



2018 FOURTH CIRCUIT ESSAY CONTEST

How has the Fourteenth Amendment impacted education in the 150 years since it was ratified, and what impact will it likely have in the future?

Essay Awards Program

September 26, 2018
2:30 p.m.

LEWIS F. POWELL, JR.
UNITED STATES COURTHOUSE
1000 EAST MAIN STREET
RICHMOND, VIRGINIA



Program

OPENING REMARKS

THE HONORABLE ROGER L. GREGORY
Chief United States Circuit Judge for the Fourth Circuit

READING OF THE SECOND PLACE ESSAY

OWEN PECK
Introduced by Sarah Carr

READING OF THE FIRST PLACE ESSAY

JONAS LORINCZ
Introduced by Joseph Coleman, Jr.

CONCLUSION

THE HONORABLE ROGER L. GREGORY

Refreshments will be served in the Library (first floor)
at the conclusion of the program.

About the Contest

As long as we remain focused on promoting young citizens' understanding of the Constitution, it will remain a powerful instrument for ensuring the stability of our government and the liberty of the governed. The United States Court of Appeals for the Fourth Circuit is pleased to have contributed to this effort through the 2018 Fourth Circuit Essay Contest. This year's contest asked students to consider and share their thoughts on the question: "How has the Fourth Amendment impacted education in the 150 years since it was ratified and what impact will it likely have in the future?"

The contest was open to high school students currently in grades 9 through 12 in the five states within the circuit: Maryland, Virginia, West Virginia, North Carolina, and South Carolina. The court received 345 submissions. The top three submissions were selected by our panel of judges through a blind review process.

The court extends its appreciation to its panel of judges for their work in reviewing the essays and selecting the top three submissions: Henry L. Chambers, Jr., Austin E. Owen Research Scholar and Professor of Law, University of Richmond School of Law; Hannah Rogers Metcalfe, Partner, Metcalfe & Atkinson, LLC, and President Elect of the Federal Bar Association; Robert H. Edmunds, Jr., Of Counsel, Smith Moore Leatherwood LLP, and Chair, Appellate Judges Conference, American Bar Association; Joshua Weishart, Associate Professor of Law and Policy, West Virginia University College of Law, and 2017 West Virginia University Outstanding Teacher Award Winner; and Jody Zepp, Government Teacher, Long Reach High School, Howard County, and 2015 Maryland Teacher of the Year.

We would like to thank the judges, attorneys, educators, court staff, and students from throughout the Fourth Circuit whose contributions of time and effort helped make our annual high school essay contest a success.

First ★
Place ★
★ Jonas Lorincz
★ Marriottsville, MD



Jonas Lorincz is an incoming sophomore at Marriotts Ridge High School in Marriottsville, Maryland. His favorite subjects are math and science. Next year, he plans to participate in an independent research course where he will study the topic of artificial intelligence and machine learning. After high school, Jonas plans to earn a bachelor's degree and a doctorate degree in computer science. Jonas's interests and activities include computer programming, circuitry, fishing, playing the violin, and volunteering at the Baltimore Humane Society.

The Fourteenth Amendment and the Rights of Students

For 150 years, the Fourteenth Amendment has impacted a wide spectrum of student life. Through its Equal Protection Clause, Due Process Clause, and by incorporating the Bill of Rights, the Fourteenth Amendment has addressed issues such as which students share a classroom and whether students can be expelled without a hearing or made to recite prayers. Given its historical role in protecting the rights of students, it is likely that the Fourteenth Amendment will continue to protect students in the future.

