SCHOOL DESEGREGATION

IN THE SOUTHERN AND BORDER STATES

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ALABAMA HIGHLIGHTS

A three-judge federal court ruled May 3 that the anti-guidelines law passed by the Alabama legislature last fall was unconstitutional, and that a state cannot nullify the actions of a federal agency implementing a U.S. statute. At the same time, the court accepted the judgment of the Fifth Circuit Court of Appeals that the 1966 guidelines of the Department of Health, Education and Welfare are legal. The court warned, however, that HEW itself should respect court desegregation orders.

Bibb County was made a party to the statewide desegregation order of March 22 and enjoined to take appropriate action. It was the only system of the 99 ordered to desegregate, which had refused to submit a plan. Similar "show cause" actions against three other systems were dismissed.

U.S. District Judge Frank M. Johnson Jr., considering action to force four school systems already under his desegregation orders to conform to the Fifth Circuit ruling, explored evidence that suggested that his previous directives and the appellate court's were similar. He delayed decision. In Birmingham federal court, the city system there was ordered to comply with the Fifth Circuit's order.

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ALABAMA

Legal Action

A three-judge federal court ruled May 3 that the Alabama legislature, in enacting an anti-guidelines statute last fall, was "taking the law into its own hands." The court found that the law passed by the legislature, at the behest of former Gov. George C. Wallace, violated the supremacy clause of the U.S. Constitution.

The anti-guidelines act sought to set aside agreements made by local school boards complying with school desegregation guidelines laid down by the U.S. Department of Health, Education and Welfare. The statute declared such agreements null and void and refused to recognize the legality of any compliance agreements made after the act was passed. (For details, see report for September, 1966.)

The court said the law was invalid because it ran counter to Article 16 of the U.S. Constitution, which holds that acts of Congress are the "supreme law of the land."

"We think," the judges wrote, "that a state may not, except through a court action reviewable by the Supreme Court, undertake to declare null and void any action of a federal department or agency to implement or effectuate a federal statute." Particularly is this true, the court continued, "where such a declaration is part of the state's effort to obstruct or interfere with the operation of such a statute."

Attorneys for the state had asked, in a counter-suit filed last fall, for a court finding that the guidelines themselves were invalid. However, before the decision could be handed down, the U.S. Fifth Circuit Court of Appeals answered that question Dec. 28 and March 29, holding that the guidelines do not exceed the provisions of the 1964 Civil Rights Act.

The three judges said they had a "clear duty" to abide by the appellate court decision. But even if they did not, they said, the circuit court ruling "is entitled to such great deference and respect that we would be unwilling to depart from it."

A major issue in the case was the controversy over whether HEW, in enforcing the guidelines, had authority to withhold federal funds from school systems that refuse to comply. On that, the three judges pointed out that the guidelines are not within the scope of HEW's rule-making powers but serve instead as a mere statement of policy. Any action to cut off funds, the court stressed, is subject to judicial review.

In a kind of judicial aside, the court took notice of charges that the Fifth Circuit's decree ordering desegregation in six Southern states means total, massive "integration" and transfer of students to achieve racial balance.

The appellate ruling, the court said, "does not call for any further or more complete mixing or balancing of the races than may be appropriate for the purpose of correcting discrimination." (Judge Frank M. Johnson Jr., a member of the panel, also touched on this point in hearing four cases in which Negroes sought to have his desegregation orders broadened to embrace the Fifth Circuit ruling. See below.)

In its 10-page decision, the court put HEW on notice that it must recognize desegregation orders handed down by the courts. "As courts attempt to cooperate with executive and legislative policies," the judges said, "so, too, the department must respect a court order for the desegregation of a school or school system."

There have been complaints that HEW officials in some instances regarded court orders as not going far enough. An apparent conflict developed in the case of five systems, notified at the end of May of cutoff of federal funds. All of the systems, like every school system in Alabama, are under court desegregation orders.

Judges sitting on the anti-guidelines case were U.S. Circuit Judge Richard T. Rives, and District Judges Frank M. Johnson Jr. and Virgil Pittman. Rives and Johnson are from Montgomery; Pittman, from Mobile.

