SCHOOL DESEGREGATION

IN THE SOUTHERN AND BORDER STATES

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THE REGION

For the first time since the school desegregation process began in 1954, the 11 Southern states have more Negroes in biracial schools than the heavily desegregated border area, consisting of six states and the District of Columbia.

This is one of the facts disclosed in an analysis of the new desegregation statistics released by the U.S. Office of Education this month. The federal agency's tabulation also showed that a Southern state--Texas--now leads the Southern and border region in the number of Negro students in school with whites.

The Southern states, with 82 per cent of the region's Negro enrollment, have 488,250 Negroes in classrooms with whites--16.8 per cent of the 11-state Negro enrollment of almost three million. In the border area, 454,836 Negroes are desegregated--71.7 per cent of that area's Negro enrollment of more than 600,000. These percentages of Negroes in biracial schools compare with 6.01 per cent for the South and 68.9 for the border area last year.

The size of the Negro enrollment greatly affects the states' standing on desegregation percentage. Texas, with 160,050 Negroes in biracial schools, has more Negroes in this category than the next highest state, Maryland, which has 140,550. But because of its Negro enrollment of 338,300, the Texas desegregation percentage of 47.3 ranks well below the 64 per cent figure for Maryland, which has only 219,700 Negro students.

The five states with the least desegregation last year hold that same position this year, although these same five showed the highest proportionate change in the percentage of Negroes in desegregated schools. Alabama jumped from less than one-half of one per cent to 4.7 per cent this year. The figures for the other states are: Georgia, from 2.7 per cent to 10 per cent, Louisiana, from less than 1 per cent to 3.5 per cent, Mississippi from less than 1 per cent to 3.2 per cent, and South Carolina, from 1.5 per cent to 6 per cent.

Arkansas, Florida and North Carolina form a middle group in the percentage of desegregation, ranging from 15-20 per cent. The three highest states are Tennessee, Texas and Virginia, in the percentage range of 25-47.

By making its first complete desegregation survey on a school-by-school basis, USOE was able to determine the racial proportions of the desegregated schools. The pattern varies from state to state on how many desegregated Negroes are located in schools with 1) Negro enrollments of less than 20 per cent--mostly white, 2) 20-80 per cent Negro, and 3) 80-99 per cent Negro--mostly Negro. Every state reports desegregated--but mostly Negro--schools attended by few whites, which can raise desegregation statistics by several points.

The three Southern states with the highest percentage of Negroes in schools with whites--Tennessee, Texas and Virginia--have these desegregated Negroes spread generally through all three categories. However, every Southern state has it's largest number of desegregated Negroes attending mostly white schools--with less than 20 per cent Negro enrollments. Alabama has about half of its desegregated Negroes in mostly white schools and about half in mostly Negro schools, with only a few Negro students in schools of the middle category of 20-80 per cent Negro. Altogether, the South has half of its desegregated Negroes in schools with less than 20 per cent Negro enrollment, about one-fourth are in schools between 20 and 80 per cent Negro, and the other fourth are in mostly Negro schools.

The border area follows the reverse pattern: Most of the desegregated Negroes attend the mostly Negro schools (80-99 per cent Negro enrollment) and the smallest number are in the mostly white schools (less than 20 per cent Negro). Kentucky is an exception, with more than half of its total Negro enrollment in the mostly white schools. Delaware and West Virginia have more than half of their total Negro enrollment in schools with Negro enrollments of 20-80 per cent.

In its desegregation survey, the USOE statistics solicited information from all public schools and districts, whether they were acting under court orders or under voluntary compliance programs. As yet, the fact that the federal government has collected school statistics by race and announced them has had little effect on the practices of state officials in making such records public. The survey forms used by USOE provided for copies to be retained by the districts and to be forwarded to the "chief state school office."

Correspondents for Southern Education Reporting Service found that most states refused to make the information available, or sometimes to admit such statistics existed. For some of the border states, which previously have not kept records by race, the federal survey provided the first actual count of desegregation. Only rough estimates have been available previously, accounting in part for unexpected changes in desegregation statistics this year. Oklahoma, for example, was believed to have had 17,500 Negroes in desegregated schools last year, but this year's official survey by USOE listed 34,310.

