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Department of Justice
Washington, D.C. 20530

August 11, 1975

CIVIL RIGHTS DIVISION WEEKLY REPORT
TO THE ATTORNEY GENERAL

Following is a report of significant legal and legislative activities which have been brought to my August 1 through August 7, 1975.

A. Appellate

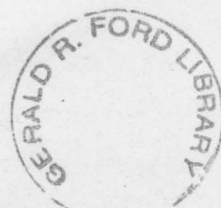
1. State of Florida: On July 29, 1975, the Fifth Circuit Court of Appeals granted the Florida Division of Corrections' motion for a stay pending appeal in Costello v. Wainwright. We had opposed a stay of the district court's interlocutory order requiring reductions in the level of overcrowding in the Florida prison system. However, the court adopted our alternate suggestion and announced an expedited briefing and oral argument schedule. The court also directed the state to submit a report shortly prior to oral argument detailing progress made in alleviating overcrowding.

B. Criminal

1. Waycross, Georgia: On August 1, 1975, Joeallene Stone pled guilty to a one-count violation of 18 U.S.C. Section 242. Sentencing has not yet been scheduled.

Stone shot a fifteen-year old runaway in the back after chasing him twice. Two police officer witnesses say Stone told them he shot because he got tired of chasing the youth.

2. Louisville, Kentucky: On August 6, 1975, a federal grand jury (W.D. Ky.) returned a one-count indictment charging officers Michael Duffy and Paul Nethery of the Louisville Police Department with a felony violation of 18 U.S.C. Section 242. Duffy and Nethery were charged with shooting Jerry A. Redmon on June 14, 1972, as they attempted to arrest him for indecent exposure in a public park in Louisville. According to three eyewitnesses, Redmon, who was completely nude, was at least thirty feet from the two officers when they fired a total of five shots. Redmon died as a result of multiple gunshot wounds.



C. Employment

1. Atlanta, Georgia: On August 4, 1975, a consent decree was entered into with the defendant company partly resolving United States and EEOC v. Terminal Transport, et al. Trial was held on the remaining issue against defendant Teamsters on August 4, 5, and 6.

The suit charged that Terminal Transport, which operated from thirty-four terminals in thirteen states, and the International Brotherhood of Teamsters followed a pattern and practice of discrimination against blacks in job opportunities. The case was consolidated for trial with a private case against the company and the union.

The decree, which enjoins the company from any discriminatory employment practice, requires it to begin a program to recruit blacks for jobs in each city where it maintains a terminal. In filling vacancies, the company is required to adopt and seek to achieve a goal of hiring qualified blacks at a 50 percent rate for road driver, city driver, dock, shop, office and clerical jobs until the percentage of blacks in each job equals that of the workforce in the area, and at a 25 percent rate for managerial and supervisory positions until the percentage of blacks in those positions is 10 percent system-wide.

In addition, the decree provides for payment of \$200,000 to more than 150 named rejected job applicants and present and former employees, while providing a procedure for additional alleged discriminatees to present their claims. This back pay award is the largest obtained to date in a trucking company case.

Trial was held on August 4, 5, and 6 on the unresolved issue of the unlawfulness of the seniority system under the company's collective bargaining agreement with the Teamsters. We presented a comprehensive stipulation signed with the company, as well as documentary evidence and depositions, and the testimony of four black witnesses and two company officials. The defendant Teamsters introduced no evidence in defense.

D. Housing

1. Atlanta, Georgia: On or about August 1, 1975, Northside Realty Associates, Inc., Atlanta's largest broker, and several of its agents, filed suits in the Superior Court of Fulton County against a group of individuals who had "tested" the practices of Northside and reported their experiences to this Department, for several million dollars in compensatory and punitive damages and for an injunction to restrain all future testing. The evidence provided by



the testers is part of the Government's case in a civil contempt proceeding recently instituted by the United States against Northside. Northside's state court complaint alleges a conspiracy to run its business and has counts alleging the following torts: (1) Interference with Economic Relations; (2) Tortious Competition; (3) Nuisance; (4) Implied Contract; (5) Unjust Enrichment; and (6) Libel.

We are presently considering what steps to take to protect witnesses for the United States from unlawful interference. National fair housing and civil rights organizations may represent the testers, since this is likely to develop into one of the more important fair housing cases.

