of the building and into a waiting car. The white girls in the dorm had been advised to change their sheets because the tear gas might be absorbed and irritate their eyes. As Hunter walked through the lobby of the building, one of the white girls threw a quarter to her and said, “Here’s a quarter, Charlayne. . . . Go upstairs and change my sheets.”<sup>189</sup> The next morning, the dormitory mother reported that all of the girls had been “perfectly lovely” to Hunter.<sup>190</sup>

The Dean took Hunter to where Holmes was staying, and both were driven to Atlanta in the backseat of a Georgia Highway Patrol car. A Georgia legislator would later introduce a bill to provide grants to fund the education of any white students who were expelled for demonstrating against integration.<sup>191</sup> Some evidence suggested that the rioting students may have had the support of top state officials.<sup>192</sup> If the riot was part of a plan, the instigators were following a playbook straight from the University of Alabama. In 1955, a federal judge ordered the University of Alabama to admit Autherine Lucy, a black applicant, to its

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186. *A Historical Gathering with Governor Samuel Ernest Vandiver, Jr. and Others*, 14 J.S. LEGAL HIST. 11, 34 (2006).

187. TRILLIN, *supra* note 5, at 58.

188. PRATT, *supra* note 5, at 94.

189. HUNTER-GAULT, *TO THE MOUNTAINTOP*, *supra* note 5, at 43.

190. *WSB-TV Newsfilm Clip of Myers Hall Dormitory Mother Minnie Porter Speaking to a Reporter and Senator Carl Sanders Speaking about a Riot at the University of Georgia As Well As Images from Athens, Georgia* (WSB-TV television broadcast Jan. 16, 1961), [http://crdl.usg.edu/id:ugabma\\_wsbn\\_wsbn43330](http://crdl.usg.edu/id:ugabma_wsbn_wsbn43330) (follow the “Click here to view the item” hyperlink).

191. *WSB-TV Newsfilm Clip of Georgia House of Representatives Member Lucius Black Speaking to a Reporter about Proposed Legislation Granting Financial Aid to Students Expelled from the University of Georgia and of Representative Marvin L. Summers Condemning the United States Supreme Court for Legislating from the Bench in Athens, Georgia* (WSB-TV television broadcast Jan. 1961), [http://crdl.usg.edu/cgi/crdl?query=id%3Augabma\\_wsbn\\_43242&\\_cc=1&Welcome](http://crdl.usg.edu/cgi/crdl?query=id%3Augabma_wsbn_43242&_cc=1&Welcome) (follow the “Click here to view the item” hyperlink).

192. PRATT, *supra* note 5, at 98. *See also* Parham, *supra* note 176, at 9 (noting that the Senate approved a resolution criticizing the Federal Court’s decision by a 46-2 vote).

graduate program.<sup>193</sup> The University suspended her after violent campus disturbances, allegedly for her own safety, but then permanently expelled her for claiming that University officials conspired with the mob.<sup>194</sup>

#### 4. *Friday, January 13, 1961 to March 1961*

By Friday, January 13, Holmes' and Hunter's lawyers had returned to Judge Bootle to try to overturn the students' suspensions. Judge Bootle made factual findings that local law enforcement officials in Athens had quelled the January 11 demonstration by midnight and that city and county police forces, backed up if necessary by state police, would be able to keep the peace. The University nevertheless refused to voluntarily vacate the students' suspensions. Judge Bootle ordered the University to terminate the suspensions by 8:00 a.m. on Monday, January 16, 1961, and he enjoined the University "from suspending, withdrawing, dismissing or otherwise causing the plaintiffs to leave the University of Georgia on the ground that the same is necessary for their personal safety because of mob action or violence . . . or for any other reason related to mob action or violence."<sup>195</sup> The judge concluded that the "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>196</sup>

Holmes and Hunter decided to stay in Atlanta that weekend to, in Hunter's words, "catch our breath."<sup>197</sup> It is fortunate that they did so. On Sunday night, a white man carrying a gun came to Hunter's dormitory asking for her. He was turned away and apprehended, but it is possible that a tragedy had been averted. It turned out that the man had escaped from a mental institution.<sup>198</sup>

Holmes and Hunter returned to class on Monday, January 16. Hunter later said that this marked the end of the "active resistance" to their attendance,<sup>199</sup> but the environment remained unfriendly. News footage from this time period shows a University

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193. J.W. PELTASON, FIFTY-EIGHT LONELY MEN 138 (1961).

194. *Id.* at 139–42.

195. *Holmes v. Danner*, 191 F. Supp. 394, 417 (M.D. Ga. 1961).

196. *Id.* (quoting *Cooper v. Aaron*, 358 U.S. 1, 16 (1958)).

197. HUNTER-GAULT, TO THE MOUNTAINTOP, *supra* note 5, at 45.

198. *Id.*; HUNTER-GAULT, IN MY PLACE, *supra* note 5, at 195.

