

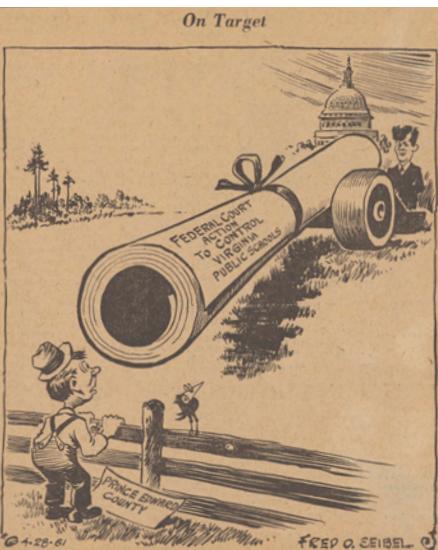
# A New Frontier

## Reevaluating JFK's Civil Rights Record Through a Case Study of Prince Edward County, Virginia

Brian E. Lee

The Kennedy administration's civil rights record requires revision. The focus of many historians on the most dramatic and publicized crises of that time—the Freedom Rides, Ole Miss, and Birmingham—has distorted our understanding of the administration's role: one of active and crucial leadership in the promotion of educational equality. This scholarship often opens chronologically with the Freedom Rides in May 1961, thus perpetuating the mis-conception that the Kennedys were slow to recognize civil rights violations and that they only reacted to events. The scholarly emphasis on the Freedom Rides as a starting point has obscured, for example, the administration's proactive measures to resolve the school issue in Prince Edward County, Virginia, a poor, rural community that closed its public schools in June 1959 in defiance of a federal court order to desegregate. Within its first 100 days, the Kennedy administration employed the power of the federal government in an attempt to arrest the county's educational erosion and prevent more localities from following the Prince Edward model—steps inconceivable to the previous administration. These efforts in Prince Edward County thus substantiate the need to comprehensively reassess civil rights during the Kennedy years.

By the time the torch was passed to Kennedy, southern states had taken only minimal steps to comply with the *Brown v. Board of Education* decision. In 1955



The Kennedy administration took unprecedented legal actions to reopen the public schools in Prince Edward County, Virginia.

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the U.S. Supreme Court directed the lower courts to ensure that public schools desegregated “with all deliberate speed.” However, without clear guidelines to interpret the ambiguous decree, federal judges issued conflicting rulings. Congress provided no clarification through federal statute, omitting school desegregation provisions from the civil rights acts of 1957 and 1960. President Dwight Eisenhower provided virtually no moral leadership on the issue, never once endorsing the *Brown* decision. At the state level, over two hundred statutes, resolutions, and constitutional amendments had been passed in the South to block or delay the Court’s ruling. Only six percent of African American students in the South attended desegregated schools, and four states (Alabama, Georgia, Mississippi, and South Carolina) had yet to desegregate a single classroom. With more school districts facing desegregation decrees, more school closings loomed on the horizon.<sup>1</sup>

The moment required strong executive leadership to fulfill the promise of *Brown* and preserve public education. Senator John F. Kennedy, though not a civil rights crusader, had urged Democrats to back the *Brown* decision. “I have no hesitancy in stating my views and I would say tonight as I said in Massachusetts,” Kennedy told a Mississippi audience in 1957, “I have accepted the Supreme Court decision as the law of the land.” In his 1960 presidential campaign, Kennedy pledged to lead on civil rights: “Unless the president speaks, then, of course, the country doesn’t speak. . . . The presidency is above all a place of moral leadership and I believe on this great moral issue he should speak out and give his views clearly.” Kennedy’s thin electoral victory, however, all but diminished any hope of passing sweeping reforms. Instead, the Kennedy administration energetically enforced existing laws and tested the limits of executive authority.<sup>2</sup>

This article traces how the Kennedy administration actively took measures to restore public education to Prince Edward County in 1961. President Kennedy provided hope to the locked-out children by using the moral authority of his office to condemn school closings and by authorizing his attorney general to find a remedy. The attorney general

<sup>1</sup> *Brown v. Board of Education*, 349 U.S. 294 (1955); J. W. Peltason, *Fifty-Eight Lonely Men: Southern Federal Judges and School Desegregation* (New York: Harcourt, Brace & World, 1961); Robert A. Caro, *Master of the Senate: The Years of Lyndon Johnson* (New York: Alfred A. Knopf, 2002); James C. Duram, *A Moderate Among Extremists: Dwight D. Eisenhower and the School Desegregation Crisis* (Chicago: Nelson-Hall, 1981); Francis M. Wilhoit, *The Politics of Massive Resistance* (New York: George Braziller, 1973), 150; “Segregation-Desegregation Status,” *Southern School News*, Dec. 1960, 1.