SERS correspondents have been able to obtain district-by-district counts of the Negroes in desegregated schools for Arkansas, Maryland, Mississippi, South Carolina and Tennessee. Georgia provided the statistics broken down only for congressional districts. Although the USOE was reported not planning any formal publication of the data on a district basis, officials in Washington said they considered the information part of the public record and available by district on request once the computer process is completed.

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ALABAMA HIGHLIGHTS

A four-judge federal court panel--actually, two three-judge panels with overlapping membership--began on Nov. 30 hearing testimony on consolidated suits that:

1) Attacked Alabama's Sept. 2 law declaring void the 1966 school desegregation guidelines of the Department of Health, Education and Welfare;

2) Sought an injunction desegregating all Alabama schools in a single order;

3) Attacked, in a counter-suit, the validity of the HEW guidelines as implemented by the U.S. Office of Education; and,

4) Asked for an order invalidating Alabama's private school tuition plan.

Mrs. George C. Wallace, stand-in candidate for her governor husband, was overwhelmingly elected the state's next chief executive Nov. 8.

Atty. Gen. Richmond Flowers called the election a blow for moderation in the state.

Gov. Wallace, who did most of the campaign speaking for his wife, made school segregation a central issue in his states rights appeal. He said Nov. 8, as he had earlier, that he intended to carry the "Alabama Movement" across the nation, possibly as a third-party presidential candidate in 1968.

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ALABAMA

Legal Action

Alabama State Supt. of Education Austin R. Meadows was unable to produce evidence in federal court Nov. 30 of any specific action taken in the past two years to "promote" school desegregation in Alabama.

That is one of the questions involved in a complex consolidation of suits involving: a request for an order desegregating all Alabama schools in a single thrust; a state suit asking the court to invalidate the U.S. Department of Health, Education and Welfare's 1966 school desegregation guidelines; a petition seeking invalidation of the state's Sept. 2 law "nullifying" the guidelines; and a U.S. Department of Justice request for an order prohibiting the state from paying tuition of pupils attending private, segregated schools.

The hearing began Nov. 30 before four judges, sitting in two three-judge panels: U.S. Circuit Judge Richard T. Rives of Montgomery; and District Judges Frank M. Johnson Jr. of Montgomery, H.H. Grooms of Birmingham and Virgil Pittman of Mobile.

Rives, Johnson and Grooms heard the Lee v. Macon case of 1963-64, which led to an order in July, 1964, on which part of the new litigation is based. That order directed state school officials, including Supt. Meadows and Gov. George C. Wallace (as ex officio chairman of the State Board of Education) to encourage and promote desegregation. In that case, the court indicated that failure to abide by the injunction could lead to an order cutting off state funds to segregated districts and possibly a court directive desegregating all the state's schools.

This is precisely what one of the suits seeks. It was filed by Negro attorney Fred Gray, counsel in the original case in behalf of Macon County plaintiffs. A second suit, filed by the Alabama NAACP, Sept. 12, asked the court to declare Alabama's Sept. 2 anti-guidelines law invalid. The justice department entered this suit at the direction of the court.

In a separate action filed Aug. 31, the justice department also asked the court to prohibit the state from making tuition grants, under a 1965 state act, to pupils attending private, segregated schools. The plan is intended to perpetuate segregation, the justice department said in its suit, which also relies on the 1964 Lee v. Macon case.

Alabama filed a cross-action asking the court to invalidate the HEW guidelines. The court refused to permit the federal government to be named a defendant, but did allow the state to sue U.S. Welfare Secretary John Gardner and Commissioner of Education Harold Howe II as "third-party defendants."

Lumped together, the suits seek rulings on the validity of the guidelines, the validity of the state law "nullifying" them, the constitutionality of the tuition grant act of 1965 (passed after the 1964 order and not mentioning race) and on the question of a statewide desegregation order.

As the hearing got under way Nov. 30, the court turned first to the request for complete desegregation of all Alabama schools. The issue was whether the state had encouraged and promoted desegregation as directed to in the Lee v. Macon order.

Supt. Meadows was the first witness, remaining on the stand most of the day. He admitted that he had not recommended or encouraged the abolition of the dual school system. "I approach the matter from a non-discrimination standpoint," he told the court.

