# UNITED STATES DEPARTMENT OF JUSTICE

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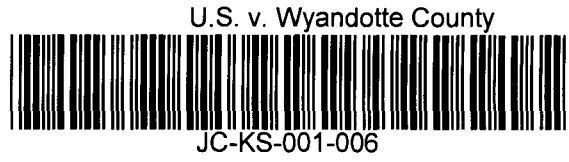


Mr. James P. Turner
c/o Mr. James C. Turner
423 Polk
Pueblo, Colorado 81005

Dear Mr. Turner:

Here is the remainder of Ron Nabonne's research and his observations. He will be leaving for New Orleans Friday afternoon, July 17, 1970, and can be reached there from Friday evening on. In his Remarks Ron made several statements which might lead you to believe he only gave you a portion of the law he found in this area, but he has explained that those remarks appear only as a hedge against the possibility that cases exist of which he is not aware. All he has found he has given you.

On the off chance that you now have all the cases in this area except the major cases dealing with segregation and racial discrimination, I am giving you a brief description of those cases.

Singleton v. Board of Commissioners of State Institutions, 356 F.2d 771 (5th Cir. 1966). Plaintiffs sought to have a statute requiring segregation declared a violation of the Fourteenth Amendment, and to enjoin racial segregation, restriction of Negroes taking certain courses, and racial assignment of staff members. The court cited Brown v. Board of Education, and said the

principle extends to all institutions controlled or operated by the state, and therefore declared the statute unconstitutional and enjoined discrimination.

Washington v. Lee, 263 F. Supp. 327 (M.D. Ala. 1966) affirmed per curiam 390 U.S. 333 (1968). The court followed Singleton extending the Brown principle to all state controlled or operated institutions and said that the due process and equal protection clause of the Fourteenth Amendment follow prisoners into prison. The court could see no condition of discipline or security which would require complete and permanent segregation in all Alabama prisons except in isolated instances for limited periods, i.e., a drunk tank. This is not an Eighth Amendment cruel and unusual punishment situation. The court recognized that associations of prisoners are closer and more fraught with physical danger than with any other people and therefore did not order immediate and total ~~desegregation~~ desegregation except on honor farms, schools and hospitals. As to other prison facilities, except maximum security, the court allowed six months to accomplish desegregation. As to maximum security the court allowed one year.

Wilson v. Kelley, 294 F. Supp. 1005 (N.D. Ga. 1968, three judge court). In a case where plaintiffs sought to abolish segregation in all state penal institutions, the court found that all prisoners in all state penal institutions were segregated by race pursuant to a long-standing state policy, and although state laws apply primarily to the ~~state~~ system, the court found that county and city jails segregate their prisoners through custom and practice. The court found the segregation violative of the Fourteenth Amendment, and when discussing the six month time period allowed for compliance with the order, said that should an application be made by the authorities for a

variance it should be noted that, ". . . the exceptional rights of prison authorities 'acting in good faith and in particularized circumstances, to take into account racial tensions in maintaining security, discipline, and good order in prisons and jails' is determined to exist normally after -- the -- fact and not before." The court also stated that its order desegregating the penal institutions will preclude racial assignmen and thus settle complaints about custodial practices.

Affirmed as "unexceptionable" by the Supreme Court.

Rentfrow v. Carter, 296 F. Supp. 301 (N.D. Ga. 1968). Inmates filed a lawsuit to enjoin the operation of the order in Wilson v. Kelley and allow prisoner assignment on a freedom of choice basis, and alleged violence would result from race mixing.

The court said that Wilson followed the "unexceptionable" Washington and the tenor of those decisions dictates that this court not interfere by substituting a freedom of choice plan for the desegregation order of the three judge panel: petitioners have showed no violence as a result of the order's implementation; racial violence will be within the prison authorities' exceptional right to maintain security provided the danger presently exists and is apparent. Therefore, segregation for the limited purpose of avoiding imminent prison violence is at the discretion of prison authorities. That associations between prisoners are fraught with psychological dangers and that racial tensions increase this friction, is no license for violated resistance but rather a need for a higher degree of restraint. Those who use violent violated resistance will not halt

discrimination but really bring their own conduct to a halt by disciplinary action and criminal sanctions.

Sincerely,

BARRY H. WEINBERG
Attorney
Civil Rights Division