<sup>2</sup> Carl M. Brauer, *John F. Kennedy and the Second Reconstruction* (New York: Columbia University Press, 1977); “Kennedy Given Ovation in Mississippi Despite Stand for Integration,” *Boston Daily Globe*, Oct. 18, 1957, 10; “Vice President Richard M. Nixon and Senator John F. Kennedy, Second Joint Radio-Television Broadcast,” Oct. 7, 1960, in *The Joint Appearances of Senator John F. Kennedy and Vice-President Richard M. Nixon, Presidential Campaign of 1960* (Washington, DC: GPO, 1961), 152.

lacked clear authority to reopen the schools, but he did not allow that injustice to go unchallenged. This review of the Department of Justice's legal efforts both in Louisiana and Virginia demonstrates that the Department used imaginative thinking to build the argument for federal intervention through case law. Once precedents were established allowing the federal government to initiate intervention, the attorney general placed the power of the federal government behind black Prince Edwardians. The Kennedy administration, therefore, not only took quick action to reopen the schools, but it signaled in unmistakable language that the federal government planned to enforce the *Brown* decision. These decisive actions expand and revise our understanding of the Kennedy administration's initial civil rights policies as a careful, determined, and deliberate campaign to secure and enforce legal rights for African Americans.

### **“New Hope”**

The Eisenhower administration's indifference to school desegregation had emboldened Prince Edward County's segregationists. In May 1959 the U.S. Fourth Circuit Court of Appeals ordered the county to begin desegregating its schools by September. In response, local white leaders moved to open a long-planned private academy for white children (later funded by state and local tuition grants), and the county board of supervisors voted to close the public schools, leaving about 1,700 black children without access to formal education.<sup>3</sup> A local black leader, the Reverend L. Francis Griffin, petitioned President Eisenhower to remedy the situation, but the White House rebuffed his entreaty, claiming that the president was “powerless” to act. The Department of Justice had defined its role in school desegregation narrowly. Attorney General William Rogers believed that he had no authority to initiate school desegregation litigation without congressional approval. He could, however, advise the court upon the invitation of the presiding judge, but no such invitation was forthcoming from U.S. District Court Judge Oren R. Lewis in the Prince Edward County case. A more vigorous federal response was needed to arrest the educational erosion in Prince Edward County and prevent more school closings.<sup>4</sup>

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<sup>3</sup> *Allen v. County School Board of Prince Edward County*, 266 F.2d 507 (4th Cir., 1959); Robert C. Smith, *They Closed Their Schools: Prince Edward County, Virginia, 1951–1964* (Chapel Hill: University of North Carolina Press, 1965); Jill Oglive Titus, *Brown's Battleground: Students, Segregationists, and the Struggle for Justice in Prince Edward County, Virginia* (Chapel Hill: University of North Carolina Press, 2011); Christopher Bonastia, *Southern Stalemate: Five Years without Public Education in Prince Edward County, Virginia* (Chicago: University of Chicago Press, 2012).

<sup>4</sup> L. Francis Griffin to Dwight D. Eisenhower, Aug. 20, 1959; Gerald D. Morgan to L. Francis Griffin, both in Reel 14, *Civil Rights During the Eisenhower Administration, Part 1: White House Central Files, Series A: School Desegregation* (microfilm), University Publications of America; Harold R. Tyler, Jr., to Milton A. Reid, Jan. 4, 1961, Micro Copy No. NK-2, Department of Justice, Civil Rights Division, Schools: Prince Edward County, Reel 105, Record Group (RG) 60, General Records of the Department of Justice, National Archives at College Park, MD (hereinafter NACP).

President Kennedy changed the tone in Washington. The president departed from precedent by issuing the first presidential endorsement of the *Brown* decision. On his 20th day in office, Kennedy told reporters that “there is no doubt in my view: students should be permitted to attend schools in accordance with court decisions,” adding “that all students should be given the opportunity to attend public schools regardless of their race, and that is in accordance with the Constitution.” Days later, Kennedy condemned school closings as a method to circumvent the Supreme Court: “Our public school system must be preserved and improved. . . . This is no time for schools to close for any reason, and certainly no time for schools to close in the name of racial discrimination.”<sup>5</sup> Reverend Griffin reported that the president’s support for school desegregation “brought new hope to all persons of color in Prince Edward.”<sup>6</sup> Kennedy may have changed the tone in Washington, but the executive branch still remained constrained by its ambiguous authority over school desegregation.

