

David L. Norman, Chief
Appeals & Research

March 13, 1967

Frank M. Dunbaugh, Acting
Chief, Southeastern Section

FMD:KPF:efw
DJ 169-3-6
#1-105-13A

Appeal in U.S. v. Perry County Board of
Education (S.D. Alabama) Civil Action
No. 4222-66

On February 8, 1967, District Judge Daniel H. Thomas, Southern District of Alabama, issued an order in the above-captioned case enjoining the defendants from failing or refusing to carry out a court ordered plan of desegregation, a copy of which is attached. The Court made no findings of fact and in a short paragraph preceding the plan concludes that further action is necessary to achieve compliance with Brown v. Board of Education. The order is brief and in the areas enumerated herein contains general language which is inadequate in light of the evidence presented to the Court. Thus, the relief does not reach the problems brought out at the trial; for this reason, the order should be appealed.

This order was preceded by a September 15, 1966 interlocutory order on the government's motion to require the Board to enroll, in the school of their choice, all Negro students who chose formerly all-white schools. At that time, while referring to the choices as transfer applications, the Court ordered the Board to reconsider the applications of all Negro students whose parents requested a review in writing. When the Board denied several requests for reasons other than overcrowding, we filed an application for an order to show cause why all students who applied for reconsideration should not be enrolled. No decision was made on the application and the case was tried on the merits December 20, 1966. I recommend an appeal in the following areas. The notice of appeal should be filed by April 7, 1967 if one is to be taken.

A. Construction and Consolidation of Facilities

The Court ordered the closing and consolidation of nine Negro schools but in failing to direct the manner in which this was to be accomplished, ignores the factual situation in Perry County and encourages the perpetuation of a dual school system. The superintendent testified that the Board would add to the present 10 grade Negro school in East Perry County to accommodate the students from the attendance area served by three Negro schools to

cc: Records Investigation File
Chrono Dunbaugh
 ✓ A. Ross

be closed. He also testified the Board will construct a new 12 grade center in West Perry County to absorb the attendance areas now served by five of the schools being closed. The Board minutes for November, 1965, refer to this site as a proposed new Negro school. Each project, the superintendent testified, is based on the recommendations of a 1965 State Board of Education survey (in evidence). Such surveys are racially planned to perpetuate a dual school system.

Especially significant is the superintendent's testimony that the East Perry additions will be financed by ESEA Title I funds. At the conclusion of the hearing, the Board's counsel requested a court order so that federal funds could be received from HEW. A hearing examiner had previously found Perry County in non-compliance with Title VI. Perry County has since submitted its court order to HEW and they are in the process of approving funds. Should the East Perry addition be completed, the superintendent admitted that there would be two 12 grade centers (one white and one Negro) within 2 miles of each other serving the identical rural attendance area encompassing a total of about 650 students.

In our proposed relief, we suggested that all construction and consolidation projects be held in abeyance pending a new court-approved, non-racial survey of the educational needs of Perry County. For authority we cited U.S. v. Jefferson County. The plan in Lowndes County, the apparent model for this one, specifically provided that newly constructed schools must be operated on a desegregated basis and the faculty must be assigned to those schools so that it is not composed of only one race. The present order only provides for closing and consolidating of schools and ignores our proposal. The record shows that consolidation, in this case, can only mean continuation of a dual system.

B. Student Assignment Procedures

Absent a specific finding, the Court's declaration in paragraph I(a), that 7 grades were desegregated in 1966 and "pupils assigned without regard to race or color, on a freedom of choice basis" constitutes judicial approval of the measures adopted last year by the defendants to implement free choice. Such a finding is unwarranted by the record and should be assigned as error.

