SCHOOL DESEGREGATION

IN THE SOUTHERN AND BORDER STATES

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ALABAMA HIGHLIGHTS

Four U. S. Judges sitting as two federal panels took under consideration suits asking for the invalidation of the Department of Health, Education and Welfare's 1966 school desegregation guidelines, the invalidation of Alabama's 1966 anti-guidelines law and a single-shot order desegregating all Alabama schools. Presiding Judge Richard T. Rives said that it would be some time before the panels ruled but that the decisions would come in ample time to apply at the time of school re-opening in the fall.

Attorneys for school boards of Jefferson County, Bessemer and Fairfax hailed the decision of the Fifth Circuit Court of Appeals to review a Dec. 29 decision by a three-judge court adopting HEW guidelines as standards of the court.

A federal judge ordered total desegregation of the school systems of Hale and Perry counties in the fall and the closing of 11 schools.

Gov. Lurleen Wallace denounced a series of meetings on federal school desegregation guidelines.

Muscle Shoals school officials were notified that the federal government had reversed a decision to cut off federal aid to the city system because of failure to agree to desegregation guidelines.

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ALABAMA

Legal Action

Four U. S. judges, sitting as two three-judge panels, heard arguments Feb. 3 in suits that requested the 1966 school desegregation guidelines of the Department of Health, Education and Welfare be invalidated, that Alabama's 1966 anti-guidelines law itself be invalidated and that all the state's school systems be ordered desegregated in an omnibus order.

Hearings in the complex litigation were recessed Dec. 2, when the court directed attorneys for Alabama, the Justice Department and the National Association for the Advancement of Colored People to file depositions and other evidence. After the eight-hour hearing Feb. 3, attorneys were given 20 days to file supplementary briefs.

The one-day hearing was marked by frequent differences of opinion between presiding Judge Richard T. Rives of the U. S. Fifth Circuit of Appeals (author of most of the Fifth Circuit's desegregation rulings in recent years) and lawyers for the Justice Department and the NAACP.

On more than one occasion, Rives voiced the opinion that the 1966 guidelines "might transcend the legislative authority grant by Congress in the 1964 Civil Rights Act." He expressed particular concern that some "rules of general application made by the U. S. Department of Education without approval of the President might be outside the authority granted by Congress."

"It worries me," Rives said, "whether there is any requirement of integration beyond true freedom of choice. I think there are some Negro children who prefer to go to purely Negro schools and some white children who prefer to go to purely white schools." Rives also observed that the ultimate goal in court decisions has been "the elimination of discrimination, not the mixing of races."

He asked U. S. and NAACP attorneys: "If you classify students by race for the purpose of forced integration, aren't you coming close to depriving people of their rights under the equal-protection provision of the Constitution?"

Such frequent questions and comments by Rives, whose Fifth Circuit decisions have frequently been regarded as bellweather rulings, suggested to many court observers that the court--or at least he--was deeply concerned about the legality of the guidelines and also by "integration" as distinguished from freedom-of-choice "desegregation."

While conceding that some "integration" is necessary "to eliminate segregation," Rives asked: "When you go beyond that, aren't you denying the rights of others to equal protection?" At the same time, Rives indicated the court will give serious consideration to a petition to order Gov. Lurleen Wallace and other state officials to take positive steps to end racial discrimination in Alabama schools.

He and Justice Department lawyer St. John Barrett were frequently at odds over the law in the Feb. 3 hearing. Rives interrupted the argument of Barrett to ask questions, to inquire into the distinctions between "freedom" and "force" in desegregation and to express doubt about the validity of the HEW guidelines.

The last case to be argued Feb. 3 was that asking for an order directing the desegregation of all Alabama schools. Fred D. Gray, Negro attorney, argued that state officials had continued to interfere with school desegregation and to foster segregation, in direct violation of the 1964 Lee vs. Macon injunction. In that ruling (by Rives and two district judges also sitting on the combined panels, Frank M. Johnson Jr. of Montgomery and H. H. Grooms of Birmingham), the court put officials on notice that they had an affirmative duty "to do away with a dual school system," Gray said.

"The defendants not only failed to keep faith with the court's order," Gray said, "but interfered with local boards that wanted to do something about racial discrimination. These defendants will never do anything until this court puts some teeth in the order."

