457 F.2d 1402
United States Court of Appeals,
Fifth Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
FLAGLER COUNTY SCHOOL DISTRICT et al.,
Defendants, James O. Craig, Supt. of Schools,
School Board of Flagler County,
Defendant-Appellant.

No. 71-2323.
|
March 29, 1972.

Synopsis

School desegregation case. The United States District Court for the Middle District of Florida, Charles R. Scott, J., directed desegregation of schools and school superintendent appealed. The Court of Appeals, John R. Brown, Chief Judge, held that order directing desegregation of schools was not vague even though it may not have defined Negro.

Affirmed.

Procedural Posture(s): On Appeal.

Attorneys and Law Firms

***1402** Stanley D. Kupiszewski, Jr., DeLand, Fla., for defendant-appellant; James O. Craig, pro se.

Jerris Leonard, Asst. Atty. Gen., Brian K. Landsberg, Atty., U. S. Dept. of Justice, Washington, D. C., John L. Briggs, U. S. Atty., John D. Roberts, Asst. U. S. Atty., Jacksonville, Fla., David L. Norman, Asst. Atty. Gen., Roderick N. McAulay, Atty. Dept. of Justice, Washington, D. C., for plaintiff-appellee.

Before JOHN R. BROWN, Chief Judge, and INGRAHAM and RONEY, Circuit Judges.

Opinion

JOHN R. BROWN, Chief Judge:

As a last gasp in the struggle against desegregation in the Flagler County (Florida) School District, Superintendent James O. Craig, now alone and unaided by the school board, appeals *pro se* from the District Court's order enjoining the operation of racially segregated public educational facilities and requiring the immediate implementation of a unitary school system, including compliance with the semi-annual reporting provision of Singleton v. Jackson Municipal Separate School District, 5 Cir., 1970, 426 F.2d 1364.[1]

In the long march from Mansfield[2] this Court has seen, heard, or heard of everything[3]–everything, that is, until today.

Here the District Court, after finding that Flagler County was operating a dual school system, ordered the immediate implementation of a unitary school system on August 7, 1970. The School ***1403** District resisted, arguing that it did not know what the term "race" or "ethnic origin" contemplated. It contended that it could not assure that Negro students were not being discriminated against because it did not have a Congressional definition of the term "Negro." What began as an ingenius quandry soon became disingenuous when HEW offered these definitions:

Negro:
persons considered by themselves, by the school or by the community to be of African or Negro origin.

Oriental:
persons considered by themselves, by the school or by the community to be of Asian origin.

Similar guidelines were announced for identifying American Indians, Spanish Surnamed Americans and All Others. Thereupon, the School District blithely filed a Supplemental Report identifying all teachers and students in the District as "Orientals," since they were so "considered by the school." Therefore, it reasoned, there was no discrimination, since there was only one race in the entire school district (i. e., "Orientals") and it could not be found to be in noncompliance with Constitutional standards.

With no surprise to anyone the District Court summarily rejected this absurdity and to the credit of the School District and the good sense of its members, the Board consented to a decree, avoiding any further

embarrassment by urging that contention in this Court. The School Superintendent, who was named as a party-defendant in the suit below as a matter of form, appeals singly *pro se* from the District Court's order.

His argument is that he cannot enforce the District Court's order because it contains no definition of what is a Negro and therefore, he contends, the order is vague and uncertain. Justice Douglas's statement in Tijerina v. Henry, 1970, 398 U.S. 922, 90 S.Ct. 1718, 26 L.Ed.2d 86, sufficiently answers that argument–"One thing is not vague or uncertain, however, and that is that those who discriminate against members of this and other minority groups have little difficulty in isolating the objects of their discrimination." The record indicates that in the past the School District has apparently had no difficulty identifying Negroes for the purposes of segregating them. For desegregation they can be identified with similar ease.

Appellant's other argument, that he does not know how to implement the District Court's mandate that discrimination in the system be rooted out completely by use of non-discriminatory assignment of students (as the Trial Court suggests, on the basis of alphabetical order) is without any redeeming merit.

Whether viewed as frivolous under our Rule 20, which it clearly is, or on the merits–or more accurately, the total lack of merits–the appeal utterly fails.

Affirmed.

All Citations

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Footnotes

[1] The United States instituted the present action nearly six months after the entry of a consent decree providing a desegregation plan for the county, because the first semi-annual report required by that decree failed to include statistical data relating to the racial composition of student bodies and faculties.

[2] Jackson v. Rawdon, 5 Cir., 1956, 235 F.2d 93, cert. denied, 352 U.S. 925, 77 S.Ct. 221, 1 L.Ed.2d 160.

[3] See, e. g., Hernandez v. Driscoll Consolidated Independent School District, 2 Race Rel.L.R. 329 (S.D.Tex., January 11, 1957). There, the school district tried to circumvent an order of the State Supertendent of Public Instruction, promulgated as a result of a court order in Delgado v. Bastrop Ind. School Dist., Civil No. 388 (W.D.Tex., June 15, 1948). The Superintendent's order had permitted segregation of Mexican Americans in the first grade *only*–as a means of combatting a prevalent language deficiency. Driscoll Independent School District's coup was to keep Mexican American students in the first grade for the first four years of their educational careers.