Joint Memorandum

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SUBJECT: Bell v. School City of Gary, Indiana

FROM: Paul Hartman and Theodore Leskes

DIGEST: U. S. Court of Appeals for the Seventh Circuit affirms decision of United States District Court in Indiana holding that Negro children attending public schools in Gary have no constitutional right to attend racially integrated schools, and the School City of Gary has no constitutional duty to provide and maintain a racially integrated school system.

On October 31st, 1963 the United States Court of Appeals for the Seventh Circuit ruled that Negro children attending public schools which are segregated as a result of segregated housing and not because of any intentional policy of segregation on the part of the school authorities, have no constitutional right to attend racially integrated schools. The Court affirmed a decision of the Federal District Court for the Northern District of Indiana dismissing an action that Negro children attending public schools had initiated against the School City of Gary which administers the public school system of the City of Gary, Indiana.

The Complaint

The action was started by approximately 100 minor Negro students enrolled in the public schools of Gary, Indiana. It was as a class action in behalf of the plaintiffs and all others similarly situated.

The complaint directed against the School City of Gary asked for a declaratory judgment based on the assertion that the plaintiffs' constitutional rights under the Equal Protection Clause of the Fourteenth Amendment had been violated in three respects:

1. They charged that the School Board by assigning Negroes to certain schools, by creating attendance zones, by controlling transfers and assignments from school to school and by the pattern it followed in building and enlarging existing schools was maintaining a racially segregated school system.

2. They charged that the School Board discriminated against Negroes by providing inferior facilities for Negro children, including overcrowded and larger classes and unequal recreational and extra-curricular activities.

3. They claimed that the Negro plaintiffs and others in the same class had a constitutional right to attend racially integrated schools and the School Board a corresponding constitutional duty to provide and maintain a racially integegrated

school system.

Summary of Findings and Conclusions of Law by the Federal District Court

On January 29, 1963 United States District Judge Beamer, after trial, dismissed plaintiffs' complaint (213 F. Supp 21). The following is a summary of the findings and conclusions of law in his opinion:

The student population in the public schools of Gary for the 1951-1952 school year was 22,770 of which 8,406 or approximately 37% were Negroes. In the 1961-1962 school year there were 43,090 students in the public school system and 23,055 or approximately 53% were Negroes.

In the school year 1961-1962, 10,710 of the students enrolled in the Gary school system attended fourteen schools which were 100% white; 16,242 students attended twelve schools which were populated from 99 to 100 per cent Negro; 6,981 students attended five schools which were from 77 to 95 per cent Negro; 4,066 attended four schools which had a range from 13 to 37 per cent Negro; 5,465 attended five schools which had a Negro population from one to five per cent.

The Board of School Trustees is a bi-partisan body consisting of five members. The president at the time of the initiation of this complaint was a Negro. The school staff in Gary has been integrated. A Negro is assistant superintendent of schools along with two other assistant superintendents of equal rank.

The School Board has a policy of transferring students from overcrowded to less crowded schools. Although racial considerations did not enter into the adoption of this policy, it resulted in transfer of a larger number of Negroes than whites. Thus, 123 children, 92 of whom were Negroes, were transferred from a predominantly Negro school to a predominantly white school; and 140, 120 of whom were Negroes, were transferred from another predominantly Negro school to a predominantly white school. Transfer from one school district to another is not a matter of right; whether a transfer application of an individual student is allowed or denied depends "upon the apparent reasonableness and desirability of the transfer and no racial factors are considered in allowing or disallowing a transfer."

The plaintiffs failed to establish that the School Board has so drawn the boundary lines of the school district as to contain the Negroes in certain districts and the whites in others. Rather, the evidence shows that the School Board has consistently followed the general policy of requiring the students to attend schools designated to serve the district in which they live regardless of race. The problem is not one of segregated schools but one of segregated housing.

Plaintiffs failed to prove that the students attending predominantly Negro schools were discriminated against because of inferior instruction, inferior curriculum and overcrowded conditions.

The decision of the Federal District Court, affirmed by the Court of Appeals for the Second Circuit, in the New Rochelle school segregation case (Taylor v. Board of Education) is no authority for plaintiffs' proposition that school boards have an affirmative duty to integrate the races and see that racial balance is maintained in the schools under their supervision. The Taylor case differs from

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the present case in that there the Court found that the school board had deliberately segregated the races.

