

10-1974

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Recommended Citation

James W. Ely, Jr., Negro Demonstrations and the Law: Danville as a Test Case, *27 Vanderbilt Law Review* 927 (1974)

Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol27/iss5/2>

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Negro Demonstrations and the Law: Danville as a Test Case

*James W. Ely, Jr.**

The hectic events of the summer of 1963 abruptly shattered the prevailing domestic calm of the United States. Widespread Negro demonstrations that summer contrasted sharply with the peaceful 1950's and heralded the advent of the major disorders and urban riots which characterized the late 1960's. Growing directly out of the civil rights movement, the 1963 demonstrations reflected the impatience of black Americans with the leisurely implementation of *Brown v. Board of Education*¹ and the other equal rights decisions. Moreover, they indicated that Negroes were no longer content to await executive and judicial action, the impact of which had too often proved minimal or illusory in the past. The era of direct action had begun in early 1960 with the lunch counter sit-ins. By the spring of 1963, however, racial disturbances in Birmingham raised the level of violence and spawned numerous lesser protests across the South. The protest movement presented a serious crisis in law enforcement and respect for the law.

Perhaps the most significant of these secondary demonstrations occurred in Danville, Virginia. Overshadowed by the massive national publicity accorded the Birmingham affair, the Danville disturbances have not received a careful study.² The Danville experience, however, is instructive in several areas. Its study raises a series of important questions. How did the law, both state and federal, respond to the outbreak of racial demonstrations? What was the role of the courts, and of the Kennedy administration, in handling the Negro protest movement? What does the Danville imbroglio suggest about the feasibility of the resort to direct action tactics? Considered in a broader context, a study of the Danville demonstrations

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1. 347 U.S. 483 (1954).

2. Two attorneys and civil rights activists have described their experiences in Danville: L. HOLT, *AN ACT OF CONSCIENCE* (1965); W. M. KUNSTLER, *DEEP IN MY HEART* 211-32 (1966). For other accounts of the Danville demonstrations see A. BUNI, *THE NEGRO IN VIRGINIA POLITICS, 1902-1965*, at 214-16 (1967); G. Powell, Jr., *Black Cloud over Danville—the Negro Movement in Danville, Virginia, in 1963, 1968* (unpublished thesis in University of Richmond Library); "Danville on Trial," *New Republic* Nov. 2, 1963, at 11-12.

illustrates a major, and surprisingly successful, chapter in Virginia's resistance to any change in the racial status quo.

The City and the Demonstrations

The City of Danville is located on the Dan River in Southside Virginia, just north of the boundary with North Carolina. In 1960 the city contained a population of 46,577, of which 11,558 or 24.73 per cent were Negroes.³ Danville was governed by nine councilmen elected at large, and the council in turn named the city manager. The largest industry was Dan River Mills, which employed about 9,500 people in Danville alone.⁴ In addition, there were tobacco processing and storage plants, and factories of Corning Glass Works. Two institutions of higher education, Averett College and Stratford Junior College, were located in the city. Danville's newspapers, the morning *Register* and the afternoon *Bee*, followed a staunchly conservative editorial line.

Although Danville appeared a bustling commercial center, the past weighed heavily on the city as it did upon so much of the South. Danville had been the site of prisons for Union soldiers during the Civil War. For a week in April, 1865, the city served as the last capitol of the Confederacy after Jefferson Davis fled there from Richmond.⁵ Located in the heart of the Virginia black belt, Danville had long maintained a rigidly segregationist line in the area of race relations. These racial tensions were demonstrated most vividly by the serious Danville riot of November, 1883. That disturbance developed out of the exceedingly bitter political struggle between the Virginia Democrats and the Readjusters, a relatively liberal state political faction that included blacks and Republicans.⁶ During the 1880's a majority of Danville's population was black, and in 1882 Negro voters elected a Readjuster majority to the city council. The Readjuster city administration appointed black policemen and named Negroes to important municipal posts. Although the mayor and chief of police were white, Danville whites became increasingly restive. As part of their campaign in the forthcoming legislative elections, the Democrats seized upon the race issue, and particularly the situation in Danville, as a stratagem to boost the fortune

3. U.S. Census of Population, Virginia: General Population Characteristics, 1960.

4. For the growth of Dan River Mills see R. SMITH, *MILL ON THE DAN: A HISTORY OF DAN RIVER MILLS, 1882-1950* (1960).

5. L. HAIRSTON, *A BRIEF HISTORY OF DANVILLE, VIRGINIA, 1728-1954* (1955).

6. The Readjusters breached Virginia political tradition by their efforts to lure black votes. See J. Moore, *To Carry Africa into the War: the Readjuster Movement and the Negro*, 1968 (unpublished thesis in University of Virginia Library); C. PEARSON, *THE READJUSTER MOVEMENT IN VIRGINIA* (1917).

of their party. On Saturday, November 3, 1883—just four days prior to the election—armed whites, inflamed by Democratic campaign propaganda, fired indiscriminately into a crowd of Negroes, killing four blacks and wounding ten. The governor called out the militia and the city was subsequently placed under martial law. Both in Danville and throughout Virginia, the Democrats effectively used the Danville riot and appeals for white supremacy to regain political ascendancy.⁷ No one was ever arrested or punished for the shootings. Hence, a resort to violence to defend white rule was nothing novel in Danville.⁸ Subsequently, in 1906 the city was the scene of a short-lived and unsuccessful Negro boycott against the introduction of segregated streetcars.⁹

Racial attitudes in the Old Dominion had not changed appreciably when the Supreme Court decided the *Brown* case in 1954. After a brief period of indecision, the state political leadership, headed by United States Senator Harry F. Byrd, adopted a policy of massive resistance to school integration. Space does not permit an exhaustive discussion of the many legal and practical problems posed by massive resistance. Briefly stated, massive resistance was a program which sought to halt school integration anywhere in Virginia by erecting a series of defensive rings: a statewide pupil assignment plan administered by a Pupil Placement Board that would try to forestall integration by elaborate criteria and cumbersome proce-

7. Ten days before the election a circular entitled "Coalition Rule in Danville" appeared over the signature of several Danville businessmen. The circular was addressed to the citizens of southwest Virginia and described in lurid detail the alleged conditions of Negro domination in Danville. The purpose of the Danville circular was to solidify the white voters behind the Democratic Party. See "Coalition Rule in Danville" 1883, (circular in Virginia Historical Society).

8. Concerned about the adverse publicity given Danville in the northern press, a meeting of white citizens appointed a committee to investigate the riot. The committee report blamed the riot on Negroes and the Readjuster city administration; ". . . there was engendered in the minds of the Negroes of Danville a belief that as against the white men they would receive the support and protection of the municipal government. In consequence of which belief they became rude, insolent and intolerant to the white citizens of the town, and the bad temper and ill-feeling between the races thus generated continued to increase and was of late greatly aggravated by the heated political canvass preceding the election. . . ." *Report of the Committee of Forty* (Richmond, 1883). A committee of the United States Senate also investigated the Danville riot. The majority report, adopted by a 5-4 vote, attributed the disorders to the efforts of the Democratic Party to excite the race issue. SENATE COMM. ON PRIVILEGES AND ELECTIONS. REPORT UPON DANVILLE, VIRGINIA RIOT (Washington 1884). For scholarly treatment of the subject see C. WYNES, *RACE RELATIONS IN VIRGINIA, 1870-1902* (1961); Calhoun, *The Danville Riot and Its Repercussions on the Virginia Election of 1883*, in 3 *EAST CAROLINA COLLEGE PUBLICATIONS IN HISTORY*, at 25-51 (1966); J. Melzer, *The Danville Riot, November 3, 1883*, 1963 (unpublished thesis in University of Virginia Library).

9. Meier and Rudwick, *Negro Boycotts of Segregated Streetcars in Virginia, 1904-1907*, 81 *VA. MAG. HIST. AND BIOG.* at 479-87 (1973).

dures, and a statutory mandate that the governor close any school confronted with a final integration order and attempt to reorganize such school on a segregated basis. If all else failed, the governor was authorized, in his discretion, to permit a closed school to reopen with racial integration, but all state appropriations were automatically cut off to any integrated schools. A program of tuition grants was established to facilitate attendance at private schools by students adversely affected by the public school closings.¹⁰

The Byrd organization, as the senator's political friends were known, completely dominated the agencies of state government in the 1950's and enacted the massive resistance legislation at a special session of the Virginia legislature in September of 1956. Byrd represented the interests of white, conservative, property-owning Virginians, and, although never a race-baiter, he was personally antagonistic to racial integration. Convinced that the *Brown* opinion was "illegal and a usurpation of power," Byrd admitted that the opinion "has disturbed me more than anything that has occurred in my political career."¹¹ Pursuant to massive resistance, white schools in three Virginia localities were closed during the fall semester of 1958. The policy expired in January of 1959 when the Virginia Supreme Court of Appeals and a three-judge federal district court declared massive resistance unconstitutional.¹²

While there was considerable unease about the school closing aspects of massive resistance, there was at the same time no white support for racial integration. Through their elected representatives in the legislature, Danville whites gave enthusiastic support to massive resistance and bitterly battled the modification of the state's policy in the spring of 1959. Delegate C. Stuart Wheatley of Danville declared: "What some of the people do not realize and will never realize until it has been [sic] too late is that an integrated school is worse than a closed school."¹³ Despite the tactical retreat from

10. For recent scholarship on the topic see J. Ely, Jr., *The Crisis of Conservative Virginia: The Decline and Fall of Massive Resistance, 1957-1965*, 1971 (unpublished dissertation in University of Virginia Library); A. Grundman, *Public School Desegregation in Virginia from 1954 to the Present*, 1972 (unpublished dissertation in Wayne State University Library); N. BARTLEY, *THE RISE OF MASSIVE RESISTANCE: RACE AND POLITICS IN THE SOUTH DURING THE 1950's* (1969). See also B. MUSE, *VIRGINIA'S MASSIVE RESISTANCE* (1961); R. GATES, *THE MAKING OF MASSIVE RESISTANCE: VIRGINIA'S POLITICS OF PUBLIC SCHOOL DESEGREGATION, 1954-1956* (1964).

11. Letter from Harry F. Byrd to Samuel M. Bemiss, September 24, 1956 (Samuel M. Bemiss Papers in Virginia Historical Society).

12. *Harrison v. Day*, 200 Va. 439, 106 S.E.2d 636 (1959); *James v. Almond*, 170 F. Supp. 331 (E.D. Va. 1959).

13. Letter from C. Stuart Wheatley to J. Lindsay Almond, September 22, 1958 (Almond Executive Papers in Virginia State Library).

massive resistance to a program of containment, the Old Dominion was successful in holding school integration to token levels during the early 1960's.¹⁴

Danville's first modern experience with racial integration took place during 1960 in the city's public libraries, and the degree of municipal opposition did not bode well for more ambitious integration plans. The city had long maintained two libraries: the main library—the Confederate Memorial Library—reserved for whites, and a small branch library for Negroes. Each library issued its own cards, which were restricted to use in the issuing library. On April 2 a group of black students attempted to use the facilities of the Confederate Memorial Library. The city manager responded by temporarily closing the main library. Two days later, the city council reopened the main library but limited access to the present holders of library cards.¹⁵ The Negroes filed suit in federal district court alleging that they were subject to unlawful discrimination in their use of the municipal library facilities. In May, Judge Roby C. Thompson directed Danville to cease practicing racial discrimination in the operation of its libraries and to permit all persons with library cards to use the main library.¹⁶ Responding unanimously to the decision, the city council closed both libraries on May 20, just prior to the effective date of the court order, and scheduled a June advisory referendum to consider the fate of the libraries. The referendum produced a vigorous campaign by Negroes and a small number of whites who urged voters to keep the libraries open. The June 14 balloting showed the strong segregationist convictions of Danville whites: 2,829 votes were cast for keeping the libraries shut, 1,598 votes supported reopening on an integrated basis. Armed with the referendum results, the council voted five-four the following day to keep the libraries closed. Here the matter rested until September when the council, by another five-four vote, reopened the libraries but removed all the chairs and tables.¹⁷

Although the battle of the library ultimately was resolved in favor of racial integration, similar movement did not take place in

14. By the fall of 1963 only an estimated 3,721 Virginia Negro pupils, or 1.57% of the total, were in school with white students. *SOUTHERN SCHOOL NEWS*, (Dec. 1963).

15. For the municipal ordinance of April 4 restricting use of public library facilities see 5 *RACE REL. L. REP.* 528 (1960).

16. *Giles v. Library Advisory Committee*, 5 *RACE REL. L. REP.* 1140 (W.D. Va. 1960).

