Court Decisions: Impact on Staff Balance

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CONTRARY to what most people believe, the Brown Decision of 1954 had very little positive effect on school staffing prior to 1966. As a matter of fact, in its pronunciation that schools separated by race are inherently unequal, the U.S. Supreme Court inadvertently delivered a temporary setback to the role of the Negro educator in American public schools. Because the average parent, both Negro and white, tended to blame the poor conditions of these schools on Negro teachers and Negro administrators, these educators were generally dismissed or downgraded as "Negro" schools were discontinued.

Included among these critics were civil rights groups and psychologists who concluded that if Negro students had not learned, it was simply because they had not been taught and that Negro administrators were incompetent for not having done anything about it. At a meeting of the American Teachers Association in Miami in 1962, a noted Negro psychologist called for the appointment of white principals in previously all-Negro schools as a way of improving education in the all-Negro schools.

It is ironic that just six years later white principals and white teachers are being blamed for the failure of Negro schools; and these same civil rights groups, sociologists, and psychologists are now calling for black principals and black teachers as a solution to the problem of the northern ghetto schools. This suggests that we may need to look beyond skin color of teachers and administrators as we seek answers to these complicated questions.

For twelve years, the 1954 Decision by the U.S. Supreme Court had little or no effect on the schools in the eleven southern states. In most cases desegregation applied only to students, especially those students brave enough to face the dangers and hardships of attending a school previously reserved for another race. Until the advent of the U.S. Office of Education's revised policy statements of 1968 (so-called guidelines), faculties in the Deep South remained primarily as before—all black for predominantly black schools and all white for integrated or predominantly white schools. This practice has served to reduce the proportion of Negro teachers employed in the South and border states, especially in those districts which have made significant progress in pupil desegregation.

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Photo courtesy of Women's Educational & Industrial Union, Boston, Massachusetts

In the six border states during the first twelve years after 1954, the effect of the Brown Decision was practically to eliminate the Negro administrators and supervisors and decrease seriously both the number and proportion of Negro teachers in the public schools.

Since Negro teachers were employed initially to teach in separate schools, many boards of education, especially in states with no tenure laws, concluded that they had no further need for Negro teachers when the Negro schools were closed and the students absorbed in the previously all-white schools.

As a matter of fact, the Federal courts, in upholding an action of the Mobley, Missouri, Board of Education in 1954 dismissing its 14 Negro educators (including one with a doctorate degree), gave legal sanction to the demise of the Negro educator, especially in the integrated small town school.

Although the court expressed some doubt that all of the 14 Negro teachers dismissed could be less adequate than all of the 125 white teachers retained, it decided that the Board had the right to make that decision.

For ten years the Mobley decision stood unchallenged. Then in 1964 J. Rupert Picott, Executive Secretary of the Virginia Teachers Association, acting in behalf of VTA and the dismissed teachers, asked the NEA and the NAACP to support his challenge of the Giles County, Virginia, Board of Education's dismissal of seven Negro educators when the all-Negro school was discontinued. Sustaining this challenge and departing from the Mobley precedent, the District Court and the Fourth Circuit Court held that Negro teachers were employed by the district and not by the school and should be treated as would others in instances of school consolidation. "Failure to do so would deny these teachers equal protection of the Law."

The Giles County case and the Enfield, North Carolina, case (also of the Fourth Circuit) led to a series of decisions by the Fourth Circuit and Eighth Circuit which will drastically affect the staffing patterns of schools throughout the nation.

The Enfield case is significant for two reasons: (a) Although it involved racial discrimination, it was not fought solely along racial lines. Since the teacher had been active politically, the defense held that she was being punished for exercising rights guaranteed by the Constitution. (b) This marked the first time that an individual in a non-tenure state had successfully challenged a board of education's contention that it does not need to give reasons for not rehiring because it has no obligation to a teacher once his contract has ended. (The Giles case and most other cases have applied to a group of teachers, thus being termed class action.) A $20,000 judgment and reinstatement for the teacher in the Enfield case set the precedent for similar rulings in North Carolina, Tennessee, and Arkansas.

Fear of loss of U.S. Department of Health, Education, and Welfare funds and fear of monetary awards by the courts are causing many boards of education to retain their Negro educators, or at least retain enough of them to prevent a successful charge of discrimination. "Tokenism" once reserved for students now applies to teachers.

The Fifth Circuit Decision, which in effect declared as legal the much disputed HEW "Guidelines for School Desegregation," will do much to reverse the trend toward tokenism in staffing.