President Kennedy authorized the Department of Justice to test a broader interpretation of executive authority. He appointed his most trusted advisor, Robert F. Kennedy, as attorney general. Civil rights figured prominently in the president’s decision to appoint his brother to the cabinet. He wanted an attorney general who would advance civil rights, “somebody that is going to be strong; who will join me in taking whatever risks,” provide honest assessments and advice, and carry out the administration’s agenda. “I’m going to have to have someone as attorney general to carry these things out on whom I can rely completely,” Kennedy privately explained. “I can do that with Bobby.”<sup>7</sup> The attorney general created an environment at the Department of Justice that fostered more imaginative thinking. He chose Burke Marshall to lead the Civil Rights Division.



John F. Kennedy issued the first presidential endorsement of *Brown v. Board of Education* at a press conference on February 8, 1961.

<sup>5</sup> President’s Press Conference of February 8, 1961, and John F. Kennedy to John Hannah, “Message for the Commission on Civil Rights’ Third Annual Conference on Schools in Transition,” Feb. 24, 1961, both in *Public Papers of the Presidents of the United States: John F. Kennedy, 1961* (Washington, DC: GPO, 1962), 69, 124–25;

<sup>6</sup> “Mixed Emotions Follow Kennedy’s School Remarks,” *Baltimore Afro-American*, Feb. 11, 1961, 1.

<sup>7</sup> John Seigenthaler, interview by Ronald J. Grele, Feb. 22, 1966, John F. Kennedy Oral History Project, John F. Kennedy Presidential Library (hereinafter JFK-OHP); James N. Giglio, *The Presidency of John F. Kennedy* (Lawrence, Kansas: University Press of Kansas, 1991), 162; Helen Fuller, *Year of Trial: Kennedy’s Crucial Decisions* (New York: Harcourt, Brace & World, 1962), 124.

Marshall believed that the federal government had a “duty and responsibility” to protect court orders and stated that he would not allow the lack of legislation to be “an excuse for inaction.” Marshall made reopening Prince Edward County’s public schools a top priority. The Kennedy brothers provided the locked-out children with hope that the federal government would correct this injustice.<sup>8</sup>

### **“The Louisiana Precedent”**

The Department of Justice’s path to federal intervention in Prince Edward County went through Louisiana. Without congressional approval or an invitation from a presiding judge, Burke Marshall had to build an argument for federal action in Prince Edward County. The ongoing New Orleans school case presented him with an opportunity to test the limits of the attorney general’s power, and under uniquely favorable conditions. The judges of the U.S. Fifth Circuit Court of Appeals, with jurisdiction over New Orleans, had progressive records. Skelly Wright, a self-proclaimed activist judge, had set a specific date for desegregation in New Orleans, invited Eisenhower’s attorney general to participate as *amicus curiae* (friend of the court), and met every challenge by state officials to block his orders. Judges Elbert Tuttle, John Minor Wisdom, John R. Brown, and Richard Taylor Rives made the U.S. Fifth Circuit Court of Appeals—which had appellate jurisdiction over Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas—“an agent for change.” The appeals court filled the leadership void left by the ambiguity of “with all deliberate speed” with clear instructions for federal district court judges. Marshall capitalized on these sympathetic jurists to broaden the attorney general’s authority.<sup>9</sup>



Burke Marshall devised the Department of Justice’s strategy for federal intervention in Prince Edward County.

The Department of Justice took firm action in New Orleans. Robert Kennedy and Burke Marshall encouraged state and local representatives to comply with court orders.

<sup>8</sup> Hearings Before the Committee on the Judiciary, United States Senate, *The Nomination of Burke Marshall to Be An Assistant Attorney General, March 2 and 15, 1961* (Washington, D.C.: GPO, 1961), 8; Burke Marshall, “The Enforcement of Civil Rights,” *ADL Bulletin*, Mar. 1962, 9–13.

<sup>9</sup> Liva Baker, *The Second Battle of New Orleans: The Hundred-Year Struggle to Integrate the Schools* (New York: HarperCollins, 1996); Jack Bass, *Unlikely Heroes: The Dramatic Story of the Southern Judges of the Fifth Circuit Who Translated the Supreme Court’s Brown Decision into a Revolution for Equality* (New York: Simon and Schuster, 1981).

Still, Shelby Jackson, the state superintendent of public education, withheld \$350,000 appropriated for teachers' salaries at the desegregated schools. Marshall threatened litigation, but Jackson remained obstinate. Robert Kennedy knew that the federal government "couldn't back down"; he therefore authorized Marshall to do "whatever is necessary." On February 16, 1961, Marshall expanded the previous administration's contempt suit by filing charges against Shelby Jackson for his "open and flagrant" interference with court orders. Judge Wright welcomed the executive action.<sup>10</sup> "The Kennedy move," observed *Southern School News*, "was seen as a means of showing that the federal government means business with regard to its position that state officials shall do nothing which could restrict operation of public schools." A week-and-a-half later, the attorney general used this leverage to negotiate an agreement with Louisiana officials to pay the teachers.<sup>11</sup> The New Orleans case signaled the death knell of federal indifference.