199. HUNTER-GAULT, TO THE MOUNTAINTOP, *supra* note 5, at 45.

fraternity house that flew the Confederate Battle Flag at half-mast.<sup>200</sup> Holmes and Hunter may have found some comfort in the fact that hundreds of members of the faculty signed a resolution in favor of desegregation, although that resolution earned the faculty a denunciation from one politician who said they were in favor of “mixing of the races” regardless of what the parents of Georgia thought.<sup>201</sup>

In March 1961, Hunter let the University know that she wished to use the dining facilities. Robert O. Arnold, Chairman of the Board of Regents, sent Judge Bootle a telegram and asked for clarification.<sup>202</sup> Judge Bootle responded by telegram that he would only rule if the parties made a formal application and all sides were given notice.<sup>203</sup> The lawyers for the state then filed a motion with Judge Bootle seeking clarification of his injunction. While they conceded there was uncertainty surrounding the order, they nonetheless took the position that the injunction did not require them to allow Hunter to use the dining hall.<sup>204</sup> At the hearing, Hollowell made an oral request that Judge Bootle expand his clarification to include “the swimming pool or any other [university] facility.”<sup>205</sup> Murphy, on behalf of the defendants, agreed to this suggestion.<sup>206</sup> Judge Bootle immediately stated on

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200. *WSB-TV Newsfilm Clip of the Kappa Alpha Order Fraternity at the University of Georgia Flying the Confederate Battle Flag at Half-Mast Following the University's Court-Ordered Integration in Athens, Georgia* (WSB-TV television broadcast Jan. 16, 1961), [http://crdl.usg.edu/cgi/crdl?query=id:ugabma\\_wsbn\\_43222](http://crdl.usg.edu/cgi/crdl?query=id:ugabma_wsbn_43222) (follow the “Click here to view the item” hyperlink).

201. PRATT, *supra* note 5, at 106–07; *WSB-TV Newsfilm Clip of Georgia House of Representatives Member A'Delbert Bowen Condemning the Faculty at the University of Georgia for Signing a Petition Supporting the University's Integration in Atlanta, Georgia* (WSB-TV television broadcast Jan. 16, 1961), [http://crdl.usg.edu/cgi/crdl?query=id:ugabma\\_wsbn\\_42491](http://crdl.usg.edu/cgi/crdl?query=id:ugabma_wsbn_42491) (follow the “Click here to view the item” hyperlink).

202. Telegram from Robert O. Arnold, Chairman, State Bd. of Regents, to Hon. W.A. Bootle, Judge, M.D. Ga. (Mar. 8, 1961, 11:55 AM EST) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File University of Georgia Ruling – Correspondence & Newspaper Articles).

203. Telegram from Hon. W.A. Bootle, Judge, M.D. Ga., to Robert O. Arnold, Chairman, State Bd. of Regents (Mar. 8, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File University of Georgia Ruling – Correspondence & Newspaper Articles).

204. Defendants' Motion for Clarification ¶¶ 3–4, Mar. 9, 1961, Civil Action No. 450 (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File University of Georgia Ruling – Court Proceedings).

205. Proceedings in Open Ct. 1–2, Mar. 9, 1961, Civ. Action No. 450 (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File University of Georgia Ruling – Court Proceedings).

206. *Id.* at 2.

the record that he construed his original injunction to mean “that the defendants, with respect to the opportunities and facilities which it extends and offers to white students cannot deny such facilities to these plaintiffs solely on the basis of their race and color.”<sup>207</sup> That order ended Judge Bootle’s involvement in *Holmes v. Danner*.<sup>208</sup> Hunter ate in the dining hall for the first time, without incident, on March 20, 1961.<sup>209</sup>

#### V. THE BACKLASH AGAINST JUDGE BOOTLE

In the midst of these events, and in their immediate aftermath, Judge Bootle felt the backlash from the decision. Many years later, Congressman Jim Marshall, who had clerked for Judge Bootle, said that Judge Bootle “became an immediate pariah.”<sup>210</sup> The historian Andrew Manis observed that Judge Bootle “lost a number of friends” and that “fellow church members refused to speak to him . . . .”<sup>211</sup> As noted previously, he was hung in effigy at Mercer.<sup>212</sup> Ten days after the University of Georgia decision, some citizens of Sumter County in south Georgia hung another effigy, this one of “Turncoat Bootle,” outside the county courthouse—an exercise that Mrs. Bootle found to be amusing because they “didn’t have sense enough to hang him near the federal courthouse. They hanged him over at the county courthouse. And we had to get in the car and go over there and look at him. He was swinging in the breeze.”<sup>213</sup>

Numerous southern newspaper editorials vilified Judge Bootle and the decision. The Kinston Daily Free Press in Kinston,

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207. *Id.* at 3; see also HUNTER-GAULT, IN MY PLACE, *supra* note 5, at 206; PRATT, *supra* note 5, at 113 (explaining the situation surrounding Judge Bootle’s grant of access to all University facilities).

208. Holmes and Hunter went on to distinguished careers in their respective fields. Their reflections on their experiences at the University of Georgia were mixed. Although there was no more violence, there was occasional vandalism of their cars and episodes of racist taunts. HUNTER-GAULT, TO THE MOUNTAINTOP, *supra* note 5, at 45. Calvin Trillin published a book that is largely about Holmes’ and Hunter’s college experiences after the initial turmoil. See, e.g., TRILLIN, *supra* note 5, at 60–61 (describing some of the political and social fallout of the student riots).