Equal Protection

The Equal Protection Clause of the Fourteenth Amendment provides that "No state shall ... deny to any person within its jurisdiction the equal protection of the laws."¹ The most famous case applying the Equal Protection Clause to schools is *Brown v. Board of Education*.² In *Brown*, African American children, through their parents, challenged their denial of

admission to “white” segregated schools as violating the Equal Protection Clause.³ The Supreme Court unanimously decided that the doctrine of “separate but equal” is “inherently unequal.”⁴ In declaring segregation unconstitutional, the Supreme Court overturned a half century of legal precedent that had stood ever since *Plessy v. Ferguson*.⁵

The impact of *Brown* cannot be overstated. The justices were correct that “school desegregation ‘would involve a social revolution.’”⁶ Violence⁷ and “white flight”⁸ were common reactions to *Brown*. While many schools integrated,⁹ others refused to do so.¹⁰ Even today, *de facto* segregation exists in some areas.¹¹ However, integration also narrowed racial achievement gaps¹² and increased opportunities for minorities. Linda Brown explained that the eponymous case “has made an impact in all facets of life for minorities[,] ... taking away that feeling of second-class citizenship.”¹³

The Equal Protection Clause also protects students against discrimination due to sex,¹⁴ immigration status,¹⁵ and sexual orientation.¹⁶ These cases further diversity in schools, which promotes creativity and diligence,¹⁷ and makes minorities feel more welcome and integrated into school. Overall, the Equal Protection Clause benefits schools as a whole.

Due Process

The Due Process Clause of the Fourteenth Amendment provides that states shall not “deprive any person of life, liberty, or property, without due process of law.”¹⁸ A major education case involving the Fourteenth Amendment Due Process Clause is *Goss v. Lopez*.¹⁹ In this case, ten Ohio students were suspended for alleged misconduct without a hearing.²⁰ The Supreme Court held that because Ohio “chose[] to extend the right to an education,” the students had an “entitlement to a public education as a property interest . . . protected by the Due Process Clause[.]”²¹ As a result of *Goss*, schools must provide notice and an opportunity to be heard before significantly disciplining students.²²

The impact of *Goss* is twofold. First, due process protects students from “erroneous” punishment.²³ Second, although education is not a constitutional right,²⁴ *Goss* recognized state created rights to education. Accordingly, *Goss* bolsters students’

guarantees to education.

Incorporation of First and Fourth Amendments

The First and Fourth Amendments apply to the states— and therefore to schools— through the Due Process Clause of the Fourteenth Amendment.²⁵ Thus, students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”²⁶ Furthermore, schools cannot require students to recite the pledge of allegiance,²⁷ bible verses,²⁸ or prayers.²⁹ Students are also protected from unreasonable searches by the Fourth Amendment.³⁰

The impact of incorporation is significant. For example, after the Parkland, Florida school shooting, students are able to display messages regarding gun control on their backpacks.³¹ Student athletes are free to protest bigotry by kneeling during the National Anthem.³² And, teachers may not routinely strip search students.³³ In sum, incorporation of the First and Fourth Amendments allows students to participate in political discussions and secures their fundamental rights at school.

Future of Fourteenth Amendment

The Fourteenth Amendment will likely continue to protect students. Two areas which should be considered under the Fourteenth Amendment are the rights of transgender students and whether education should be considered a constitutional right that requires equal funding. First, the rights of transgender students to use bathrooms that correspond to their gender identity remains undecided by the Supreme Court.³⁴ Even after the Trump Administration rescinded guidance that directed schools to allow transgender students to use their preferred bathrooms,³⁵ some lower courts have nevertheless ruled in favor of transgender students citing the Equal Protection Clause.³⁶ The Supreme Court will likely decide this issue in the future and may well find that the Fourteenth Amendment protects transgender students from discrimination.

Second, the Supreme Court should reconsider whether education is a fundamental constitutional right that requires equal funding of schools. After the Civil War, states prohibited unequal school funding based on race.³⁷ “[W]hites complained about their taxes subsidizing black education,” and states then

moved to allow school boards “discretion in allocating public funds.”³⁸ Currently, schools are funded by local property taxes, which results in affluent communities having well-funded schools and poorer communities having under-funded schools. This funding scheme results in educational inequality.