Meadows said he had encouraged local school systems to comply with the 1965 guidelines by submitting freedom-of-choice plans. However, he said he did not encourage compliance with the 1966 guidelines because he felt they went beyond Title VI of the Civil Rights Act. He could not cite any specific actions in which he had promoted desegregation in the past two years, but insisted he had repeatedly cautioned city and county superintendents to avoid discrimination.

Attorney Fred Gray, representing Macon County Negroes, plaintiffs in the 1963-64 case, produced numerous documents, which included letters sent by Meadows to local school boards. One of the documents was a statement attributed to Meadows July 1, 1966, in which the state official had noted that: "Segregation is a good word... Segregation has been used to man's greatest advantage... Good people have always joined together to separate themselves...from the bad... and birds of a feather truly flock together."

Meadows dismissed the document, prepared by his office and circulated among local school boards, as "merely an editorial statement." He said, under questioning, that he had never done anything to discourage compliance with federal court school desegregation orders.

Gov. Wallace submitted a written answer on his part denying that he had interfered with any court orders in the past two years. He conceded, however, that he had objected to and protested enforcement of the federal school guidelines on the grounds that they violated the 1964 Civil Rights Act.

The governor contended in his written response that the court had no authority to take further action against him because, as he put it, that would amount to "judicial encroachment on the executive function," which is prohibited by the separation-of-powers clause of the U.S. Constitution.

Gray read into the record many statements and resolutions by Meadows, Wallace and the State Board of Education urging local school boards to refrain from complying with the federal guidelines.

In response to Gray's question, Meadows said he had not discussed the anti-guidelines bill with the governor prior to its introduction in the state legislature. (The anti-guidelines law declares all existing compliance agreements between local boards and the U.S. Office of Education null and void and forbids future ones. It offers a Governor's Commission to represent local boards and promises to pay some of any federal funds lost because of cutoff. For details, see report for August and September, 1966.)

However, Gray read into the record the State Board of Education's urgings for anti-guidelines action. The board was listed among the defendants in the 1964 Lee v. Macon order, which directed officials to promote desegregation and warned that unless the practice of using public funds to support segregated schools ceased in a reasonable time, an order to that effect might be necessary.

Meadows admitted that a state board resolution of Sept. 2, 1965, had said that faculty desegregation was not required, but said that he had not voted for the resolution. Meadows added that the same statement had been made by state officials, including himself, to HEW officials.

Meadows was questioned by a justice department attorney, St. John Barrett, about state trade schools, busing and school desegregation plans. He said that Negroes were served by trade schools in all but perhaps the southeastern section of the state.

Meadows said repeatedly he urged non-compliance with the 1966 HEW guidelines because they went beyond the Civil Rights Act, in his opinion. He said this was also the position of Gov. Wallace. He said he had recommended compliance only if the forms were amended so as not to agree with staff desegregation requirements or assignment of pupils on a racial percentage basis.

Nevertheless, he insisted, "Local school boards have local autonomy."

This touched on a key point--whether or not there is central control of schools in the state. It was the finding of the court in 1964 that the state board had controlled schools in preventing the desegregation of Tuskegee's white high school in the fall of 1963 and in ordering it closed early in 1964. The board subsequently rescinded its actions, disavowing any central authority, but the court found that such authority had been exercised.

Whether this has been true since July, 1964, is thus a crucial point at issue in the suit, which is based on that earlier case and the court's findings and orders.

Attorney Gray introduced documents and testimony showing that the superintendent's office separates records of Negro and white students and personnel, Meadows' references to new schools for the "minority race," and advocacy by the state board that local schoolmen rescind their compliance agreements. Additionally, Gray introduced evidence intended to show that local boards had been directed to report action taken on the compliance forms and threatened with the loss of state funds if such reports were not made.

Gray also attempted to show that Tuscaloosa County's superintendent was urged to reassign two Negro teachers who had been placed in predominantly white schools this fall and that the state had offered two additional teacher units if pupils were given a choice in attending classes taught by a teacher not of their race. According to evidence submitted by Gray, the Tuscaloosa County system had also been offered priority on construction funds for two new classrooms if pupils were allowed a "freedom of choice" on teachers.

Meadows said the proposals were made to Tuscaloosa because of thousands of petitions from county residents. (See report for September.)

The Tuscaloosa board was made a defendant at plaintiffs' request, along with Wallace, Meadows, the state board and finance director Seymore Trammel.