209. *Charlayne Makes Use of University Cafeteria*, ATLANTA J., Mar. 21, 1961 (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File University of Georgia Ruling – Correspondence & Newspaper Articles).

210. Schanche, *supra* note 75, at 6A.

211. *Id.*

212. Rhyne, *supra* note 62, at 8A; Schanche, *supra* note 75, at 6A.

213. *Oral Interview Part II*, *supra* note 54, at 166.

North Carolina published one on January 10, 1961, entitled, *Something is Wrong with Our Democracy*.<sup>214</sup> The next day, the Birmingham Post-Herald ran an editorial about the case that read in part, "Once again the Federal courts, usurping powers never theirs under the Constitution and never intended for them, ignore the rights of states and of the people."<sup>215</sup> On January 12, the editorial page in the Thomasville Times-Enterprise stated that "[i]n the light of the federal court rulings, the rights of sovereign states, the rights of free people in the exercise of their normal functions have been subordinated to the questionable decrees of the courts."<sup>216</sup> That same day, the Augusta Herald quoted from Governor Vandiver's telegram at length in an editorial entitled, *Sovereignty of Georgia Is Crushed; Congress Should Act to Curb Courts*.<sup>217</sup> The next day, the Alabama Journal published an editorial in which it argued and predicted: "There must be some authority to which these spoiled, unjudicial judges must ultimately yield. Sooner or later this authority will assert itself, and the claws of petulant catty jurists will be well trimmed. May that day hasten to arrive."<sup>218</sup>

The most vivid reactions of people who opposed the desegregation of the University of Georgia are contained in Judge Bootle's papers, which are maintained in the Special Collections Department of Mercer University's Tarver Library. Judge Bootle apparently kept all of the letters he received about the case. He called them his "fan mail."<sup>219</sup> Judge Bootle wrote to a friend, with great understatement, "I received many letters which were not nice."<sup>220</sup> In fact, many of the letters are too vile and racist to quote. But there are enough that can be quoted to provide some context

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214. Editorial, *Something Is Wrong with Our Democracy*, THE KINSTON DAILY FREE PRESS, Jan. 10, 1961.

215. Editorial, *The Courts Write the Law*, BIRMINGHAM POST-HERALD, Jan. 11, 1961, at 10.

216. Editorial, *Judicial Dictatorship*, THOMASVILLE TIMES-ENTERPRISE, Jan. 12, 1961, at 4.

217. Editorial, *Sovereignty of Georgia Is Crushed; Congress Should Act to Curb Courts*, AUGUSTA HERALD, Jan. 12, 1961, at 4A.

218. Editorial, *Judicial Tyranny in Georgia*, ALA. J., Jan. 13, 1961, at 4A.

219. Letter from Hon. W.A. Bootle, Judge, M.D. Ga., to Anne Holderfield (Feb. 23, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Favorable).

220. Letter from Hon. W.A. Bootle, Judge, M.D. Ga., to Effie Lee Moore (Feb. 23, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Favorable).

for the social forces at work against Judge Bootle's decision and to give us a sense of the courage that it took to make the decision.

Some of the letters merely expressed the writer's displeasure in strong terms or called the judge names. The mildest of these letters is addressed to "Gus – an Old Friend and Brother." It states in part, "Shame on you[.] Another good man gone wrong – A decision in favor of two insignificant negroes as against over 7,000 White Students and the University of Georgia – You used to be a good lawyer but are a Helluva Judge."<sup>221</sup> A "T[raveling] S[alesman] [W]ho [H]ears [A]ll [S]ides" wrote to Judge Bootle on January 12, 1961, using the stationery of the Pantlind Hotel in Grand Rapids, Michigan: "YOU FEDERAL JUDGES ARE THE CRIMINAL[S] – THE CRIME PRODUCERS[,] THE WHOLE JUDICIARY SYSTEM IS COMING IN DISREPUTE. MANY SAY: GOD DAM[N] YOU SIR – UP NORTH AS DOWN SOUTH – FOR WORKING FOR THE DEVIL AND HIS BLACK BASTARDS."<sup>222</sup> Blake Craft, the pastor of the Burns Memorial Methodist Church in Augusta, wrote to say that he had "utter contempt for the way [Judge Bootle's] court [was] being run."<sup>223</sup> A University of Georgia student wrote "to take this opportunity to say to you . . . You, Sir, are a stupid ass!"<sup>224</sup>

Other letters were explicitly threatening. Among the mildest was one that said, "there should be impeachment[] proceedings instituted against you, as they instigated against Judge Spe[er][,] who held the same Court that apparently you are trying to hold."<sup>225</sup>

221. Letter from "Jim," to Hon. W.A. Bootle, Judge, M.D. Ga. (n.d.) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

222. Letter from "A Traveling Salesman," to Hon. W.A. Bootle, Judge, M.D. Ga. (Jan. 12, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

223. Letter from Blake Craft, Pastor, Burns Memorial Methodist Church, to Hon. W.A. Bootle, Judge, M.D. Ga. (Jan. 12, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

224. Letter from James W. Vining, Student, to Hon. W.A. Bootle, Judge, M.D. Ga. (n.d.) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable) (emphasis in original).

