Ms. Nesson

Accompanying Memorandum

Attached is the first supplemental case summary to the "Summaries of Significant School Desegregation Cases" which you should have received. This summary should be placed in section B, containing the summaries of Fifth Circuit cases.

As supplemental case summaries are distributed, the Index should be corrected accordingly. The Appeals and Research section will periodically (e.g. accompanying every sixth or seventh supplemental case summary) prepare and distribute new indices, taking into account these new cases.

Singleton v. Jackson Municipal Separate District, No. 22527 (C.A. 5, 1965)

Facts - This class action was brought in March, 1963 in the United States District Court for the Southern District of Mississippi against the Jackson Municipal Separate School District to desegregate the public schools of Jackson, Mississippi. The District Court dismissed the complaint on the ground that plaintiffs had failed to exhaust administrative remedies under the Mississippi pupil assignment statutes. On appeal, the Court of Appeals reversed and remanded with directions that the motion for injunctive relief be speedily heard and decided. __/

On remand, the district court issued an injunction restraining defendants from requiring segregation in the Jackson public schools from and after such time as may be necessary to arrange for admission of children on a racially nondiscriminatory basis. Defendants were ordered to submit a desegregation plan which would provide for desegregation of at least one grade per year commencing in September, 1964. __/

On July 15, 1964, defendants filed a desegregation plan providing for grade-a-year desegregation beginning with the first grade in September, 1964. Desegregation was to be accomplished by means of "freedom of choice"; where adequate facilities were not available for all pupils applying for admission to a particular school, priority of admission would be based on proximity of residence. __/

__/ Evers v. Jackson Municipal Separate School District, 328 F. 2d 408 (5 Cir., 1964).

__/ Evers v. Jackson Municipal Separate School District, 9 R.R.L.R. 171 (1964).

__/ The desegregation plan is set out in 9 R.R.L.R. 1251-1252.

In February, 1965, the District Court approved the Board's plan. Plaintiffs appealed and the United States sought leave to intervene in the Court of Appeals, based upon the Attorney General's certification that this case was of general public importance raising questions "which are bound to affect the resolution of desegregation controversies elsewhere in the State and throughout the South."

Issues Presented - (1) Whether the United States' motion for leave to intervene should be granted; (2) Whether the District Court erred in approving the desegregation plan submitted by the School District.

Holding - (1) The motion for leave to intervene is granted.

(2) The District Court erred in approving the plan. A new plan must be promptly submitted to the lower court providing for the desegregation of at least four grades for the year 1965-1966, extending concurrently from the lower grades up and from the higher grades down in order to conform with the standard required in Lockett v. Board of Education of Muscogee County School District (see summary supra). And all grades must be desegregated by the beginning of the 1967-68 school year. As to details of the plan, the Board should be guided by the standards and policies announced by the United States Office of Education in establishing standards for compliance with the requirements of Title VI of the Civil Rights Act of 1964.

Rationale - In formulating requirements of desegregation, with respect to the Jackson School District as well as all other school districts, the Court of Appeals stated that "great weight" would be attached to the standards established by the U.S. Office of Education:

> The judiciary has of course functions and duties distinct from those of the executive department, but in carrying out a national policy we have the same objective. There should be a close correlation, therefore, between the judiciary's standards in enforcing the national policy requiring desegregation of public schools and the executive department's standards in administering this policy. Absent legal questions, the United States Office of Education is better qualified than the courts and is the more appropriate federal body to weigh administrative difficulties inherent in school desegregation plans. If in some district courts judicial guides for approval of a school desegregation plan are more acceptable to the community or substantially less burdensome than H.E.W. guides, school boards may turn to the federal courts as a means of circumventing the H.E.W. requirements for financial aid. Instead of a uniform policy relatively easy to administer, both the courts and the Office of Education would have to struggle with individual school systems on ad hoc basis. If judicial standards are lower, recalcitrant school boards in effect will receive a premium for recalcitrance; the more the intransigence, the bigger the bonus.

Addendum - The Court of Appeals, repeating that the second Brown decision sanctioned delay in school desegregation solely to give the school authorities a chance to deal with administrative problems,

stated that "in retrospect," that decision imposes on public school authorities "the duty to provide an integrated school system," and that Judge Parker's dictum in Briggs v. Elliot, 132 F. Supp. 776, 777 (E.D.S.C. 1955) ("[t]he Constitution. . . does not require integration. It merely forbids discrimination") should be laid to rest.

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Price v. Denison Independent School District Board of Education, 348 F. 2d 1010 (C.A. 5, July 2, 1965)

Facts - Up until the spring of 1963, the Denison School Board maintained a dual-zoned, totally segregated school system. On June 24, 1963, the Board of its own accord passed a resolution adopting a plan providing for desegregation of the first grade in September of 1963, and an additional grade each year until the entire 12 grades were desegregated. Under the plan, dual zones were abolished with respect to desegregated grades and each child entitled to enter a desegregated grade could attend the school of his choice within his attendance area.

In January of 1964, Negro plaintiffs brought a class action requesting, inter alia, that the Board be ordered to present a complete plan for desegregation under which all grades would be desegregated by the 1964-1965 school year, and under which teachers and other school personnel would be assigned on a non-racial basis. The District Court dismissed the complaint approving the plan then in effect, essentially on the grounds that (1) the School Board had voluntarily and in good faith instituted the plan and (2) the plan was a prompt and reasonable start toward full compliance. On the question of teacher assignment the district judge apparently was of the view that the Negro pupils lacked the standing to raise the issue.

Issues Presented - (1) Whether a voluntary grade-a-year plan, begun in 1963, and adopted in good faith complies with the requirement of "all deliberate speed". (2) Whether Negro pupils have standing to raise the issue of segregated teacher assignments.

Holding - Vacated and Remanded.

(1) The grade-a-year plan is unacceptable.

(a) In the Fifth Circuit three things are clear: 1) if challenged, a grade-a-year plan will not pass muster; 2) the process must work simultaneously from both ends; 3) all grades must be desegregated by the opening of the 1968-1969 school term.

(b) Judge Wisdom's comments in Singleton v. Jackson Municipal Separate School District, with reference to the HEW Guidelines are equally applicable here. 1/ Henceforth these regulations will be the standard applicable to desegregation plans coming to this court. A new plan must be submitted in accordance with the "H.E.W. Guidelines." 2/

(c) We are convinced of the Board's good faith. That has much significance in fashioning the time, scope, and nature of the relief. "But in the final analysis it has limited bearing on the substantive rights accorded and specifically the speed of the plan. The rights of the Negro children come from the Constitution, not the attitude good or bad, of school administrators."

(2) Negro pupils have standing to raise the issue of desegregated teacher assignment.

(a) The district judge was in error in questioning their standing to do so. Board of Public Instruction of Duval County, Fla., v. Braxton (see summary supra); Augustus v. Board of Public Instruction of Escambia County (see summary supra); Lockett v. Board of Education of Muscogee County School District (see summary supra.)

(b) But on the merits we think it best for the moment to leave this to the District Court for consideration by and with the Board as the imported HEW standards are applied. The whole matter will become academic in any event. For if the Denison School District obtains federal financial aid, HEW regulations will require adjustment.

1/ See the summary of the Singleton case, supra, for Judge Wisdom's comments.

2/ In a footnote the Court said that in the 1965-1966 year, instead of desegregating only grade 3, Denison must desegregate three additional grades, including the twelfth, for a total of four. But it specifically left open the question whether all grades must be desegregated by the 1967-68, as required by the HEW regulations, or by the 1968-69 school year.