Rives conceded that the court said in 1964 it could order a withdrawal of state funds from systems that failed to end discrimination, but he added: "I'm a little doubtful whether we should direct the state to cut off funds from those local boards when they have not had their day in court."

Henry Aronson, an attorney for the Legal Defense Fund of the NAACP, asked the court for an order to cut off state funds to cities and counties which continue to maintain a dual system. Aronson said freedom of choice desegregation is not working. Judge Rives responded:

"If the goal is to mix, I will concede that freedom of choice will not work, but if the goal is to abolish discrimination, then it is a different question--it might work".

Barrett, for the Justice Department, suggested that state officials should require local schools to file desegregation plans similar to those required by district courts in 14 Alabama communities. District Judge Johnson, another member of the panel, asked Barrett if he was proposing that the court order the state to draw up a set of guidelines for individual schools to follow. "Your proposition for the court to go into the guidelines business is very interesting," Johnson said, smiling.

Montgomery attorney Maury Smith, representing the state, said that state officials had never interfered with a court order: "Any interference by the state has been directed to the guidelines and nothing else. The state has not dissented with this court. It has dissented with an administrative interpretation of an act of Congress." Smith told the court: "It is possible that the future of public education in Alabama rests in this court room."

At the time of the Feb. 3 hearing, the U. S. Fifth Court of Appeals had not ruled on the request for a rehearing of a 2-1 decision Dec. 29 which embraced HEW's guidelines as standards for the appellate court. Judge Rives announced from the bench that the suits before the combined panels in Montgomery would be ruled on only after the Circuit Court had decided on the rehearing petition. From what he said, the Montgomery panels might hold off on a ruling until the Fifth Circuit (which subsequently agreed to a rehearing) had finally disposed of that case. The Alabama school systems of Jefferson County, Bessemer and Fairfield are directly involved.

The questions before the combined panels are thus whether the guidelines are legal; whether Alabama's 1966 legislative act nullifying them is legal; whether the state should be enjoined, in all its systems, to desegregate all schools because of alleged violations of the 1964 Lee vs. Macon decision; plus related questions, including the legality of state tuition payments to students in private, white schools. (See report for December 1966.)

Besides Rives, Johnson and Grooms, hearing the suits was U. S. District Judge Virgil Pittman of Mobile. The latter was the only one of the four not involved in the 1964 suit.

Aside from a general defense of Alabama officials, the state asked that the guidelines be declared illegal.

Originally, Rives had indicated a decision could be expected in the spring.

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Attorneys representing Jefferson County, Fairfield and Bessemer were pleased by the Fifth Circuit Court of Appeals' agreement to review a Dec. 29 decision which would have required total desegregation of the school systems in the fall and applied HEW guidelines. The lawyers were particularly gratified by the 12-judge court's amended decision to hear oral argument March 10 in Jacksonville, Fla.

Birmingham attorney Reid Barnes, representing Bessemer schools, said Feb. 22 that the three Birmingham-area systems would probably present argument similar to those they used before the three-judge appellate court in December. The court ruled against them 2-1 on Dec. 29. Alabama and Louisiana authorities appealed for an en banc hearing by the full court.

The December decision threw out desegregation plans of Jefferson County, Bessemer and Fairfield schools, which had been approved by federal district court judges in Birmingham in 1965.

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U. S. District Judge Daniel H. Thomas of Mobile ordered Feb. 9 that the school systems of Hale and Perry counties desegregate their last five grades next September. In virtually identical orders, Judge Thomas told the rural west-central Alabama counties: "Race or color will henceforth not be a factor in the hiring, assignment, reassignment, promotion, demotion or dismissal of teachers and other professional staff."

A student, once assigned to a school, "shall have full access to and benefits of all services, facilities, activities and programs of the school to which he is assigned without discrimination based on race or color," Thomas said.

Thomas also directed that 11 schools in the two counties be closed and consolidated. Freedom of choice must be guaranteed to all students, he said, and "no choice will be denied for any reason other than overcrowding." In case of overcrowding, he said, "preference will be given on the basis of proximity of the school to the homes of students choosing it without regard to race or color." The effect of the orders was to require total desegregation, through freedom of choice, next fall.