The plaintiffs in *San Antonio Independent School District v. Rodriguez* challenged school funding inequality. The Supreme Court found that education is not a fundamental right under the Equal Protection Clause, and therefore equal funding was not required.³⁹ However, the Supreme Court could reconsider its decision and find a right to education under the Privileges or Immunities Clause of the Fourteenth Amendment.⁴⁰ Though historically weak, the Privileges or Immunities Clause encompasses the right to travel.⁴¹ Therefore, it could also possibly be found to encompass a right to education. If the Supreme Court found a right to education, it could help create educational equality and reduce the effects of *de facto* segregation.⁴²

Conclusion

The *Brown* Court declared, “education is perhaps the most important function of state and local governments.” It is therefore crucial that students attend school without discrimination and with the constitutional guarantees of due process and the Bill of Rights. By securing these rights for students, the Fourteenth Amendment has fundamentally shaped American education and will continue to do so.

¹ U.S. CONST. amend. XIV, § 1.

² *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

³ *Id.* at 487-88.

⁴ *Id.* at 495.

⁵ *Id.* at 494-95.

⁶ Michael J. Klarman, *BROWN V. BOARD OF EDUCATION AND THE CIVIL RIGHTS MOVEMENT* 45-46 (Oxford University Press 2007) [hereinafter Klarman].

⁷ *Id.* at 113-15 (describing violence against parents escorting children to school and NAACP lawyers responsible for school desegregation).

⁸ See Imani Perry, *Five Myths About Brown v. Board of Education*, WASH. POST, May 16, 2014, available at https://www.washingtonpost.com/opinions/five-myths-about-brown-v-board-of-education/2014/05/16/fd84b82c-dc3b-11e3-8009-71de85b9c527_story.html?utm_term=.43859f205451 [hereinafter Perry].

⁹ Klarman at 105-6, 108.

¹⁰ *Id.* at 108, 111-12.

¹¹ See Perry.

¹² George Theoharis, 'Forced Busing' Didn't Fail. Desegregation is the Best Way to Improve Our Schools, WASH. POST, Oct. 23, 2015, available at https://www.washingtonpost.com/posteverything/wp/2015/10/23/forced-busing-didnt-fail-desegregation-is-the-best-way-to-improve-our-schools/?utm_term=.28d5588f26f3 ("Racial achievement gaps were narrowest at the height of school integration.").

¹³ Harrison Smith and Ellie Silverman, *Linda Brown Thompson, Girl at Center of Brown v. Board of Education Case, Dies*, WASH. POST, Mar. 26, 2018, available at https://www.washingtonpost.com/local/obituaries/linda-brown-young-girl-at-center-of-brown-v-board-segregation-case-dies-at-76/2018/03/26/2406d6d8-3138-11e8-8abc-22a366b72f2d_story.html?utm_term=.7450205622f8.

¹⁴ *United States v. Virginia*, 518 U.S. 515 (1996); *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982).

¹⁵ *Plyler v. Doe*, 457 U.S. 202 (1982).

¹⁶ See *Nabozny v. Podlesny*, 92 F.3d 446, 458 (7th Cir. 1996) ("We are unable to garner any rational basis for permitting one student to assault another based on the victim's sexual orientation[.]"); *Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1138 (9th Cir. 2003) (there was sufficient evidence to conclude that "defendants intentionally discriminated against the plaintiffs [on the basis of sexual orientation] in violation of the Equal Protection Clause.").

¹⁷ See Katherine W. Phillips, *How Diversity Makes Us Smarter*, SCIENTIFIC AMERICAN, Oct. 1 2014, <https://www.scientificamerican.com/article/how-diversity-makes-us-smarter/>.

¹⁸ U.S. CONST. amend. XIV, § 1.

¹⁹ *Goss v. Lopez*, 419 U.S. 565 (1975).

²⁰ *Id.* at 569-71.

²¹ *Id.* at 574.

²² *Id.* at 583-84.

²³ *Id.* at 583.

²⁴ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 30-35 (1973).

²⁵ Paul Rodgers, UNITED STATES CONSTITUTIONAL LAW: AN INTRODUCTION 206 (McFarland 2011).

²⁶ *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 506 (1969).

²⁷ *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943).

²⁸ *Sch. Dist. of Abington Township v. Schempp*, 374 U.S. 203 (1963).

²⁹ *Engel v. Vitale*, 370 U.S. 421 (1962).

