

Memorandum



Subject October 9 Status Call in
Chicago School Case

Date **OCT 7 1981**
ACR:mvr
DJ 144-100-23-1

To James P. Turner
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General
Civil Rights Division

From Alexander C. Ross *ACR*
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In addition to ruling on the Intervention Motions of the NAACP and Alderman Pucinski, Judge Shadur may want to discuss a variety of other matters. If so, I propose to address them in the manner described below.

1. State liability investigation

At the end of last week, Bob Howard rejected my renewed request that he cause a search to be made of the Chicago School Board's files to determine whether they contain evidence of the extent to which the State of Illinois was aware of racial segregation and discriminatory treatment of minority students in Chicago's public schools during the period 1963 through 1979. Mr. Howard's stated reason is that the Board's staff is so busy with desegregation planning that no one can be spared for this expensive and time-consuming task. I suspect that he is still reluctant to produce materials that might be used by the NAACP to establish the liability of the Chicago Board.

Mr. Howard proposes to raise the state liability issue with the court in the following manner: he would acknowledge the Chicago Board's reluctance to supply us with this information and state his understanding that the State Board was unwilling to provide data to us voluntarily. Further, he would suggest that the United States take discovery against the state within the context of our suit against the Chicago Board. If Mr. Howard takes this approach, I plan to tell the court that we think it is appropriate to make one more attempt to reach an agreement with the State.

The State of Illinois will be represented at the status call because both our case and the NAACP's case (which includes the state as a defendant) will come on simultaneously. This

cc: Ross ✓

presents the likelihood that the state will raise its theory of the federal government's contribution to (and joint liability for) segregation in Chicago, citing Gautreaux among other things, and that the state will offer to supply evidence to us only in return for information relevant to this issue. I would argue that the two issues are not related, that the federal government has taken action and, further, that relief has been granted against the United States in Gautreaux.

2. The interdistrict investigation

If asked, I will tell the court that we are conducting school, housing and employment investigations to determine whether the state or local governmental units have engaged in any inter-district violations, including actions which limit the mobility of blacks from the city to the suburbs. If necessary, I will explain that we have no preconceived notion of what relief would be called for and that we will be guided by the general principle that the relief should be tailored to fit the nature and scope of any violation found.

3. Specific questions concerning our position

I have no idea whether or not Judge Shadur will have any questions about our position on specific issues dealt with in our July 21 Response or the Joint Statement. I am prepared to point out the consistency between the two documents but I think that most questions should be postponed until after the Board has completed its comprehensive plan.

4. The Graham and Hendricks boycott

Bob Howard will be prepared to give the court an up-to-date report, with attendance figures showing that the boycott is weakening, with the exception of the continued refusal of white parents to send their children to Hendricks.

5. Chicago's ESAA application

This has been approved for \$1.8 million and was announced last week. I would not be surprised if the NAACP were to challenge Chicago's eligibility; thus, there is a remote possibility that it will come up at the status call. Ultimately, but not by October 9, we (or the Civil Division) may have to defend Education's action in court (probably in Washington, in Brown v. Bell).

6. The results of this fall's voluntary transfer program

I have urged Bob Howard to be prepared to give the court as much detail as he can about this fall's results, but I doubt that he can produce more than estimates before the Board's next Progress Report is due in mid-November.

7. The Intervention Motions

Judge Shadur may not rule on the NAACP's motion by October 9 -- he gave an opportunity to respond to our October 6 filing when he originally set the briefing schedule and the date for the status call. On the other hand, Alderman Pucinski's Motion is ripe for decision.

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If the court does or says anything newsworthy I will let you know immediately.