

To: Trial File

Patterson v. Board of Education

Portions of the oral argument in Lee v. Mason City Sch Bd, Feb. 3, 1967; to supplement Mr. Lordberg's recordation

144-107-2-1  
#1-087-2

D R A F T  
2/6/67

cc: Doer  
Barrett  
Nixon  
Jabara  
Fiss  
Lordberg  
Recrets

Mr. Barrett began his argument in the Lee case by stating that he did not intend to discuss the facts nor the need for relief. Instead, he said that he would discuss the proposed decree, or what the relief should consist of. First he asked that the preliminary injunction prohibiting interference with desegregation be made final. He then turned to the part of the decree involving trade schools and junior colleges. Immediately Judge Johnson asked whether the Government proposes that there be reassignment of faculty in all schools. Mr. Barrett answered that the decree did not require reassignment by these defendants but that the reassignment would take place by the local school board under the desegregation plans that they were required to adopt. Judge Johnson then asked as to ~~xxx~~ how much reassignment would be required under the plans.

Judge Johnson: Do you think that there is going to be any reassignment unless ~~however~~ a specific order <sup>requires</sup> ~~they however reassign.~~ <sup>that there be reassignment?</sup>

Mr. Barrett: Yes. There will be some in some school systems. ~~We require that they wait~~ <sup>we realize that there is a need</sup> for a specific order and we are attempting to make the obligation more specific in our proposed decree.

Judge Johnson: Your decree is more specific -- in an ~~ambiguous~~ <sup>ambiguous</sup> sort of way. I understand what you are getting at.

Judge Grooms: Does your proposed decree cover everything?

Mr. Barrett: Yes. We recognize that on certain ~~attempts~~ <sup>Provisions</sup> our decree might be on the conservative side.

Mr. Barrett then proceeded to describe the various items covered under the <sup>proposed</sup> decree. Judge Rives interrupted.

Judge Rives: One thing disturbs me and that is the guidelines. Suppose the guidelines are held invalid because of the lack of presidential approval, or for some other reason. What effect would that have on this case? Hasn't the State department and HEW been so much at war with one another that it would not be fair to enter any order until things return to normal once again. Hasn't it reached the time when it would be ~~appropriate~~ <sup>possible</sup> to have a just decree? <sup>?</sup> The agencies are still at war with one another. Suppose the HEW guidelines are held to be invalid. Then I presume that there would be no problem with the proposed decree.

Mr. Barrett: Although we make reference to the HEW guidelines in our proposed decree, this reference is merely a shorthand method of referring to a desegregation plan. This court could ~~write~~ write its own desegregation plan if it wished to do so without any reliance on the freedom of choice plan of HEW. We used the guidelines only to solve the problem of formulating a plan.

Judge Johnson: What do the guidelines have to do with unconstitutional segregation, with deciding the constitutional obligation of the school board?

Mr. Barrett: They have nothing to do with constitutional obligations. We ~~decided~~<sup>rely</sup> upon the guidelines only for purposes of obtaining the specifics of a desegregation plan.

Judge Rives: Don't the guidelines have the same relation to this case as they did to Jefferson County?

Mr. Barrett: No. In Jefferson County it was necessary for the court to determine the validity of the guidelines. They ~~are~~<sup>were</sup> attempting to formulate a uniform desegregation plan for the whole of the 5th Circuit. However, in this case we are not dealing with the local school board. We are dealing with the State Department of Education ~~and~~ which has a great deal of expertise in these specific areas. In our proposed decree, there is a direct relationship between the specificity of the obligation on the State Superintendent and the extensiveness of his control. For example our proposed decree regarding transportation is extremely specific since the State has so much control. It pays 97% of the transportation by local systems.

Judge Johnson: You mean you would like "guidelines" ~~but~~<sup>by</sup> the State Department of Education? ~~would not.~~

At this point, Judges Rives, Grooms and Johnson conferred with one another and then by way of explaining what the conference was about Judge Johnson announced that the Court found the idea of going into the "guidelines business" an interesting one. After all, he said, we are in ~~all~~ <sup>other</sup> other businesses. This was said in a joking manner and there was considerable laughter in the courtroom.

Mr. Barrett then announced that he would discuss construction.

Judge Rives inquired as to whether there was anything ~~more~~ <sup>other than what was</sup> ~~that was not~~ in writing in the briefs, and ~~that~~ if not ~~there~~ <sup>there would</sup> ~~be~~ <sup>be</sup> any purpose in continuing this line of argument. Mr. Barrett replied that he was simply going to illustrate how the proposed decree would work and then spent some time going into various provisions in the proposed decree relating to construction. He then used the charts for ~~purposes of illustrating~~ <sup>the point of</sup> the Walker School System. Judge Rives commented: "We see your point." ~~He~~ <sup>Mr. Barrett</sup> then pointed to the example of Fayette School System and justified ~~this further~~ <sup>his discussion of</sup> example on the ground that it was necessary to illustrate how "racial considerations" would ~~be involved in~~ <sup>be involved in</sup> ~~be used under~~ our proposed decree. It would be racial consideration that would dictate the consolidation of the ~~two~~ two schools that are right near to one another ~~and~~ <sup>with</sup> one large school center, each school covering different grades.

At the conclusion of his argument, Mr. Barrett urged that the Court order rule now on the application for further relief and that there was no need to wait for

Jefferson County or for a decision in the NAACP v. George V. Wallace case regarding the guidelines. He emphasized that the conduct in question in this case was ~~mainly~~ *merely* "a garden variety of racial discrimination" and that relief was needed as soon as possible. He made specific reference to the Spring choice point that would be required under the freedom of choice plan. Judge Rives was somewhat puzzled by this reference to the Spring and asked Mr. Barrett what did he mean. ~~We~~ *was general that the Court was* thinking of having a decision in time for the opening of school in the fall, *September.* Mr. Barrett replied that we needed a decision now because under freedom of choice plans, the choice is usually exercised by the children while they are still in school in the Spring. Judge Rives ~~said~~ *then* said that he understood.