³⁰ *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

³¹ See Dianne Gallagher, Emanuella Grinberg, and Paul P. Murphy, *How Parkland Students Feel About Their New Mandatory Clear Backpacks*, CNN, Apr. 2, 2018, <https://www.cnn.com/2018/04/02/us/marjory-stoneman-douglas-clear-backpacks/index.html>.

³² Valeriya Safronova and Joanna Nikas, *High School Students Explain Why They Protest Anthems and Pledges*, N.Y. TIMES, Oct. 21, 2017, available at <https://www.nytimes.com/2017/10/21/style/high-school-students-explain-why-they-protest-anthems-and-pledges.html>.

³³ See *Safford Unified Sch. Dist. #1 v. Redding*, 557 U.S. 364 (2009).

³⁴ See *Gloucester County Sch. Bd. v. G.G. Ex Rel Grimm*, 137 S. Ct. 1239 (2017)

(vacating judgement from Fourth Circuit Court of Appeals regarding transgender student for reconsideration in light of DOE and DOJ guidance document dated Feb. 22, 2017).

³⁵ Letter from Sandra Battle and T.E. Wheeler, *Dear Colleague Letter*, Feb. 22, 2017, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf>.

³⁶ See *Whitaker v. Kenosha Unified Sch. Dist.*, 858 F.3d 1034, 1054 (7th Cir. 2017) (transgender student demonstrated “probability of success on his Equal Protection Claim.”); *M.A.B. v. Bd. of Educ. of Talbot County*, Case No. 1:16-cv-02622-GLR, Dkt. No. 53 at 24, 32, 37 (D. Md. Mar. 12, 2018) (denying motion to dismiss transgender student’s Equal Protection Claims).

³⁷ Klarman at 16-17.

³⁸ *Id.* at 17.

³⁹ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 30-35 (1973).

⁴⁰ U.S. CONST. amend. XIV, § 1.

⁴¹ See Kara A. Millonzi, *Education as a Right of National Citizenship Under the Privileges or Immunities Clause of the Fourteenth Amendment*, 81 N.C.L. Rev. 1286, 1288, 1298-99 (2003).

⁴² *Id.*; see also Perry.

⁴³ *Brown*, 347 U.S. at 493.

Second Place ★★
Owen Peck
Richmond, VA



Owen Peck just completed his senior year at Maggie L. Walker Governor's School in Richmond, Virginia, and will be attending the College of William & Mary this fall. His favorite school subjects are history, government, Spanish, and Russian. At the College of William & Mary, Owen is hoping to major in government or international relations as well as study music. Particular areas of study that interest him include Constitutional law, linguistics, and political science. Owen enjoys singing, playing piano, and composing music. He sang with the Greater Richmond Children's Choir for 7 years. He also participated in quizbowl with his school and was on his school's We The People team which finished 5th in the nation this past April. In his free time, he enjoys watching football and golf.

Since its ratification in 1868, the 14th Amendment has reshaped Americans' perceptions of our democracy. In many ways the centerpiece of Constitutional law in the modern day, the 14th Amendment includes provisions barring states from depriving people of their natural rights without due process of law, or denying them equal protection of the laws. The amendment's framer, John Bingham, believed that it would combat institutional racism in the Southern states following the abolition of slavery. He also intended that its language would allow for the incorporation of the Bill of Rights to the states. Not even Bingham, though, nor indeed any of his contemporaries, could have foreseen the monumental shift in American political philosophy and jurisprudence that the amendment would usher in. Because education is an area over which the individual states have broad jurisdiction, the 14th Amendment began to alter the landscape of

the rights of students and parents. Three main ways in which education policy has shifted are through equal protection, application of the due process clause, and incorporation of Bill of Rights protections.