225. Letter from Brooks C. Whitten, to Hon. W.A. Bootle, Judge, M.D. Ga. (Jan. 11, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable). The reference to "Judge Spe[er]" is apparently a reference to Judge Emory Speer, a federal judge in Macon who was investigated for alleged wrongdoing early in the twentieth century. See Marshall Burke Dukes, *The Investigation of the Behavior of Judge Emory Speer – Lack of Judicial*

Others threatened, or implied threats of, physical harm. An undated handwritten letter from a “Carroll Christian and full white” in Carrollton, Georgia stated, “You are the most-hated man by your race in G[eorgia]. We all know why you are [e]mployed. . . . Well I will [s]top but I hope god will get you out of our way.”<sup>226</sup> Mrs. J.V. Johnson wrote: “Oh, you would squirm if you knew how many thousands upon thousands of white people wish you ill – There are no State patrol or police or Federal Marshals way out here in the country and there is talk and secret gatherings. Yes, even a hundred miles from Athens.”<sup>227</sup> An undated, typewritten, unsigned note in Judge Bootle’s file states: “I cannot see, for the life of me, why some good citizen of Bibb County has not broken your damn neck, comrade.”<sup>228</sup> In a handwritten but undated letter from Tampa, Florida, one of Judge Bootle’s critics called him a “damn dirty, low-down traitor to your own people and race.”<sup>229</sup> The writer then mentioned the members of the Supreme Court of the United States and then wrote, “Such men, along with you, should be tarred and feathered and exiled to Siberia, for such traitorous rascals are not fit to be called American citizens. If I were on the staff of the U[.] of Ga[.], I would tell you to go to deep Hell with your ‘order.’”<sup>230</sup> Another correspondent wrote that “[t]o tar, feather, and burn you at the stake would be too good for you” and added the prospect of divine retribution: “The dict[at]ors should be dealt with in the proper manner and they will be by God.”<sup>231</sup> Another anonymous writer warned, “[B]ootle: I believe that as surely as night follows day[] – that our day will come, when it will be permissible to hang

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*Temperament Does Not an Impeachment Make*, 6 J.S. LEGAL HIST. 1, 14–15 (1998) (describing the numerous legal, professional, and personal charges brought against Judge Speer by the House Judiciary Committee).

226. Letter from “a ‘Carroll Christian,’” to Hon. W.A. Bootle, Judge, M.D. Ga. (n.d.) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

227. Letter from J.V. Johnson, to Hon. W.A. Bootle, Judge, M.D. Ga. (Jan. 16, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

228. Letter from Anonymous, to Hon. W.A. Bootle, Judge, M.D. Ga. (n.d.) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

229. Letter from Anonymous, to Hon. W.A. Bootle, Judge, M.D. Ga. (Jan. 8, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

230. *Id.*

231. Open Letter, *Tar and Feather Bootle* (n.d.) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

a son of a bitch such as you to the first available tree – and that it is going to take action such as this to again put America back on the right track. May God speed the day when it will be the ‘thing to do.’”<sup>232</sup> One correspondent suggested in a telegram that Judge Bootle should take the initiative to “COMMIT HAR[A]K[I]RI.”<sup>233</sup>

Other letters elaborated on predictions of divine justice or concerns for Judge Bootle’s soul. In a handwritten letter postmarked in Atlanta on January 14, 1961, one writer expressed his or her prayer that “the Lord will make you suffer before you die.”<sup>234</sup> Mrs. W.L. Smith expressed a similar sentiment when she wrote, “I pray God that you never have an other moment of peace or happiness as long as you live.”<sup>235</sup> A handwritten letter from Charlotte, North Carolina, dated January 17, 1961, hoped that “God almighty will take care of you just like he did old Ab[ra]ham[;] he is in hell do you want God to send you where he is. . . . I’d just like to me[e]t you and tell you what God has in future for you.”<sup>236</sup> John G. Sharpe wrote in March of 1961:

Dear Sir- Don’t you fear God? Your Honor, when you ordered the University of G[eorgia] to integrate the races there, you begin a chain of action that is going to destroy the human race. . . . Your Honor, judgement day is co[m]ing . . . if you were the Great Judge on that day, who would you call the guilty one, the negro, or the Federal officials of these United States. Think

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232. Letter to Hon. W.A. Bootle, Judge, M.D. Ga. (Nov. 15, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

233. Telegram from Mrs. J.A. Johnson, to Hon. W.A. Bootle, Judge, M.D. Ga., *Communist Bootle* (Jan. 10, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable). Also known as Suppuku, Harakiri is the Japanese practice of ritual suicide used a “means for samurai to achieve an honorable death.” Evan Andrews, *What is Seppuku?*, HISTORY (Jan. 11, 2016), <https://www.history.com/news/what-is-seppuku>.