In early March, a three-judge federal court in Louisiana issued a full-throated pronouncement of the attorney general's authority in school desegregation cases. The court rejected the argument that the Department of Justice was handcuffed without congressional authority to intervene in school cases: "The absence of specific statutory authority is of itself no obstacle, for it is well settled that there is no such prerequisite to the appearance of the United States before its own courts." In fact, the court wrote in unmistakable language that the attorney general was welcome in the case. "We deem it important to state unequivocally," the opinion read, "the right of the United States to appear in these proceedings because it involves a principle vital to the effective administration of justice."<sup>12</sup> The opinion provided valuable legal doctrine for federal involvement in existing school cases.

Nevertheless, Louisiana continued its defiance. The state legislature had convened for a fifth extraordinary session. Governor Jimmie Davis signed into law measures to block school desegregation, including Act No. 2, which authorized local school boards to hold referenda to suspend operation or close public schools. If a school board closed its schools, it was permitted to sell or lease school property and abolish taxes that supported public schools. The governor's office wanted to test the school closing

<sup>10</sup> Carl Brauer, *John F. Kennedy and the Second Reconstruction*, 94–95; Interview, Robert F. Kennedy and Burke Marshall by Anthony Lewis, Dec. 1964, JFK-OHP; UPI, "U.S. Sues to Free Funds for New Orleans Schools: Court Move Seeks to Release \$350,000 in Federal Aid That Louisiana Has Withheld During Racial Fight," *New York Times*, Feb. 17, 1961, 1.

<sup>11</sup> "Louisiana Legal Action," *Southern School News*, Mar. 1961, 10; "Robt. Kennedy, State Group Meeting Today," *Times-Picayune*, Feb. 21, 1961, 1; "U.S. Stands Pat on Courts' Rule in Rights Cases," *Times-Picayune*, Feb. 25, 1961, 1; James H. Gillis and Robert Wagner, "Fund for Teacher Salaries Provided: All School Employees Will Be Paid," *Times-Picayune*, Feb. 27, 1961, 1.

<sup>12</sup> *Bush v. Orleans Parish School Board*, 191 F. Supp. 871 (E.D. La. 1961).

law in St. Helena Parish, a poor, rural community servicing 1,821 black students and 1,021 white students, and under a federal court order to desegregate “with all deliberate speed.” The results were a foregone conclusion, because, although African Americans outnumbered whites, white registered voters outnumbered blacks 1,420 to 14. If successful in St. Helena Parish, Governor Davis planned to call the legislature into another extraordinary session to provide public tuition grants to private school students. On March 2 the St. Helena Parish school board became the first to invoke Act No. 2, choosing to hold a referendum, scheduled for April 22, on whether to desegregate their public schools or convert to a publicly funded private school system.<sup>13</sup> Prince Edward County–style education was pollinating in Louisiana.

The state of Louisiana presented the Kennedy administration with new problems but also more opportunities to expand federal authority. Like St. Helena, East Baton Rouge Parish and several technical schools had been ordered to desegregate “with all deliberate speed,” but the legislature had obstructed Judge Wright’s edict. Burke Marshall had kept in regular contact with Judge Wright, which explains the choreographed events of March 17. The Department of Justice filed motions to intervene in each of these cases as *amicus curiae* “to prevent interference with the carrying out of the court’s order.” Judge Wright immediately authorized the attorney general to intervene in the cases, thus extending significantly the Justice Department’s power. The United States then filed pleadings to convene a special three-judge court (a necessary move to interpret state law), declare state laws that obstructed the court’s orders unconstitutional, and add several state and local officials as defendants to enjoin them from enforcing the laws in question and interfering with the court orders. As a result, the attorney general’s power as *amicus curiae* had expanded; the new precedent allowed him to intervene in a case rather than wait for an invitation.<sup>14</sup>

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<sup>13</sup> Act No. 2, in *Race Relations Law Reporter, Volume Six* (Nashville: Vanderbilt University School of Law, 1962), 310–11; Emile Comar, “Rural Area May Test Private School Setup,” *Southern School News*, Apr. 1961, 9; “Parish School Vote Is Called: St. Helena First to Face Closing Issue,” *Times-Picayune*, Mar. 4, 1961, 1.