Basing their decision on the guidelines on the March 29 en banc decision of the Fifth Circuit (which reviewed a three-judge appellate court decision of Dec. 29), the court panel in Montgomery said May 3: "... We hold that the 1966 guidelines are constitutionally valid and conform to the intent of the Civil Rights Act of 1964."

The judges noted that the objective of the Civil Rights Act prohibiting racial discrimination in programs receiving federal funds "is not compulsory mixing of the races but freedom from discrimination."

"Of course," the judges said, "some compulsory association of the races is necessary for the purpose of desegregating the schools, but that is limited to such as is appropriate for eliminating a dual structure of separate schools for students of different races..."

No arbitrary power is vested in any federal department or agency, the court continued. Definite rules and regulations are for the purpose of letting local authorities know in advance the policies of the department. Purpose of the guidelines is to "provide assistance and guidance to recipients to help them comply voluntarily," the judges said.

The case was heard Nov. 30, 1966, along with another suit (Lee v. Macon) seeking statewide desegregation of the 99 districts not already under court orders. This part of the multi-faceted case, involving four judges sitting as two three-judge panels, resulted in the March 22 ruling directing the desegregation of 99 systems next fall, along with junior colleges, trade schools and state colleges under the State Board of Education.

Rives, Johnson and District Judge H. H. Grooms of Birmingham handed down that decision. The court also, at that time, threw out a state tuition grant law passed during the administration of Gov. George Wallace.

In its May 3 ruling on the guidelines and the state's anti-guidelines law, the judges noted that "... this court has ordered the public schools and colleges in Alabama not already desegregated to be completely desegregated as of the beginning of the next school year."

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The Bibb County school system, one of the 99 districts ordered to desegregate by a ruling March 22, was enjoined May 18 by the court to adopt a school desegregation plan for the 1967-68 school year. Thus Bibb became the first school system after Macon County to be added as a defendant and directly ordered to comply with the court's decree.

Bibb was enjoined by the three-judge court of Rives, Johnson and Grooms after refusing to submit the required plan. The panel said Bibb officials offered no evidence to show why they should not be required to comply with the March 22 order "other than a statement by their counsel that the board has, since March 22, directed certain questionnaires to the students and teachers in the Bibb County school system."

The panel noted further that a deposition of the superintendent of Bibb schools "established that the Board of Education of Bibb County is operating a dual system based on race."

Bibb was the only system that had failed to respond in any manner to the request for plans sent out by State Superintendent of Education Ernest Stone, who was made directly responsible for overseeing the court's detailed order. Bibb's defense to the "show cause" action, which resulted in the injunction, was essentially that it had not been a party to the original suit (Lee v. Macon) and that the court had no jurisdiction over it.

Three other systems made defendants in the "show cause" hearing were found to have conformed to the order. They were: Autauga, Cullman and Pickens county systems. The court dismissed them as defendants.

The panel ruled in May that it did have jurisdiction of school systems all over the state and that Supt. Stone had authority--which Bibb denied--to require desegregation plans. Justice department attorneys brought out that there has been no desegregation in Bibb and that although the Board of Education claimed to have passed a resolution to accept transfer applications this was never made public.

The court made the four systems of Bibb, Autauga, Cullman and Pickens defendants April 24 but dismissed all but Bibb May 18. The justice department has also asked the court to advise 48 other systems that their plans fall short, in varying particulars, of court requirements.

Gov. Lurleen Wallace, one of the defendants in the statewide order, asked through her attorneys that the court drop the four named systems as defendants. The position of the state has been Macon County, the original defendant, is the only proper respondent to the court's March order and the only one legally bound by it. However, the U.S. Supreme Court refused May 22 to delay the statewide order.

Gov. Wallace's lawyers, in a motion before the high court, requested a stay. "We feel that this court should pass upon the merits of this controversy before the status quo is so greatly changed that it could never be restored," the state pleaded.

The justice department said the request was "no more than a further attempt to delay the realization of a constitutional right." The lower court's ruling, the government attorneys said, was "a measured and carefully considered judicial response to years of foot-dragging and defiance of the Constitution by officials of the State of Alabama responsible for school desegregation."