234. Letter to Hon. W.A. Bootle, Judge, M.D. Ga. (n.d.) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

235. Letter from Mrs. W.L. Smith, to Hon. W.A. Bootle, Judge, M.D. Ga. (Jan. 9, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

236. Letter to Hon. W.A. Bootle, Judge, M.D. Ga. (Jan. 17, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

on these things. I wish that I could teach you in my Sun[day] school class.<sup>237</sup>

One writer sent the judge a sympathy card that included this handwritten note: "To – Dictator Judge Bootle, The Khrushchev of Georgia – . . . you have our sympathy. . . . we hope and pray that Our Blessed Lord will forgive you . . . for things that you have done and are doing to your White fellow man when you close your eyes for the last time and pass from this earth to the Great Beyond."<sup>238</sup> The ironically named Mrs. Love wrote in an undated letter, "I am glad to know there is comfort in the knowledge that there is a hell and that God is still running this old world and that justice will be done to those who cause strife among his people, the Southern whites and Negroes."<sup>239</sup>

Other letters and telegrams linked Judge Bootle's decision to the threat of communism.<sup>240</sup> Many of the writers associated the NAACP with communism. Mr. C. Ralph Youngblood, the Principal of the Roy E. Rollins School in Augusta, wrote on January 13, 1961, "As a three-time graduate of the University it does cause concern to me and friends. Since you do not have any connections you cannot feel any interest. . . . it makes one wonder if all of the judiciary have sold their souls to the NAACP and the Communists."<sup>241</sup> A Western Union telegram asked: "IS THERE A DIFFERE[N]CE IN GETTING ORDERS FROM MOSCOW AND

237. Letter from John G. Sharpe, to Hon. W.A. Bootle, Judge, M.D. Ga. (Mar. 21, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

238. Card to Hon. W.A. Bootle, Judge, M.D. Ga. (n.d.) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

239. Letter from Mrs. Love, to Hon. W.A. Bootle, Judge, M.D. Ga. (n.d.) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

240. In 1961, the United States was in the midst of the Cold War against the Soviet Union, which was headed by Nikita Khrushchev. See MICHAEL R. BESCHLOSS, *THE CRISIS YEARS: KENNEDY AND KHRUSHCHEV 1960–1963* 54–55, 57–61 (1991). Castro had taken over Cuba in 1959. *Id.* at 94–95. Khrushchev would soon meet with a newly inaugurated John F. Kennedy and later decide to send missiles to Cuba, an act that brought the world to the brink of war in 1962. ROBERT F. KENNEDY, *THIRTEEN DAYS: A MEMOIR OF THE CUBAN MISSILE CRISIS* 13 (1968).

241. Letter from C. Ralph Youngblood, Principal, Roy E. Rollins School, to Mr. W.A. Bootle, U.S. District Judge, *Sold Your Soul* (Jan. 13, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

IN GETTING ORDERS FROM YOU? SIR, I THINK NOT.”<sup>242</sup> One writer with something akin to a sense of humor wrote the judge this letter:

Judge William A Boo[t]le  
Member of the Federal Politburo  
Macon Georgia

Dear Comrad[e]:

I wish to congratulate you on your excellent work in initiating the el[i]mination of the white race in Georgia. It may be a small beginning but there is only one end and that is that the people of the South will become a race of mulattoes. No doubt you take great pride in the aid you given to this glorious movement.

I also wish to congratulate you on your part in the destruction of our present form of government. Regardless of what our Constitution may say, the State and Local governments are superfluous and no doubt you believe they should be reduced to a pawn of an all[-]powerful[] Federal Government, just as we have in the Soviet Union.

Hop[ing] that you will continue to build up a[] Super Federal State, I a[m].

Very truly yours.

William A. Krushef,<sup>243</sup>

In a handwritten unsigned note, another critic combined the communist connection with an implied threat: “Cuba has Castro. Georgia has Bootle. Enjoy yourself[,] it’s later than you think.”<sup>244</sup> Another made the communist connection and indulged in some

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242. Telegram from Mr. and Mrs. Marvin Williams to Hon. W.A. Bootle, Judge, M.D. Ga., *Moscow Orders* (Jan. 14, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

243. Letter from William A. Krushef to Hon. W.A. Bootle, Judge, M.D. Ga., *Elimination of White Race* (Jan. 15, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

244. Card to Governor W.A. Bootle, *Communist Connection* (Jan. 12, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

name-calling: "BOOTLE: AFTER CONSIDERING THE MATTER FROM EVERY ANGLE, [I] AM CONVINCED YOU ARE A NEW DEAL S.O.B., AND SUSPECT THAT YOU COULD EASILY QUALIFY FOR MEMBERSHIP IN THE COMMUNIST PARTY, FOR YOUR HIGH-HANDED COURT DECISIONS VS. [THE] STATE OF GEORGIA COULD NOT BE IMPROVED ON, EVEN IN MOSCOW."<sup>245</sup>

A frequent concern expressed by the critics was the terror they associated with interracial marriage. One letter expressed this hope: "I hope [someday] to see some of those, who are so forcibly pushing integration down our throats, live to see some of their dear off-spring come up with a husband or wife of the Negro race and a family of Mongrel offspring."<sup>246</sup> Attorney Edward J. Burns wrote, "It would seem to be a just reward of some of the judges in years to come if some of their descendants and heirs at law should turn out to be mulattoes."<sup>247</sup> An anonymous correspondent urged Judge Bootle to "[t]hink" and asked, "How would you like to be called grandad by a negro[]." <sup>248</sup>