17. For the library controversy see G. Powell, *Black Cloud over Danville—the Negro Movement in Danville, Virginia, in 1963*, (unpublished thesis in University of Richmond Library) [hereinafter cited as *Powell, Black Cloud Over Danville*]; *SOUTHERN SCHOOL NEWS* at 10-15, 75 (June-Oct. 1960); *N.Y. Times*, May 20, 1960, at 27, June 15, 1960, at 28, September 18, 1960, at 72.

other areas of municipal life. In the spring of 1963 the hotels, motels, motion picture theatres, hospitals, public schools, courthouses and prison farms remained rigidly segregated.¹⁸ All agencies of municipal government and the entire seventy-man police force were white. Danville Negroes also charged that the city and private employers discriminated against blacks in employment practices. Negro petitions to city council seeking redress of their complaints were ignored. Nine years after the *Brown* ruling, the civil rights currents had somehow bypassed Danville. It appeared to be an example of effective nullification of an unpopular judicial trend, the very goal that Virginia's massive resistance had sought in vain.

The Birmingham demonstrations were the catalyst for the outbreak of similar disturbances in Danville as Negroes took to the streets in this segregationist stronghold.¹⁹ The initial march took place on May 31; it was peaceful and no arrests were made. The local press ignored the first marches. During the hot and muggy month of June, however, the demonstrations grew more disorderly and took the form of marches, singing and chanting, mass picketing, trespass on private property, sit-ins (including one in the city manager's office), and impeding traffic and downtown business. Danville's Municipal Building became the focal point of the disturbances. These almost daily events soon exacerbated the already tense race relations in Danville. On the evening of June 5, the Negro demonstrators sat down on a main business street, blocking all traffic. At this point the police summoned Archibald M. Aiken, judge of the Corporation Court of Danville. Aiken addressed the crowd and asked the demonstrators to disperse.²⁰ This command

18. The initial desegregation of Danville public schools was not the result of litigation. On June 19, 1963, the Pupil Placement Board assigned 10 Negro students to 4 white schools. When Danville schools opened August 26 this limited integration proceeded without incident. One can only speculate whether the demonstrations were a factor in the action of the Board. It seems unlikely that the demonstrations were a prime cause of school integration in Danville because, by 1963, Virginia had abandoned massive resistance and was following a policy of token integration. The Board made similar pupil assignments in other localities which did not experience racial disorders. School integration moved slowly in Danville for the balance of the decade. For a history of school desegregation in Danville see *Medley v. School Board*, 350 F. Supp. 34 (W.D. Va. 1972), *Rev'd* 482 F.2d 1061 (4th Cir. 1973), *cert. denied* 414 U.S. 1172 (1974).

19. The Danville *Register* castigated the Birmingham disorders and praised the city authorities for maintaining order "in a responsible manner." Danville Register, May 14, 1963.

20. Aiken appeared pursuant to § 18.1-247 of the Code of Virginia which provided:

Suppression of riots.—All judges and justices of the peace may suppress riots, routs, and unlawful assemblies within their jurisdiction. And it shall be the duty of each of them to go among, or as near as may be with safety to, persons riotously, tumultously, or unlawfully assembled, and in the name of the law command them to disperse; and if they shall not thereupon immediately and peacefully disperse, such judge or justice of

was ignored and Aiken was jeered. The next day, upon application by the city, Aiken issued *ex parte* a temporary injunction limiting the scope of the demonstrations.²¹ This injunction provided the principal ground for the numerous arrests made by city authorities in the course of the summer.

More than any other person, Judge Aiken symbolized the determination of Danville whites and the city administration to crush the Negro protests. A native of Danville and the son of a judge, Aiken received his undergraduate and legal education at the University of Virginia. He had served as a Circuit Court judge and as the city attorney before being named judge of the Corporation Court by the

the peace giving the command, and any other present, shall command the assistance of all persons present, and of the sheriff or sergeant of the county or corporation, with his posse, if need be, in arresting and securing those so assembled. If any person present, on being required to give his assistance depart or fail to obey, he shall be deemed a rioter. VA. CODE ANN. § 18.1-247 (1950) (repealed 1968). This section was repealed in 1968 as part of a general revision of the laws dealing with riots.

21. "This day came the plaintiff, by Counsel, and presented to the Court its motion for a temporary injunction and restraining order, which motion was verified and upon the presentation and consideration of said verified motion and affidavit of T. Edward Temple, City Manager of the City of Danville;

"Upon due consideration whereof it appearing to the Court that the plaintiff herein is entitled to the temporary injunction and restraining order prayed for and that under the circumstances of this case, no notice to said named defendants herein is necessary or practicable, it is ADJUDGED, ORDERED and DECREED as follows:

"1. That said named defendants, their servants, agents and employees, their attorneys and all other persons acting in concert therewith be, and they hereby are, enjoined and restrained until the further order of this Court from participating in the following actions or conduct:

- (a) Unlawfully assembling in an unauthorized manner on the public streets and in the vicinity of the public buildings of the City of Danville;
- (b) Unlawful interference with the lawful operation of private enterprises and business in the City of Danville;
- (c) Unlawfully obstructing the freedom of movement of the general public of the City of Danville and the general traffic of the City of Danville;
- (d) Unlawfully obstructing the entrances and exits to and from both private business concerns and public facilities in the City of Danville;
- (e) Participating in and inciting mob violence, rioting and inciting persons to rioting;
- (f) Unlawfully carrying deadly weapons, threatening to use said deadly weapons, assaulting divers citizens in this community;
- (g) Unlawfully using loud and boisterous language interrupting the peace and repose of the citizens of the community, business establishments of the community and the public works of the community;
- (h) Creating and maintaining a public nuisance by reason of unlawful and unauthorized gatherings and loud, boisterous and concerted demonstrations interfering with the peace and quiet and enjoyment of the citizens of the City of Danville.

"2. This temporary injunction and restraining order shall be effective immediately and shall continue from day to day until the further order of this Court until July 6, 1963, at which time it shall stand dissolved unless prior thereto it be enlarged or further temporary or permanent injunction granted herein.

"3. And that a copy of this Order be served upon the named defendants herein."

legislature in 1950.²² As was the case with nearly all Virginia state judges, Aiken was an ally of Senator Byrd and held conservative social and political views.²³ Moreover, Aiken was unquestionably committed to the defense of racial segregation. In early 1959 he privately proposed a plan to "keep the public schools of Virginia permanently open and segregated, and be [sic] federal court proof."²⁴ Aiken's plan was designed to take advantage of the superior economic position of Virginia whites. The Judge suggested these specific steps:

1. Repeal of Section 129 of the Virginia Constitution, the section which mandated public education.
2. Repeal of the compulsory school attendance law.
3. The legislature, or localities, should impose a school tax on every child, regardless of race, who attends a public school.
4. This school tax should be a credit against the payment of state income taxes or local real property taxes.

"I imagine," Aiken explained, "most of the Negroes who have been getting a free education at the expense of the White people either could not and would not pay it." He further envisioned a limited scholarship plan for the poor, and white sponsorship of black pupils so long as they attended separate schools. Aiken reasoned that his proposal should be viewed as a revenue measure, not merely a device to prevent integration. Coming in the final, emotional days of the massive resistance controversy and raising a host of new problems, Aiken's ideas never had much chance of being adopted into law. Nonetheless, Byrd evidently found Aiken's proposal sufficiently intriguing to circulate it among his Virginia colleagues in Washington.²⁵ Later the same year Aiken criticized Virginia's tactical retreat from massive resistance and renewed his call for an amendment to the Virginia Constitution.²⁶ There can be no doubt

22. Danville Register, November 28, 1971.

23. In October of 1964 Aiken expressed his highest regards to Byrd and promised to do anything he could to assist Byrd's re-election bid. Aiken predicted that Byrd and Senator Barry Goldwater, the Republican presidential nominee, would carry Danville handily. Letter from Archibald M. Aiken to Harry F. Byrd, October 13, 1964 (Harry F. Byrd Papers in University of Virginia Library).

24. Letter from Archibald M. Aiken to Harry F. Byrd, January 24, 1959 (Watkins M. Abbitt Papers in University of Richmond Library).

25. William M. Tuck, congressman for Virginia's Fifth District (which included Danville), wrote to Byrd: "Many thanks for letting me see Judge Aiken's letter. I think he is undoubtedly hitting at them in the right way. His plan is worthy of serious consideration." Letter from Tuck to Byrd, January 28, 1959 (Watkins M. Abbitt Papers in University of Richmond Library).

26. Letter from Archibald M. Aiken to Harry F. Byrd, March 25, 1959 (Watkins M. Abbitt Papers in University of Richmond Library).

that Aiken found the tactics and objectives of the Negro protesters very distasteful.

Despite Judge Aiken's temporary injunction, the disorders did not cease. On the night of June 10, after a full day of protest activity, a demonstration ended in violence as police attacked Negroes massed outside the city jail with nightsticks and fire hoses.²⁷ The quickening tempo of events in mid-June underscored the unyielding municipal resistance. First, a special seven-man grand jury summoned by Aiken indicted the demonstration leaders under a Virginia statute outlawing conspiracy "to incite the colored population of the State to acts of violence and war against the white population. . . ."²⁸ For those indicted Aiken set bail at 5,000 dollars apiece.²⁹ Secondly, on June 11 a heavily armed detachment of forty-eight state police moved into Danville to supplement the local force. Thirdly, the city council enacted an ordinance to limit the time, place, and size of picketing or demonstrations.³⁰ Lastly, Councilman

27. Len Holt makes a convincing case that the Danville police overreacted and unnecessarily beat Negro demonstrators with clubs on the evening of June 10. L. HOLT, AN ACT OF CONSCIENCE 23-25, 93-95 (1965). Burke Marshall, Assistant Attorney General, Civil Rights Division, seems to have agreed with this assessment. In a September 18, 1963 memorandum to the Attorney General Marshall declared: "However, I am trying to develop a broader kind of case against this sort of repressive and violent police action. We have one, for example, in Danville, Virginia." Memorandum, September 18, 1963 (Burke Marshall Papers in John F. Kennedy Library). The Fourth Circuit concurred in this evaluation. "On that occasion the police were guilty of excesses, as the demonstrators had been on earlier occasions." *Baines v. City of Danville*, 337 F.2d 579, 584 (4th Cir. 1964), *cert. denied* 381 U.S. 939 (1965).

28. VA. CODE ANN. § 18.1-422 (1950).

29. 60 Danville Common Law Order Book, Corporation Court at 111-12, 139-40.

30. "An Ordinance Limiting Picketing and Demonstrations; Providing Punishment for Violations Thereof.

"WHEREAS, large, noisy, lawless and rioting groups of people, there being among these armed persons with records as habitual criminals, under the pretext of picketing, have incited racial strife, caused personal injuries and destruction of property; and,

"WHEREAS, such groups have further disrupted the peace and convenience of this community, have placed the citizenry in fear of its safety and have disrupted the orderly flow of both vehicular and pedestrian traffic; and,

"WHEREAS, there are reasonable restraints which must be imposed upon freedom of speech and assembly when such freedoms are exercised in such a manner as to endanger the personal safety and property of the citizenry; and,

"WHEREAS, it is necessary to impose reasonable regulations upon assemblies and picketing,

"NOW, THEREFORE, BE IT ORDAINED, as follows:

"(1) All assemblies and picketing shall be peaceful and unattended by noise and boisterousness, and there shall be no shouting, clapping or singing of such a nature as to disturb the peace and tranquility of the community; and,

"(2) That marching shall be in single file and pickets or demonstrators shall be spaced a distance of not less than ten feet apart, and not more than six pickets shall picket or demonstrate before any given place of business or [public facility]; and,

"(3) That all picketing or demonstrating shall be during the business or work hours of

John W. Carter, a vitriolic segregationist who was determined to crush the protests, moved to the fore as the principal spokesman for the city administration. Playing to the racial attitudes of Danville whites, Carter's popular following undercut more moderate councilmen and rendered a compromise solution impossible. Carter also helped to represent the city in the voluminous litigation which emerged from the disorders.

As the demonstrations continued, so did the arrests for violation of the Aiken injunction and the newly enacted ordinance. By June 17 there were 105 persons under arrest and awaiting trial before Judge Aiken on charges of contempt. The defendants were represented by five Danville Negro lawyers affiliated with the NAACP, by Len W. Holt, a black attorney from Norfolk,³¹ and by a shifting group of civil rights attorneys that included William M. Kunstler. The proceedings in the Corporation Court proved extremely controversial and figured prominently in the subsequent efforts to remove the injunction cases to the federal district court. Although a removal petition had already been filed, and although he was without jurisdiction in the matter, Aiken began to try the cases of persons charged with disobeying his injunction. A Justice Department official related the courtroom setting to his superiors:³²

The proceedings before Judge Aiken have been extraordinary. The judge has entered a formal written order excluding the public from the courtroom

the place of business or public facility being picketed, and upon such days as such facility may be open for the transaction of business; and,

"(4) That no picketing or demonstrating shall be performed within any public building; and,

"(5) That no person under the age of eighteen years shall be permitted to march, picket or demonstrate in the City; and,

"(6) That no vehicles shall be used in any picket or demonstrating line, and that all picketers or demonstrators shall be afoot; and,

"(7) That violation of the foregoing regulations shall constitute a misdemeanor, and be punished as provided in Section 1-6 of the Code of the City of Danville, 1962."

