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Appeals & Research

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Appeal in U.S. v. Hale County Board
of Education (S.D. Alabama) Civil
Action No. 3980-66

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, 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. The Board denied several requests for reasons other than overcrowding. The case was tried on the merits October 10, 1966. The notice of appeal should be filed by April 7, 1967 if one is to be taken. I recommend an appeal in the following areas.

A. 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

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the measure adopted last year by the defendants to implement free choice. Such a finding is unwarranted by the record and should be assigned as error.

For the 1966-67 school year, the defendants purported to desegregate their school system under a plan that permitted applications for transfers to be filed and all students who did not file applications remained in their previous school. The defendants distributed choice forms and the superintendent testified he gave all applications to the respective principals to resolve without issuing any instructions. He said not all students filled out forms but that all white students whether they completed a form or not were assigned to white schools and Negroes who did not or were late in filing a form were not considered for assignment to white schools. In this manner only 19 of 178 transfers were granted. After the September 15, 1966 order, the superintendent said the defendants considered factors other than overcrowding when reconsidering the applications of the students who requested a review and rejected 21 of 52 applicants.

We proposed that all Negro students who requested reconsiderations be allowed to enroll in the white schools for the second semester of this year. The refusal to rule on this proposal in conjunction with the Court's conclusion that students were assigned on a freedom of choice basis should be appealed.

B. Faculty Desegregation Provisions

As written, the faculty provision 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 as factors in hiring, assignment, re-assignment, promotion, demotion or dismissal of teachers or staff personnel.

The superintendent testified the teaching staffs are entirely segregated, that the Board has made no effort to desegregate the faculties and have not considered taking any action.

Our proposed relief contained detailed measures on employment, dismissal, recruitment and elimination of past racially discriminatory patterns based on Wheeler v. Durham City. Fifth Circuit decisions require more than is granted here and the District Court in Lowndes adds that "affirmative steps will be taken to eliminate racial assignments heretofore made." The present provision is legally insufficient and fails to reach the problem evidenced by the record.

C. Transportation

The effectiveness of a freedom of choice plan is seriously impaired if the bus transportation system that was designed to serve a dual school system based on race is continued. The superintendent testified the bus routes were designed for a dual system with few exceptions and the routes often parallel each other. Routes were not changed to accommodate Negro students and the defendants denied 5 choices for lack of transportation.

We proposed relief to eradicate such a clearly established dual system. Based on the Middle District of Alabama cases in Barbour and Crenshaw counties we proposed that a revision be made and a unitary county-wide bus transportation system designed to serve all students without regard to race be established by June, 1967. The Court's order, which does not require a unitary system but only that buses be routed to the maximum extent feasible so as to serve each student choosing any school in the system, is inadequate to meet the problem in Hale County.

D. Remedial 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 and equalization of existing facilities to correct the effects of that discrimination should be appealed. The pupil-classroom and pupil-teacher ratios show wide disparities in favor of white students. Financially, the defendants spent much less per Negro student than white student. In their answer, the defendants admitted a dual system prior to June, 1965 and the exhibits introduced in evidence support the inequality.

We proposed closing two Negro schools by February 1967 but the Court did not order them closed until fall, 1967.

We proposed equalization of existing facilities and programs and the introduction of remedial programs but the Court made no provisions in this area.

E. Reporting Provision

The concept of reporting to the Court may be new in school litigation but it is necessary to monitor enforcement of the order. These provisions are imperative in Hale County in view of the Board's failure to take affirmative steps on choices and on faculty desegregation.

We proposed specific reporting provisions which the Court has deleted from its order. Legal basis for such provisions can be found in the Jefferson County case and can be analogized from voting and jury cases.

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