Two statements stand out in this regard: (a) One should not be able to look at a school and tell for which race it is intended. (b) The board has an affirmative duty to desegregate, not just to cease discrimination.

This latter point was clearly enunciated by the Fifth Circuit Court in 1967 when it declared: "School authorities have an affirmative duty to integrate faculties as well as facilities. . . . school desegregation . . . cannot be accomplished by a statement of policy."

In the same decree, the Fifth Circuit shows some impatience with the pace of desegregation.

> In view of the foot dragging of the local school system in moving toward desegregated schools, the rule has become: The later the start, the shorter the time allowed for transition.

The following excerpt from a decision by the Eighth Circuit Court in December 1966 indicates a trend toward toughness as well as impatience:

> If (a local school board) is unable to discharge its duty to bring about,

in a reasonable manner of its choosing, a final end to unlawful discrimination, the courts will have no choice but to impose further demands to insure . . . the . . . constitutional rights . . . too long denied. And failure to . . . comply (with court directives) could be the basis of contempt proceedings.

After ten years of silence on staff in desegregated school systems, and just about four years of patient dealings with reluctant boards of education, the courts go beyond the call for white teachers and administrators in black schools to call for black educators in the previously all-white schools as well.

The courts conclude that the mere presence of an all-black or all-white faculty is as clear an indication of what race the school was intended to serve as a sign saying "white" or "colored" hanging on the outside.

Several decisions by District Court judges which have not yet been upheld or overturned by higher courts have even greater potential for significant changes in staffing patterns. Cases illustrative of this new attitude of the courts toward staff balance are now being implemented or are awaiting appeals in the following school districts: Shelby County, Tennessee; Montgomery City and County, Alabama; South Holland Elementary District (Illinois); Washington, D.C.

The Shelby County Decision holds that the racial composition of the faculty of each school in the district should not vary by more than 10 percent from the racial composition of all teachers in the system. Since about 30 percent of the teachers in the county are Negro, this seems to indicate that no school will have a faculty which is more than 80 percent white, more than 40 percent Negro; and that no school would have less than 20 percent Negro or less than 60 percent white.

In a recent review of the Montgomery County, Alabama, case, the district judge indicated that he will require a white-Negro ratio in every

school faculty which reflects the total for the system, two Negro teachers for every three white teachers. The decision is being appealed.

Noting in July 1968 that two of the six schools in the South Holland District were 99 percent Negro and that four were practically all white, the district judge, Julius Hoffman, called attention to the fact that more than 14 years had passed since the U.S. Supreme Court ruled against the doctrine of separate but equal.

Referring to opponents of pupil and faculty integration, Judge Hoffman declared, "They are doing a disservice to their own children when they deprive them of the opportunity to know members of another race and to be saved from the arrogant belief that a white skin is proof of preeminence."

The Skelly Wright Decision involving the District of Columbia schools, if upheld by the higher courts, will, in my opinion, have greater significance for staff balance than any of the cases yet discussed.

While Judge Wright questioned the practice of having all-white or all-Negro faculties within the school district and ordered staff desegregation, he added new dimensions for consideration in achieving staff balance.

Judge Wright looked at certification status, academic preparation, years of experience, presence or absence of auxiliary personnel, and concluded that to give children in low income areas a disproportionate share of non-certified and temporary teachers, while denying them the proportionate share of teachers with advanced degrees, serves to deny them equal protection of the law.

Evidence presented by the plaintiffs indicated that the per pupil expenditures in the higher income areas were significantly higher than per pupil expenditure in low income areas. The school district, instead of compensating for economic disadvantages, was in fact reinforcing the disadvantages by not giving equal support to teachers working in low income areas.

The real impact of these decisions lies not so much in the changes which it will cause in the districts directly affected, as in the creative leadership it will inspire in thousands of other districts which will seize the initiative in developing schools and faculties which best prepare students for tomorrow's world.

Boards of education, administrators, and professional associations have in 1968 the same opportunity to develop integrated faculties and staffs which they had to develop integrated student bodies in 1954.

The profession cannot afford to sit quietly by and watch the battle for staff balance be fought on the basis of race alone. It must insist that criteria for staff balance take into consideration such factors as age, sex, experience, preparation, areas of specialization, as well as attitude. Moreover, the profession must come to realize that true equality will never take place until there is balance in the kind of resources and support given to each school by the board and the central administration.

Whether or not the profession and boards of education will summon the courage and fortitude to look beyond selfish interest and develop staff balance in the interest of educating children for tomorrow's world is uncertain. But one fact about which there can be no doubt is that the courts are running out of patience. □