8 RACE REL. L. REP. 698 (1963).

31. Holt was in the unique position of being both an attorney for the defendants and a defendant himself. He was arrested for violating the Aiken injunction and indicted under the racial conspiracy statute. Holt was already in trouble with the courts of Virginia. In January of 1962 he was found guilty of contempt of court and fined by the Circuit Court of the City of Hopewell. The Virginia Supreme Court of Appeals affirmed the sentence, 205 Va. 332, 136 S.E.2d 809 (1964), but the Supreme Court reversed on the grounds that, on the facts presented therein, Holt could not be punished for contempt consistent with due process. *Holt v. Commonwealth of Virginia*, 381 U.S. 131 (1965). Holt's conviction under the Aiken injunction was reversed by the Virginia Supreme Court of Appeals. *Holt v. Commonwealth*, 72 Danville Common Law Order Book, Corporation Court, 29-45.

32. Memorandum, June 19, 1963 (Burke Marshall Papers in John F. Kennedy Library). For the text of the order excluding the general public from the courtroom on the grounds that "there is danger of unlawful interference with the lawful operation of this Court" see 60 Danville Common Law Order Book, Corporation Court, 131 (1963).

because of unrest and possible violence. The only ones admitted are city personnel, court attaches, the defendants, their attorneys, witnesses, and the parents of juvenile defendants.

Witnesses, and even attorneys, are frisked for weapons. All of the city personnel, however, wear sidearms. The last two days there have been approximately 30 armed police in the courtroom. Judge Aiken has been wearing a pistol while presiding on the bench.³³

In the course of June 17 and 18 Aiken tried two cases and both defendants were found guilty of contempt. The court imposed forty-five- and sixty-day jail sentences on the convicted defendants, together with fines.³⁴ Aiken permitted no discussion of the legality of his injunction and denied defense requests for an adjournment to prepare its case. In passing sentence, the judge read from a written memorandum prepared in advance of the trial. Aiken refused to release the convicted defendants on bail pending appeal reasoning that "any such suspension of the judgement would render the injunctive powers of the Court ineffective . . ."³⁵ Without a stay of execution, the defendants would be compelled to serve their sentences before an appeal could be heard by the Virginia Supreme Court of Appeals, effectively denying appellate review. Moreover, Aiken refused to allow out-of-state attorneys to practice in the Corporation Court unless they produced their certificates of admission to the bar. He also conducted daily roll calls of all defendants and their attorneys, forcing the latter to waste valuable time in court. "Danville's Negroes," Kunstler wrote, "were in the grip of a reign of judicial terror."³⁶

On June 19, Aiken postponed further trials for the contempt defendants, apparently planning to abide the outcome of the removal proceedings. With the trials stalled, Danville pressed other tactics to disquiet the demonstrators. Up to half of the protestors were of high school age and within the purview of the juvenile laws. Parents of such young demonstrators were arrested on charges of contributing to the delinquency of a minor by failing properly to supervise their children. In late June the first administrative level of the Virginia Employment Commission cut off unemployment in-

33. Aiken denied that he had ever worn a gun while on the bench, but he readily admitted that, upon police advice, he traveled armed to his office. Indeed, virtually every city official began wearing pistols in June. Although avowedly for protection, this policy of going armed was likely to have a chilling effect on the Negro demonstrations. Martin Luther King recalled: "Danville, Virginia—upright white citizens, concerned that police brutality is insufficient to intimidate Negroes, began wearing guns in their belts." M. KING, JR., *WHY WE CAN'T WAIT* at 126 (1964).

34. 60 Danville Common Law Order Book, Corporation Court, 131-133 (1963).

35. *Id.* at 132.

36. W. KUNSTLER, *DEEP IN MY HEART* 218 (1966).

insurance checks for those awaiting trial. The Commission reasoned that persons under arrest and facing possible jail terms were not "available" for work within the meaning of Virginia's unemployment insurance law. With seasonal unemployment falling heavily on Danville Negroes, the action of the Commission weakened the financial basis of the protest and tended to discourage new demonstrations.³⁷

Although the Danville demonstrations were of spontaneous origin, the various civil rights groups promptly formulated a series of demands for city officials. The announced objectives of the protest included:

1. The appointment of a bi-racial committee to fix a schedule for the desegregation of schools and municipal facilities.
2. Desegregation of public accommodations, such as restaurants and hotels.
3. The employment of Negroes in municipal jobs, particularly the hiring of Negro policemen.
4. The hiring or upgrading of Negro employees by Danville merchants.
5. The dropping of all charges against the demonstrators who had been arrested.³⁸

The demonstration leaders further charged that Dan River Mills had a discriminatory hiring policy under which blacks were confined to menial jobs. To dramatize this complaint against the textile company, in July civil rights organizations picketed the New York City offices of Dan River Mills demanding that the concern use its influence to end segregation in Danville.³⁹ Local blacks picketed and conducted sit-ins before the gates of Dan River Mills.

Obviously, several of the objectives of the demonstrators did not relate to state or municipal activities, but rather to private employers and privately owned accommodations. The city, of course, had no direct control over the operations of such private facilities. With respect to alleged private discrimination, the demonstrations both highlighted the problem and impeded its solution. Merchants, for example, worried that the white public was so angry at the demonstrators that the employment of Negro store clerks might become economically hazardous. Those demands directed squarely against the city raised a similar difficulty. Token steps

37. Powell, *Black Cloud over Danville*, *supra* note 17, at 43.

38. For the demands of Negro protestors in Danville see *id.* at 33; L. HOLT, *AN ACT OF CONSCIENCE* 142 (1965).

39. N.Y. Times, July 18, 1963, at 10.

might have been taken, especially in the employment area, to meet some of the protest goals. Danville officials, however, rejected any moves that might be interpreted as a concession to the racial disorders. Thus, while the demonstrations continued, the city offered no hint of a compromise solution and turned instead to a determined and ingenious effort to break up the protests. Benjamin Muse described the city's viewpoint:

The whites feel that the Negroes should be punished for the June disorders rather than rewarded with concessions. They are not irrevocably opposed to the moves desired by the Negroes, but refuse to discuss them under pressure.⁴⁰

In keeping with this philosophy, the city authorities never considered the demand that charges pending against the demonstrators be dropped.

A fair example of this municipal attitude is the handling of the demand for the hiring of black policemen. Muse reported in October that "[t]he city has no objection in principle, but it does not want to move while 'under the gun.' I gather that the Negro policeman will be hired shortly, but it must be in a routine way"⁴¹ As if to confirm this assessment, later that same month, and with the disorders at an end, Danville employed a Negro policeman. In this anticlimactic fashion the demonstrators gained partial satisfaction of one of their major demands.

From the outset of the demonstrations Danville Negroes hoped for a visit from Martin Luther King, fresh from his seeming triumph in Birmingham. Indeed, King had spoken before a large crowd in this troubled city in March. After several postponements, King paid a return visit to Danville on July 11, ostensibly to lead a march in defiance of the Aiken injunction. "I have so many injunctions that I don't even look at them anymore," he declared.⁴² Danville, however, was not to be a success for King. His mass demonstration on the night of July 11 drew only about eighty participants and King declined to lead the march. Coming at the very time that he was receiving massive publicity and was catapulting toward the apex of his civil rights career, King found that he could not devote sustained personal attention to the demonstrations. Historian David L. Lewis regards King's Danville campaign as a failure and compares the result there with Albany, Georgia, another disappointment for

40. Confidential memorandum entitled "Danville, Va." from Benjamin Muse to Burke Marshall, October 8, 1963 (Burke Marshall Papers in John F. Kennedy Library) [hereinafter cited as Muse, Danville, Va.]. Muse, an author and journalist of liberal racial views, prepared a series of reports for the Justice Department on the situation in various southern cities.

41. *Id.*

42. D. LEWIS, KING: A CRITICAL BIOGRAPHY 212 (1970).

King.⁴³ With King's inability to furnish effective assistance, the prospect for any meaningful success resulting from the Danville disorders was greatly lessened.

White attitudes, on the other hand, remained adamant throughout the period of the demonstrations. The disorders and marches failed to arouse support from any level of the city's white population. The local newspapers poured scorn on the protest at every turn, linking the demonstrations with crime and communism. Mayor Julian R. Stinson referred to the protestors as "hoodlums."⁴⁴ "The anti-Negro feeling at the middle-class and country club level is intense . . .," Muse reported in October.⁴⁵ At the zenith of the controversy over Judge Aiken's conduct of the contempt trials, the Danville Bar Association adopted a resolution expressing "its support and admiration of the Honorable A. M. Aiken and of the extremely able and judicious manner in which he conducts his court, thus assuring a fair and impartial trial to every defendant, regardless of race, color, or creed."⁴⁶ No resident white lawyer took any part in the defense of the demonstrators. Likewise, the white textile workers were hostile to the civil rights campaign. Holt explained:

For the most part the Danville textile workers are complacent members of a complacent textile workers union who consider themselves well off. . . . The Negro is both their standard and their *enemy*. Realizing this, they are told by *City Hall* that Negroes are trying to force their way into the union and thus destroy the seniority rights of the white members and their right to pass on their trades to their sons, along with forcing their daughters to sit beside Negro children in the public schools.⁴⁷

The reaction of whites elsewhere in Virginia to the Negro demonstrations paralleled that of the Danville leaders. Virginia had generally avoided mass demonstrations and civil rights violence, and the surprised state officials reacted with dismay and support for the City of Danville. Congressman William M. Tuck commended Danville authorities for "the forthright manner" in which they dealt with the protest. Tuck was confident that the disorders could "be traced directly to troublemakers in Washington and elsewhere who have been preaching enforced integration against the will of the most thoughtful people of both races."⁴⁸ He was even moved to

43. *Id.* at 211-14; see HOLT, AN ACT OF CONSCIENCE 205-07 (1965); N.Y. Times, July 12, 1963, at 8.

44. N.Y. Times, June 11, 1963, at 22.

45. Muse, Danville, Va.

46. "Resolutions of Bar Association of Danville," 109 Cong. Rec. 12211 (1963) (remarks of Senator A. Willis Robertson).

47. L. HOLT, AN ACT OF CONSCIENCE 227 (1965).

48. Powell, Black Cloud Over Danville, *supra* note 17, at 29.

introduce legislation that would bar persons from crossing a state line for the purpose of demonstrating in violation of law. "When I consider the disgraceful concerted defiance of law which has occurred in communities such as Danville, Va., in my own Congressional district," Tuck declared, "it is perfectly obvious that the participants are responding to incitation from outsiders"⁴⁹ Similarly, United States Senator A. Willis Robertson observed: ". . . the trouble you have experienced in Danville recently was the result of outside agitation"⁵⁰

The response of the state government was largely determined by Albertis S. Harrison, Jr., the Old Dominion's cautious and quiet governor. Cognizant of the importance of maintaining the favorable national image of Virginia, Harrison characteristically followed a low-key path. He eschewed the flamboyant role and the defiant statements that became the trademarks of Governor George C. Wallace in Alabama. Harrison realized that a relaxed executive attitude would minimize the prospects for extensive national press coverage of events in Danville, and thereby give Danville officials a freer hand to deal with the demonstrations. As the prospect for sensational press coverage dimmed, so did the chance for federal intervention. While Harrison sent state police to Danville, he publicly emphasized that better education and understanding were the solution to racial harmony. He declined to encourage the formation of bi-racial committees in Virginia communities. Harrison's desire to call as little attention as possible to the Danville disorders is best illustrated by his correspondence with State Senator William F. Stone, who represented the embattled city in the legislature. Stone called upon the governor "to make very strong statements denouncing what is going on in Danville"⁵¹ Harrison replied that "I am as deeply conscious of what is going on in Danville as you are," but he significantly added:

There is a great deal that I would like to say publicly about this matter.

However, a Governor cannot always indulge himself that luxury.⁵²

He further advised the mayor of neighboring Farmville that he doubted "the wisdom of too much activity on our part when such might provoke demonstrations."⁵³

49. 109 Cong. Rec. 13429 (1963) (remarks of Congressman Tuck).

50. Letter from A. Willis Robertson to Landon R. Wyatt, July 11, 1963 (A. Willis Robertson Papers in College of William and Mary).