<sup>14</sup> Emile Comar, “Rural Area May Test Private School Setup,” 9; Telephone Logs, Box 9, Burke Marshall Personal Papers, John F. Kennedy Presidential Library (hereinafter BMP); M. Hepburn Many and St. John Barrett, “Application of United States for an Order Designating It as *Amicus Curiae* and for Leave to File Petition for an Injunction Against Enforcement of Acts Nos. 3 and 5 of the Second Extraordinary Session of the Louisiana Legislature of 1961,” Mar. 17, 1961; J. Skelly Wright, “Order Designating United States of America as *Amicus Curiae*,” Mar. 17, 1961; M. Hepburn Many, “Petition of the United States, *Amicus Curiae* for Injunction to Restrain Enforcement of Act No. 3 and Act Number 5 of the Second Extraordinary Session of the Louisiana Legislature of 1961,” Mar. 17, 1961, all in *Hall v. St. Helena Parish School Board*, Civil Action No. 1068 (U.S. District Court for the Eastern District of Louisiana); “U.S. Moves to Kill New Acts Against School Mix,” *Times-Picayune*, Mar. 18, 1961, 1.

Burke Marshall had created the foundation for federal intervention in Prince Edward County through case law in Louisiana.

### **“We Will Move”**

In its opening weeks, the new administration studied the Prince Edward County school crisis. The Civil Rights Division drafted a 12-page staff report, dated February 20, that chronicled the 10-year school battle by focusing on the facts of the case, the educational opportunities for African Americans, and the actions taken to organize the private schools.<sup>15</sup> Five days later, the U.S. Commission on Civil Rights convened a two-day conference in Williamsburg, Virginia, to study problems that communities faced by desegregating their public schools. Among the participants were agents from the Prince Edward County school board, the Prince Edward School Foundation (the white private school), and the Kennedy administration.<sup>16</sup> The staff report and conference testimony pointed to collusion between the state and county to establish and fund private schools to circumvent court orders. On February 28, 1961, Burke Marshall recommended that the attorney general intervene in the Prince Edward litigation “as soon as possible.” He advised, “If the Department [of Justice] is going into any other school suits, it would be more appropriate to go into this one.” The Civil Rights Division made preparations to intervene, while the attorney general provided the state with a chance to resolve the crisis.<sup>17</sup>

The Department of Justice opened talks with Virginia’s attorney general, Albertis Harrison. On March 23 Robert Kennedy and Burke Marshall hosted Harrison for an unpublicized conference in Washington to discuss Prince Edward County. Kennedy threatened to intervene in the case if he determined that the defendants were frustrating or obstructing court orders. Harrison denied any violation of court orders and stated that he found “no occasion” for federal intervention. Furthermore, Kennedy sought assurances that the schools would be reopened, but Harrison offered no such pledge, explaining that the state government had no authority to compel a locality to operate public schools. “Such a pledge,” Harrison determined, “was apparently the only assurance which would have

<sup>15</sup> Staff Study, “Public Education in Prince Edward County, Virginia: From Segregated to Closed Schools,” Feb. 20, 1961, Micro Copy No. NK-2, Reel 105, RG 60, NACP.

<sup>16</sup> U.S. Commission on Civil Rights, *Conference Before the United States Commission on Civil Rights: Third Annual Conference on Problems of Schools in Transition, From the Educator’s Viewpoint* (Washington, DC: GPO, 1961).

<sup>17</sup> Burke Marshall to Robert F. Kennedy, Feb. 28, 1961, Box 1, BMP; Cary L. Branch to G. P. Choppin, Mar. 22, 1961, Micro. Copy No. NK-2, Reel 105, RG 60, NACP.

deterred [Kennedy] from an otherwise fixed intention to intervene in the suit.”<sup>18</sup> The Kennedy-Harrison meeting adjourned without resolution, but it did open a channel of communication. Harrison promised to share the substance of their conversation with county representatives.<sup>19</sup> Perhaps the threat of federal intervention would soften the county’s resistance. At that point, however, the county had no reason to concede, at least not without an enforceable court order.

On April 11 the U.S. district court resumed proceedings in the Prince Edward County school case without the segregationists shifting their position. Judge Oren Lewis permitted the National Association for the Advancement of Colored People (NAACP) to challenge the allocation of public funds to private schools and set a May 8 hearing date for the attorneys to present further arguments. Judge Lewis, however, did *not* invite the attorney general to enter the case as an *amicus curiae* as Judge Wright had done in New Orleans. Burke Marshall was “giving every consideration to the question whether any Federal action is proper and desirable,” but without new legislation or an invitation from the court the attorney general’s authority to intervene in the Prince Edward litigation remained tenuous. When the Civil Rights Division acted without court orders, reflected Assistant Attorney General Nicholas Katzenbach, “it was often on thin ice, which is one of the reasons Burke [Marshall] so often tried to negotiate and compromise.”<sup>20</sup>

