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Civil Rights Division

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OMF:daw
DJ 169-74-4

Owen M. Fiss
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Ross v. Eckels: the Houston School Desegregation Case - Motion for Supplemental Relief

On May 6, 1968, we sent a letter to Mr. Reynolds, the attorney for Houston School Board, stating that the Board had not made sufficient progress during the 1967-68 school year in converting the traditional dual school system into a unitary, nonracial school system and the letter called upon the Board to formulate and adopt plans that would bring the operation of the system within the requirement of the Constitution and the court order. We met with Mr. Reynolds in Washington on May 29th. The Board formally responded by letter dated June 14, 1968. We met again with Mr. Reynolds on June 25, 1968, generally stating, after discussing this matter with you, that if the proposals contained in the letter of June 14th were the extent of the School Board's response we would have a responsibility to ask the federal district court for supplemental relief. On Mr. Reynold's suggestion, the plan was to have a further meeting in Washington on July 2, 1968; this time with the Superintendent and President of the School Board present. I spoke to Mr. Reynolds on June 27th, in which Mr. Reynolds said it would be difficult to arrange that meeting because of vacation schedules. Instead, he made a further statement of the proposals of the School Board in a letter dated June 28, 1968.

cc: Records
Chrono
Invest. File
(Western)

Messrs. Lewin, Rosenberg, Quaintance, Top, Fiss

In my judgment, we have obtained from the process of voluntary negotiation all that is to be obtained from that process, and we must promptly decide whether we are going to apply to the Court for supplemental relief.

1. Performance for the 1967-68 School Year

For the 1967-68 school year, Houston has been -- at least nominally -- operating under a Jefferson County freedom of choice plan, with some particularized provisions with respect to transportation and faculty. (See Attachment B) However, it should be noted that although the Constitutional obligations of the Board might have been made clear on March 29, 1968, the date the en banc decision in Jefferson County was announced, the Jefferson County decree was entered on September 5, 1967, literally on the eve of the opening of school for that year. The lateness of the decree must be kept in mind in evaluating their performance under the decree. Most of the students were assigned for the 1967-68 school year on the basis of a freedom of choice method of student assignment administered the preceding Spring that did not have the Jefferson County procedural safeguards. Following our conferences with Judge Connally in the last week in August and in anticipation of a Jefferson County order being entered, we worked with the School Board to hold an abbreviated ad hoc choice period during the first week of school. In fact that consisted of placing advertisements in newspapers stating that any child could choose the school he wished to attend and identifying where they could pick up forms to effectuate that choice. With respect to the faculty and transportation provision, the lateness of the entry of the order undoubtedly had some impact on the School Board's performance for the 1967-68 school year. The performance that did occur took place in a relatively short period immediately

before the opening of school. In the course of the conference with the Court, for example, the District abandoned about 22 of the more striking instances where bus routes had fostered segregation and faculty assignments were being made.

Attachment D to this memorandum describes our analysis of the performance of the School Board. Because Houston is a large city and does not confront many of the problems of a rural Southern school system, and because it is a large urban system, we decided to measure the performance of the School District not in terms of the total number of Negro children attending formerly white schools, 1/ or the faculty desegregation on a system wide basis, 2/ in terms of the impact of its

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1/ The following chart, prepared by defendants for their application for a HEW Title IV grant, summarizes those statistics:

School Level	Total Number of Negro Students 1967-1968	Number of Negroes in White Schools 1966-67	1967-68	Percentage for 1967-68
Elementary	51,568	5,394	8,442	16.4%
Secondary	27,346	2,463	3,860	14.1%
Total	78,914	7,857	12,302	15.6%

2/ For the 1967-68 school year there were approximately 390 teachers in schools where faculty is predominantly of the other race, while there are a total of 230 schools. There were almost 10,000 teachers in the system as a whole. New Orleans, which has about 4,000 teachers, had only about 100 cross-overs.

policies on the all-Negro schools created and maintained as integral parts of the dual school system. The results were rather striking. Briefly, under the dual school system there were 14 secondary schools that were maintained as Negro schools and they are still all-Negro; there were only 9 white children in these schools for 1967-68 school year. Of the 43 elementary schools that were maintained as Negro schools under the dual system, 30 are still all-Negro, 11 have only a few whites (less than 5%), and only 2 have some whites. On the faculty side, the faculty of the Negro schools remained all-Negro. Half did not even have some token desegregation. Twenty-two of the 43 all-Negro elementary and 7 of the 14 secondary schools had no regular classroom teachers that were white. For the other all-Negro schools, the desegregation amounted to usually one white regular classroom teacher. It should also be noted that a great number of new teachers were hired for the 1967-68 school year, and this was used to perpetuate and extend rather than correct the segregated pattern. Our letter to Mr. Reynolds also identified many bus routes that were used to perpetuate the dual school system.

2. Plans for the 1968-69 School Year

In the course of all the discussions and correspondence, it appeared that the School Board's plans for the 1968-69 school year were:

(a) Assign students on the basis of choices exercised this past Spring. 3/ We asked the

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3/ We found some of the notices to students in that choice period to be inadequate and asked for corrective action in the course of the period. These suggestions were followed. Because race is not on the form, it is impossible to determine what the distribution of students will be for the 1968-69 school year.