The superintendent testified the Board took no action on any choice forms leaving the decision to each principal. He said students could attend any school, provided the principal could fit them into his program. During the first week of school, the

principals testified they accepted all white students first then considered Negro students. They also required Negro students, but not white students, to validate their academic standing as a pre-condition to enrollment. After the September 15 order mentioned above, the Board rejected 42 of 56 applications for reconsideration of students' "transfers." The superintendent testified they asked the principals how many they could afford to take and then selected students at random. One principal said that overcrowding was not the only reason for rejection, as he considered geographical location to get a "fair representation." It was also shown that rejections for "grade full" were unreasonable in view of pupil-teacher and pupil-classroom ratios. The principal and a teacher at Suttle High testified more students could be accommodated at that school. The principal stated he accepted about 20 white students in the eighth and ninth grades who transferred from a white school that did not include their grades and who had not exercised a choice form for that school and rejected Negro students for those grades as being full. A Negro student testified she was rejected for unreasonable transportation but that the bus she rides stops at the white school she had chosen, in order to discharge another Negro student who was accepted.

We proposed that all Negro students who submitted requests for reconsideration be allowed to enroll in the white schools for the second semester of this year if they still desired to do so. The Court's refusal to rule on this proposal should be assigned as error since the record shows that students were not assigned on a freedom of choice basis as the Court concluded.

C. Faculty Desegregation Provisions

As written, the faculty provision of this order fails to meet present legal requirements in that it does not order the defendants to take any affirmative steps toward faculty or staff desegregation. The Board is only enjoined from using race or color in hiring, assignment, re-assignment, promotion, demotion or dismissal of teachers or staff personnel.

The superintendent testified there is no faculty desegregation whatsoever and none planned for 1967-68 in Perry County. He also said he recruits teachers by race at their respective colleges in Alabama. It was further demonstrated that for 1966-67 the county had extra teacher units available as a result of an increase in Negro enrollment yet failed to hire additional teachers even though they were needed.

Our proposed relief contained detailed measures on employment, dismissals, recruitment, and elimination of past racially discriminatory patterns based on Wheeler v. Durham City. The Singleton and Davis decisions both require more than is granted here. The Lowndes County plan also contained the important phrase that "affirmative steps will be taken to eliminate racial assignments heretofore made." This sentence in conjunction with that Court's order that the faculty at any newly constructed school not be composed of members of one race is fully applicable here where the record shows the defendants will not take affirmative steps unless ordered to do so and where there is an extensive construction-consolidation program affecting many teacher and staff positions. The present provision is thus legally inadequate.

D. Transportation

An important element in the effective desegregation of a rural county school system is elimination of dual bus transportation systems. The relief here, that buses will be routed to the maximum extent feasible so as to serve each student choosing any school in the system, is inadequate to meet this problem and the record supports an appeal on this issue.

The superintendent testified the bus routes currently in use were established to serve a dual system based on race and have not been materially altered. Graphic exhibits depict Negro and white bus routes which often parallel or overlap each other. A Negro student testified she must ride a series of Negro buses in order to get to the white school she attends even though a white bus passes within 1/4 mile of her home. A Negro student testified she travels 60-100 miles each day because her grade is not included in the Negro school in her area and she was rejected at the white school. No white students ride more than 40 miles round trip.

The dual bus system was conclusively established and we proposed that the transportation system be completely desegregated and a unitary system be adopted for the 1967-68 school year. The Middle District of Alabama in the Barbour and Crenshaw county cases recognized this problem and in Crenshaw the Court ordered the identical relief we prayed for here.

E. Reporting Provision

Although the concept of reporting to the Court is new in school litigation, these provisions are necessary to monitor enforcement of the order. Such provisions are imperative in Perry County in view of the Board's prior practices such as refusal to

act on choices before the school term commences. The hiring and reassigning of faculty during consolidation of old schools should be closely scrutinized.

We proposed specific reporting provisions which the Court has deleted from its order. Legal basis for such provisions can be analogized from voting, and jury cases and is presently under consideration in U.S. v. Jefferson County, albeit not one of the major issues.

F. Remedial Educational Programs

Although there is no finding that the defendants have provided Negroes with inferior educational opportunities and facilities, the record establishes such a fact and the omission of remedial programs to correct the effects of that discrimination should be appealed. In their answer, the defendants admitted a dual school system prior to June, 1965 and the records admitted into evidence support the inequality of opportunities and facilities. There is also no provision for equalization of facilities and programs at existing schools. Most recent court orders make such provisions mandatory.

For each of the foregoing reasons, I recommend that an appeal be filed in U.S. v. Perry County Board of Education.