Most of the letters and telegrams Judge Bootle received were negative, but not all of them were. He kept the positive ones as well, and he responded to many of them (he apparently did not respond to any of the critical ones). For example, the day after the University of Georgia decision came out, Macon attorney David L. Mincey wrote, "Having known you more than half my life—you first taught me criminal law as a freshman law student in 1937 or 1938—I am taking this liberty (without any impropriety, I hope) to say to you privately that I prize the detachment and dignity and the fairness with which you carry out your duties."<sup>249</sup> Ray

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245. Letter to Hon. W.A. Bootle, Judge, M.D. Ga., *New Deal S.O.B.* (n.d.) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

246. Letter from Mrs. C.L. Cup, to Mr. W.A. Bootle, *Mongrel Offspring* 3 (Jan. 12) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

247. Letter from Edward J. Burns, Attorney at Law, to Hon. W.A. Bootle, Judge, M.D. Ga., *Mulatto Heirs* (Jan. 14, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

248. Letter to Hon. W.A. Bootle, Judge, M.D. Ga., *Think* (n.d.) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Unfavorable).

249. Letter from David L. Mincey, Attorney at Law, to Hon. W.A. Bootle, Judge, M.D. Ga., *Fairness and Detachment* (Jan. 7, 1961) (copy on file with Mercer University Tarver

Brewster, a Mercer professor, expressed the view that perhaps Judge Bootle was placed by Divine Providence in the position to make the decision:

Mercer University  
Macon, Georgia

January 18, 1961

I fully intended last Sunday morning at church to express my thoughts to you; but somehow the occasion did not seem to present itself, partly, I suppose, because I stand in awe of you as a person

. . .

Dr. Walter L. Moore at my ordination service chose as his text, Esther 4:14: "Who knows whether you have not come to the kingdom for such a time as this?" It is my conviction that more than your own destiny was involved in bringing you to the center of this most delicate situation.

. . .

Cordially,

Ray Brewster  
Assoc. Prof. of Christianity<sup>250</sup>

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Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Favorable).

250. Letter from Ray Brewster, Assoc. Professor of Christianity, Mercer Univ., to Hon. W.A. Bootle, Judge, M.D. Ga., *Your Destiny* (Jan. 18, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Favorable). Judge Bootle responded to Professor Brewster in part, "Please do not consider yourself as standing in awe of me. To me it is unthinkable that any person should so stand." Letter from Judge W.A. Bootle, to Mr. Ray Brewster, Assoc. Professor of Christianity, Mercer Univ., *Thoughtfulness Appreciated* (Feb. 23, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Favorable). Professor Brewster served as a Mercer faculty member from 1952 to 1995. He recently died at the age of ninety-one. *Ray Brewster Obituary*, MACON TELEGRAPH (Sept. 9, 2018), <https://www.legacy.com/obituaries/macon/obituary.aspx?n=ray-brewster&pid=190164051&fhid=6093>.

Edgar Cone of the Mercer Class of 1900 wrote, “As a fellow Mercerian, I want to tell you how proud I am of your handling of the terrible problems of integration in our beloved State.”<sup>251</sup>

Mr. George A. Blake of Blake’s Cloth Shop in Abbeville, South Carolina stated, “I want to commend you for your speed of action which was 100% right in the situation at University of Georgia. . . . More power to a Judge named William A Bootle who is a credit to the South, to his Country and to the World.”<sup>252</sup> A final example relates back to Judge Bootle’s statement that the case “just happened to happen on my watch.”<sup>253</sup> A January 21, 1961 letter from Gainesville, Georgia recited, “It took a brave man to stand in your shoes and I’m glad you were that man. Someone said to me the other day, ‘I couldn’t have done it.’ I said[,] ‘That’s why he is a Judge and you aren’t.’”<sup>254</sup>

## VI. HOLMES V. DANNER AS JUDICIAL CRAFT

When Judge Bootle died in his sleep in 2005, at the age of 102, the headline of the Macon Telegraph described him as a “[d]rum major for justice.”<sup>255</sup> That is the wrong image. A drum major is a leader, one who marches out in front of and commands a marching band. Judge Bootle did not in any sense take the lead in desegregating the University of Georgia. Nor, as a judge, should he have played such a role. Instead, he did what we expect judges to do: He heard the evidence and followed the law, regardless of the possible consequences to himself, without fear and without personal bias or prejudice. That is how Judge Bootle saw his role, as the proper discharge of his judicial “duty” and as doing “what any self-respecting honest judge would have done.”<sup>256</sup> We should assess how Judge Bootle handled the case in those terms, with the

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251. Letter from Edgar Cone, to Hon. W.A. Bootle, Judge, M.D. Ga., *Proud of You* (Jan. 24, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Favorable).

252. Letter from George A. Blake, Blake’s Cloth Shop, to Hon. W.A. Bootle, Judge, M.D. Ga., *Commendable Action* (Jan. 11, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Favorable).

253. Daniels & Jones, *supra* note 2, at 00:23–00:47.

254. Letter from Mary Whitworth, to Hon. W.A. Bootle, Judge, M.D. Ga., *Brave Man* (Jan. 20, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Favorable).

255. Schanche, *supra* note 75, at 1A.

256. Daniels & Jones, *supra* note 2, at 00:23–00:47.

emphasis on his role as a judge, rather than thinking of him as a leader in civil rights.