E. Indian Rights

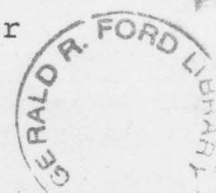
1. Rapid City, South Dakota: On July 25, 1975, we filed the response of the United States to eleven pretrial motions by the defendants in United States v. Richard Wilson, et al. This prosecution charges the Chairman of the Oglala Sioux Tribe and six of his employees with assaulting lawyers and legal workers involved in defending several Wounded Knee cases.

The defendants had filed several motions which sought inter alia, discovery, grand jury minutes, severance, and suppression of evidence. In addition, they moved to dismiss on the ground that the tribal court subsequently accepted a plea of nolo contendere for the same acts and that federal prosecution is barred by double jeopardy and is specifically precluded by the language of 18 U.S.C. Section 1152. We replied that double jeopardy is no defense as the tribe and the United States are separate sovereigns. Should the court find otherwise, we have asked for a hearing and are prepared to argue that the tribal court proceeding was instituted in an attempt to divest the federal court of jurisdiction.

F. Public Accommodations and Facilities

1. Statesboro, Georgia: On July 31, 1975, the court entered a consent decree in United States v. Skate-R-Bowl Club, Inc. (S.D. Ga.), a Title II action against an alleged private club. The judgment enjoins the owners from failing or refusing blacks the same services, facilities, and accommodations of this establishment and any other establishment owned or operated by the defendants, that are granted to white members of the general public. The judgment also requires the posting of signs indicating a nondiscriminatory policy.

It was subsequently learned that two of these defendants, June and Hugh Darley, will soon open another establishment similar to the Skate-R-Bowl.



2. Vicksburg, Mississippi: On August 6, 1975, a pretrial conference was held in United States v. Y.M.C.A. of Natchez, a Title II case in which the defendant organization has refused to admit blacks as members. The attorney for the defendants announced that a membership meeting has been called for August 14, at which time there will be a vote on dissolving the Association. Should the members vote against dissolution, it was indicated that a consent decree would be signed.

G. Schools

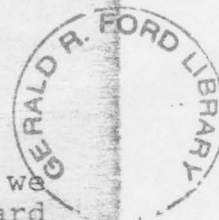
1. Autauga County, Alabama: On August 6, 1975, we filed a response to an order of the district court (Varner, J.) directing the parties to file plans in accordance with the opinion and remand of the Court of Appeals for the Fifth Circuit in Lee v. Autauga County Board of Education (M.D. Ala.). On appeal by the United States, the court of appeals on May 27, 1975, reversed a decision of the district court approving a proposal by the defendants to construct a new high school in Prattville, Alabama. The Fifth Circuit remanded the case for reconsideration of the proposal with a view toward desegregating the remaining one-race schools in Autaugaville.

In our response we include a proposed order which would require the defendants to undertake a comprehensive planning study of alternative proposals which would facilitate the desegregation of the Autaugaville schools and would require the defendants to file a detailed report concerning the steps taken under the order.

2. Decatur City, Alabama: On July 31, 1975, we filed a motion for order to show cause, a memorandum in support of motion to show cause and a proposed order in Lee, et al. v. Macon (Decatur City) (N.D. Ala.). Our motion requests the court (Judge Hancock) to require the defendant Decatur City School System to present to the court alternate methods of student and faculty assignment which will effectively desegregate the elementary schools in the Decatur system. We also ask the court to require the defendant to appear and show cause as to why it should not be required to implement a plan which will desegregate the elementary level schools by the start of the 1975-76 school year, or within a constitutionally acceptable period of time thereafter.

Judge Hancock has scheduled a conference on our motion for August 27, 1975 in Decatur.

3. Jefferson County, Alabama: On July 15, 1975, we filed a notice of appeal in Stout v. Jefferson County Board of Education (N.D. Ala.), from the order of the district court entered on June 30, 1975. The Jefferson County School Board and the private plaintiffs filed notices of cross-appeal on July 18, 1975 and July 22, 1975, respectively. On

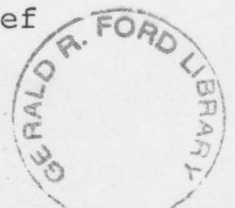


August 1, 1975 the Solicitor General approved the appeal which will raise the issue of whether the district court erred in approving a plan of student assignment for a portion of the county, which projects that two school facilities, originally constructed to serve black students, will continue to serve only black students. Under the plan, their schools will be operated significantly under capacity while facilities in contiguous predominantly white school attendance zones will be overcrowded and will require the construction of a new all-white school facility (the construction of which was also approved by the order), notwithstanding the fact that feasible alternate methods of student assignment are available which would desegregate the all-black schools and negate the need for new school construction.

