IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 71-2323

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAMES O. CRAIG, Superintendent of Schools, Flagler County School District, et al.,

Defendant-Appellant

On Appeal from the United States District Court for the Middle District of Florida

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BRIEF FOR THE UNITED STATES

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BRIEF FOR THE UNITED STATES

QUESTION PRESENTED

Whether the district court, based on uncontroverted facts showing racial discrimination by the defendants in student and faculty assignment, erred in ordering racial reporting along with other relief.

STATEMENT

This school desegregation action was commenced by the United States on July 10, 1970, pursuant to section 407 of the 1964 Civil Rights Act, 42 U.S.C. 2000c-6 and the Fourteenth Amendment to the Constitution. On August 7, 1970, a Consent Decree and Order was entered providing a plan of desegregation for the Flagler County schools to be implemented commencing with the 1970-71 school year. On September 30, 1971, the defendant school board and superintendent filed a semi-annual report required by the August 7, 1970 order but failed to include in the report racial statistics of students and faculty at each school and classroom in the district.[1/] After a series of communications with the attorney for the School Board and the entry of a stipulated agreement as to definitions of race for the purpose of racial reporting, the defendants, on December 31, 1970, filed a report with the court indicating that every student and faculty member in the Flagler County schools was "oriental."

1/ The Flagler County School District operates three school facilities with a total enrollment of approximately 1140 students.

On February 23, 1971, the United States filed an Application for an Order to Show Cause requesting that the defendants be enjoined from operating segregated classrooms, permitting segregated seating within classrooms, and discriminatorily assigning teachers to the Bunnell High School. The Application also requested that the defendants be required to file a complete report pursuant to the August 7, 1970, Consent Decree and Order. A hearing was held on March 18, 1971 and on April 28, 1971 the District Court entered Findings of Fact and Conclusions of Law and the Order from which this appeal was taken. At the March 18 hearing evidence was taken showing, and the District Court subsequently found, that the defendants were operating racially segregated classrooms at the Flagler Beach Elementary School, that students at Flagler Beach Elementary were assigned to school buses on a racially segregated basis, that in certain classes at Bunnell High School students were seated in a racially segregated pattern and that faculty members had been assigned to the Bunnell High School on a racially discriminatory basis. Accordingly, the District Court ordered appropriate relief.

On June 2, 1971 the defendants filed a Certificate of Compliance which included the racial statistics regarding students and faculty required in the semi-annual reports to the District Court.

This appeal was noticed on June 25, 1971, and is taken only by the defendant James O. Craig, superintendent of the Flagler County School District. The School Board has not appealed the April 28, 1971 order.

DISCUSSION

The transcript of the March 18, 1971, hearing which has been designated by the appellant shows that the findings of the District Court were made on facts in evidence. The facts of racial discrimination by the defendants were uncontroverted and are not clearly erroneous.

The law requiring maintenance of racial records and racial reporting is well settled. United States v. Jefferson County Board of Education, 372 F.2d 385 (5th Cir. 1966) aff'd en banc, 380 F.2d 385 (5th Cir. 1967); United States v. Hinds County School Board, 417 F.2d 852 (5th Cir. 1969); and Singleton v. Jackson Municipal Separate School District, 426 F.2d 1364 (5th Cir. 1970). The information required by the reporting provision is necessary to assess and evaluate the desegregation plan in practice, as is demonstrated by the record in this case. Green v. School Board of New Kent County, 391 U.S. 430 (1968); Swann v.

Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971). Accordingly, no error of law appears and an opinion in this appeal would have no precedential value.

In N.L.R.B. v. Amalgamated Clothing Workers of America, 430 F.2d 966 (5th Cir. 1970) this court established Local Rule 21 which states in part: "When the Court determines that any one or more of the following circumstances exists and is dispositive of a matter submitted to the Court for decision: (1) that a judgment of the district court is based on findings of fact which are not clearly erroneous; ... (4) that no error of law appears; and the court also determines that an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion." The instant appeal presents a situation which is appropriate for disposition under this rule.

CONCLUSION

For the foregoing reasons, the decision of the district court should be summarily affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Roderick N. McAulay, an attorney for the United States, do hereby certify that I have this 27th day of September, 1971, served by United States air-mail, postage prepaid, two copies of the foregoing Brief For The United States upon the party to this appeal at the address indicated:

Mr. James O. Craig
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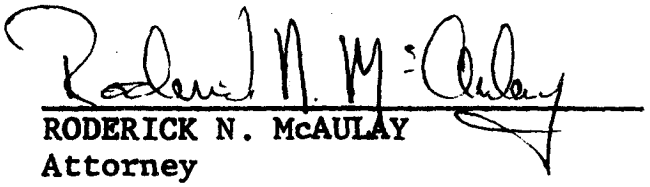

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