51. Letter from William F. Stone to Albertis S. Harrison, Jr., June 17, 1963 (Harrison Executive Papers in Virginia State Library).

52. Letter from Albertis S. Harrison, Jr. to William F. Stone, June 19, 1963 (Harrison Executive Papers in Virginia State Library).

53. Letter from Albertis S. Harrison, Jr. to William F. Watkins, Jr., June 20, 1963 (Harrison Executive Papers in Virginia State Library).

Harrison's thinking on the racial disorders is most fully set forth in the draft of a statement prepared for delivery on television, a speech that the governor ultimately decided not to deliver.⁵⁴ In his draft remarks Harrison offered the following comments on the situation in Danville:

1. He deplored the outbreak of racial violence in Virginia.
2. He pledged to the Negro demonstrators that "Virginia will see to it that your rights of free speech and peaceable assembly are protected to the fullest extent of the law."
3. He promised to protect the owners of private property against trespass or seizure of their place of business.
4. He stressed that the fourteenth amendment applies only to state action.
5. He defined the limits of freedom of speech:

By this I mean to say that free speech will be protected, but the cursing and abusing of law enforcement officers will not be tolerated in this State. The right to peaceable assembly will be made fully secure, but we shall not permit mob violence to be masked as peaceable assembly. A right to demonstrate will not be equated, in Virginia, with some imagined right to take effective possession of private property. The right to petition for redress of grievances will not be converted into a license to intimidate, to coerce, and to extort. The right of protesting groups to walk the streets in freedom will not be made superior to the right of all men to walk the streets in safety.

6. He alerted units of the Virginia National Guard for possible riot duty and, contrary to his earlier position, he now urged that cities and counties consider creating bi-racial committees.

7. He concluded by saying that social "changes of this magnitude cannot successfully be imposed by compulsion, by coercion, or by the suppression of any of the rights with which free men are endowed."

Harrison's undelivered remarks indicate a painstaking effort to evaluate the first amendment rights of the Danville community and the owners of private property. Orderly, but not massive or riotous, picketing and demonstrations were to be permitted and protected. Although Harrison correctly emphasized that trespass and blocking the streets were not to be confused with freedom of expression,⁵⁵

54. "Draft of a statement, intended for use on television, that might possibly be delivered by Governor Harrison, dealing with the racial disorders" (Harrison Executive Papers in Virginia State Library).

55. Compare Harrison's comments with a similar analysis of the Fourth Circuit: "Those First Amendment rights incorporated into the Fourteenth Amendment, however, are not a license to trample upon the rights of others. They must be exercised responsibly and without depriving others of their rights, the enjoyment of which is equally as precious." The court

nothing in the governor's comments constituted a threat to suppress reasonable speech and protest activities. Rather, his message called for mutual accommodation for the various legitimate interests involved in the controversy. Of course, Harrison's views did not necessarily reflect those of the Danville authorities, but they tend to establish that the state government was not itself a party to any design to crush the first amendment rights of the demonstrators. The most likely explanation for Harrison's decision not to deliver the speech is the governor's belief that any television talk, regardless of its content, would serve to highlight and possibly enflame the Danville situation.

By early July it was evident that the demonstrations had utterly failed to achieve their announced objectives. Although the disorders and consequent arrests continued on a sporadic basis, they gradually diminished. With bail money nearly gone and most potential protestors already awaiting trial, it became progressively more difficult to find Negroes willing to march. The reopening of the public schools in late August deprived the protest of a major source of demonstrators. Despite the flagging level of protest activities, city policy continued to be aggressive. On July 10, the city council amended the ordinance regulating permits for parades. The amendment specified that applications for a parade permit must be filed "not less than thirty days nor more than sixty days" before the date of the proposed parade.⁵⁶ Arrests for parading without a permit supplemented the city's other tactics. A special August report in the *New York Times* described Danville "as an example of successful resistance to Negro demonstrations demanding equality." The *Times* noted that Danville had developed "a defense strategy that is among the most unyielding, ingenious, legalistic and effective of any city in the South."⁵⁷

The Resort to the Federal Courts

Almost immediately, the attorneys for the Danville demonstrators sought to enlist federal jurisdiction as a shield for protest activities. The proceedings before Judge Aiken and the other state and municipal actions indicated that defense efforts would not meet with success at the local state court level. Moreover, the inevitable

pointed out that Negro demonstrators did not have any right "to coerce acceptance of their demands through violence or threats of violence." *Baines v. City of Danville*, 337 F.2d 579, 586 (4th Cir. 1964), *cert. denied*, 381 U.S. 939 (1965).

56. The text of the parade permit ordinance may be found in *York v. City of Danville*, 207 Va. 665, 152 S.E.2d 259, 261 (1967).

57. *N.Y. Times*, August 11, 1963, at 71, col. 1.

delays and expenses of carrying hundreds of appeals to the Virginia Supreme Court of Appeals certainly would sap the energy and resources of the protest. One commentator has concluded that "the most prominent characteristic of state courts in the South is that a Negro will not voluntarily bring them a dispute involving his civil rights."⁵⁸ This was certainly true in Virginia, where the task of implementing racial desegregation was almost exclusively a federal court responsibility. Accordingly, the protesters attempted to fashion procedures that would produce federal court intervention. They filed a petition to remove the cases of those charged with violating the Aiken injunction to federal court on the ground that a fair trial could not be obtained in the Corporation Court. They filed original federal suits attacking the constitutionality of the Danville ordinance limiting picketing, attacking the Aiken injunction, attacking the Virginia racial conspiracy statute, and attacking the administrative decision to terminate unemployment compensation for demonstrators under arrest. In July the demonstrators brought suit to restrain enforcement of the parade ordinance, contending that it was used to suppress lawful demonstrations. Holt explained the strategy of the Negroes:

We were fighting. This action had enhanced the probability of intervention of the federal government As Danville would pass or invoke a law, the lawyers would scamper to the federal courts with a suit.⁵⁹

Hence, one of the principal legal questions posed by the demonstrations was whether the defendants could establish some theory to secure federal court intervention in the Danville situation. This struggle was confusing and prolonged, and ultimately the Supreme Court gave a negative answer.

The various applications for federal relief were presented to Judge Thomas J. Michie of Charlottesville. A graduate of the University of Virginia, Michie had practiced law in Charlottesville since the 1920's. A member of the Democratic Party, Michie had served as mayor of Charlottesville in the late 1950's, a period in which he gained the reputation of a moderate on racial integration. Michie had earned the enmity of the Byrd organization by opposing the school closings in Charlottesville pursuant to massive resistance and by supporting John F. Kennedy for the presidency.⁶⁰ In fact, when

58. Meltsner, *Southern Appellate Courts: A Dead End*, in *SOUTHERN JUSTICE* 138 (L. Friedman ed. 1965).

59. L. HOLT, *AN ACT OF CONSCIENCE* 177 (1965).

60. Letter from Francis P. Miller to Ralph A. Dungan, December 21, 1960 (Miller Papers in University of Virginia).

President Kennedy nominated Michie to the federal bench in 1961. Virginia conservatives urged their senators to defeat confirmation of the appointment. One constituent informed Senator Robertson that Michie had always been opposed to conservative government.⁶¹ The president of the Defenders of State Sovereignty and Individual Liberty, a segregationist lobby in the Old Dominion, asserted that the appointment of Michie to a federal judgeship would be extremely unfortunate.⁶² Such expressions of opposition were to no avail, and Michie was duly confirmed, but they do underscore the liberal image which Michie had acquired. As Kennedy's first appointment to the federal district bench in Virginia, one could reasonably expect that he would be more sympathetic to the plight of the Negro demonstrators than any other federal judge in the Old Dominion.

Acting first on the petition to remove the criminal proceedings to federal court, Michie declined to take immediate action on the city's motion for remand and scheduled a hearing in Danville on June 24 to receive evidence on the question. During the two day hearing, the protesters' attorneys called witnesses to show that their clients could not obtain a fair trial before Judge Aiken. Michie reserved judgment on the general removal problem, but granted writs of habeas corpus for the two defendants convicted by Aiken after their cases had been removed.⁶³ Yet the Aiken injunction and the municipal ordinance curtailing demonstrations remained in effect, and Michie's steps did not preclude further arrests. In a move without modern precedent, the Justice Department filed a brief supporting the removal effort. The brief reviewed the courtroom proceedings before Aiken and asserted that the trials were being "conducted in a most unjudicial atmosphere."⁶⁴ Contending that the Negro demonstrators could not receive a fair trial in the Corporation Court, the brief concluded:

The combination of the trier of the fact who has apparently prejudged the issues and was a participant in the events culminating in the very charges to be tried, considered together with the general atmosphere of the proceedings and its inevitable result, make it quite clear, it seems to us, that a fair trial cannot be had in the Corporation Court. But that is not all. It is not simply that whatever rights defendants have to demonstrate for the equal protection

61. Letter from John B. Boatwright, Jr. to A. Willis Robertson, February 13, 1961 (Robertson Papers in College of William and Mary).

62. Letter from Robert B. Crawford to A. Willis Robertson, February 10, 1961 (Robertson Papers in College of William and Mary).

63. L. HOLT, AN ACT OF CONSCIENCE 6-40 (1965); W. KUNSTLER, DEEP IN MY HEART 221-22 (1966).

64. The Justice Department brief is reprinted in part in W. KUNSTLER, DEEP IN MY HEART at 219-21. See also N.Y. Times, July 3, 1963, at 10.

of the laws will be disregarded in the contempt trials. The situation is further aggravated by the fact that racial antagonism lies at the root of this denial. The entire controversy now before this Court stems from the conflict over Negro equality, and the proceedings in the Corporation Court which are here challenged are a direct result of this conflict. We do not suggest that Judge Aiken is racially prejudiced against the defendants; but a Court would have to close its eyes to the realities not to notice that the peculiar proceedings in the Corporation Court are the direct result of this racial conflict.

The Danville Bar Association responded to the Justice Department brief by denouncing the "unwarranted, irresponsible and unjust attack" on Aiken, and proceeded to censure the representatives of the Justice Department for making such statements.⁶⁵

Judge Michie's next action absolutely stunned the demonstrators. News that Martin Luther King would lead a march in early July prompted Danville to seek a federal court order curtailing further demonstrations. On July 2 Michie rendered a federal injunction against the Negro protest movement on the ground that the disorders denied others in Danville federally protected rights. Almost as broad as the earlier Aiken order, the Michie injunction prohibited obstructing traffic, use of public facilities or private property, "unnecessarily loud, objectionable, offensive, and insulting noises," inciting any person to riot, and meetings at which violations of the laws of Virginia or Danville or of the federal court order were advocated.⁶⁶ The Michie injunction complicated the plight of the Negro protesters.⁶⁷ The Justice Department declined to "take any legal action to suspend issuance of the restraining order," and a representative of the Department advised Len Holt that "in my judgment, the defendants would be obliged to obey any order issued by Judge Michie whether they thought it legally sound or not and

65. "Resolutions of Bar Association of Danville," 109 CONG. REC. 12211 (1963) (Remarks of Senator Robertson).

66. Powell, *Black Cloud Over Danville*, *supra* note 17, at 47.

67. Michie's course of action was perhaps influenced by a similar injunction issued by Federal District Judge J. Robert Elliott against mass racial demonstrations in Albany, Georgia. In a suit filed by the mayor of Albany, Elliott granted a sweeping temporary order on July 20, 1962 restraining demonstration leaders from continuing to incite or encourage unlawful picketing or parading, and from engaging in acts designed to produce breaches of the peace. The suit was brought under the federal civil rights act and alleged that organized breaches of the peace had prevented city authorities from carrying out governmental functions and from according equal protection of the law to all citizens. Chief Judge Elbert P. Tuttle of the Fifth Circuit set aside the restraining order on July 24 on the basis that no federal question was raised by the complaint. Evidently neither Elliott nor Tuttle prepared formal opinions to support their actions. The events in Albany, however, may be traced in *Kelly v. Page*, 9 RACE REL. L. REP. 1115 (M.D. Ga., 1963), *aff'd in part, remanded in part*, 335 F.2d 114 (5th Cir. 1964). See N.Y. Times, July 22, 1962 at 32.

would have to pursue their remedies in the court."⁶⁸ Now confronted with two injunctions against the demonstrations, the protest leaders hurriedly asked Michie to dissolve his order. When Michie refused, Kunstler carried the matter before Chief Judge Simon E. Sobeloff of the Fourth Circuit. After hearing Kunstler, Sobeloff had a private telephone conversation with Michie, the substance of which was never disclosed. Apparently as a result of this conversation, Michie dissolved his injunction on July 10.⁶⁹

This minor gain for the demonstrators was more than offset, however, by Michie's other actions. He remanded all the removed contempt cases to the Corporation Court.⁷⁰ Reasoning that the accused should exhaust their remedies in the state courts, he denied the request for orders restraining enforcement of the Aiken injunction and the city ordinance limiting picketing and demonstrations.⁷¹ Virginia's political leaders were delighted with Michie's performance. Senator Robertson, for example, strongly approved Michie's course and viewed the removal proceedings as a political maneuver by Attorney General Robert F. Kennedy.⁷²

In addition, Michie's actions highlighted the central role of the federal district court in determining the course of racial demonstrations. Time was a crucial factor for the demonstrators: as the period without effective federal intervention grew longer, the prospect of success became more remote. Whatever the outcome of subsequent appellate review, the district court judge was in a position to withhold or extend an immediate and hence effective federal remedy. Certainly Michie's decisions furnished no encouragement to the demonstrators while giving a legal and psychological boost to the city at a key time in the history of the Danville demonstrations.

