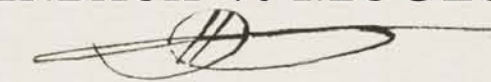


KATZENBACH V. McCLUNG



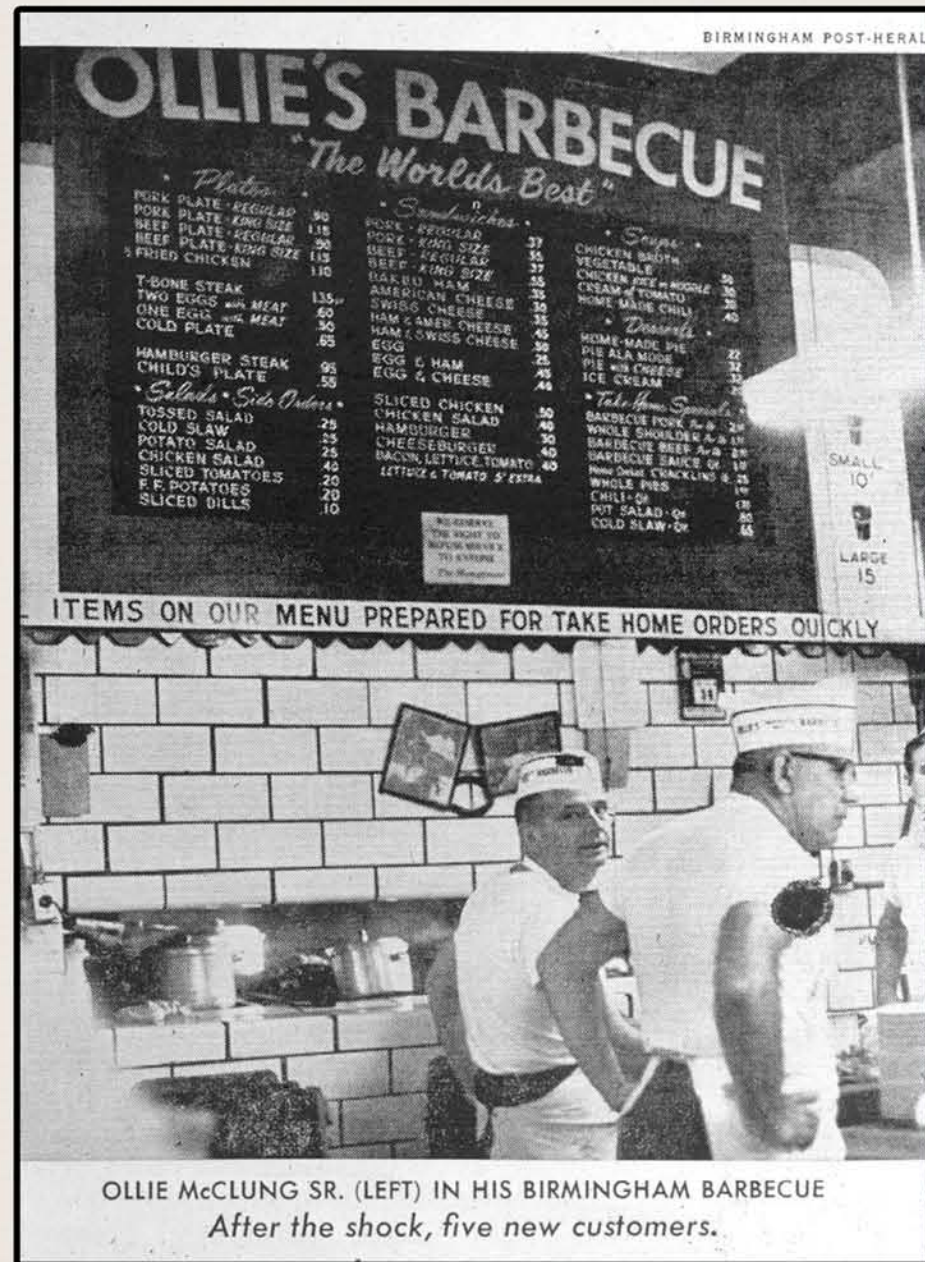
"OLLIE'S BARBECUE IS A FAMILY-OWNED RESTAURANT IN BIRMINGHAM, ALABAMA, SPECIALIZING IN BARBECUED MEATS AND HOMEMADE PIES, WITH A SEATING CAPACITY OF 220 CUSTOMERS. IT IS LOCATED ON A STATE HIGHWAY 11 BLOCKS FROM AN INTERSTATE ONE AND A SOMEWHAT GREATER DISTANCE FROM RAILROAD AND BUS STATIONS."

KATZENBACH V. McCLUNG, 379 U.S. 294 (1964) (CLARK, J.)

Ollie McClung, the eponymous proprietor of Ollie's Barbecue, was willing to employ blacks at his restaurant. He was even willing to sell them food, for takeout. But sit-down service at the Birmingham, Alabama establishment was strictly for whites only. Whatever Ollie's personal views (and his black waitresses said he treated them well), his customers surely would not stand for anything else. So matters had stood since 1927, when Ollie's dad opened the restaurant's doors, and so they continued until 1964, when Congress decided that the time to outlaw segregation in public establishments was long overdue. The Civil Rights Act of 1964 forbade discrimination on the part of hotels, restaurants, and similar facilities. Ollie responded by taking the Government to court: He was not a city or a state, so he was not bound by the Constitution's Equal Protection Clause; nor was his barbecue joint located on, say, a train moving between different states and thus subject to congressional authority under the Commerce Clause of Article I. How then could Congress purport to tell him how to run his restaurant?

Unanimously, the Supreme Court of the United States told Ollie to get with the program. The restaurant itself might not be moving between different states, but the food it purchases certainly does, and so do (at least a few of) its customers. Refusing to serve blacks, the Court found, in all likelihood reduced the quantities of food that Ollie had to buy from other states, and may well also have reduced the number of blacks willing to cross state lines and visit Alabama. Voila: racial discrimination at Ollie's Barbecue, with seating for 220 patrons, burdens interstate commerce. And if so, Congress, pursuant to its "broad and sweeping" power over that sphere, is entitled to step in, as it had in the Civil Rights Act. Three Justices penned concurrences -- with Justice Goldberg emphasizing that despite how it might seem from the Court's opinion, the Civil Rights Act is really about "human dignity and not mere economics" -- but the restaurateur did not pick up a single vote.

Ollie obeyed the law and the Court's order. Blacks were served without incident just days after the decision was released. Happily, the restaurant survived integration. In fact, it continued to operate for over 35 more years, though it moved locations in 1968. But all good things must come to an end. In 1999, Ollie's moved to the suburbs, and suburbia was not kind to the purveyor of barbecued meats and homemade pies. Only two years later, Ollie McClung, Jr. -- the son of our plaintiff -- closed the restaurant for good. Ollie's Barbecue Sauce (pictured to the right), however, remains available for purchase online, a steal at \$5 a bottle.



The new Ollie's Barbecue. The original restaurant was located at 902 Seventh Avenue South, Birmingham, AL. Photographs courtesy of Ron Talmo.