Burke Marshall continued talks with Albertis Harrison. On April 19 Marshall spoke to Harrison by telephone for the third straight day. Harrison had advised the Prince Edward attorneys of their talks, but “it did not appear that any action on their part was indicated.” After the negotiations yielded no significant progress, Marshall sent Harrison the latest opinion in the St. Helena Parish school case. Speaking for the three-judge court, Judge John Minor Wisdom had determined that

national policy and state policy require us to scrutinize carefully any statute leading to the closing of public schools. When there is now such a manifest correlation between education and national survival, it is a sad and ill-timed hour

<sup>18</sup> Desk Diaries, Box 1, Papers of Robert F. Kennedy, Attorney General Papers, John F. Kennedy Presidential Library; Drafts of “Statement of A. S. Harrison, Jr., Former Attorney General of Virginia, Relative to the Intervention of the United States Department of Justice in the Prince Edward School Case,” May 2, 1961, Box 73, Executive Papers, Albertis S. Harrison, 1962–64, Library of Virginia (hereinafter EP-ASH).

<sup>19</sup> Drafts of “Statement of A. S. Harrison, Jr., Former Attorney General of Virginia, Relative to the Intervention of the United States Department of Justice,” Box 73, EP-ASH.

<sup>20</sup> “Prince Edward Negroes Win Right To Challenge Public School Closing,” *Washington Post*, Apr. 12, 1961, B5; “NAACP Wins Right to File Complaint in School Case,” *Richmond Times-Dispatch*, Apr. 12, 1961, 28; Burke Marshall to Colin W. Bell, Apr. 11, 1961, Box 1, BMP; Burke Marshall to Colin W. Bell, Apr. 14, 1961, Reel 105, RG 60, NACP; E-mail, Nicholas Katzenbach to Brian E. Lee, Aug. 18, 2008.

to shut the doors to public schools. And, now, when one of the principal functions of the state is to maintain an educational system, it seems strange indeed and anti-civilized to shift the major burden to private persons, many of whom cannot afford or can ill-afford to pay for private schooling.<sup>21</sup>

In addition, the court invited the U.S. Department of Justice and state attorneys general from across the country to file amicus briefs to determine if school closings were unconstitutional. With the U.S. Supreme Court providing little guidance to the lower courts, the appeals courts often issued the definitive interpretation of the law, and the Fifth Circuit played a leading role. Judge Wisdom clearly indicated where the court's sympathies lay. An affirmative ruling by the appeals court could set the necessary precedent to find school closings unconstitutional. In his final overture to Albertis Harrison, Burke Marshall attached a note that read: "If this action of the court in Louisiana, and the obligations under which it places the Federal Government appears to you likely to change the situation in Prince Edward County, I would appreciate it if you would call me at your earliest convenience."<sup>22</sup> The time for negotiating had run out.



The Prince Edward County board of supervisors closed the county's public schools in June 1959 in defiance of a federal court order to desegregate.

Prince Edward–style education was on the march in Louisiana. On April 22 St. Helena Parish voted by an overwhelming majority of 1,147 to 56 on a referendum to abandon public education (the federal courts had ordered the vote to be nonbinding). Also, representatives from several Louisiana parishes, including East Baton Rouge, visited Prince Edward Academy to obtain firsthand information on establishing private schools. Roy Pearson, a school administrator, received favorable impressions from his visitors and predicted that several parishes would organize private schools. Pearson had recently authored a booklet, *Setting Up Private Schools*, that was part Prince Edward School Foundation history, part procedural framework. Pearson concluded that "any other community with sufficient citizens who wish to preserve and exercise their individual rights also can establish satisfactory private schools." The foundation's president, Blanton Hanbury, told the *Saturday Evening Post* that segregation academies were "the coming thing in the South." The administration

<sup>21</sup> Burke Marshall to Albertis Harrison, Apr. 19, 1961, Box 1, and Telephone Logs, both in Box 9, BMP; Drafts of "Statement of A. S. Harrison, Jr., EP-ASH; Order, *Hall v. St. Helena Parish School Board*, Apr. 24, 1961, in *Race Relations Law Reporter, Volume Six* (Nashville: Vanderbilt University School of Law, 1962), 416–18.

<sup>22</sup> Burke Marshall to Albertis Harrison, Apr. 19, 1961, Box 1, BMP; Jack Bass, *Unlikely Heroes*, 16.

"didn't want [Prince Edward] to become a model," explained Nicholas Katzenbach.<sup>23</sup> Therefore, the Kennedy administration had to blunt the segregated private school movement to save public schools, and that meant damming the river at its source.