> The neighborhood school which serves the students within a prescribed district is a long and well established institution in American public school education. It is almost universally used, particularly in the larger school systems. It has many social, cultural and administrative advantages which are apparent without enumeration. With the use of the neighborhood school districts in any school system with a large and expanding percentage of Negro population, it is almost inevitable that a racial imbalance will result in certain schools. Nevertheless, I have seen nothing in the many cases dealing with the segregation problem which leads me to believe that the law requires that a school system developed on the neighborhood school plan, honestly and conscientiously constructed with no intention or purpose to segregate the races, must be destroyed or abandoned because the resulting effect is to have a racial imbalance in certain schools where the district is populated almost entirely by Negroes or whites.

The trial court referred to decisions by the federal district courts in Kansas and Delaware which had stated that the prohibition of discrimination under the Fourteenth Amendment does not impose on the states an active duty to integrate white and Negro children.

Under the evidence submitted by plaintiffs, racial balance in Gary could be achieved by a plan involving the transfer of approximately 6,000 students from their neighborhood schools to other schools, some of them great distances away. Even then, one school would still remain 100% Negro. The financial burden of transporting 6,000 students would be considerable, especially to this already heavily taxed and indebted school district. Furthermore requiring certain students to leave their neighborhood and friends and be transferred to another school while other students, similarly situated remain in the neighborhood schools, simply for the purpose of balancing the races would be a violation of the Equal Protection Clause of the Fourteenth Amendment.

<u>The Court of Appeals Decision</u>

Circuit Judge Duffy delivered the unanimous opinion affirming the trial court.

At the outset he stated that the principal relief asked by plaintiffs was that defendants be enjoined from operating and providing racially segregated public schools in Gary. Judge Duffy referred with praise to District Judge Beamer's opinion and set forth the salient facts relating to the school situation in Gary in substantially the same manner as Judge Beamer had done in his opinion.

Turning to the question of law Judge Duffy stressed that plaintiffs did not refer to any court decision supporting their claim that the Gary school system had an affirmative duty "to recast or realign school districts or areas for the purpose of mixing or blending Negroes and whites in a particular school."

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Judge Duffy pointed out that the Supreme Court decision in the School Segregation cases prohibited enforced segregation in public schools solely on the basis of race. That decision was not applicable to Gary where school district boundaries were determined without any consideration of race and color. Judge Duffy expressed approval of Judge Beamer's finding that the school district lines had not been drawn for the purpose of including or excluding children of certain races. He agreed with Judge Beamer's view that the law does not require "that a school system developed on the neighborhood school plan, honestly and conscientiously constructed with no intention or purpose to segregate the races, must be destroyed or abandoned because the resulting effect is to have a racial imbalance in certain schools where the district is populated almost entirely by Negroes or whites..."

The Court of Appeals concluded that no constitutional rights of the plaintiffs and others similarly situated were violated by the manner in which the School District of Gary maintained and operated its schools.

Note: The court's conclusions in this case may be contrasted with those of the California Supreme Court in the case of Jackson v. Pasadena School District decided last June. 159 A.C. 905 This is what Chief Justice Gibson speaking for a unanimous court had to say about the obligations of a school board in a situation involving *de facto* racial segregation of public school children:

> Although it is alleged that the board was guilty of intentional discriminatory action, it should be pointed out that even in the absence of gerrymandering of other affirmative discriminatory conduct by a school board, a student under some circumstances would be entitled to relief where, by reason of residential segregation, substantial racial imbalance exists in his school. So long as large numbers of Negroes live in segregated areas, school authorities will be confronted with difficult problems in providing Negro children with the kind of education they are entitled to have. Residential segregation is in itself an evil which tends to frustrate the youth in the area and to cause antisocial attitudes and behavior. Where such segregation exists it is not enough for a school board to refrain from affirmative discriminatory conduct. The harmful influence on the children will be reflected and intensified in the classroom if school attendance is determined on a geographic basis without corrective measures. The right to an equal opportunity for education and the harmful consequences of segregation require that school boards take steps, insofar as reasonably feasible, to alleviate racial imbalance in schools regardless of its cause.

See also Branche v. Board of Education of Hempstead, 204 F. Supp 150, in which Judge Dooling said that a public school board is under the obligation to deal with the inadequacies arising from *de facto* segregation.

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