Part of being a judge is the ability and disposition to set aside any personal feelings about the case.<sup>257</sup> One can speculate about how Judge Bootle felt personally about desegregation. For decades, he refused to be interviewed about the University of Georgia case.<sup>258</sup> Some supposed that, as a white man who was raised in the deep South in the first part of the twentieth century, he must have personally believed in, or at least accepted, segregation. Billy Randall, a civil rights leader in Macon at the time, said upon Judge Bootle's death: "Basically what it was, he just followed the law while so many other Southern judges were not so courageous. He put aside whatever personal feelings he had about the situation and he just followed the law."<sup>259</sup> Friends wrote him letters in the immediate aftermath of the case and presumed to know that the judge's ruling went against the judge's personal beliefs.<sup>260</sup> On the other hand, others have supposed that Judge Bootle "grew" past the norms of his time and place.<sup>261</sup> But the fact that his personal views are unknown is the point. His personal views were irrelevant to the job he had to do as a judge. He also knew that it was crucial for him to be *perceived* as unbiased. Appearances matter—the legitimacy of judicial rulings depends in part upon the perception

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257. "A judge . . . shall perform all duties of judicial office fairly and impartially." MODEL CODE OF JUDICIAL CONDUCT 2.2 (AM. BAR ASS'N 2011). "Impartiality" in the Code is defined as the "absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge." *Id.* at Terminology. *See also id.* at 2.2 cmt. 2 ("Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.").

258. *Oral Interview Part II, supra* note 54, at 95.

259. Schanche, *supra* note 75, at 6A.

260. For example, one friend wrote, "You know, as well as I, I am from way back, 'deep South corn bread and blackeyed peas.' But regardless of my feelings or yours, I think you have handled a tough situation the only way it could have been. Fair but firm." Letter from Noble Arnold, City Manager, to Hon. W.A. Bootle, Judge, M.D. Ga., *Fair Handling* (Feb. 2, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Favorable). Another wrote, "You are a Federal Judge and as such have a duty to perform; a duty that you cannot shirk although you may not be in sympathy with what your office requires you to do." Letter from Henry B. Pease, to "Gus" Bootle, *Duty Requires* (Jan. 14, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Favorable).

261. Schanche, *supra* note 75, at 6A.

that the judge is impartial.<sup>262</sup> Recall that during the trial, he heard the evidence impassively, “stone faced” in Hunter’s words, and gave no indication how he was going to rule.<sup>263</sup>

Another important aspect of judicial craft is to be diligent, to avoid undue delay in the delivery of justice.<sup>264</sup> Judge Bootle certainly was diligent in *Holmes v. Danner*. The case was filed on September 2, 1960. He held an all-day evidentiary hearing on September 14.<sup>265</sup> He ruled on the application for a preliminary injunction on September 25.<sup>266</sup> Judge Bootle held the final trial less than four months after the case was filed. He required briefs to be filed promptly after the final hearing, and he issued his findings of fact, conclusions of law, and permanent injunction two days after completion of the briefing. Judge Bootle did not cautiously order the University to admit Holmes and Hunter at some date far in the future. He gave Holmes and Hunter—as the victims of unconstitutional discrimination—the option to begin attending the University at once or in a later quarter, as *they* chose. When the University sought a stay of his order, Judge Bootle granted it that day. When Governor Vandiver announced that he was going to close the University of Georgia, Judge Bootle issued an *ex parte* temporary restraining order the next morning to forbid him from doing so. In the immediate aftermath of the campus riot, he ordered the reinstatement of Holmes and Hunter. Judge Bootle clarified that his injunction covered all University facilities in open court when the question was raised. No one could accuse Judge Bootle of denying justice by delaying it.

Judges must also be even-handed.<sup>267</sup> In the end, of course, Holmes and Hunter won, but Judge Bootle ruled against them at two points in the process. Recall that immediately upon filing suit, Holmes and Hunter sought a preliminary injunction to order their admission, while their appeals to the Board of Regents were still pending. Judge Bootle denied the preliminary injunction and, as

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262. See MODEL CODE OF JUDICIAL CONDUCT 1.2 (AM. BAR ASS’N 2011) (“A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”).

263. HUNTER-GAULT, *TO THE MOUNTAINTOP*, *supra* note 5, at 33.

264. See MODEL CODE OF JUDICIAL CONDUCT 2.5(A) (AM. BAR ASS’N 2011) (“A judge shall perform judicial and administrative duties, competently and diligently.”).

265. *Holmes v. Danner*, 191 F. Supp. 385, 386 (M.D. Ga. 1960).

266. *Id.* at 396.

267. Rule 2.2 provides: “A judge shall perform the duties of judicial office impartially . . . .” MODEL CODE OF JUDICIAL CONDUCT 2.2 (AM. BAR ASS’N 2011).

the law demanded, required Holmes and Hunter to exhaust their administrative remedies. After they had done so and after Judge Bootle had held the final trial and ordered their admission, the University sought the supersedeas to stay the injunction pending appeal. Judge Bootle followed his custom of making sure the losing party in his court had the opportunity to test the correctness of his ruling. Judge Tuttle quickly reversed that order, but as a matter of judicial craft the supersedeas is revealing. A judge with an agenda to further the cause of civil rights would never have stayed his own order. But to Judge Bootle, this was not just about fairness to Holmes and Hunter. It was also about fairness to the University of Georgia. Judge Bootle had no agenda.