For nearly a hundred years following the passage of the 14th Amendment, Southern states employed the “separate but equal” doctrine, requiring racially segregated schools. The Court first confronted this doctrine head-on in the 1896 case *Plessy v. Ferguson*. In one of the most flawed judicial decisions in American history, they supported a conservative interpretation of “equal protection under the laws”, under which separate but equal was deemed an acceptable protection of the rights of black students. However, Justice John Marshall Harlan anticipated the future of the debate when he famously dissented in the case, writing, “Our Constitution is color-blind and neither knows nor tolerates classes among citizens.” In 1954, the progressive Warren Court decided unanimously to strike down separate but equal in *Brown v. Board of Education*, this time specifically in reference to education. A year later in *Brown II*, they mandated that states integrate their schools “with all deliberate speed.” Since then, the equal protection clause has been applied in myriad other circumstances, including in the case *Plyler v. Doe*. The Court decided that even the children of illegal aliens had the right to an education in public school, because the 14th Amendment’s equal protection under the law extends to “any person”, not just citizens. Through this decision, the right to an education was established as fundamental, and carries numerous implications to this day.

The 14th Amendment’s due process clause has also been applied to our education systems. One substantive due process right that has been established through cases such as *Meyer v. Nebraska* is the right of parents to generally direct the education of their children. In *Pierce v. Society of Sisters*, the Court struck down an Oregon law that required all students to attend public school. Justice McReynolds wrote in the majority opinion that, “The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” Procedural due process, too, has played a notable role, such as in *Goss v. Lopez*, when the Court identified the right to education as a property right, unable to be denied to students

without due process. This understanding should foster positive change by discouraging purely punitive measures such as suspension and instead offer more opportunities for students to grow.

The incorporation doctrine, derived similarly from the due process clause, allows the Supreme Court to selectively apply the protections guaranteed in the federal Bill of Rights to state governments. Accordingly, throughout the second half of the 20th Century, the Court began to hear cases about issues such as free speech and establishment of religion in public schools. The Court's 1969 decision in *Tinker v. Des Moines* for the first time acknowledged that students possessed First Amendment rights and that even political or controversial speech could not be limited unless it represented a material disruption to school activities. *Morse v. Frederick*, the wildly entertaining 2007 case that saw Chief Justice Roberts try to ascertain the exact meaning of "Bong Hits 4 Jesus", admittedly saw the Court take a step back in their protection of student speech. Still, this issue promises to remain in the national consciousness, with events like the shouting down of Milo Yiannopoulos on the campus of UC Berkeley making headlines. The case *Engel v. Vitale* applied the First Amendment's establishment of religion clause to schools in order to disallow school prayer. Even by providing a non-denominational, voluntary Christian prayer, the Court ruled that those actions constituted an endorsement of a specific religious tradition by a government actor, the school.

It is the nature of the 14th Amendment, more even than any other part of the Constitution, to mold itself around pressing contemporary issues and ground the present political debate in principles of constitutional and common law. For example, North Carolina's now-infamous Public Facilities Privacy & Security Act, commonly known as the "bathroom bill", was in my opinion unconstitutional under the equal protection clause. Other Bill of Rights protections, such as the 4th Amendment's protection from unreasonable searches and seizures, have been only shallowly explored in education-related jurisprudence, although Justice White did write in *New Jersey v. TLO* in reference to the 4th Amendment's application in schools, "indisputable is the proposition that the 14th Amendment protects the rights of students against encroachment by public school officials." This

question will doubtlessly face the Court in the near future, as privacy in the digital age presents new challenges, like the monitoring of activities on school wifi and searching of students' personal electronic devices. One increasingly common argument concerns provisions such as the one in Virginia's state constitution, which requires that "an educational program of high quality [be] established and continually maintained." Does the equal protection clause require a redistribution of resources and funding towards underachieving schools? The courts will continue to use the 14th Amendment to protect and expand the rights of students in the future.

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Third ★
Place ★ Rachel Sexton
★
★ Damascus, VA



Rachel Sexton is an incoming junior at Holston High School in Damascus, Virginia. Her favorite subjects are history and science. After attending college she is considering pursuing a teaching career. Rachel's interests include school, reading, church, and music.

"The Fourteenth Amendment," says my teacher. "Does anybody know what it is?" I duck my head and hope he won't pick me. "Okay, well the Fourteenth Amendment was and is probably one of the most important amendments we....." I zone out as he drones on and on about events I don't care about. I mean, why should I even care about being naturalized? I lay my head down on the desk and slowly fall asleep.