Earlier, the court refused to order Wallace to show cause why he should not be held in contempt of the 1964 order (which was directed at him solely as chairman of the state board).

The state, although denied the right to sue the federal government, was given court permission to name HEW Secretary John Gardner and Education Commissioner Harold Howe II as "third party defendants." The state challenges the legality of the guidelines, asking for an injunction against their enforcement.

Speaking for the court on pre-hearing motions, Judge Johnson said the U.S. government could not itself be made a defendant, as the state had petitioned, because it refused to waive its "sovereign immunity," but that the two federal officials could be and that the guidelines "as promulgated and administered (are) a proper issue in this case."

The justice department, in its petition, contended that 79 of Alabama's 118 school districts have submitted either final court orders or compliance agreements to receive federal assistance. The state anti-guidelines law, which the justice department challenged, does not affect systems under federal court orders to desegregate.

The department said the Alabama legislature had no authority to nullify the assurances between local boards and HEW and that the law's purpose and effect was "to facilitate and perpetuate maintenance of dual school systems based upon race...and to impede and interfere with efforts of local school boards to transform dual structures based upon race into single, non-racial school systems."

In the tangle of pre-hearing motions, the court also rejected Gov. Wallace, as governor, as a defendant. He remained a defendant in one of the actions as state board chairman.

Judge Johnson ordered HEW to permit state attorneys to inspect certain records in the U.S. Office of Education, but he refused the state's request to see documents on any new additions or changes in guideline requirements which HEW might be contemplating.

State officials were directed to provide full records for the plaintiffs.

Court observers speculated that the case might produce far-reaching decisions, including a possible precedent that a state government could be held responsible for achieving desegregation in public schools.

When the anti-guidelines bill was debated in August (see report), the few opponents argued that such an order might result if the bill was passed. However, Wallace and administration leaders countered with the argument that a single statewide desegregation order from a federal court would be "no worse" than dealing with HEW.

Although the provision for reimbursing local systems for money lost by federal withholding action has apparently not been used, the anti-guidelines law has been used at least once--in the case of the Crenshaw County Board of Education, which adopted a resolution Sept. 14 requesting the governor and the Governor's Commission created by the law "to stand in its place" in further dealings with HEW.

Some 40 witnesses were sworn on the first day of the hearing Nov. 30. Attorneys said they had 164 exhibits to introduce, some of them with more than 10 parts.

There was no indication Nov. 30 when the hearing would be completed or when the court might be expected to rule.

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Political Action

Mrs. George C. Wallace, a stand-in for her husband, the present governor, was overwhelmingly elected the state's next chief executive Nov. 8.

Wallace could not succeed himself under Alabama law. Last fall, the legislature refused to pass his succession bill to amend the state constitution and remove the barrier to a second consecutive term.

The governor, riding a wave of popularity unprecedented in modern Alabama history, entered his wife, who repeatedly promised the voters that her husband would be the de facto governor. She won the May 3 Democratic primary without a run-off and swamped GOP challenger James D. Martin in the general election.

Wallace, who did most of the campaign talking, hit hard on the states rights issue, specifically including school segregation and the guidelines controversy. He indicated before and after his wife's election that he was thinking about running on a third-party presidential ticket in 1968 and would carry the "Alabama Movement" from "Maine to California."

Speaking at Duke University, Atty. Gen. Richmond Flowers, who received most of the Negro vote in his primary challenge to Mrs. Wallace, called the election of the governor's wife a blow to moderation in Alabama. He called Wallace a "racist and smart politician."

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Schoolmen

Auburn University and the University of South Alabama were notified that funds would be available to them to establish conferences on school desegregation.

The U.S. Office of Education announced in Washington Nov. 24 that the money would enable Alabama teachers and officials to attend institutes on how to handle school desegregation problems. Part of the money would be used to set up resource centers to make professional assistance available to districts requesting help, the announcement said.

Auburn was awarded $301,906 and the University of South Alabama $165,619, according to the announcement.

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Thirteen more Alabama school districts were cited to attend hearings on proposed termination of federal financial assistance in hearings to continue through Dec. 21, the U.S. Office of Education announced Nov. 22. Named in Alabama were: Baldwin County, Marshall County, Colbert County, Houston County, Shelby County, Opelika City, Chilton County, Clarke County, Demopolis City, Fayette County, Talladega City and Chambers County.

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