School Board to consider implementing proposals involving geographic zones, feeders, or pairing in at least certain portions of the system, but these proposals were rejected. They were rejected on several purported grounds: First, that where there was residential segregation the racial compositions of the schools would not change and, second, that where there were integrated neighborhoods, such assignment policies would cause whites to "flee" the area and eventually result with the same racial distribution of students. The further - unstated - ground is simply that neither the School Board nor the Administration will not assume the responsibility of a policy that would assign -- without regard to their choices -- white students to Negro schools.

(b) The School Board has eliminated some of the objectionable bus routes that we identified in our letter and adopted the following policy: First, they will only transport students who are eligible under state law for transportation for purposes of state reimbursement (during 1967-68 almost 49% of the students transported were ineligible); and, second, a student will only be transported to the school nearest his home. This last policy is expected to have some impact on student desegregation - forcing some white children to go to Negro schools (or provide their own transportation) and enabling some Negro children to be transported to white schools near their homes. With respect to the policy of transporting students to the school closest to his home, Mr. Reynolds was prepared to make one concession in the interest of preventing certain white schools from becoming all-Negro. Wherever there was such a tipping school, and another white school was in the general vicinity, Negro students would be given another choice and transported to that more distant white school. He was not prepared to take such steps in order to desegregate the Negro schools.

(c) The $59 million construction project that was the subject of the Broussard litigation is now complete; but Mr. Reynolds indicated that further construction would be undertaken soon. With respect to the new constitution, Mr. Reynolds stated that the Jefferson County and Polk standards would be applied, which he acknowledged meant that integration must be one of the factors taken into consideration in locating the new schools, and further that the Department will be given notice of and an opportunity to evaluate proposed construction projects before irrevocable commitments were made.

(d) The proposals with respect to faculty has three facets: First, a minimum of two cross-over teachers would be assigned to each school of the system 4/; second, there would be six schools (which appear to be Negro schools in integrated residential areas) with fully balanced faculties (65% white and 35% Negro) 5/; and third, that with respect to new schools opening for the first time in 1968-69 there will be a "goodly number of Negro teachers in the white schools." 6/

4/ Hugh Fleischer indicates that from our perspective this would be a sufficient progress in New Orleans, one of the other Southern urban systems we have been involved with.

5/ At these so-called prototype or magnet schools, it also appears that there will be some in-service training programs and some special courses to attract students.

6/ Letter of June 28, 1968. We were advised that while in 1967-68 about 1,000 new teachers were hired, this year there will be less than 100 and hence that does not provide an easy avenue for increasing faculty desegregation.

There is also a commitment to increase the number of prototype schools for 1969-70; but we have commitments as to when all 230 schools would be reached. The attitude of the School Board toward faculty desegregation is problematic: their willingness to send Negro teachers to white schools far exceeds their willingness to do the reverse, but they are only willing to send specially "qualified" Negroes to the white schools, stating that the Negro teachers are less qualified.

3. Recommendation

There are strong reasons for moving for supplemental relief:

(a) The freedom of choice method of student assignment has not effectively disestablished the all-Negro schools under the dual system, and although there are factors that indicate that it might have a better chance for "working" this year (the improved procedures for the choice period; the prospect of faculty desegregation; the revisions in bus transportation; the magnet schools), one has to confront the naked fact of how unlikely it is that a white parent will ever choose to send his child to a Negro school.

(b) We cannot afford to exempt Houston, the largest school system in the South, from our general, across-the-board enforcement program under Green. Although the existing residential segregation in Houston limits the capacity to disestablish all the all-Negro student bodies, we cannot say that there are no alternatives open to the School Board that would promptly and effectively desegregate -- at least in the short run -- some of the all-Negro schools.

(c) Absent a court order, the School Board will not adopt a method of student assignment that will assign — without regard to choices — white students to Negro schools, and assuming that the issue must be litigated at some juncture, it would be best to build the evidentiary record on the facts of the 1967-68 school year. As we move further and further away from the dual system, the evidentiary record becomes less and less striking.

(d) The plaintiffs are moving for supplemental relief, and we will be required to take some position in the hearing, which is likely to be held in the Fall.

The reasons against moving for supplemental relief are:

(a) The commitment of resources would be enormous. The burden of proving that the performance is inadequate might be manageable; but we would have to prove that there are more effective alternatives and, given the size of the system and the residential segregation, that is not an easy task. It would be a great challenge, though a fascinating one.

(b) One has some doubts as to whether we will be achieving any meaningful results in the long run. Geographic assignments or feeders will undoubtedly cause further movement of whites out of integrated areas and into white areas, and the size of the ghetto and the Houston System itself (300 square miles) makes one lose faith in grandiose bussing schemes. Perhaps the most meaningful progress will be achieved through the school construction, and we can get a hand on that without a motion for supplemental relief.

On balance, we would recommend the filing of the motion. We will have a very difficult time with the District Judge, and we will have to push hard to get any relief for the coming school year. Perhaps the best strategy would be to ask for relief for the 1968-69 school year (that would keep the pressure on them this summer); but file the motion without dispatch, so that the evidentiary hearing is held in the Fall, giving us more time for preparation.