

Case No. 3113

By HP-Time.com, Monday, Sep. 30, 1957

Federal Judge Ronald Davies glanced at his case file, routinely called up the next item of business: "Civil Case No. 3113 On A Motion For Preliminary Injunction." But Case 3113 was far from routine; it brought to a 'historic showdown the issue between the U.S. and Arkansas' Democratic Governor Orval Faubus, who had defied the law of the land in calling out his National Guard to prevent school integration.

Orval Faubus, who had been dignified the previous weekend by a conference with the President of the U.S. (TIME, Sept. 23), returned from Newport all full of himself, soon gave up any pretense of living up to his implied agreement to start withdrawing National Guard troops from Little Rock's Central High School. He desperately tried to whip up backers for his claim that Little Rock had been about to erupt into violence at the start of integrated classes. Example: he called in a Little Rock city official, displayed a schoolbook with a square section of pages cut out ("Just right for hiding a gun"), and a few water pistols ("The Negroes were gonna fill them with acid and shoot at the white kids"). The city official, far more impressed by Faubus' political power than by the "evidence," signed a statement supporting Faubus.

Undeserving Battleground. Throughout the week Arkansas' Democratic Congressman Brooks Hays, who had engineered the Newport meeting with President Eisenhower in all good faith, worked tirelessly on Faubus. Said Mrs. Hays: "Sometimes I wake up in the middle of the night and find Brooks wide awake, thinking things out." Said Hays: "I felt like the sparrow that flew into the badminton game." Hays spent two hours with Faubus on Monday, four more on Tuesday, three on Wednesday and one on Thursday.

Orval Faubus seemed to find the Hays efforts simply hilarious; time after time his raucous laughter boomed out of the second-floor study where he was conferring with Hays. For his own part, Brooks Hays could not see the humor of the situation. Said he: "Arkansas does not deserve to be this battleground—no, we surely don't. This should have been fought in a state where there was genuine feeling on the subject of race."

That was the whole point. To set himself up as a segregationist hero, Orval Faubus had chosen to manufacture violence in Little Rock and make a dramatic issue of integration in a city long untroubled by major racial difficulties. His refusal to back down put the matter squarely up to Judge Davies (see box) and the U.S. district court where Faubus had been summoned to show cause why a temporary injunction should not be issued against him.

Unalterable Stand. The smallish courtroom on the west end of Little Rock's granite Federal Court Building was crowded to capacity (about 130)—but Orval Faubus was conspicuously

absent. He satisfied the requirements of the summons by sending three lawyers, including Democratic State Committee Chairman Tom Harper.

Judge Davies entered the courtroom at 10 a.m., climbed the dais and engulfed himself in a padded chair several sizes too large. Immediately before him was a group of delaying motions filed by the Faubus legal battery: that Judge Davies disqualify himself on the ground of personal bias, that service of subpoenas against National Guard officers be quashed, that the case be dismissed because it should be heard by a three-judge court, etc.

The Faubus attorneys seemed hardly to care what happened to the motions. Within minutes after young, nervous Faubus Lawyer Kay Matthews began a rambling argument for the disqualification motion, Little Rock School Superintendent Virgil Blossom became the first—but by no means the last—spectator to fall sound asleep. Again, while addressing himself to another motion, Faubus Lawyer Walter Pope said his whole argument was in his brief, and someone had once told him that judges could read. Smiled Ronald Davies: "Yes, I am one of the judges who can read." Moments later the Faubus-inspired motions were quietly and firmly overruled.

That was enough for the Faubus lawyers. Chief Counsel Tom Harper, smiling and benign, stepped to the bar and began reading from scribbled notes: "The position of the respondent, Governor Faubus and his military officers, must be firm, unequivocal, unalterable: that the governor of the State of Arkansas cannot and will not concede that the U.S. in this court or anywhere else can question his discretion and judgment . . ." Harper left one door open for retreat: "This is not to say that the respondents will not comply until they can be set aside, with orders, even though they may be made here." Then, with old-fashioned courtroom courtesy, Harper asked if the Faubus lawyers might be excused from the hearings. Just as politely Judge Davies granted the request. The lawyers walked out.

"He Had No Evidence." By leaving the rest of the hearing uncontested, the Faubus lawyers foreclosed themselves from hope of successful appeal from the facts and the evidence presented after the walkout. As for the U.S., which had nearly 200 witnesses on call, the case was simplified by the Faubus default. Result: only eight witnesses were called.

They included Little Rock's Mayor Woodrow Wilson Mann, School Superintendent Blossom and Police Chief Marvin Potts. All testified that they had neither heard nor seen any signs of violence before the opening of integrated schools in Little Rock. Between them, they could think of only one exception to a remarkable two-decade record of racial peace in their city. The exception: asked if he could recall any violent incidents during his 22 years on the police force, Chief Potts replied: "Just the usual thing. They'd get into rock fights once in a while after school hours." Remarkd a spectator: "Imagine if they had asked the chief of police of Chicago if he could remember any incidents of racial violence over 22 years!"

"Thwarted by the Governor." Later, as the afternoon wore out in Little Rock, Judge Davies was ready with his decision. There had, in fact, been no issue before his court. All the evidence, as the judge put it, showed that school integration in Little Rock had been "thwarted by the governor of Arkansas by the use of National Guard troops. It is equally demonstrable from the testimony here today that there would have been no violence in carrying out the plan of

integration." The preliminary injunction was therefore issued, ordering Faubus and his National Guard officers not to interfere with integration. Snapped Judge Ronald Davies: "Stand in recess," and left the bench.

Governor Faubus, chief target of the injunction, had received word of his lawyers' walkout while lolling relaxed in a window seat at his executive mansion. Ever since calling out the National Guard he had warded off questions about his "evidence" of violence by promising to produce it in court. Yet his day in court had come, and neither the evidence nor Orval Faubus was there.* Upon hearing that he was no longer even represented (because he had wanted it so), Faubus called for pencil and paper, scratched out an extraordinary statement: "***Now begins the crucifixion.*** There will be no cross-examination, no evidence presented for the other [Faubus] side. So now, by the use of carefully selected witnesses, the Justice Department's case can be continued. The results are a foregone conclusion."

That night, after the injunction had been issued, Faubus appeared on three Little Rock television stations. Inveighing against the "unwarranted action" of Judge Davies, Faubus denounced all his critics. But he would nonetheless comply with the court order until its "certain reversal on appeal." Said Governor Orval Faubus: "I have issued orders that all units of the Arkansas National Guard stationed at the high schools in Little Rock be removed there as soon as this can be accomplished. They are now gone or are moving from the school grounds."

So they were. The last dozen or so of the 250 National Guardsmen who had moved in on Central High School and the executive mansion two weeks before pulled out quietly as Orval Faubus was speaking. That left the city of Little Rock free to go on about its business—if Orval Faubus, by manufacturing the myth of violence, had not in fact whipped up the reality.

*Arriving at the Southern Governors' Conference in Sea Island, Georgia, Faubus explained to newsmen that he had first called out the guard because 1) integrationists had planned to make a big showcase out of integration in Little Rock. and 2) segregationists, catching wind of the plan had threatened violence to stop it, including TIME, for its "colored, slanted and falsified reports" (see Publisher's Letter).