"Run! You N****, RUN!!" Confused and disoriented, I jump up and run without a second thought. I run through the hallways of a high school I've never been in before. It is so obsolete. As I run, I see a poster advertising "saddle shoes," whatever those are. After a short while, the pounding footsteps behind me fade, and I'm all alone. I stop to catch my breath and see that this part of the school is horrible. There is trash on the floor, the lockers have been vandalized with awful sayings, and the lights are flickering like there isn't enough power to light up this section of the school. I'm walking down the hall when the bell rings, and students stream out of the classrooms. Correction: African American students. I watch as only blacks stream out of that door. One of them looks at me and says, "There you are! I was wondering where you had gone. One minute you were sitting beside of me in class, the next you just disappeared!" I look down

at this very enigmatic girl and wonder where the heck I am. She notices me staring and says, "Susan? Are you okay? Do you need to see the nurse?" I shake my head and she loops her arm through mine. "So, are we going to eat in the cafeteria or outside? 'Cause I don't know about you, but I am not in the mood for white kids looking down on us like we're vermin." She says this as if we are both black, but when I look at my arm I discover that I am, indeed, black. We get to the cafeteria, which is in the better part of the school, and I look in the cafeteria expecting to see my friends so I can ditch this chick. Yet when I scan the cafeteria I find that I don't know anybody in here. I shake my head and say, "I think we should go somewhere quiet, so I can talk to you about something." She just nods her head and walks off towards the door at the end of the hallway.

I run to catch up to her and settle into a pace the same speed as hers. We walk through the door and over to the picnic tables by the school. I sit down across from her and take a deep breath, steeling myself for the inevitable. I open my mouth, but then—SLAP! Something whacks me in the back of the head. I turn around ready to beat the crap out of whoever did that, but when I do I see a high school boy who is white, and I instantly get terrified. I understand the dynamic of this situation pretty quickly. He looks me up and down and says, "What are you doing here? This table is for whites only. Read the sign." He points at a piece of paper hanging off the table. I glance at it and stand up, my hands clenched into fists at my sides. When the girl I've been with says calmly, "Steven, we have just as much right as you to sit here, so you can just go back over there and stow it," I look back at her and my mouth is wide open. I am shocked at what I just heard. I didn't think she would do something like that after her display of distaste for sitting in the cafeteria with the whites. Steven scoffs and looks away from us, then he turns back and says, "Whatever, it doesn't matter anyway 'cause when my daddy and all the other men revolt against this so-called Fourteenth Amendment, then y'all will all be wiped out." He walks away, and I stand there gob smacked. I turn to the girl and say, "I'm not from here." She smiles and says, "Yeah I kind of guessed that on my own." I sit down, calmer now, and say, "Will you explain to me what is happening here?" She smiles and says, "It all started a long time ago when the Fourteenth Amendment was first ratified..."

She spends the next two hours explaining how *Brown v. Board of Education* changed schooling in America. She tells me how they were able to overcome segregation because of the Fourteenth Amendment, which states, "No state shall make or enforce any law....nor deny to any person within its jurisdiction the equal protection of the laws." After explaining all this, she tells me why the whites are so hostile to the blacks. She says it's because when Brown won, their parents, who had been raised hating blacks, told their kids to not associate or interact with blacks. "Okay, so let me get this straight. Even though that amendment was ratified close to ninety years ago, it wasn't really put into effect until five years ago?" I say, puzzled and outraged. She nods her head and stands up saying, "Yeah, it is pretty devastating to think that it took that long for us to achieve equality." We walk back inside together. When we get to a classroom door, she stops and says, "Well, it was nice meeting you." I smile and say, "You too." She starts to head back into her classroom, and I realize I'm starting to wake up. I hold out my hand and say, "Wait! I don't even know your name!" She turns around and smiles at me, "My name is Linda Brown."

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United States Court of Appeals for the Fourth Circuit

THE HONORABLE ROGER L. GREGORY
Chief Judge

THE HONORABLE J. HARVIE WILKINSON III

THE HONORABLE PAUL V. NIEMEYER

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THE HONORABLE A. MARVIN QUATTLEBAUM, JR.