Judges are obliged to ensure everyone has a right to be heard according to law,<sup>268</sup> and sometimes that means the judge must take control to ensure that a party does not engage in unfair tactics of delay. Although Judge Bootle required Holmes and Hunter to exhaust their administrative remedies, he foresaw that the state might continue to drag its feet. That is why he wrote in his opinion denying the preliminary injunction that he would deem the appeals denied if they had not been ruled on within thirty days. As a result, the Board of Regents acted. Judge Bootle made it clear that he expected the University to conduct the personal interviews of Holmes and Hunter soon thereafter. As a result, the University promptly did so. When the University refused to cooperate with the inspection of the admissions files that would show disparate treatment and reveal the University's motivation for its "limited facilities" position, he ordered the University to make the files available immediately. Within days, Ward and Jordan had the crucial evidence in hand. Judge Bootle also ensured that the state could not delay enforcement of his decree by cutting off funds to the University or by suspending them for their own safety. Judges must be fair to both sides, but sometimes fairness requires the judge to hold a recalcitrant party's feet to the fire. He did so in the University of Georgia case.

Judicial craft also demands that a judge be able to assess credibility and marshal evidence in a persuasive opinion. As noted, Judge Bootle said late in his life that the University of Georgia case was easy, that "he didn't need much evidence."<sup>269</sup> But either he

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268. MODEL CODE OF JUDICIAL CONDUCT 2.6(A) (AM. BAR ASS'N 2011).

269. Daniels & Jones, *supra* note 2, at 0:00–0:22.

forgot about the complexities of the case or he was being humble. There was voluminous conflicting evidence and huge stakes. Judge Bootle's performance on this score is probably better captured by a letter that he received two weeks after his ruling from his former student Brainerd Currie, who was by then on the faculty of the law school of the University of Chicago:

Dear Gus:

One of my colleagues here had expressed some doubt about the sincerity of the southern judge in the decision of such a case. I gave him the full opinion. . . . After reading the opinion he was left with nothing but admiration for the stand you had taken. He then realized that your task was far more difficult than simply to stand on the authority of the Supreme Court decision; that you had difficult factual issues to cope with, and that you forthrightly exposed the sham character of the University's evasive tactics.<sup>270</sup>

One need only read the opinions in *Holmes v. Danner* to see that Professor Currie was right.

Finally, it is important to emphasize that part of judicial craft is courage.<sup>271</sup> Rule 2.4 of the Model Code of Judicial Conduct provides that "[a] judge shall not be swayed by public clamor or fear of criticism" and that "[a] judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment."<sup>272</sup> Easier said than done. In ordering the desegregation of the University of Georgia, when the University had been all white for 175 years, Judge Bootle had much to fear. As noted above, some people wanted him dead. Others wanted him to suffer, in this life and the next. Some merely ostracized him. It would be only human to flinch in the face of such consequences. But, as Judge Bootle knew, judges must not flinch. If they did, the law would mean nothing, and the mob would rule. He was not swayed by anything but the facts and the law.

In 1998, the United States Courthouse in Macon was named for Judge Bootle, an honor that the judge said he had a hard time

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270. Letter from Brainerd Currie, The University of Chicago, to Hon. W.A. Bootle, Judge, M.D. Ga., *Evasive Tactics* (Jan. 23, 1961) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Favorable).

271. MODEL CODE OF JUDICIAL CONDUCT 2.4 (AM. BAR ASS'N 2011).

272. *Id.*

believing was true.<sup>273</sup> That was a fitting tribute, and it is also a symbol of Judge Bootle's role in the desegregation of the University of Georgia. He was not in the streets, leading the marching band of justice. He was where he belonged, doing his part, in the courthouse, as a judge.

## VII. CONCLUSION

There were two other important pieces of correspondence carefully preserved in Judge Bootle's archived papers.<sup>274</sup> Each was a thick envelope that contained fine, embossed stationery. On each was printed, in elegant script:

The Faculty and Graduating Class  
of the  
University of Georgia  
request the honor of your presence  
at the  
One Hundred Sixtieth Commencement  
Saturday, June first  
nineteen hundred sixty-three  
Athens, Georgia<sup>275</sup>

When I examined the first of these envelopes, a small card imprinted with "Hamilton Earl Holmes" fell out. Out of the other fell a similar card imprinted "Charlayne A. Hunter." It does not appear that Judge Bootle attended the graduation, but he did his part to make it possible. Holmes and Hunter recognized his role by inviting him. They knew what the historical record makes clear: Judge William Augustus Bootle did not flinch in the face of duty.

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273. *Oral Interview Part II, supra* note 54, at 155. See also Mike Billips, *Senate Votes to Name Macon Courthouse for Local Judge*, MACON TELEGRAPH, June 14, 1997, at 2B.

274. Invitation from Hamilton Earl Holmes and Charlayne A. Hunter, to Hon. W.A. Bootle, Judge, M.D. Ga., *University of Georgia Commencement* (May 29, 1963) (copy on file with Mercer University Tarver Library in William Augustus Bootle Papers, Box 3, File: University of Georgia Ruling – Correspondence – Favorable).

275. *Id.*