Mrs. Wallace and the other defendant state officials argued that the three-judge panel had exceeded its authority, that it was without lawful power "to command the local school officials to take the ordered action," and that "an orderly process of desegregation is continuing in the elementary and secondary public schools of Alabama."

The original Lee v. Macon injunction in July, 1964, was the result of state interference with court-ordered desegregation in Macon County in 1963 and 1964. At that time, the same three-judge panel, which handed down the statewide injunction March 22, warned that interference must cease, that state officials had the duty to promote and encourage desegregation. The court said then that "it could and probably should" have issued a statewide order. It warned that this would be the result of continued defiance and the failure of state officials to take affirmative action to facilitate desegregation.

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At the end of May, U.S. District Judge Frank M. Johnson Jr. of Montgomery was considering whether to place four Alabama school districts under the new desegregation ruling by the Fifth Circuit Court of Appeals, as affirmed en banc March 29. The systems of Montgomery City-County, Barbour, Bullock and Crenshaw counties are already under Johnson's desegregation orders and were among the 19 systems omitted from the March 22 statewide ruling because of prior injunctions.

Attorney Fred Gray, representing Negro plaintiffs, asked for an order placing the four boards under the Fifth Circuit's requirements. However, in a point-by-point analysis of the district court's orders, under which the boards were already operating, it was established that there was very little difference between what Johnson had required and what the appellate order required.

State Senator Alton Turner of Crenshaw County, attorney for that board, accused the justice department of "straining at gnats" because the two orders were so nearly identical. He and other lawyers and school officials argued that faculty desegregation would be the most difficult requirement to comply with by this fall.

In the course of the hearings, Judge Johnson praised school officials of Montgomery City-County and Bullock County for demonstrating "a desire to operate their school systems as professional educators, not as politicians." Judge Johnson noted that school officials in both counties "accomplished their efforts" without any disruption of schools. He said their work was "a considerable feat" and that the "community owes these school officials its appreciation."

One point of contention raised by justice department attorneys was the method of sending freedom-of-choice forms to parents. They said the forms should be mailed. Johnson said he didn't care how it was done as long as the school boards realized their duty to get the forms to parents and to see that they are returned.

Attorney Gray said transportation was another grievance and that Negroes did not know what school buses were available in their neighborhoods. Attorneys Vaughan Hill Robison and Maury Smith of Montgomery, representing Montgomery and Bullock, said available bus transportation is clearly marked on the choice forms and that no discrimination in transportation exists in either county.

Judge Johnson himself objected to a justice department proposal that pupils be allowed to transfer from one school to another in mid-term to get a particular academic course they wanted. Johnson took the motions under advisement and said he would rule on them at a later date. The major problem seemed faculty desegregation.

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The three-judge court that ordered 99 Alabama school systems not under previous desegregation injunctions to begin desegregation next fall gave school officials additional time May 1 to work out transportation problems. In the March 22 order, State Supt. Ernest Stone had been given until May 21 to collect the bus plans of the 99 systems. That was extended to June 15 and Stone was allowed 30 days from then to approve or disapprove the plans.

The three-judge panel agreed that local school boards would be in a better position to complete their plans to desegregate transportation facilities following the choice periods during the month of April. "The responsibility of the local boards remains, as the court expressed in its decree of March 22, to eliminate overlapping and duplicative bus routes based on race," the judges said May 1.

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Birmingham schools must comply with the desegregation plan approved in the March 29 review by the Fifth Circuit, U.S. District Judge Seybourn Lynne ruled May 8. His decree in effect struck down the gradual desegregation plan in effect in the state's largest city and replaced it with the appellate court's formula.

Lynne established the choice period as May 15-31. The Fifth Circuit had established May 1-31 as the registration time. Lynne said this was impossible since the May 1 date had passed. He refused to extend the choice period to June 15, as requested by Negro attorney Orzell Billingsley, because no teachers would be under contract with the Birmingham board after June 2 to handle implementation of the plan.

