SCHOOL DESEGREGATION

IN THE SOUTHERN AND BORDER STATES

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ALABAMA HIGHLIGHTS

A three-judge federal panel March 22 ordered the statewide desegregation of all school systems in Alabama not already under court orders. The order, first of its kind, was directed at Gov. Lurleen B. Wallace, the State Board of Education, the State Superintendent of Education, and all others acting in concert with them.

Although the Governor and the Board were ordered to take "affirmative action to disestablish" segregation in Alabama schools, the main burden of carrying out the court's sweeping directive fell on State Supt. of Education Ernest Stone. Specifically named were 99 of the state's 118 school systems. The remaining 19 are already under court desegregation orders.

Mrs. Wallace, in a statewide televised address to a joint session of the Legislature March 30, called for resistance, an appeal, and possible legislative action which would invest in her and the Legislature all the duties of the state superintendent and the state board. She also indicated the state would invoke its "police powers" to thwart the order.

ALABAMA

Legal Action

A three-judge U.S. District Court ordered Alabama officials March 22 to take affirmative action to desegregate schools in 99 districts--those not already under federal school desegregation orders.

Named in the permanent injunction in the case were Gov. Lurleen Burns Wallace, as Governor and president of the Alabama State Board of Education, the individual board members, State Supt. of Education Ernest Stone, "together with their agents, servants, employes, successors in office, and all those in active concert or participation with them."

All of those named were enjoined against discrimination on the basis of race and were directed to take "affirmative action to disestablish all state-enforced or encouraged public school segregation and to eliminate the effects or past state-enforced or encouraged discrimination in their activities and their operation of the public schools systems throughout the state." But the main burden of carrying out the details of the order fell on State Supt. Stone.

The lengthy orders directed Stone to oversee such matters as school construction and consolidation, to collect and report data on the residence and attendance at schools "by race" in all 99 systems, to require expansion of facilities as needed to effect desegregation; to approve new school sites in accordance with the order; to develop a "detailed program for assisting and encouraging faculty desegregation" throughout the state and to report on such plans within 60 days after the court's decree; to help local boards locate and employ suitable teachers "in a manner to effect faculty desegregation in the public schools throughout the state; to direct a single, system-wide teacher institute in each local system for the 1967-68 school year and every year thereafter; to apply certification requirements without racial discrimination and in a manner which will not perpetuate faculty segregation; to notify all applicants for certification that all systems in the state are obliged to desegregate faculties and that teachers "are subject to assignment in accordance with that obligation."

The superintendent was directed to eliminate race as a basis for assigning students to school buses and to eliminate overlapping or duplicative bus routes based on race; to require all local school boards, before the beginning of the 1967-68 school year, to establish nondiscriminatory criteria governing transportation, which criteria "at a minimum, should entitle each student to be transported to the school he attends if that school is the one nearest his residence if that school is at least two miles from his residence."

The state superintendent was charged with the responsibility of approving or disapproving the proposed routes and criteria, and to make certain that students and parents know the details.

Stone was directed to notify the following school systems that they are required to adopt a desegregation plan for all grades beginning with the 1967-68 school year in accordance with the court's orders:

Alexander City, Andalusia, Anniston, Athens, Attalla, Auburn, Autauga County, Baldwin County, Bibb County, Blount County, Brewton, Butler County, Calhoun County, Carbon Hill, Chambers County, Cherokee County, Chilton County, Clarke County, Clay County, Cleburne County, Coffee County, Colbert County, Conecuh County, Coosa County, Covington County, Cullman, Cullman County, Dale County, Daleville, Dallas County, Demopolis, Dothan, Elba, Elmore County, Etowah County, Eufaula County, Eufaula, Fayette County, Florala, Florence, Fort Payne, Franklin County, Geneva County, Greene County, Henry County, Houston County, Jackson County, Jacksonville, Jasper, Lamar County, Lanett, Lauderdale County, Lee County, Limestone County, Linden, Marengo County, Marion, Marion County, Marshall County, Monroe County, Morgan County, Mountain Brook, Muscle Shoals, Oneonta, Opelika, Opp, Ozark, Phenix City, Pickens County, Piedmont, Pike County, Randolph County, Roanoke, Russell County, Russellville, St. Clair County, Scottsboro, Selma, Sheffield, Shelby County, Sumter County, Sylacauga, Talladega, Talladega County, Tallapoosa County, Tallahassee, Tarrant, Thomasville, Troy, Tuscaloosa, Tuscaloosa County, Tuscumbia, Walker County, Washington County, Winfield and Winston County.