On April 26 the Department of Justice acted in Prince Edward County with, as the *New York Times* reported, the "toughest move on the school desegregation problem to date." Upon the recommendation of Burke Marshall and "strongly backed" by President Kennedy, the attorney general filed a motion in the U.S. District Court of the Eastern District of Virginia to intervene in the case, not as a friend of the court, but as a party plaintiff—an unprecedented act. He considered the case so important that an advisory role would not suffice.<sup>24</sup> Robert Kennedy asked the court to add the Commonwealth of Virginia, the comptroller of Virginia, and the Prince Edward School Foundation as defendants, because, as he argued, the state and county were working with the foundation to circumvent the court's orders by operating a private school with public funds. The NAACP did not have the power to break this ring of collusion, as private parties could not sue the state without its consent. Next, the attorney general asked the court to enjoin the defendants from obstructing court orders, failing to maintain public schools, making tuition grant payments to foundation students, and allowing taxpayer credits for contributions to the foundation. Finally, he asked the court to enjoin state officials from issuing funds to any school in the commonwealth until public education resumed in Prince Edward County. Kennedy argued that schools being operated across the state but not in Prince Edward violated the equal protection clause of the 14th Amendment.<sup>25</sup> With his motion, Kennedy put the power, prestige, and resources of the federal government behind the locked-out children—and this was done in less than 100 days into the new administration and before the Freedom Riders began their journey.

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<sup>23</sup> Robert Wagner, "St. Helena Vote Favors Closing," *Times-Picayune*, Apr. 23, 1961, 1; Roy R. Pearson to Watkins M. Abbott, Mar. 27, 1961, and Roy R. Pearson to Watkins M. Abbott, Mar. 29, 1961, Congressional Papers of Watkins Moorman, Abbott Papers (University of Richmond); Roy R. Pearson, *Setting Up Private Schools* (Farmville, VA, 1961); Irv Goodman, "Public Schools Died Here," *Saturday Evening Post*, Apr. 29, 1961, 89; E-mail, Nicholas Katzenbach to Brian E. Lee, May 21, 2008.

<sup>24</sup> Press Release, Apr. 26, 1961, Reel 105, RG 60, NACP; Anthony Lewis, "Action on Civil Rights: Robert Kennedy's Suit to Open Virginia Schools Makes Clear That He Rejects 'Go Easy' Role," *New York Times*, Apr. 30, 1961, E7; Anthony Lewis, "U.S. Sues to Force a Virginia County to Open Schools," *New York Times*, Apr. 27, 1961, 13; Harris Wofford, *Of Kennedys and Kings: Making Sense of the Sixties* (New York: Farrar, Straus, and Giroux, 1980), 135.

<sup>25</sup> Robert F. Kennedy *et al.*, "Memorandum of Points and Authorities In Support of Motion of the United States of America to Intervene and to Add Parties Defendant," Apr. 26, 1961, and Robert F. Kennedy *et al.*, "Motion to Intervene as a Plaintiff and to Add Defendants," Apr. 26, 1961, both in Box 123, Papers of the U.S. District Court of the Eastern District of Virginia, Civil Case Files, Case #1333, *Allen v. Prince Edward County School Board*, National Archives at Philadelphia (NARA-PA).

Robert Kennedy's intervention motion served as a warning to other localities plotting defiance. Ten days later at the University of Georgia, in his maiden address as attorney general, Kennedy centered his remarks on his action in Prince Edward County. "In this case—in all cases—I say to you today that if the orders of the court are circumvented, the Department of Justice will act," he declared. "We will not stand by or be aloof. We will move."<sup>26</sup> Louisiana officials certainly took notice. The state attorney general expressed "great interest, because the eventual decision on the matter ... could well end the legal fight for both a private school system and grants in aid programs." East Baton Rouge's district attorney, and recent guest of Prince Edward Academy, conceded that the proceedings "may have a great bearing on the way we chart our own course in this parish."<sup>27</sup>

On June 14 Judge Oren Lewis rejected the attorney general's motion to intervene in the Prince Edward County case. Lewis cited, among other reasons, the unnecessary delay that would result from convening a three-judge federal court to interpret the state constitution.<sup>28</sup> By contrast, in the St. Helena Parish case that summer, the court welcomed the attorney general's participation, convened a special three-judge court, and found Louisiana's school closing laws unconstitutional. St. Helena Parish's public schools opened as scheduled in September. In fact, public schools remained available in every locality across the United States, except Prince Edward County, Virginia. The exertion of federal authority did not immediately reopen the public schools in Prince Edward County, but it contributed to ending school closings as a tactic to circumvent the *Brown* decision elsewhere.<sup>29</sup>

The Kennedy administration's action should have led to the reopening of Prince Edward County's public schools. Had a more progressive judge sat on the bench, such as Judge



Robert F. Kennedy centered his Law Day remarks at the University of Georgia, May 6, 1961, on his intervention motion in Prince Edward County.