About a week earlier, Judge Thomas ruled that the addition of eight Negro pupils to a rural Wilcox County school did not overcrowd classes in that county. He directed the Wilcox board to accept the eight in seventh and eighth grade classes at Pine Hill school. The board, under court desegregation orders, had petitioned Judge Thomas for permission to return the eight to the Negro schools they originally attended.

The pupils had been admitted to the school under a ruling handed down by Thomas Jan. 16 (see SERS report for January), in which the court ordered the board to admit to white schools any of 66 pupils who had been denied transfer applications last September and who still wanted the transfers. The court noted that the board approved transfers of 21 other Negro pupils in September, but that only 11 of these are now enrolled in the formerly white schools.

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Schoolmen

In a brief statement Feb. 16, Gov. Lurleen Wallace denounced a series of meetings on federal school desegregation guidelines as "not in the interest of the school system or the school children of Alabama." The statement followed the announcement by the Alabama State Advisory Committee of the U. S. Commission on Civil Rights that six meetings on federal school desegregation guidelines would be held over the state during February.

At the first, in Montgomery Feb. 18, a U. S. Office of Education official said that the guidelines program would be expanded during the coming school year. The statement came from Harold R. Williams, a native of Montgomery and a Negro, who is now deputy assistant director of the Equal Education Opportunities Program of the Office of Education.

More than 400 people from 36 counties, mostly Negroes, attended the first meeting. Some 5,000, including school superintendents, school board members, parent-teacher leaders and public officials were invited to the meetings, designed to acquaint Alabamians with the requirements of the amended federal guidelines.

Birmingham attorney C. H. Erskine Smith, chairman of the advisory committee, said that his group hoped to hear from local school personnel and citizens regarding "the problems and progress being encountered in eliminating the dual school system in the various districts of the state."

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A federal examiner notified Muscle Shoals school officials Feb. 17 that a decision to cut off federal aid to the city system because of failure to agree to desegregation guidelines had been reversed. The examiner, J. Marker Dern, said he interpreted the HEW compliance forms as "permissive rather than compulsory." He said the Muscle Shoal School Board's "actions speak louder than words."

HEW had cut off funds to the board when school officials refused to sign a compliance form. Instead of signing, the board adopted a resolution saying it was in compliance with civil rights laws. School Supt. James Moore and the board's attorney, Jack Huddleston, asked for and were granted a special hearing in Washington to state their case. It was presumably on the basis of this that the order to withhold funds was withdrawn.

Former Gov. George C. Wallace, who has opposed compliance agreements, said the decision to restore the funds "reinforces what we have been telling our people all along and it shows the astuteness of the legislature... in passing the anti-guidelines law last year." All our schools boards recognize that they must follow the law even though they may disagree with it. [But the decision] points up the fact that the school boards do not have to put up with being harassed by HEW to sign an illegal form."

Meanwhile, school funds for Henry and Geneva counties were ordered withdrawn.

Geneva County Supt. Herbert Hughes said: "We can still run our schools even though we may not be able to comply to the satisfaction of the commissioner of education." He conceded, however, that trying to run the schools without federal funds would be like putting a farmer behind a mule after he had driven a tractor for years. The loss to Geneva schools was reported in excess of $500,000; to Henry, about $400,000.

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* Negro classrooms were overcrowded, some having as many as 50 to 80 students per teacher.

* The findings expose "the myth of the separate-but-equal philosophy still practiced in some Southern communities resisting school integration."

* "Sorry educational gaps" show that the amount per pupil per year from 1955 to 1964 was $286 for white children and less than half that, $141, for Negroes.

* The average amount of purely local funds spent per pupil showed that whites got $94 per child; Negroes, $17.

The NEA said that the investigation was prompted by the firing of nine Negro teachers in 1965. The investigation was requested by the Wilcox County Teachers Association, a Negro group. The report charged that while the reason for the firing of the teachers was given as a decline in enrollment, other teachers, white and Negro, were hired, many of them with less training and experience.

The NEA's Commission on Professional Rights and Responsibilities also said Wilcox schools have lost millions of dollars in federal aid for refusing to desegregate. Inadequacies found in the school system, the report said, also include libraries, instructional materials, sanitary facilities and transportation.

The county was criticized for failing to use its "full taxing capacity." Another $3 million had been lost in potential funds under the Economic Opportunity Act, the report said. The assessed valuation of property is one of the state's lowest and so is the millage tax on education--14.5 per cent, compared to Mobile's 28, according to the report.