The attorneys for the demonstrators had filed their wide array of petitions and suits on the theory that the best defense was an aggressive assault on the state court proceedings. A study of the response of the federal district judges, however, suggests that the strategy of multiple litigation backfired. It perplexed the judges and

68. Memorandums from Justice Dept. to Len Holt, July 3, 1963 (Burke Marshall Papers in John F. Kennedy Library).

69. W. KUNSTLER, *DEEP IN MY HEART* 226-27 (1966).

70. For the order, dated July 11, 1963, remanding the criminal contempt cases see *Baines v. City of Danville*, Civil Action No. 574, Federal Records Center, Suitland, Maryland.

71. For Michie's opinion denying injunctive relief against arrests and prosecutions under the ordinance limiting demonstrations see *Chase v. McCain*, 220 F. Supp. 407 (W.D. Va. 1963). Michie evidently did not prepare opinions in his disposition of the other matters before him.

72. Letter from A. Willis Robertson to Walter L. Grant, July 12, 1963 (Robertson Papers in College of William and Mary).

caused them to downgrade, indeed, to desire to escape altogether, the Danville cases. Michie, for example, expressed a sense of relief that he was not required to deal with the thorny problems in "the numerous suits" growing out of the disorders: "Again, I am happy to say that I do not have to decide that issue in this case."⁷³ For further evidence of this skeptical judicial attitude consider the correspondence of Judge John Paul, who was named along with Michie to a three judge panel to hear the suit challenging Virginia's racial conspiracy statute.⁷⁴ Paul complained to Michie:

The complaint is about as badly drawn as it could be. It attacks the Virginia statute forbidding the incitement of racial hostilities and then proceeds to list a lot of alleged grievances which the Negroes have, but which seem to have no connection with the statute which is attacked. It is charged that the Negroes have been prevented from registering as voters, have been subjected to police brutality and that they have been denied bail and several other things. These matters are those which are protected by various federal statutes designed to protect the civil rights of all citizens, but there is no allegation in this complaint which invokes the protection of these federal statutes or makes them applicable to the alleged wrongs. In other words, the attack made by the plaintiffs is solely on that section of the Virginia Code which is cited in the complaint and to which I have referred. As far as I can see, no federal question arises either by virtue of federal statutory provisions or by the terms of the Constitution.⁷⁵

In August, Paul was even more explicit:

I might say also that, with the numerous suits which have been instituted against the city of Danville and its officials, I am in quite a state of confusion as to what the real situation is there and I cannot make very much out of the complaint in the instant case, as I previously wrote you.

He revealingly added that "I know this whole Danville business has been a headache to you"⁷⁶ Since Michie and Paul conceived of the demonstrations as a legal headache, one is hardly surprised that they were disinclined to assert federal jurisdiction.

Stymied in the district court, Kunstler and the other attorneys

73. *Chase v. McCain*, 220 F. Supp. 407, 408 (W.D. Va. 1963).

74. John Paul (1883-1964) was a resident of Harrisonburg and a member of the Republican Party. Educated at the University of Virginia, Paul was named federal district judge by President Herbert Hoover in 1932. Paul had early and consistently enforced the *Brown* edict against Virginia localities. *Allen v. School Bd.*, 144 F. Supp. 239 (W.D. Va.), *aff'd*, 240 F.2d 59 (4th Cir. 1956), *cert. denied*, 353 U.S. 910 (1957); *Kilby v. County School Bd.*, 3 RACE REL. L. REP. 972 (W.D. Va. 1958). Although his judicial orders caused schools to be closed in two areas pursuant to the program of massive resistance, Paul remained on friendly personal terms with Senator Byrd and other leaders of the Byrd organization. Letter from Paul to Harry F. Byrd, June 20, 1958 (John Paul Papers in University of Virginia).

75. Letter from John Paul to Thomas J. Michie, July 30, 1963 (Paul Papers in University of Virginia).

76. Letter from John Paul to Thomas J. Michie, August 21, 1963 (Paul Papers in University of Virginia).

for the protest movement again applied to the Fourth Circuit for an immediate hearing on Michie's orders. Danville authorities were jubilant when on July 22 the court decided to take no action. This inability to gain federal intervention completed the paralysis of the waning protests. In early August, Aiken modified and made permanent his earlier temporary injunction and resumed the trials of the contempt and ordinance violation cases.⁷⁷ The number of contempt defendants had swollen to 346.⁷⁸

At this point, however, the city overplayed its hand and finally provoked limited federal court intervention. Since each defendant demanded and was granted an individual trial, it was obvious that the trials would drag on interminably and clog the entire judicial calendar in the Corporation Court. The assignment of Judge Leon M. Brazile of Hanover County to assist Aiken in holding court provided only partial relief. To alleviate this problem, the prosecutor moved on August 5 for a change of venue for the trials of some defendants. He reasoned that the crowded docket would not permit the defendants to receive speedy trials and would burden the administration of justice. Over the objection of the defendants, the court granted the motion, and some 124 cases were transferred to other courts in Virginia from 80 to 200 miles from Danville.⁷⁹ The defendants, most of them poor, were now confronted with having to travel, and transport their witnesses, a considerable distance for trial. Pressure on the defense attorneys was, of course, greatly increased by the change of venue. The court's ruling was based on a misreading of Section 19.1-224 of the Code of Virginia authorizing a change of venue "for good cause" at the request of either the accused or the state.⁸⁰ It seems evident that the venue statute was intended to accord criminal defendants a fair and impartial trial free from local prejudice. The Danville court's action, then, was a grievous misapplication of the statute and hampered the accused

77. On August 2 Judge Aiken issued a permanent injunction against certain named defendants "and all other persons similarly situated" and "all other persons in active concert and participation with them." 38 Danville Chancery Order Book, Corporation Court 385.

78. L. HOLT, AN ACT OF CONSCIENCE 216-17 (1965).

79. Cases were transferred to courts in Lee County, the City of Bristol, Russell County, Fairfax County, Buchanan County, Hanover County, Chesterfield County, Cumberland County, the City of Hopewell, and the City of Virginia Beach. Danville Register, Aug. 6-8, 1963; 60 Danville Common Law Order Book, Corporation Court 274-83.

80. Section 19.1-224 provides in part as follows: "—A Circuit court may, on motion of the accused or of the Commonwealth, for good cause, order the venue for the trial of a criminal case in such court to be changed to some other corporation or circuit court. Such motion when made by the accused may be made in his absence upon a petition signed and sworn to by him, which petition may, in the discretion of the judge, be acted on by him in vacation . . ."

in offering a defense. The transfer of the trials to distant points struck many observers as a naked display of judicial power designed more to intimidate the defendants rather than enhance their chance for a fair trial.⁸¹

Another application to the Fourth Circuit finally produced an order favorable to the demonstrators. Attorneys for the protest movement sought an order staying all arrests, trials, and other proceedings for violation of the Aiken injunction and the ordinance restricting demonstrations.⁸² Reviewing the criminal prosecutions in the state court, and noting specifically the denial of bail to those convicted and the transfer of the cases, the circuit court restrained trials for violation of the Aiken injunction and the ordinance curtailing demonstrations. Temporary relief was granted "to protect the jurisdiction of this court pending disposition of the appeals before us" The court called upon "persons of good will of both races to establish communications and to seek eventually acceptable solutions to these problems out of which these cases arise."⁸³ It should be noted that the Fourth Circuit order, coming on August 8, was both too little and too late as far as the demonstrators were concerned.⁸⁴ The stay only halted trials for offenses against the Aiken injunction and the ordinance regulating demonstrations. Prosecutions for trespass, contributing to the delinquency of a minor, or

81. L. HOLT, AN ACT OF CONSCIENCE 217 (1965).

82. Chase v. Aiken, Civil Action No. 9084, Federal Records Center, Suitland, Maryland.

83. Baines v. City of Danville, 321 F.2d 643 (4th Cir. 1963).

84. The action of the Fourth Circuit was commended by an unlikely source, the *Richmond News Leader*. Under the editorship of James J. Kilpatrick, the *News Leader* had championed massive resistance and generally opposed the civil rights movement. Nonetheless, the *News Leader* was concerned about the manner in which Danville handled the protests and hailed the Circuit Court "for suspending the gold-plated, triple-bottomed, hand-tooled stupidity of these so-called Danville trials." Charging that Danville had abridged the right of free speech, the *News Leader* assailed "trumped-up ordinances, unwarranted arrests, drum-head trials, and autocratic decrees!" *Richmond News Leader*, Aug. 12, 1963. Reaction from Danville was swift. The *Danville Register* described the *News Leader* editorial as "half-baked comments based upon less-than-half accurate information . . ." *Danville Register*, Aug. 13, 1963. Congressman Tuck told Kilpatrick that "I was sure that you had not familiarized yourself with all of the facts in respect to the situation in Danville." William M. Tuck to James J. Kilpatrick, Aug. 14, 1963, Watkins M. Abbitt Papers, University of Richmond. In turn, the *News Leader* explained that it was not defending the excesses of the demonstrators: "When racial demonstrators run in the streets, stop automobiles, swarm into public offices, block traffic, smash windshields, hurl bricks, shoot at police cars, carry concealed weapons, trespass upon private property, prevent access to stores, lie down on bridges, and engage in noisy disturbances of the peace—and they have done all of these things in Danville—the proper course of conduct is to lock 'em up on appropriate criminal charges." The newspaper insisted, however, that while the "professional troublemakers" from various civil rights groups may "have inflamed the problem," they "found a sickness to begin with." *Richmond News Leader*, Aug. 15, 1963.

violating the parade permit ordinance were unaffected. Furthermore, the stay did not prevent continued arrests for all offenses, and the mass arrests were more effective than the trials in destroying the protest. In addition, by August the demonstrations were already dying in the face of the city's unyielding position. The protestors had lost the energy and will to extend their campaign and at this point, more than six weeks after the first application to Judge Michie, partial federal assistance did not suffice to revive the disorders. Danville had outlasted the demonstrators and won the victory.

On August 13 Aiken continued the criminal contempt cases until the federal appeal was determined.⁸⁵ In late 1963 and early 1964, however, he proceeded to hear cases of resisting arrest, disorderly conduct, violation of the parade permit ordinance, and trespass growing out of the summer disorders. Sentences for those found guilty typically imposed two to five days in jail and a fine, and the execution of the sentences was suspended pending an appeal.⁸⁶ Moreover, as a consequence of counsel's agreement to consolidate the injunction cases for trial, in September Aiken rescinded the orders transferring the venue of the 124 cases.⁸⁷

While the demonstrations ended, the legal struggle over the fate of those arrested for contempt of the Aiken injunction was just beginning. That the relief held out by the Fourth Circuit was temporary as well as limited in scope became manifest a year later when the court, sitting en banc, dissolved the temporary injunction by a three-two vote.⁸⁸ The court considered the merits of the appeals from the various decisions of Judge Michie and the majority opinion by Clement F. Haynsworth, Jr. reached the following conclusions:

1. As passions in Danville ebbed the court had no reason to conclude that "in the quieter atmosphere of the present" the contempt defendants could not obtain a fair trial.⁸⁹ The majority judges were particularly impressed by the fact that the order transferring cases away from Danville had been rescinded. They assumed that bail would be available pending appeal to the Supreme Court of Appeals of Virginia, "a court which merits the high reputation it enjoys."⁹⁰ Since the temporary injunction had served its purpose of protecting the justiciability of these appeals, the order was dissolved.

85. 60 Danville Common Law Order Book, Corporation Court 292 (1963).

86. *Id.* at 401-07; 61 *id.* at 113-15, 232-34.

87. 60 Danville Common Law Order Book, Corporation Court 399 (1963).

88. *Baines v. City of Danville*, 337 F.2d 579 (4th Cir. 1964).

89. *Id.* at 594.