The only school systems not directly affected were those already under court desegregation orders, including: Fairfield, Huntsville, Montgomery City-County, Bullock County, Crenshaw County, Jefferson County, Lowndes County, Madison County, Gadsden, Mobile City-County, Barbour County, Choctaw County, Hale County, Lawrence County and Macon County.

The court also directed that all institutions under control of the State Board of Education--trade schools, junior colleges and state colleges--must not discriminate. Applicants cannot be denied admission on the ground of race, the court said. Further: "Dual attendance zones" based on race for these institutions must be abolished. Additionally, the State Department of Education was directed to order the schools and colleges to recruit, hire and assign teachers to desegregate the faculties by September.

The state superintendent was directed to develop a detailed program for equalizing all facilities, services, courses of instruction, instructional materials, etc. in "schools previously maintained for Negro students." These must be brought "up to the level in schools previously maintained for white students."

(In this, some lawyers believed, the court appeared to recognize the probability of continuing separate facilities in many areas, while insisting that they be equalized.)

In the final section of the order, the court declared Alabama's 1965 private-school tuition-grant law (Statute No. 687, approved Sept. 1, 1965) unconstitutional and enjoined approval of any tuition grant under the act.

The court directed the United States to submit to the court within 30 days, and serve upon all parties, a report informing the court whether any of the school systems listed had failed to adopt a satisfactory desegregation plan. The court retained jurisdiction of the case.

The opinion of the court, a 28-page document separate from the order, recounted events leading up to the unprecedented statewide injunction. Both were signed by Circuit Judge Richard T. Rives of Montgomery and District Judges Frank M. Johnson Jr. of Montgomery and H. H. Grooms of Birmingham.

The opinion contained the court's finding that state officials, including former Gov. George C. Wallace, had violated the court's injunction in the case (Lee v. Macon, a style which was retained in the March 22 revival of the action) in July, 1964.

All desegregation attempts, executive and judicial, have "met with the relentless opposition of these defendant state officials," the court said, continuing:

"Not only have these defendants, through their control and influence over the local school boards, flouted every effort to make the 14th Amendment a meaningful reality to Negro school children in Alabama; they have apparently dedicated themselves and, certainly from the evidence in this case, have committed the powers and resources of their offices to the continuation of a dual public school system such as that condemned by Brown v. Board of Education...As a result of such efforts on the part of those charged with the duty and responsibility under the law as announced in 1954 by the Supreme Court in Brown, by the Congress of the United States in the Civil Rights Act of 1964, and, more specifically, by this court in its July, 1964 order, today only a very small percentage of students in Alabama are enrolled in desegregated school systems."

In a footnote, the court noted that the percentage of students enrolled in schools in which they are in a racial minority, according to state records for 1965-66, was: White, 0.003%; Negro, 0.34%. In that period, the court found that of the 294,734 Negro children attending public schools in Alabama, only 1,009 were attending desegregated schools. Thus:

"Based on this fact and a continuation of such conduct on the part of these state officials...it is now evident that the reasons for this court's reluctance to grant the relief to which these plaintiffs were entitled over two years ago [a reference to the 1963-64 Lee litigation in which plaintiffs asked for a statewide injunction] are no longer valid."

The court then reviewed the constitutional and statutory powers of the State Superintendent and the State Board and said:

"To maintain the racial characteristics of the Alabama public school system, the defendant state officials have used their power in essentially two ways. First, they have used their authority as a threat and as a means of punishment to prevent local school officials from fulfilling their constitutional obligations to desegregate schools, and, second, they have performed their own functions in such a way as to maintain and preserve the racial characteristics of the system. No useful purposes would be served by reiterating the machinations surrounding the closing of schools in Tuskegee, Alabama, and the Governor's abortive efforts to thwart the desegregation of Tuskegee High School (in 1963-64), since this episode is adequately set out in this court's opinion of July 1964 (231 F. Supp. 743). Such conduct, and its continuation... reveals a broad spectrum of state interference with local desegregation efforts."

The 28-page opinion accompanying the 12-page order ticked off case after case of the defendants' actions in violation of the court's 1964 order to "encourage and promote" desegregation. Included was a "parable" circulated by Meadows rationalizing segregation, on July 1, 1966.