<sup>26</sup> Thomas A. Hopkins, ed., *Rights for Americans: The Speeches of Robert F. Kennedy* (Indianapolis: Bobbs-Merrill, 1964), 17–26.

<sup>27</sup> James McLean, "Va. Action May End La. Plan," *Times-Picayune*, Apr. 27, 1961, 2.

<sup>28</sup> Oren R. Lewis, "Memorandum Opinion," June 14, 1961, Box 123, Papers of the U.S. District Court of the Eastern District of Virginia, Civil Case Files, Case #1333, NARA-PA.

<sup>29</sup> *Hall v. St. Helena Parish*, 197 F. Supp. 649 (1961); U.S. Commission on Civil Rights, *Education: 1961 Commission on Civil Rights Report* (Washington, DC: GPO, 1961).

Wright, the attorney general could have advised the court and enforced an affirmative order. Instead, the case moved glacially through the state and federal courts, as Judge Lewis accepted nearly all the delaying tactics the county attorneys could concoct. As a result, the county's public schools remained closed for three more years. By 1963 there were school-age young children who had never attended school and young adults who never completed their education. Unwilling to permit a fifth year without schools for black children, the Kennedy administration spearheaded an extraordinary effort to organize a temporary free school system available to all children in the county while the case moved its way to the U.S. Supreme Court. In May 1964 the High Court found the school closings unconstitutional, and public education resumed in the next term. History, and the lives of over one thousand children, would have been significantly different had Judge Lewis granted the attorney general's motion in 1961.<sup>30</sup>

### Conclusion

The Kennedy administration employed the power of the federal government to promote and protect the constitutional rights of black students. Dwight Eisenhower and William Rogers lacked the interest and imagination to challenge the school closers. Their failure to act buoyed the school closers and left the locked-out children with virtually no allies in government. In fact, black Prince Edwardians could not rely on any branch of government at any level to remedy this injustice. The 1960 election offered hope. President Kennedy fundamentally changed the course of the desegregation effort nationwide by placing the moral authority of his office behind the *Brown* decision. He empowered the attorney general to fully explore the limits of his authority to correct an injustice and prevent its replication. Burke Marshall brilliantly established legal precedents in Louisiana to make the case for federal intervention in Prince Edward County. Robert Kennedy followed with swift action that unequivocally signaled the administration's intent to vigorously protect civil rights—an action taken within the first 100 days and before the Freedom Rides.

The Kennedy administration's campaign to restore public education to Prince Edward County, Virginia, demonstrates the need to reevaluate its overall performance on civil rights. The dominant narrative concludes that the administration reacted to civil rights crises, bowed to southern legislators to protect its domestic agenda, and appointed

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<sup>30</sup> Brian E. Lee, "We Will Move: The Kennedy Administration and Restoring Public Education to Prince Edward County, Virginia," in Terence Hicks and Abul Pitre, eds., *The Educational Lockout of African Americans in Prince Edward County, Virginia (1959–1964): Personal Accounts and Reflections* (Lanham, MD: University Press of America, 2010), 19–32; Brian E. Lee and Brian J. Daugherty, "Program of Action: The Rev. L. Francis Griffin and the Struggle for Racial Equality in Farmville, 1963," *Virginia Magazine of History and Biography*, Vol. 121, No. 3 (2013): 250–87.

racists to the federal bench. A *full* study of the administration's role in Prince Edward County counters the major tenets of this interpretation. In fact, the administration took proactive legal and political measures to reopen the schools—and those efforts continued beyond the first 100 days. The actions alienated southern congressmen, many of whom had used their power to disrupt Kennedy's domestic agenda. Finally, the president appointed federal judges who dismantled the last vestiges of Virginia's massive resistance.<sup>31</sup> The story of Prince Edward County has not figured into accounts of the administration's civil rights performance; instead, focus on the era's more publicized, dramatic, and violent crises has skewed historical interpretations.

This is a new frontier in Kennedy scholarship. The Freedom Rides, Ole Miss, and Birmingham have a secure place in history, but those crises do not fully represent the Kennedy administration's civil rights record, nor should they obscure the hundreds, if not thousands of unchronicled local civil rights struggles. All civil rights events and all instances of presidential intervention of the early 1960s need to be studied. Once collected, these histories promise to provide posterity with a comprehensive assessment of the Kennedy administration's response to the great domestic issue of its generation. The new frontier will require the devotion of many scholars over a number years. "All this will not be finished in the first 100 days. Nor will it be finished in the first 1,000 days . . . nor even perhaps in our lifetime on this planet. But let us begin."

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<sup>31</sup> Brian E. Lee, "A Matter of National Concern: The Kennedy Administration's Campaign to Restore Public Education to Prince Edward County, Virginia," (Ph.D. diss., UNC Greensboro, forthcoming).