90. *Id.*

2. The actions challenging the ordinance limiting picketing and demonstrations, the parade permit ordinance, and the Aiken injunction were remanded to the district court for a hearing to determine whether injunctive relief against future prosecutions was appropriate. The district court was instructed to restrain further arrests under the ordinances and Aiken injunction "only if he finds that in combination they have been applied so sweepingly as to leave no reasonable room for reasonable protest, speech and assemblies."⁹¹

3. Under the governing statute the court had no jurisdiction to review the remand of the contempt cases to the Corporation Court.⁹²

4. The suit against the Virginia Employment Commission for denying unemployment compensation benefits to defendants awaiting trial was dismissed because the Commission had never been made a party to the proceedings.⁹³

Chief Judge Sobeloff and Judge J. Spencer Bell dissented in part. They raised no objection to the handling of the remand and unemployment insurance questions. The dissenters, however, were concerned about the suppressive effect of the ordinances and the Aiken injunction on attempts by the Negro defendants to express their grievances:

The plaintiffs have alleged that the official and unofficial power structure of the white community has been successfully mobilized to deny them their First Amendment rights to protest their relegation to second class citizenship. They allege that the police, by means of violence and brutality exercised during wholesale arrests upon trumped up charges; the judiciary, by means of broad and vague injunctions; and the City Council, by means of its unconstitutional ordinances against picketing and parading, have succeeded in crushing the minority's carefully organized effort to express its discontent with the status quo.⁹⁴

The dissenters argued that the court should have considered whether the ordinances and the Aiken injunction were "unconstitutional on their face." They felt that if the district judge should conclude that "a clear and imminent danger of irretrievable injury" to the first amendment rights of the protesters existed, then he should enjoin both pending and future criminal prosecutions.⁹⁵

The majority and minority opinions parted company largely over the extent to which Danville had curtailed the freedom of as-

91. *Id.* at 596.

92. *Id.* at 596-98.

93. *Id.* at 598-99.

94. *Id.* at 599-600.

95. *Id.* at 601.

sembly and protest. Judge Haynsworth ruled that the ordinances and the Aiken injunction "were far from absolute."⁹⁶ Moreover, the majority was aware of excesses committed by the demonstrators and consequently was inclined to balance the rights of the protesters against the rights of the Danville community. Lastly, the majority argued that the pending state court proceedings would provide an adequate legal remedy for the defendants. The dissenters, on the other hand, were clearly moved by the plight of the Negro demonstrators and by their fear that municipal actions had chilled all expression of racial grievances. They suggested that the present calm in Danville, on which the majority had relied, might mean that the demonstrators "have been so cowed that they no longer dare to express themselves. . . ."⁹⁷ Their opinion gave no attention to the rights of private property owners and others in Danville.

There is only a sketchy record of the action taken by the district court on the matters remanded for additional consideration at a hearing. In December of 1966, Judge Michie refused to restrain the trials for violation of the Aiken injunction on the ground that the demonstrators must first exhaust their state court remedies.⁹⁸ No federal injunction was ever issued against further arrests and trials for violation of the various municipal ordinances and the Aiken injunction. By August of 1964 the racial disorders in Danville were long since concluded, and judicial relief of this nature was unnecessary.

The removal of the contempt cases from the Corporation Court, however, was presented anew to the Fourth Circuit on a petition for rehearing. The Civil Rights Act of 1964 amended the removal statute to permit appellate review of remand orders in civil rights cases. The circuit court ruled that the Act should be applied to appeals pending on its effective date and proceeded to reconsider the removal problem. Sitting *en banc*, the Fourth Circuit again divided by a three-two margin.⁹⁹ Chief Judge Haynsworth, writing for the majority, held that the cases were properly remanded. The majority opinion primarily analyzed 28 U.S.C. section 1443(1), which provides for the removal of civil actions on criminal proceedings

[a]gainst any person who is denied or cannot enforce in the courts of such

96. *Id.* at 594.

97. *Id.* at 600.

98. Danville Bee, Dec. 22, 1966.

99. *Baines v. City of Danville*, 357 F.2d 756 (4th Cir.) *aff'd*, 384 U.S. 890 (1966) (5-4). The majority opinion briefly treated and rejected the contention that removal could be accomplished under 28 U.S.C.A. § 1443(2), holding that removal under that section only applied to federal officers performing their duties under federal law.

State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof

Haynsworth determined that the clause "a right under any law providing for the equal civil rights of citizens" did not furnish a basis for removal of first amendment claims.¹⁰⁰ He contended that the right of removal must appear in advance of trial and could not be predicated on supposition that the defendant would be unable to enforce a protected right during trial. Haynsworth also ruled:

It would appear that the requirement of a showing of inability to enforce protected rights in the courts would require us to view all of its courts vertically, and that even a successful showing of unfairness in the trial court would not be sufficient unless it were also shown that the appellate court was unfair, too, or that the unfairness of the trial court was not correctable on appeal or avoidable by a change of venue.¹⁰¹

Hence, the contention of the protesters that they could not obtain a fair trial before Judge Aiken in the Corporation Court was not enough to sustain removal. Haynsworth stressed that there was no allegation of unfairness on the part of the Virginia Supreme Court of Appeals, "a court which showed its courage and faithfulness to constitutional principles when . . . it struck down Virginia's massive resistance laws"¹⁰²

Once again Judges Sobeloff and Bell dissented in a lengthy opinion which accused the majority of giving an "extremely narrow construction" to the removal statute. Sympathetic with the aims and aspirations of the Negro protest movement, the dissenters saw the problem in the light of contemporary racial problems:

Completely ignored in the majority opinion are the broader considerations unfolded by recent events and expounded in the latest decisions of the Supreme Court. In the full century since the Civil War, Congress has enacted ten civil rights statutes, three of them within the past ten years. The national purpose, as declared by Congress and the Court, has been made manifest. It is to make freedom a reality for the Negro, to secure him against the destruction of his most precious constitutional rights, and generally to permit him to enjoy the guarantee of citizenship equally with members of the white race. Nothing compels the continuance of a narrow legalistic interpretation of the removal provision, a statute which forms an indispensable link in the congressional plan to effectuate equal rights. It is stultifying to the recently enacted section 901, permitting appellate review of remand orders, to persist in the devitalizing construction of section 1443. Legislating a right of appeal would be of little worth if Congress did not mean to give section 1443 new force.¹⁰³

Finding that the state appellate process was inadequate to guarantee that constitutional rights would be protected, the minority de-

100. *Id.* at 764.

101. *Id.* at 769.

102. *Id.*

103. *Id.* at 788.

clared that the Negro protesters were entitled to removal and a "fair trial" in the federal district court.

The Supreme Court affirmed the Fourth Circuit decision by a five-four margin¹⁰⁴ on the strength of its opinion in *City of Greenwood v. Peacock*.¹⁰⁵ Justice Potter Stewart's majority opinion closely paralleled the reasoning of Judge Haynsworth. Stewart held that the first amendment rights of free expression were not rights arising under a "law providing for . . . equal civil rights" within the meaning of 28 U.S.C. section 1443(1).¹⁰⁶ He further ruled that

The civil rights removal statute does not require and does not permit the judges of the federal courts to put their brethren of the state judiciary on trial. Under § 1443(1), the vindication of the defendant's federal rights is left to the state courts except in the rare situations where it can be clearly predicted by reason of the operation of a pervasive and explicit state or federal law that those rights will inevitably be denied by the very act of bringing the defendant to trial in the state court.¹⁰⁷

Stewart emphasized that any denial of federal constitutional rights uncorrected by the state courts could be remedied by Supreme Court review or federal habeas corpus. His opinion concluded with a consideration of the immense practical problem that would be placed upon the federal courts if thousands of criminal removal cases were tried annually before federal judges.¹⁰⁸ Justices Douglas, Brennan, Fortas, and Chief Justice Warren dissented, maintaining that the Court gave a narrow reading to the removal statute.¹⁰⁹

The Kennedy Administration and Danville

Victor S. Navasky has charged that the Kennedy administration came into office with a civil rights program that was considerably more limited than the President's campaign rhetoric suggested. It was willing to encourage racial integration, but not at the price of social tranquility. Contrary to the white South's image of Attorney General Robert F. Kennedy, Navasky observed, "he was cautious to the point of timidity when it came to risking any kind of confrontation with an escalation potential."¹¹⁰ Although this is how the Kennedy years appear in retrospect to the civil rights activist, the white South did indeed see Kennedy's record very differently.

President Kennedy had little choice but to maintain as cordial

104. *Baines v. City of Danville*, 384 U.S. 890, *rehearing denied*, 385 U.S. 890 (1966).

105. 384 U.S. 808 (1966).

106. *Id.* at 825.

107. *Id.* at 828.

108. *Id.* at 832-34.

109. *Id.* at 835-54.

110. V. NAVASKY, *KENNEDY JUSTICE* 228 (1971).

relations as possible with Virginia leaders. Byrd and Robertson headed the Senate Finance and Banking Committees respectively. Congressman Howard W. Smith was chairman of the House Rules Committee, which handled all legislation cleared for action in the House of Representatives. These powerful Virginians were in positions to delay or even block much of the New Frontier legislation, and Kennedy was understandably anxious not to alienate them if it could be avoided. Efforts by the administration to compel a reopening of public schools in Prince Edward County, although not immediately successful, had already severely strained Kennedy's dealing with Byrd and other Virginia leaders.¹¹¹

Further, the political climate in the Old Dominion necessarily inhibited any move by the Kennedy administration to enter the Danville situation. John F. Kennedy had never been especially popular in Virginia. Richard M. Nixon had carried Virginia in 1960, with the tacit assistance of the Byrd organization, and nothing in the next few years improved Kennedy's image in the state. The administration, of course, was tarnished in Virginia by the onerous task of enforcing the *Brown* edict. More to the point, the Virginia leadership was convinced that by 1963 the administration was promoting racial demonstrations across America in order to marshal national backing for the Kennedy civil rights proposals submitted in June of that year.¹¹² Governor Harrison charged that "these mass demonstrations and disorders" were "given encouragement by the President himself."¹¹³ Delegate C. Harrison Mann, Jr. complained directly to the President that members of his administration were inciting riots and bloodshed.¹¹⁴ Senator Robertson likened the demonstrations to extortion and asserted that many irresponsible officials of government . . . were inciting Negroes to riot.¹¹⁵

111. Department of Justice press release, April 26, 1961, Byrd Papers; Richmond News Leader, April 27, 1961.

112. For example, the *Danville Register* charged that the Kennedys were promoting violence in Birmingham. "The sad conclusion of the action by the Kennedys and Dr. King is that the Government of the United States, as the tool of the Kennedys, cannot stand law and order in the South. Only by shattering enforcement of law and order, or by actions lending an impression that law and order has been shattered, can the full and brutal forces at the command of the Kennedys be applied against the people in the South who defend themselves against extra-legal action to bring about immediate total and complete race-mixing in any locality chosen by Dr. King and his colleagues in riot-making." *Danville Register*, May 14, 1963.

113. Harrison draft statement, *supra* note 54. See also letter from Harrison to Sam J. Ervin, Jr., Aug. 12, 1964 (Harrison Executive Papers).

114. Letter from C. Harrison Mann, Jr. to John F. Kennedy, June 7, 1963 (Robertson Papers in College of William and Mary).

115. Letter from A. Willis Robertson to C. Harrison Mann, Jr., June 10, 1963 (Robertson Papers in College of William and Mary).

The Kennedy strategy in Danville infuriated the Byrd leaders while, ironically, furnishing support for the Navasky assessment of the administration's limited civil rights program. Already aggravated over federal enforcement of *Brown*, the Virginians were hypersensitive to any federal action in the racial area. They saw every step by the Justice Department, however modest, as a politically inspired effort to prevent local law enforcement officials from keeping order in the state. Yet, from the point of view of Danville blacks, what did the Kennedy administration really do to assist them? There was no Justice Department intervention of any sort in June, the most tense month, and no suit was ever brought to redress police violence in Danville.¹¹⁶ A brief in support of the removal petition was the only tangible move undertaken on behalf of the demonstrators. To be sure, Justice Department representatives monitored events in the troubled city closely. Department officials profitlessly urged the city and the demonstrators to negotiate their differences. This was the full extent of Kennedy administration involvement in Danville. Danville blacks were distressed at this lack of interest in their problems. Negroes intermittently picketed the FBI office in Danville, and one protester carried a revealing placard reading "What has the Justice Department Done?"¹¹⁷ Holt explained:

. . . the Kennedy administration responded in characteristic fashion First it brought about a cessation of demonstration, if possible, and then it wielded pressure on city hall or local merchants to make minor concessions. The third step consisted of convincing the persons involved in racial protest that they had gained a great victory while simultaneously persuading city hall or the merchants that they had given up nothing important.¹¹⁸

The Danville experience illustrates the central paradox of the Kennedy civil rights intervention in the South—that the rage of southern conservatives and the disappointment of Virginia Negroes was equally merited. By justifying and seeking legal protection for the demonstrators, and by incorporating their demands in his legislative program, Kennedy inevitably, but perhaps inadvertently, encouraged and dignified the disorders. In some measure, then, Kennedy must be held responsible for the wave of urban unrest and the tendency to direct physical action which appeared in the late

116. In September of 1963 Burke Marshall wrote: ". . . I am trying to develop a broader kind of case against this sort of repressive and violent police action. We have one, for example, in Danville, Virginia, but I think it would not be wise to bring it there." Memorandum for the Attorney General, Sept. 18, 1963 (Burke Marshall Papers in John F. Kennedy Library).