4. Polk County, Florida: On August 1, 1975, we filed a motion for supplemental relief in Mills v. Polk County Board of Public Instruction (M.D. Fla.), asserting that three all-black elementary schools were remnants of Polk County's dual school system. We requested that the court order the defendant to file plans for desegregation of these facilities prior to a hearing on the merits.

5. Indianapolis, Indiana: On August 1, 1975, the district court (Judge Dillon) entered an order in United States, et al. v. Board of School Commissioners of the City of Indianapolis (S.D. Ind.). The issue before the court was whether a desegregation plan for the Indianapolis Public School System, which was previously found to be de jure segregated, would be limited to IPS only or involve some neighboring school systems outside IPS boundaries, but inside of Marion County and the City of Indianapolis.

The court ruled that evidence from the March 1975 hearing in this case indicates that the Indianapolis Housing Authority, an agent of the State of Indiana, discriminatorily located low cost public housing projects which would be occupied mostly by black families inside of the IPS boundaries when alternative sites were available elsewhere in Marion County and the City of Indianapolis. The court also stated that the record amply supports the conclusion that eight of the ten political subdivisions, also agents of the state and each operating separate public school systems, actively resisted the movement of black families into their territory. The inevitable result of this, the court said, was to create and maintain the segregation of black students in IPS. Given these facts, and the additional fact that the State of Indiana, by statute, enlarged the city limits of Indianapolis to all of Marion County without correspondingly enlarging the boundaries of IPS, a limited form of inter-district relief was held appropriate.



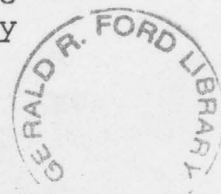
The court then ordered IPS to transfer, and the eight school systems to receive, in accordance with state law, by the beginning of the 1975-76 school year, as many black students in IPS in grades 1 through 9 as are necessary to bring the total number of black students in the districts involved to 15% of the total student population. Such a transfer program would desegregate the 19 elementary schools in IPS which are currently over 80% black. IPS was also required to develop and implement by the second semester of the 1975-76 school year, a desegregation plan for the high schools in the system. Finally, the Indianapolis Housing Authority was enjoined from locating any future public housing projects inside the IPS boundaries.

6. Kansas City, Kansas: On July 18, 1975, Judge Earl O'Connor entered an order in United States v. Unified School District No. 500 (Kansas City, Kansas Schools) (D. Kan.), which denies the United States a hearing on its motion for preliminary injunction prior to the commencement of the 1975-76 school year. Our motion seeks the desegregation of five black schools. The court's order refers to the inherent power of a judge to manage his docket and states that insufficient time remains before the school year for an adequate hearing or implementation of a remedy if violations are determined. The order sets a hearing date of November 4, 1975, for a full trial on the merits. The order will not be appealed.

7. Bossier Parish, Louisiana: On July 31, 1975, we filed a motion for supplemental relief in Lemon and United States v. Bossier Parish School Board (W.D. La.), requesting the court to order the school district to desegregate its remaining all-black elementary school. The all-black school, Butler Elementary, was constructed in the middle of a black residential area in Bossier City, Louisiana.

Previously, we had sent the district a notice letter requesting that they desegregate the Butler school. Subsequent to several meetings between the school district officials and a Department representative, the school district responded with an unsatisfactory proposal which would assign high school students in a Trainable Mentally Retarded (TMR) program to the school on a part-time basis.

8. Omaha, Nebraska: On July 25 and August 1, 1975, conferences were held with the district court and all parties concerning implementation of the Eighth Circuit Court of Appeals' decision and remand in United States v. School District of Omaha (D. Neb.). Specific agreements were reached by the parties concerning faculty desegregation for the 1975-76 school year. Pursuant to the agreements, no elementary school in Omaha will vary in black faculty by



more than 5% from the total black elementary faculty in the system. Smaller variances were agreed to in regard to high schools and junior high schools. We have reserved the right to challenge the specific reassignments at the junior high level on the grounds of disproportionate seniority and/or qualifications pending further investigations. In addition, the parties are close to an agreement in the area of student transfers and will be meeting again in order to resolve the few remaining issues.

Finally, the district court has appointed a ten-member bi-racial committee to work with the school system and parties to the lawsuit in the development of the comprehensive student desegregation plan for the 1976-77 school year.