Also the court noted the official interference with the assignment of two Negro school teachers to predominantly white schools in Tuscaloosa last August, quoting Hugh Maddox, legal adviser to the governor as saying, "It is the public policy of the state that Negro teachers not teach white children" and that the governor would use his police power to enforce the law.

Meadows was quoted as approving the Governor's position. Meadows offered to provide additional teacher units to any board which had transferred teachers to schools of the opposite race--thus to give students a "freedom of choice."

Also, the court found in effect that the state had not even lived up to "separate but equal" and that "Negro children are provided with markedly inferior educational opportunities."

Evidence in the case revealed that of over 28,000 school teachers in the state, "only 76 are teaching in schools to which students of the opposite race have been traditionally assigned," the court found. In transportation, the court found a pattern of dual education as well as the fact that buses provided Negro children are of "markedly inferior quality." The state's trade schools, vocational schools and "state colleges" [in which the court excluded those operating under separate boards of trustees--the University of Alabama, Auburn University, University of South Alabama and Alabama College] "continue to be operated on a segregated basis." All these schools, with the exceptions noted, are "the immediate responsibility of the State Board of Education," the court said.

In sum, the court said, "it is quite clear that the defendants have abrogated, and openly continue to abrogate, their affirmative duty to effectuate the principles of Brown v. Board of Education... Although the facts as herein outlined speak eloquently for themselves, there is no more clear an indication of this than Supt. Meadows' statement that he has done nothing to eliminate segregation in the public schools of Alabama."

The court observed in a footnote: "Nothing said here should be construed, inferentially or otherwise, as a decision by this court on the validity or invalidity of the 1966 guidelines (emphasis--the court's) as issued by the United States Commissioner of Education, since that question, and other related questions, is presently pending in a case styled Alabama NAACP State Conference of Branches, et. al., plaintiffs, United States of America, Plaintiff and Amicus Curiae v. George C. Wallace, et al., defendants, being heard by a separate three-judge court in this circuit." No decision on the constitutionality of the guidelines had been handed down by the end of March.

The court found that the state stood ready to exercise the same powers and control that it "demonstrated two and one-half years ago." The evidence, the court said, "is all-persuasive."

In conclusion:

"This court can conceive of no other effective way to give the plaintiffs the relief to which they are entitled under the evidence in this case than to enter a uniform state-wide plan for school desegregation, made applicable to each local county and city system not already under court order to desegregate, and to require these defendants to implement it."

In a kind of judicial aside, the court said that many local school officials "will be relieved to find themselves no longer under the pressures and exhortations of these defendants to abrogate their clear constitutional duties in this area. The local officials should, after the entry of this opinion and the accompanying decree, be able to return to the teaching of students and dealing with the related educational problems rather than expending their time and energies trying to tread the difficult 'middle ground' between conflicting federal and state demands."

For the "time being," the court said, freedom-of-choice plans could be used for desegregation statewide. But, the court warned, choice must be free and all influencing factors eliminated or "freedom of choice is a fantasy."

The state announced its plan to appeal. Gov. Lurleen B. Wallace also outlined other courses of action in a defiant address to the Legislature. (See What They Say.)

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The U.S. Department of Justice filed suit against the Dale County School System on March 20 in the U.S. District Court in Montgomery in attempt to enforce compliance with the HEW guidelines. It was said to be the first suit of the kind in the country.

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What They Say

Gov. Lurleen B. Wallace, addressing a joint session of the Legislature March 30, promised that the three-judge court's March 22 order directing the statewide desegregation of schools would be appealed.

She pronounced it "beyond the law" and also hit at the 12-judge Fifth Circuit Court of Appeals' ruling of March 29, which directly involved only three school districts in Alabama--those of Jefferson County, Fairfield and Bessemer. The appellate decision, she said, "will bring to Texas, Louisiana, Mississippi, Florida and Georgia the conditions which have been imposed on us here in Alabama."

In her talk, it was difficult at points to distinguish which of the rulings--the three-judge panel's decision in Montgomery March 22 or the 12 judge appeal court's in New Orleans a week later--she was referring to. At times she appeared to be referring to one, then the other, then both. But she was talking about the District Court's decision when she said:

"This order takes over every single aspect of the operation of every school system within the State of Alabama--it destroys the authority of local school boards, the State Board of Education, the Superintendent of Education and the Governor. It reduces the constitutionally elected officials of your state to mere agents of the District Court who must execute the commands of three judges who would determine all matters of educational policy.