Although the Fifth Circuit plan calls for progress reports by May 15 and June 15, Lynne again allowed a variation, establishing July 1 and Oct. 1 for these reports by the Birmingham board. In the only other deviation from the appellate court's opinion, Lynne said the schools could hand out letters to students rather than mailing them, as outlined by the Fifth Circuit. As in the case of Montgomery and Bullock boards, Birmingham had argued that the mailing plan would be expensive.

After the hearing, Birmingham School Supt. Raymond Christian said the board would "comply with the best interests of the schools in mind." Dr. Christian added: "We can't pick and choose which decrees to heed." The main obstacle, he added, was "time."

The Birmingham system was not affected directly either by the Fifth Circuit decision or the March 22 three-judge panel in Montgomery since it was operating under a separate court order issued several years ago. School attorney Reid Barnes called the higher court's upholding of the school desegregation guidelines "an abuse of judicial process." Since no lower federal court had ruled on the guidelines, an appellate court could not legally pass on the matter, Barnes contended. (Several judges have recently expressed similar opinions, but the three-judge panel in Montgomery said it was bound by the appellate court's decision on the guidelines.)

Lynne ordered Birmingham to take "affirmative action to disestablish all school segregation and to eliminate the effects of the dual system."

Dr. Christian said the system would not appeal the order: "After all, there's nowhere to appeal it. The Fifth Circuit handed down the decision originally and the Supreme Court has refused to stay the appellate court's decision."

The appellate court directly affected only the Jefferson County, Fairfield and Bessemer systems in Alabama. Federal Judges H. H. Grooms and Clarence Allgood had similar motions before them to bring Huntsville, Gadsden, Madison County and Lawrence County under the appellate order.

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Schoolmen

The Department of Health, Education and Welfare announced in Washington May 31 that five Alabama schools would be cut off from federal funds for "failure to comply with the non-discrimination provisions of the Civil Rights Act of 1964." The systems were those of Marengo County, Washington County, Russell County, Elmore County and Thomasville City.

Elmore County Supt. of Education William Ross McQueen said he was "completely floored" and that it came as a "complete surprise." McQueen continued: "We have not failed to comply. I thought we were in complete compliance. We have sent in copies of everything required of us, with copies to Judge Frank M. Johnson Jr. The only possible exception could be a copy of an advertisement in the county newspaper, which was sent in late. We air-mailed the advertisement to them (HEW) at their request and have received since then a postal receipt, indicating it had been received in Washington."

McQueen said Judge Johnson had been "very specific and very fair in all his dealings, and his orders have been followed to the letter in this matter."

"We have not had disturbance here," McQueen continued, "no trouble whatsoever as far as our racial situation is concerned. It looks like Judge Johnson is getting the runaround. I'm not trying to tell the judge what to do, but it seems to me he should cite someone in Washington for contempt."

McQueen said further that Dr. Ernest Stone, state superintendent of education, had been prompt in sending out Judge Johnson's directives in all desegregation matters affecting the schools, and that all directives had been dealt with immediately.

In the absence of any knowledge of the reason for the cutoff, he said, "It could be for something as ridiculous as the false charges leveled at us last year that we were feeding the white children fried chicken while the Negro students were being fed bologna."

Marengo County Supt. Fred D. Ramsey said at Sweet Water that he had received no official notification of the order. He said the school board had requested an extension of the funds cutoff date until the matter had cleared the courts. He said that HEW apparently has not seen fit to grant the request.

Russel County Supt. Warren N. Richards said in Phenix City that he had not received notification either. The same response came from Washington County Supt. John S. Wood.

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Russell Supt. Richards had other problems as well. A citizens group was attempting in late May to force his resignation and get a new superintendent and a new school board. That pledge was made May 26 by Frank Samples, a Phenix City lawyer who serves as chairman of the citizens group. Supt. Richards told the group that he would consider suggestions to make him a better superintendent, but added: "I have not been requested to resign by any member of this school board and have no plans to offer my resignation."