"Only massive financial aid from outside the county, assisted by professional leadership from universities and urban areas of the state, can bring about any real solution to the problems of ignorance and poverty now strangling the county's growth potential," the commission continued. Other recommendations included:

* Quick action on the part of Wilcox officials--without waiting for fiscal reforms by state and federal governments--to increase local school support. The state, NEA said, pays 95 per cent.

* A campaign to reassess property at a more reasonable evaluation and raise the millage for school purposes.

* The beginning of a year-round Head Start program with some $600,000 in federal funds which the commission said was available to the county.

* Statewide application of state teacher tenure laws without exemptions by local act as in Wilcox.

Alabamians should recognize their interdependence, the report said, and understand that the impoverishment of any one segment of the community is a perpetual drain on the productivity of the community of the whole. In a mobile nation, the commission added, "there is no region that can long escape the consequences of poverty and ignorance in any other region."

State and local officials promptly denied the truth, in whole or in part, of the report. They said the charges were founded largely on "manufactured" information.

State Supt. of Education Ernest Stone commented: "I wonder if they've been out to California to investigate the educational opportunities of the Chinese. As far as I'm concerned, if we need NEA we will call them in Alabama." Stone said he knew nothing of the study group's presence in Wilcox, but that state funds had been allocated to Wilcox County on the basis of average daily attendance "completely without regard to race."

So far as state records show, Stone continued, Wilcox has legally spent state funds allotted to it. "We believe that we know more about it here in Alabama than a committee of teachers who are not trained in school finance and school supervisors who come from a far-off place and spend a few days and formulate biased opinions."

Stone said that it was the responsibility of the State Department of Education to allocate funds regardless of race or color on the basis of teacher units and average daily attendance: "This has been done to the letter of the law in Wilcox County and every school system in Alabama."

Wilcox County State Senator Roland Cooper said he was not surprised by the NEA report: "A bunch of NEA, Northern liberal left-wing folks came down and made the study. I wouldn't think they would be capable of writing a favorable report for our area."

Cooper said the school system was following court desegregation orders and was spending all available funds for education. "This is a rural county and we don't have the funds some of the others do," he said. "The people who say we ought to raise taxes ought to come down here and pay some of them."

As for the unfair dismissal of some Negro teachers, Cooper said: "That's a damn lie." A drop in enrollment in some Negro schools necessitated the dismissal of five instructors, he said, but the terminations came on the recommendation of Negro school principals.

R. E. Lambert, chairman of the county school board, said that while it was necessary "at one time to let some teachers go, that was because of reduction of funds available... We haven't just willfully fired anyone."

As for continued segregation, Lambert said:

"I don't know for sure where they got their information because the facts in the case don't justify a statement like that. A lot of that is just manufactured stuff and full of false accusations. We've had integration for a year now. The report has...been falsified."

He also denied that the system has lost federal funds. "We didn't lose the funds because we are integrated, and we are integrated because we are under a specific federal court order applying only to Wilcox County. In a case like that, there is nothing to do but integrate."

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Under a summer VISTA project, 25 volunteers were reported to have begun work in Wilcox County in early July, under the direction of Miles College of Birmingham. The volunteers went to work with the Wilcox board in eight areas, helping teachers use new reading machines and assisting in basic education and recreation, the college announced. The tutors were said to be both white and Negro but "most, if not all," of the students are Negro.

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Some 13 Alabama school districts had their eligibility for federal financial assistance restored by the U.S. Office of Education July 21. The agency said in Washington that the Alabama districts arranged new school desegregation plans under court order. Most of them were among the 99 ordered desegregated in a statewide court directive March 22.

However, two other systems, those of Athens and Limestone County, in North Alabama, had their third postponement for hearings in Washington on alleged violations of the Civil Rights Act of 1964. The hearings have been reset for the fourth time for Aug. 3. The last postponement was for a hearing set July 19, five days after the three-judge court, which ordered statewide desegregation in March, issued a temporary restraining order against HEW's withholding of any funds of systems under the omnibus order.

Charges in the Lanett case, which prompted that order against HEW, were identical to the charges made against the Athens and Limestone County systems, according to the two superintendents.

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