"This order directs the Superintendent of Education in the execution of all his duties and prohibits action on his part without the consent of the court."

The decision, Mrs. Wallace said, "requires--in every area in Alabama--transferring of students back and forth across town to achieve balance." It means that white children must have colored teachers and colored children must have white teachers. It tells what bus a child must ride on and who that child must ride with. Under the order, the court will close certain schools and send the children to another part of town or to another part of the county.

"This order and the New Orleans order...require the closing of every Negro college, junior college and trade school and every all-Negro elementary and secondary school. Under this court order (whether the Montgomery order or the New Orleans order or both was not clear), state funds would be cut off to Alabama State College here in Montgomery unless white students voluntarily agreed to enroll there. The same would be true of the other senior colleges, junior colleges and trade schools--unless white students enrolled there, state funds would be cut off by order of the court.

"Furthermore, this order (which order was unclear) forces white children to go to all-Negro schools and Negro students to go to predominantly white schools. There is no law to force students to attend senior colleges, junior colleges and trade schools. The only way to force students to attend elementary and junior high school is to put their parents in jail.

"We in Alabama will not put parents in jail for this reason--and we cannot and will not deprive our Negro children and college students of an education by closing all Negro schools, senior colleges and junior colleges and trade schools. If they are closed, the federal courts will have to close them. This is a decree with which compliance is a physical impossibility..."

"Under this decree," the governor continued, "no person, including teachers and parents, is free to discuss the order of the court other than to express approval thereof. Any expression of disapproval subjects the individual to contempt--thus to a jail sentence without benefit of trial by jury."

This "dangerous doctrine," would, she said, deprive "our citizens and teachers freedom of speech." No institution can survive "if this freedom is destroyed." The decree, forcing school officials to approve it, violates provisions of state and federal constitutions, she said.

The state must resist the decree in every way possible, she said. She thereupon asked the legislature to resolve itself into a "committee of the whole, and...call as witnesses our university presidents, junior college presidents and trade school directors, school superintendents, school board members, principals, teachers and others from all fields of education--as well as parents and representatives from educational associations."

If necessary, the state would invoke its "police power," she said, and then made a proposal akin to her husband's previous tactics:

"I ask you, in the event a stay is not granted or an appeal be unsuccessful, to consider placing in the Governor...or in the Governor and Legislature all powers heretofore vested by the Alabama Legislature in the State Superintendent of Education, including, but not limited to, supervisory control with regard to our various local boards of education."

She said the "committee of the whole" would give school boards, state colleges and junior colleges and trade schools "their day in court," which she said they had been denied by "star chamber justice."

Also the committee would determine what legislation is needed.

Mrs. Wallace asked the Legislature to issue "as an exercise of the police power of this state, a cease and desist order, to be delivered and served upon the three federal judges who have issued this unfounded decree, advising them that their actions are beyond the police power of ...Alabama."

Also put to the Legislature, without elaboration, was the question of "whether additional state troopers may be required in order that the children of our state be protected."

There was general agreement that the Legislature would give Mrs. Wallace everything she wanted, but this was an immediate reaction which could possibly change, observers felt.

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U.S. District Judge Hobart H. Grooms of Birmingham, a member of the three-judge panel which ordered the statewide desegregation of Alabama schools March 22, said the day after the Governor's speech that she had erred in her analysis of the order.

In response to Mrs. Wallace's reference to a complete take-over of every aspect of school operation in Alabama, Judge Grooms said: "We're not taking over the running of the schools." He said enforcement of the decree is left up to the state superintendent. (See Legal Action.)

In reply to her contention that the order requires busing students back and forth to achieve "balance," Judge Grooms said: "Correction of the imbalance of pupils does not appear in the order."

As for her contention that the Montgomery panel and the appellate decision a week later had ordered the closing of every Negro college, junior college and trade school and every all-Negro elementary and secondary school in the state, Grooms said the decision makes no mention of closing of any schools except those which have "fewer students under the minimum-student standards of the State Department of Education."

Rather than taking authority away from local schools, the order prevents Gov. Wallace and the state board from interfering with local boards, some lawyers said.

To Mrs. Wallace's contention that the order forced "White children to go to all-Negro schools and Negro students to go to predominantly white schools," critics pointed to the free-choice requirements in the order.

Lawyers also noted that her reference to restriction on freedom of speech, threatening anyone who disagreed with the order with a jail sentence for contempt is not in the court's ruling.

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