117. Danville Register, Aug. 6, 1963.

118. L. HOLT, AN ACT OF CONSCIENCE 177-78 (1965).

1960's.¹¹⁹ On the other hand, while he aroused heightened expectations by blacks in America, Kennedy was nonetheless too deliberate to satisfy rapidly the promises fired up by his gestures and pronouncements. In short, his moralistic rhetoric vastly outstripped his performance, a gap that was bound to fuel the very disorders that he claimed to disapprove.

This interpretation accords with the highly suggestive study of Henry Fairlie, in which he argues that Kennedy relied upon the politics of expectation.¹²⁰ Fairlie contends that the Kennedy administration governed by keeping people in a constant state of expectation and by encouraging an exaggerated notion of what politics could achieve. When the aroused hopes were necessarily unrealized, the public mood turned to the frustration and disillusionment of the 1960's. Fairlie points out that Kennedy moved on civil rights only after Negroes had taken to the streets, and concludes:

It is false to try to manufacture a "consensus" in such a situation; and it was false in the 1960's to try to do so in the cause of civil rights. It could only be a distraction, certain in the end to provoke the frustration as much of the advocates of the cause, whose expectations had been aroused, as of its opponents, who felt with some justice that the political processes of the country had been bypassed.¹²¹

Disposition in the State Courts

In December of 1966 Aiken resumed the long-stalled trials of the persons accused of violating his injunction. By consent of the state and the defendants, groups of cases were consolidated and tried together by the court without a jury.¹²² The trials now pro-

119. In his January 1963 State of the Union message Kennedy did not mention new civil rights legislation. The disorders of April and May in Birmingham induced the administration to propose a sweeping civil rights bill, which eventually became the Civil Rights Act of 1964. The Kennedy recommendations fit neatly into the administration pattern of seeking to manage the civil rights movement and channel its energy into peaceful courses. "Even the proposed new civil rights legislation . . .," Navasky contended, "was designed to cool down trouble as much as to correct injustice." V. NAVASKY, *KENNEDY JUSTICE* 205 (1971). Of course, it seems most likely that there would have been no Kennedy civil rights proposal in 1963 but for the Birmingham disturbances. Thus, one could surely argue that Kennedy did in fact yield to pressure generated by mob activities in the street. In other words, the Kennedy concern about halting the demonstrations took the form of granting the demands of the protestors, a certain prescription for renewed street violence.

120. H. FAIRLIE, *THE KENNEDY PROMISE: THE POLITICS OF EXPECTATION* 13-16 (1973). In a similar analysis of contemporary urban problems, Edward C. Banfield has stressed the major role of expectancy in our understanding of city life. "The answer," he observed, "is that the improvements in performance, great as they have been, have not kept pace with rising expectations. In other words, although things have been getting better absolutely, they have been getting worse relative to what we think they should be." E. BANFIELD, *THE UNHEAVENLY CITY: THE NATURE AND THE FUTURE OF OUR URBAN CRISIS* 19 (1970).

121. FAIRLIE, *supra* note 120, at 255.

122. 65 Danville Common Law Order Book, Corporation Court 316; *Commonwealth v. Burrell*, transcript, 4.

ceeded expeditiously, and on some days Aiken heard three sets of cases.¹²³ As many as twenty-nine defendants were tried in a group, many of them for multiple offenses.¹²⁴ It was stipulated that when a defendant failed to appear on the date of his trial, the state could present its evidence against the defendant and that such could be used at a later trial.¹²⁵ Not all the accused were convicted. The Commonwealth's Attorney announced that he was not going to prosecute certain defendants, presumably for lack of evidence, and they were ordered discharged.¹²⁶ Additionally, Aiken dismissed other cases after hearing the evidence.¹²⁷ Numerous defendants failed to appear, and Aiken declared as many as eleven 500-dollar bonds forfeit in a single day.¹²⁸

In the course of the trials, defense counsel routinely moved to strike the evidence of the prosecution on the following grounds:

1. that there was no showing of service of the Aiken injunction, or that the defendants had actual notice thereof;
2. that even if service had been made, the defendants were not named or described in the order and hence not within its coverage;
3. that the acts committed by the defendants were not in violation of the injunction;
4. "that the injunction denied due process of speech and assembly in violation of the First and Fourteenth Amendments to the Constitution of the United States."¹²⁹

As would be expected, Aiken consistently overruled the motions. The leaders of the demonstration received relatively severe sentences, with Rev. Lawrence Campbell drawing the stiffest punishment of 250 days and a fine of 2,500 dollars. The usual sentence for a single violation was a ten day term at the city prison farm, of which eight days were suspended, and a fine of twenty dollars.¹³⁰ Those convicted were admitted to 500- or 1,000-dollar appeal bonds. Aiken refused to release them on personal recognizance, noting the poor experience with defendants appearing for trial.¹³¹

123. 66 Danville Common Law Order Book, Corporation Court 21-27, 32-41.

124. *Id.* at 9-11.

125. *Id.*; Commonwealth v. Burrell, transcript, 3a.

126. 65 Danville Common Law Order Book, Corporation Court 304-05; 66 *id.* at 15, 53.

127. 66 *id.* at 46, 53-56.

128. 65 *id.* at 333-37.

129. *Id.* at 305-06, 317-19; Commonwealth v. Burrell, transcript, 126-27.

130. 65 Danville Common Law Order Book, Corporation Court 317-19.

131. Commonwealth v. Bethel, transcript, 217.

Judge Aiken felt that his sentences were very mild. "I realize," he declared from the bench, "that I am being rather lenient on these people. I don't know but what I am being too lenient on them."¹³² Even Samuel W. Tucker, NAACP attorney and one of the defense counsel, agreed that "the court has imposed a nominal fine and a short jail sentence."¹³³ Aiken's analysis of the question of sentences was most fully elaborated at the end of the first group of trials:

The Court is considerably disappointed about these defendants. As Mr. Ferguson pointed out, not a single defendant has expressed any regret for disobeying the Court's orders. Not a single lawyer representing these defendants has expressed any regret about it that I know. They are not willing to say that they were mistaken and misguided in doing what they did, and maybe they don't think so. I don't know. I am disappointed too in the attitude of some of the leaders of this movement, especially the ministers . . . and the Court thinks that he [defendant Reverend McGhee] ought to have been advising the people that he was leading there that night to obey the Court's order rather than leading them in demonstrations . . . The Court feels that it is its duty to uphold the dignity and self-respect of this Court, and when this Court makes an order, it's got to be obeyed and anybody who violates it has got to pay some penalty for it even though it may be small.¹³⁴

Assuming that the evidence supported a determination of guilt, then Aiken was unquestionably correct in passing sentence on the convicted defendants. The sentences were hardly onerous, and they served to uphold the rule of law over the resort to the streets. Surely the delay between the disorders and the time of the trial—a delay caused in large part by the futile efforts at removal—could not be considered as an excuse for criminal conduct. A contrary outcome would have permitted the demonstrators to evade the consequences of their illegal activities by the mere passage of time.

Although his punishments were moderate, Aiken's handling of defense counsel and private criticism was inexcusable and again showed all too clearly his overbearing character. On December 20, 1966, he found Ruth L. Harvey, a Danville attorney representing the defendants, guilty of contempt for allegedly misleading the court with respect to her representation of defendant Leonard Holt. At a pre-trial conference she advised Aiken that she represented Holt and that he would appear for trial. Holt subsequently failed to attend, and Miss Harvey explained that she was no longer his attorney. Aiken fined her twenty-five dollars.¹³⁵ The Virginia Supreme Court of Appeals unanimously reversed this absurd judgment, hold-

132. Commonwealth v. Burrell, transcript, 185.

133. Commonwealth v. Bethel, transcript, 217.

134. *Id.*

135. Danville Bee, Dec. 21, 1966.

ing that the statements of Miss Harvey "were not sufficient to warrant the finding of contempt against her."¹³⁶

Even more controversial was the Taylor affair. Shortly after the trials resumed, W. Leigh Taylor, the director of education and training at Dan River Mills, wrote a personal letter to Judge Aiken in which he charged that the Judge's imposition of jail sentences "served to aggravate a situation which has been improving constantly."¹³⁷ He referred to "petulance on the part of the judge" and characterized Aiken's disposition as "an inane decision." Aiken reacted swiftly, ordering the arrest of Taylor on a charge of contempt of the judge of the court. Arrested at his mill office, Taylor admitted writing the letter and apologized to Aiken. The apology was to no avail, and Aiken found Taylor in contempt, sentencing him to ten days, eight of which were suspended, in the city prison farm and a fine of fifty dollars.¹³⁸

In a free society, judges are not immune from criticism, and there can be no doubt that Aiken's behavior toward Taylor was a serious error which curtailed constitutionally protected freedom of speech and reflected negatively on his judicial temperament.¹³⁹ Returning to an old target, the *Richmond News Leader* declared that Aiken "has grossly abused his powers. In our opinion, he ought to be impeached."¹⁴⁰ In the resulting furor the Danville Bar Association once more came to Aiken's defense with a resolution which described the *News Leader* editorial as "irresponsible, despicable, thoroughly unjustified and designed to hold the dignity of the Court up for public ridicule."¹⁴¹ The lawyers recorded their "highest respect for and confidence in Judge Aiken." By February of 1967, Aiken evidently thought better of his hasty action and suspended Taylor's entire jail sentence.¹⁴²

As the federal courts anticipated, the constitutional issues raised by the Negro protest movement were resolved by the state courts. Under the rationale of the federal deference policy, as expressed by the *Peacock* opinion, it was incumbent upon the state courts to decide the criminal cases in good faith and not to permit the law to become a hindrance to the expression of unpopular views.

136. *Harvey v. Commonwealth*, 209 Va. 433, 437, 164 S. E. 2d 636, 638 (1968).

137. For the text of Taylor's letter see *Danville Bee*, Dec. 20, 1966.

138. 65 *Danville Common Law Order Book*, Corporation Court 319-20.

139. Taylor's action in sending a personal letter to Aiken scarcely presented a danger to the administration of justice. *Wood v. Georgia*, 370 U.S. 375 (1962).

140. *Richmond News Leader*, Dec. 21, 1966.

141. *Danville Bee*, Dec. 23, 1966.

142. 66 *Danville Common Law Order Book*, Corporation Court 14.

The Fourth Circuit had repeatedly expressed its confidence in the judicial integrity of Virginia's highest court. Its conscientious and deliberate treatment of the varied issues posed by the disorders amply vindicated the trust of the Circuit Court.

In early 1967 the first of a long series of appeals from the Danville Corporation Court were decided by the Supreme Court of Appeals. The most important device used by the city to halt the demonstrations was the Aiken temporary injunction of June 6, later made permanent. This injunction was considered by the Supreme Court of Appeals in *Thomas v. City of Danville*.¹⁴³ On appeal from the order entering a perpetual injunction, the defendants raised no factual or procedural questions and pressed the contention that the order was contrary to the protections of the first and fourteenth amendments. The Court ruled that a court of equity had jurisdiction to enjoin acts that were a menace to the public rights or welfare.¹⁴⁴ Indeed, the defendants conceded that Aiken could properly restrain obstruction of traffic and the obstruction of the use of public and private facilities. They asserted, however, that the remainder of the Aiken injunction violated their freedom of speech and assembly. The Supreme Court of Appeals unanimously disagreed and upheld the permanent injunction in the main. Relying upon *Adderly v. Florida*,¹⁴⁵ the court pointed out that the Constitution does not guarantee that individuals can protest whenever and however they please. Concerned about the rights of the community as a whole, the court declared: "The rights guaranteed to the defendants under the Federal Constitution were not a license for them to trample upon the rights of the public, as was done in some of the incidents in the present case."¹⁴⁶

Thereupon the Supreme Court of Appeals examined each item of the Aiken injunction. It had no difficulty upholding the prohibitions against assaults on persons and damaging property, against inciting persons to riot or violation of law, and against participation in mob violence or riot. Two items of the injunction were declared invalid on the ground that freedom of speech was protected unless shown likely to produce an evil greater than mere public inconveni-

143. 207 Va. 656, 152 S.E.2d 265 (1967).