9. Asheville, North Carolina: On August 4, 1975, a three-judge district court heard oral argument in United States v. North Carolina (E.D. N.C.), a Title VII suit brought by the government alleging North Carolina's National Teacher Examinations cut-off score requirements are an unlawful employment practice and violate the Fourteenth Amendment. The plaintiff and plaintiff-intervenors (National Education Association, North Carolina Association of Educators and twenty-four individuals) emphasized the facts showing: (1) that the NTE scores disqualified minorities as compared to whites at a proportional rate of about thirty to one; (2) that neither the defendants nor the test producer, Educational Testing Service, had ever indicated the cut-off score requirements; (3) that the circumstances surrounding the adoption of the score requirements reflected racial motivation; and (4) that satisfactory, nondiscriminatory alternatives were available to the defendants. We pointed out that the factual and legal issues in this case were not as difficult for the court to resolve as cases such as Albemarle Paper Company v. Moody since no validation efforts had ever been made.

Without prior notice to the parties, an attorney for ETS also obtained permission from the court to present oral argument. ETS argued, without record support, that the NTE were "content" valid because they were carefully constructed and also that their use had been validated in other school systems such as Los Angeles and Chicago, and that they were, in ETS's view, used properly in Boston. In rebuttal, we contradicted these assertions and also pointed out that the court in Morgan v. Kerrigan found the Boston NTE requirement invalid and that we had requested ETS during discovery to provide copies of all such validity studies but that no studies validating the tests for employment or certification use in Los Angeles, Chicago or anywhere else were ever produced.



10. Fayette County, Tennessee: On August 5, 1975, we served a brief in McFerren and United States v. Fayette County Board of Education (W.D. Tenn.), addressing the issue of whether the court, on motion of the private plaintiffs, should enter an order requiring the school board to implement a policy which would prohibit its employees from enrolling their own children in private segregated schools. Plaintiffs allege that such relief is necessary to assure the effective implementation of desegregation. Our brief argues that the evidence shows that only sixteen of the board's 571 employees have children enrolled in private segregated schools, and even if those children did return to the public schools, the impact on desegregation would be minimal. We also noted that only two of said employees were classroom teachers and argued that if these teachers, or any other teachers, treated black children in a discriminatory manner the proper remedy would be dismissal from employment, or other less severe action which would remedy the discrimination. On the basis of the facts before the court we suggested that plaintiffs' motion be denied.

11. Corpus Christi, Texas: On July 26, 1975, the district court for the Southern District of Texas (Cox, J.) issued a memorandum and order adopting a computerized assignment plan for the desegregation of elementary schools in Cisneros v. Corpus Christi ISD. The plan was ordered to be developed by the court sua sponte, on June 16, 1975, after a hearing on earlier plans submitted by the school board. In the June 16 order the court ruled that the school board's desegregation plan was inadequate to desegregate the elementary schools and announced the appointment of a committee of computer experts to assist the court in developing the computer proposal. The plan was developed and adopted by the court without further hearing and without permitting the parties to otherwise respond to the plan.

The finalized plan abolishes existing elementary attendance zone lines and divides the school district into 453 separate grids, each containing approximately 40 students. The assignment of particular grids to particular schools is accomplished so that at 37 of the 40 elementary schools the minority population is no less than 25% and no greater than 75% of the total student population. (The overall elementary population in Corpus Christi is approximately 35% Anglo). The plan, however, necessitates the reassignment of approximately 10,000 elementary students. About 2,100 of these students will require transportation. The remainder, according to the plan, will reside within two miles (straight line distance) of their assigned school and therefore will not require transportation.



H. Voting

1. Rome, Georgia: On August 1, 1975, the Attorney General objected to sixty annexations submitted by the City of Rome, Georgia. Our analysis has revealed that during the period of time when these annexations took effect, the manner in which members were elected to the city commission and the city school board was substantially changed. Because we found these electoral changes to be indispensable to an evaluation of the voting effects of the annexations, we advised the submitting authority that we were unable to conclude that the annexations had no discriminatory effect absent an evaluation of those changes in the manner of electing commission and school board members. We informed the city that the Attorney General will reconsider his determination relative to the annexations upon receipt of a submission of the changes regarding the election of the city commission and the city school board.

2. This week the Department sent four letters of no objection concerning submissions pursuant to Section 5 of the Voting Rights Act of 1965, as amended in 1970.

Stan

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