The protesting group, which burned freedom-of-choice forms sent out by the board, issued a list of charges ranging from censored news releases to racial imbalance on teachers' committees. Jack Miller, attorney for the board, read and denied the charges, calling them unfounded and untrue. He noted that Alabama's governer and attorney general haven't been able to ward off federal desegregation orders:

"They can't do anything about the federal guidelines and they are a lot smarter and better trained than we are. I don't see how you can think the school board can do anything about them."

Miller also mentioned Bibb County's failure to comply with the three-judge court's desegregation order and commented: "Now they are no longer operating under thier school board, but directly under a federal court."

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It was reported, meanwhile, that State Supt. Stone was quietly working to save Alabama schools some $20 million in federal funds--the estimate of the amount local school districts out of compliance with the guidelines might lose before they were returned to good standing. Stone was reported by newspapers as trying to persuade HEW that since the districts will undoubtedly be in compliance next fall, with every system under federal court desegregation orders, the federal agency might as well send the money to them.

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Two civil rights groups in Huntsville complained in May that the freedom-of-choice forms sent out by the city system were "dishonest," created a "terrible situation," and resulted in unfair burdens on Negro parents. Supt. Alton C. Crews described the formal complaints of the Huntsville Council on Human Relations and the Community Service Committee May 20 as "regrettably hasty." The groups made their protests in letters to John Doar of the justice department.

The complaints focused on the transfer form and on the availability of maps showing the various school zones within the city--the contention being that the former was unclear and the latter unavailable.

The protesting groups claimed some Negro parents selected a Negro school for their child when they could have a desegregated one. When told this, they said they wanted to. But the board, according to the groups, has taken the position that a choice, once made, could not be changed except in a case of extreme hardship.

Crews said the board's adoption of the transfer form was a "clerical necessity," adding: "If the parents have the map showing the zones in the city, they should have no difficulty choosing the school they wish their child to attend."

But the complaining parents said the maps were not available to parents: "School zone maps were posted at the Board of Education building (closed on Saturday) and Negro schools two days after the (choice) period started. This made it extremely difficult for working parents to learn the correct zone. This information is not available over the phone."

Crews promised May 20 that mimeographed zone maps would be sent to the homes of 29,000 white students and 3,000 Negro students in the system. Every parent would get a map, he said. Besides, he said, the complaint was made at the end of the first of four weeks of the choice period, which ends June 15.

Crews accused the civil rights groups of "jumping to conclusions."

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What They Say

In an apparent reference to Gov. Lurleen Wallace's March 30 appeal for resistance to the three-judge court's statewide desegregation order, U.S. District Judge Frank M. Johnson Jr. of Montgomery, a member of the panel, said May 1:

"The doctrine of anarchy is offensive to the concept of 'government by law'--whether it be preached in the streets or on statewide television." The occasion was a naturalization ceremony in the U.S. District Court in Montgomery on "Law Day U.S.A."

Mrs. Wallace had appeared on statewide television March 30, asking for legislative and popular resistance to the court's order. Judge Johnson told the new citizens that it is alien to the philosophy that the law is the instrument of the government for individuals in positions of leadership in social movements to cry, "To Hell with the laws of the United States."

It is equally wrong, he said, for individuals in positions of political leadership to threaten to use police power of a state government to impede--even thwart--the decree of a lawfully constituted court. "While one cry of defiance against our law is couched in language that is vulgar and offensive and the other is couched in more sophisticated terms," he said, "both are doctrines of defiance against our laws and our government and, for this reason, they equally advocate anarchy."

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In her message to the regular biennial session of the legislature, which convened May 2, Mrs. Wallace asked the lawmakers to "give continuing priority" to the investigation of recent federal court desegregation decisions. However, she made no specific reference to legislation to enable her to take over administration of the schools as part of her planned resistance to the court orders--as she did in her speech to a joint assembly in special session March 30. The governor did say, however: "The movement which started here in Alabama...is catching fire all over the country."

Her husband, former Gov. George C. Wallace, continued his speeches over the country as an all but declared candidate for the presidency in 1968. He repeatedly advocated that each state should be allowed to choose whether it wanted segregation or not. Segregation is best for Alabama, he said, but as president he would respect the contrary choice of other states.

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