144. The defendants also contended that certain items in the injunction enjoined violations of criminal law and thus deprived them of the right to trial by jury with respect to such violations. The court rejected this argument, pointing out that "such injunctive restraints are not criminal in character but are civil; that their purpose is not to convict and punish for violation of the law, but to prevent such violation." 207 Va. at 664, 152 S.E.2d at 270.

145. 385 U.S. 39 (1966).

146. 207 Va. at 661, 152 S.E.2d at 269.

ence.¹⁴⁷ The deleted portions of the order read as follows:

4. From creating unnecessarily loud, objectionable, offensive and insulting noises, which are designed to upset the peace and tranquility of the community.

6. From engaging in any act in a violent and tumultuous manner or holding unlawful assemblies such as to unreasonably disturb or alarm the public within the City of Danville.

Lastly, the court modified the provision which restrained the defendants from participating in meetings where violations of the law or the injunction "are suggested, advocated or encouraged." The court eliminated the word "suggested," fearing that it would inhibit the mere discussion of the validity of such laws and the injunction.¹⁴⁸ No act that could legitimately be described as an exercise of free speech was prevented under the Aiken injunction as modified.¹⁴⁹

The parade permit ordinance posed the second constitutional problem for Virginia's highest court in *York v. City of Danville*.¹⁵⁰ The court's opinion, again unanimous, declared that the right to conduct a parade was "subject to reasonable and nondiscriminatory regulation."¹⁵¹ Nonetheless, the court held that the Danville ordinance, requiring an application for a parade permit to be filed "not less than thirty days nor more than sixty days" before the date of the parade, was arbitrary and oppressive.¹⁵² The practical effect of this ordinance, enacted while the disorders were continuing, was to prevent the defendants from demonstrating during the thirty day waiting period. Hence, the parade ordinance was held to constitute "an arbitrary and unreasonable prior restraint upon the rights of freedom of speech and assembly . . ."¹⁵³ The *York* opinion indicates anew that the court was prepared to uphold first amendment rights to express grievances.

The Supreme Court of Appeals readily disposed of some lesser matters emanating from the disorders. Convictions for trespass on

147. *Id.* at 662-63, 152 S.E.2d at 269-70.

148. *Id.* at 664, 152 S.E.2d at 270.

149. In December of 1963 Burke Marshall expressed a contrary view with respect to the Aiken injunction: "In Danville . . . there has been repressive police action, and the use of state and federal injunctions against demonstrations which will eventually be held to be unconstitutional." Memorandum for the Attorney General, Dec. 2, 1963 (Burke Marshall Papers in John F. Kennedy Library).

150. 207 Va. 665, 152 S.E.2d 259 (1967).

151. *Id.* at 669, 152 S.E.2d at 263.

152. For the text of the parade permit ordinance see 207 Va. at 667-68, 152 S.E.2d at 261-62.

153. *Id.* at 671, 152 S.E.2d at 264.

private property and blocking ingress and egress to Dan River Mills were sustained.¹⁵⁴ In another action, the court affirmed a forfeiture of a bail bond when a defendant failed to appear for his trial, scheduled some three and one-half years after the demonstrations had occurred.¹⁵⁵

An appeal dealing with arrests under the June 6 temporary injunction reached Virginia's highest court in 1970. The court regarded the constitutionality of the order as having been settled by the *Thomas* opinion, and considered the case solely in terms of notice and the sufficiency of the evidence upon which the defendant was convicted. Since the defendant was not named in the injunction, the court ruled that the state must prove "that he had actual notice or knowledge of the injunction before he committed prohibited acts."¹⁵⁶ Concluding that the evidence sustained a finding of actual notice on the part of the defendant, the contempt conviction was affirmed.

Finally, in January of 1973, the Supreme Court of Appeals decided the last batch of cases emanating from the Danville disorders. The high court asked the Commonwealth's Attorney for Danville to review the pending appeals in light of the *Thomas*, *York*, and *Rollins* rulings.¹⁵⁷ He conceded that in many of the contempt cases the state had failed to prove notice as required in *Rollins*. Violations of the parade permit ordinance had to fall as a consequence of *York*. The Commonwealth's Attorney further stipulated that there was inadequate evidence to uphold many of the convictions for resisting arrest, disorderly conduct, and trespassing.¹⁵⁸ Thus, without contest the Virginia Supreme Court overturned the convictions of nearly 270 persons.¹⁵⁹ At the same time, the court upheld the contempt convictions of the persons named in the injunction and served with a copy thereof. Sentences for illegal picketing, trespassing, and obstructing traffic were also sustained.¹⁶⁰

A month later, and nearly ten years after the demonstrations, the prolonged legal proceedings reached their anti-climactic end. Aiken having died in 1971, and the new Danville judge having disqualified himself, Judge Glynn R. Phillips, Jr. of Clintwood was assigned to hear a defense motion to suspend the fines and jail

154. *Hubbard v. Commonwealth*, 207 Va. 673, 152 S.E.2d 250 (1967).

155. *McGhee v. Commonwealth*, 211 Va. 434, 177 S.E.2d 649 (1970).

156. *Rollins v. Commonwealth*, 211 Va. 438, 441, 177 S.E.2d 639, 642 (1970).

157. Letter from William H. Fuller III to author, Apr. 25, 1973.

158. 75 Danville Common Law Order Book, Corporation Court 428-39.

159. *Id.*; Richmond News Leader, Jan. 13, 1973.

160. 75 Danville Common Law Order Book, Corporation Court 439-43.

sentences of those persons whose convictions were affirmed. Over the heated objection of the Commonwealth's Attorney, Judge Phillips suspended the jail terms, conditioned on good behavior for two years, but directed payment of fines totalling more than 5,000 dollars.¹⁶¹

Conclusion

The Danville demonstrations of 1963 were a failure. Municipal authorities made only modest concessions to the demands of the protest movement and life resumed its traditional pattern. White racial attitudes were unchanged.¹⁶² The legal aftermath of the hectic summer events was, in an important sense, irrelevant to the successful crushing of the disorders. Probably the principal reason for the collapse of the protests was the inability of Danville Negroes to enlist meaningful assistance from either the Kennedy administration or the federal courts. During the critical months of June and July, the city was able to harass and arrest the demonstrators at will under a host of state and municipal provisions. While police violence was not a conspicuous feature of the Danville plan, the police excesses on the night of June 10 were calculated to discourage protest activities.

Judge Aiken significantly contributed to the chilling of the demonstrations.¹⁶³ His injunction provided the basis for hundreds of arrests, and the arrests in turn permitted the court to require bail of the accused awaiting trial. With many blacks unemployed or holding marginal jobs, this bail policy fell upon the poorest members of the Danville community. Moreover, Aiken's abrupt and arbitrary conduct in the first contempt trials unmistakably conveyed the impression that the demonstrators could expect swift and harsh judicial treatment at his hands. Faced with the certainty of arrest and consequent bail expenses and the likelihood of a jail term, many protesters came to have second thoughts. Aiken's deportment, then, furnished an excellent example of the utilization of the state court

161. 76 *id.* at 11.

162. In June of 1964 the first municipal elections after the disorders produced a complete triumph for supporters of a tough policy against demonstrations. Five candidates who defended the city's handling of the demonstrators and were allied to John W. Carter easily won all the vacancies on the city council, defeating Negro and moderate candidates. *Richmond News Leader*, June 10, 1964; *N.Y. Times*, June 10, 1964.

163. Aiken was re-named judge of the Corporation Court by the legislature in February of 1968. He was elected by a margin of 99-7, with only the Republican minority in the House of Delegates opposing him because of his advanced age. There seems to have been no open discussion of Aiken's role in the demonstration cases. *Journal of the Senate of Virginia*, Regular Session, 310-15 (1968); *Richmond Times-Dispatch*, Feb. 10, 1968.

trial bench as an additional club to undercut racial disorders. His stern resistance to the demonstrations exacted a heavy price in terms of judicial integrity. Aiken was all too obviously part of a municipal power structure dedicated to white supremacy and the racial status quo.

Nevertheless, it is entirely possible to offer a partial justification for the city's method of handling the unrest. In at least some measure, the Negro demonstrations of the 1960's were an attempt to create tensions and intimidate the white public into taking actions favored by the black minority, or, that failing, to provoke such a savage reaction from the whites as to arouse national public opinion. Violence and threats of violence were an integral part of this strategy. It is to the credit of Virginia leaders at all levels that they recognized this overt threat and refused to yield to extra-legal tactics. One of the most unhappy legacies of the 1960's was the widespread notion that questions of public policy should be determined by mobs in the street.¹⁶⁴ Not infrequently it seemed that even the federal judiciary viewed the behavior of Negro demonstrators as somehow above the law. At first glance the judicial receptivity to civil rights demands would appear to remove any necessity for protest activity, but in fact the judicial climate encouraged the belief that almost any conduct by blacks in the name of "civil rights," short of personal violence, would be upheld as a form of free expression. Whatever the flaws in Danville's handling of the demonstrations, Virginians correctly insisted upon obedience to law and established procedure. Illegal practices in Danville or errors by Judge Aiken could be corrected on appeal and did not furnish an excuse for street mobs.

Failing to coerce the whites, the Negro demonstrators sought to arouse some type of national support. Here, too, Danville Negroes were disappointed. The low profile of Governor Harrison was the decisive factor in keeping Danville out of the national headlines. Holt revealed the publicity consciousness of the protestors when he lamented that the press "had forsaken Danville, finding nothing spectacular about the routine arrests and demonstrations. . . ."¹⁶⁵ When some provocative events in Danville threatened to generate outside attention, national developments fortuitously overshadowed

164. Elliot Zashin has recently argued that the civil rights movement did not rely upon litigation or upon convincing the electorate, but "hoped to force southern whites to abandon segregation both by confronting them directly and by creating publicity that would apply still more pressure." Zashin, *Civil Rights and Civil Disobedience: the Limits of Legalism*, 52 *TEX. L. REV.* 285, 293 (1974).

165. L. HOLT, *AN ACT OF CONSCIENCE* 206 (1965).

the demonstrations. For example, the March on Washington by civil rights groups on August 28 and the maneuvers over the Kennedy civil rights proposals dominated the domestic news coverage in the summer of 1963. Without the kind of federal assistance that publicity could arouse, there was never much doubt that Danville would crush the disorders.

The demonstrators were unquestionably entitled to engage in peaceful picketing and orderly marches to express their dissatisfaction with the racial conditions in Danville. Indeed, the initial demonstrations were peaceful and without incident. Not surprisingly, the protestors soon found that the white citizens of Danville paid no attention to such activities. Accordingly, they resorted to extralegal tactics for which they erroneously claimed first amendment protection, thereby blurring both the constitutional issues and their own coercive and publicity-seeking aims. When the Corporation Court and the city council sought to halt these unlawful activities, the protestors promptly alleged that the judicial and municipal responses were overly broad and forbade conduct protected under the first amendment. Conveniently overlooked was the indisputable evidence that their own unlawful conduct had caused the prohibitions of which they complained.

Finally, the Danville imbroglio calls into question the image of the federal courts and the Kennedy administration as stalwart champions of the Negro protest movement. At no point were the demonstrators able to secure meaningful judicial relief. In the last analysis, the federal courts respected the traditional deference to the adjudication of criminal cases in the state courts. The remand of the Danville contempt cases was certainly appropriate as a matter of general policy, but it nevertheless allowed the state court to maintain the pressure against the disorders. The Kennedy administration, for its part, was simply not as aggressive on the racial front as either the Danville blacks hoped or the Virginia whites feared.

By February of 1973 the sentencing of the Danville demonstrators was finished and a violent chapter in Virginia's history closed.¹⁶⁶ The Danville experience suggests the limitation of mass demonstra-

166. The defendants indicted under Virginia's racial conspiracy statute were never brought to trial. Letter from William H. Fuller III to author, Feb. 23, 1973. Although the challenge to the constitutionality of the statute was referred to a 3-judge federal court, no action was taken after the death of Judge Paul in 1964 and the suit was dismissed in 1967 for failure to prosecute. *Adams v. Aiken*, Civil Action No. 584, Federal Records Center, Suitland, Maryland. A similar statute was held unconstitutional in *Herndon v. Lowry*, 301 U.S. 242 (1937).

tion as a tactic to encourage social change. Only under unique circumstances—favorable national publicity, clumsy and obnoxious local government authorities subject to ready vilification, timely federal assistance—could they succeed. In short, the Danville disorders show the ease with which the South could maintain racial segregation absent federal intervention.