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'Law of Land' spelled out by Lawrence

By David Lawrence
(Reprinted from U. S. News & World Report

Ever since the Supreme Court of the United States rendered its opinion in 1954 and 1955 dealing with desegregation and racial discrimination in public schools, there has been a tragic indifference to what is often called the "law of the land."

Local school boards have been under pressure not only to "integrate" but to bring about a "racial balance" by transporting Negro children to schools in white areas or whites to schools in Negro sections. Indeed, federal funds have been withdrawn as a means of punishing those public institutions which have not taken positive action to correct "racial imbalance." Disturbances and disorders have arisen in many cities in the North as school officials have been unwilling to bow to demands that children be bused from one school district to another so as to achieve "racial balance". It has also been insisted that a certain proportion of whites and Negroes be assigned to faculties of public schools.

But the Supreme Court of the United States has never ruled that there must be "integration," much less that "racial balance" must be corrected, when segregation is the result of normal conditions and constitutes no deliberate act of discrimination by a public agency.

The Supreme Court has let stand a decision handed down on July 15, 1955, by a three-judge court—consisting of two Circuit Court judges and one District Court judge—in the case of Briggs vs. Elliott. Its opinion, which is at present the "law of the land" on discrimination in public schools, said in part:

"Whatever may have been the views of this court as to the law when the case was originally before us, it is our duty now to accept the law as declared by the Supreme Court.

"Having said this, it is important that we point out exactly what the Supreme Court has decided and what it has not decided in this case. It has not decided that the federal courts are to take over or regulate the public schools of the States. It has not decided that the States must mix persons of different races in the schools or must require them to attend schools or must deprive them of the right of choosing the schools they attend.

"What it has decided, and all that it has decided, is that a state may not deny to any person on account of race the right to attend any school that it maintains. This, under the decision of the Supreme Court, the State may not do directly or indirectly; but if the schools which it maintains are open to children of all races no violation of the Constitution is involved even though the children of different races voluntarily attend different schools as they attend different churches.

"Nothing in the Constitution or in the decision of the Supreme Court takes away from people the freedom to choose the schools they attend.

"The Constitution, in other words, does not require integration. It merely forbids discrimination. It does not forbid such segregation as occurs as the result of voluntary action. It merely forbids the use of governmental power to enforce segregation. The Fourteenth Amendment is a limitation upon the exercise of power by the State or State agencies, not a limitation upon the freedom of individuals.

"The Supreme Court has pointed out that the solution of the problem in accord with its decisions is the primary responsibility of school authorities and that the function of the courts is to determine whether action of the school authorities constitutes 'good faith implementation of the governing constitutional principles.' "

The Congress of the United States, in the Civil Rights Act of 1964, carried out the basic concepts set forth by the Supreme Court decisions, and provided for desegregation in public education. This statute says

" 'Desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance . .

"Nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance."

This same law authorizes each federal department or agency which extends financial assistance to any program or activity to issue "rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance." But it makes the following stipulation:

"No such rule, regulation, or order shall become effective unless and until approved by the President."

While President Johnson approved some regulations issued on Dec. 3, 1964, by the Department of Health, Education and Welfare, nowhere as mention made of the specific prohibition in the law against issuance of any order seeking to achieve racial balance in any school." But the "guidelines" distributed by the Department of Health, Education and Welfare actually have the effect of imposing a requirement that there shall be certain percentages or quotas of Negro pupils in various public schools. State and local governments have been told that compliance is "voluntary." But they nevertheless have been threatened by punitive action if they failed to carry out the edicts.

In the issue of Feb. 6, 1967, this writer said:

"The U. S. Commissioner of Education is insisting on what might be called 'compulsory volition.' The States and cities are told that the "guidelines" are purely voluntary. If, however, these yardsticks are not applied, the local governments then can lose federal funds.

"It is the duty of the President of the United States to insist that regulations be issued from threatening to withhold to prohibit any Department school funds or from taking other actions which directly or indirectly seek 'to achieve a racial balance in any school.'

"Why shouldn't officials of our Government be required to obey both the spirit and the letter of the law?

"To ignore an Act of Congress or to violate its explicit provisions is hardly a good example of government under a system of 'law and order.' On the contrary, it is, unfortunately, another tragic infringement during our era of 'civil' disobedience.' "

Will President Nixon, who has just taken an oath to support the Constitution, permit the "guidelines" of the Department of Health E,ducation, and Welfare to remain in effect insofar as they threaten punishment unless" racial imbalance" is corrected?

In many areas of the country efforts have been made to put into operation "freedom of choice" plans, and certainly there is no reason why school boards shouldn't open their institutions to students who come from any part of the city. There is, on the other hand, no reason for the Federal Government to punish a school board when it chooses to admit only the children who live within a particular district as long as admission is open to all, without regard to race or color.

The "law of the land" properly calls for an end to segregation. But it does not require "integration" as a means of correcting "racial imbalance" which is due to residential patterns or other circumstances not connected with discrimatory practices.

Yet we have observed in the last few years agencies of the Department of Health, Education and Welfare proclaiming "guidelines" which, in effect, seek to correct "racial imbalance" by transporting children away from the school which they would normally attend, while other children are bused to that same school. Faculty members are being assigned on a racial basis. The object is to have in some instances at least the same percentage of white and Negro teachers as students in a school.

The big question before the country today is whether the new Administration at Washington will show the indifference to the "law of the land" that has been previously exhibited.

Within the last few days, Robert M. Finch, the new Secretary of Health, Education and Welfare, granted a 60-day extension to five Southern school districts which were scheduled to lose federal funds because of an alleged refusal to abolish segregated school systems. Mr. Finch said he has not had an opportunity to establish and review the facts in these cases and has dispatched a team of investigators to each district "to develop workable and effective alternatives within the law." He recalled that Mr. Nixon during the election campaign had set forth "the proper construction of this provision of the law."

The Republican presidential nominee, in a public speech in October, said:

"No child, black or white, should be deprived of an adequate education. I would enforce Title VI of the Civil Rights Act of 1964. I oppose any action by the Office of Education that goes beyond a mandate of Congress. A case in point is the busing of students to achieve racial balance in the schools. The law clearly states that 'desegregation shall not mean the assignment of students to public schools in order to overcome racial imbalance.' "

The total vote given to Mr. Nixon and to Wallace was in part a reflection of the bitter feeling that had developed thruout the country because the Johnson Administration permitted the issuance of illegal "guidelines," along with threats to curtail federal funds, in order to attain "racial balance" in the schools.

The fact is there are various ways of moving toward racial balance through the voluntary action of the residents in different communities.

Our citizens want a fair deal for every race, and they do not want governmental power used as a means of correcting "racial imbalance" arising from natural causes. The "law of the land" must be properly administered to retain the support of an overwhelming majority of the American people.

State of South Carolina,
County of Newberry
By FRANK H. WARD,
Probate Judge

Whereas, Virgil C. Harmon hath made suit to me to grant him Letters of Administration of the Estate and effects of Carroll R. Harmon deceased.

These are, therefore, to cite and admonish all and singular the Kindred and Creditors of the said Carroll R. Harmon deceased, that they be and appear before me, in the Court of Probate, to be held at Newberry, S. C. on March 4, 1969 next after publication hereof, at 10 o'clock in the forenoon, to show cause, if any they have, why the said Administration should not be granted.

Given under my hand this 20 day of February, A. D. 1969.

FRANK H. WARD,
Probate Judge,
Newberry County 2t