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This article appraises the decision of Judge J. Skelly Wright in the "Hobsen v. Hansen" litigation invalidating de facto segregation in the schools in Washington, D.C. The "finding of fact" section of the decision attacked as discriminatory the schools' track system, the racial distribution of faculty, and the utilization of school buildings. It indicated that the system's neighborhood school policy segregates Negroes from whites, who are permitted to escape from assignment to Negro schools by transferring to optional school zones. In addition to ruling on racial discrimination, Judge Wright applied his decision to socioeconomic and class discrimination, suggesting the importance of social class integration as well as racial balance in the schools. It is felt, however, that while Judge Wright's decision invalidated discriminatory de facto school conditions, it did not actually outlaw de facto segregation on constitutional grounds. Also, since the "Hobsen v. Hansen" case was heard at the district court level, the ruling is applicable only to the Washington school system. (LB)

Judge Wright

Judge Wisdom

HOW POWERFUL A WEAPON DID WRIGHT PROVIDE?

By Jim Leeson

Although Judge J. Skelly Wright's decision on the Washington, D. C., public schools discussed at length the issue of *de facto* segregation, the question remains as to whether he ruled as unconstitutional such segregation resulting from fortuitous circumstances. The nation's press, in its news coverage and subsequent analysis of the case, differed on how far the ruling went toward providing a key legal weapon to end *de facto* segregation in other cities of the nation. One interpretation has the decision outlawing *de facto* school segregation, and others say Judge Wright stopped short of that.

Judge Wright did equate the damaging effects of *de facto* segregation with those of *de jure* segregation, writing: "Racially and socially homogeneous schools damage the minds and spirit of all children who attend them—the Negro, the white, the poor and the affluent—and block the attainment of the broader goals of democratic education, whether the segregation occurs by law or by fact."

In supporting this, the judge noted that the U. S. Supreme Court, in its 1954 decision on segregated schools (*Brown v. Topeka Board of Education*), had approved the finding of a lower court stating that even unmandated segregation has a detrimental effect on Negroes. That finding in the Topeka, Kans., case, which was one of the five original school segregation cases, read "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of law. . . ."

The Wright opinion (*Hobson v. Hansen*) referred to two other decisions that had discussed the *de facto* issue—*U. S. v. Jefferson County* in the U. S. Fifth Circuit Court of Appeals (Dec. 29, 1966), and *Blocker v. Manhassett Board of Education* in U. S. District Court (Jan. 4, 1964). In the *Jefferson* case, which is cited repeatedly by Judge Wright in his Washington ruling, Judge John Minor Wisdom, writing for the majority, countered the view that the Supreme Court in its original rulings did not require integration but merely forbade segregation. Wisdom said that this dictum in *Briggs v. Elliott* "is a product of the narrow view that Fourteenth Amendment rights are only individual rights. . . ." Judge Wright quoted that portion of the *Jefferson* ruling that said, "Integration is an educational goal to be given a high, high priority among the vari-

ous considerations involved in the proper administration of a system beset with *de facto* segregation in the schools."

In the *Blocker* case, involving a system in New York state, Federal District Judge Joseph Zavatt held that the school board had violated the 14th Amendment by maintaining a segregated school system. The neighborhood school is not "devoid of rationality," the judge said, but the court added that mere thin rationality is less than enough. It said that a closer scrutiny and stronger justification were needed.

Judge Wright defines school segregation as being *de facto* "when it results from the action of public assignment policies not based on race [but] upon social or other conditions for which government cannot be held responsible." Then he notes that "whether segregation so occasioned does fall within *Brown's* prescription the Supreme Court has not yet considered or decided." Later he refers to "however the Supreme Court ultimately decides the question of a school board's duty to avoid pupil-assignment policies which lead to *de facto* segregation . . ." This language on *de facto* could be taken to mean that he is not ruling on the constitutionality, although he provides extensive legal arguments and reasoning on which higher courts could consider the validity of *de facto* segregation.

In another section of his opinion, Judge Wright declared: "The court assesses the *de facto* segregation question and holds that the District's neighborhood school policy, as presently administered at least, results in harm to Negro children and to society which cannot constitutionally be fully justified." This tends to support the view that he has ruled on the constitutional validity of *de facto.*

The U. S. Supreme Court, having never ruled directly on the issue and in refusing to review several different rulings on the question, has left the matter to the lower courts. At this level, some prevailing opinions *permit* educators to become color conscious and correct racial imbalance caused by *de facto* segregation, and others have held that the educators could not be *compelled* to adopt this policy.

As a federal district judge in New Orleans in 1960, Judge Wright phrased a complete plan of desegregation for the city in only two paragraphs. For the Washington decision and resulting order to the board, the judge provided 183 typewritten legal-size pages. Many aspects of the decision are not new legal ground and come under *de jure* rather than *de facto* conditions of segregation.

Prof. Nathaniel E. Gozansky of the *Race Relations Law Reporter* sees the decision as "exciting" but he does not "see the end result as so significant." Gozansky, a member of the Vanderbilt University law faculty, says, "The end product is no different; it's how Wright says it, the aggressiveness with which he says it."

The director of the *Law Reporter,* Prof. T. A. Smedley, believes that Wright's decision is especially significant where he says that even though *de facto* segregation might not be unconstitutional *per se,* it could be held invalid because the evil social conditions that are created could not be justified by the benefits of the neighborhood school policy that created the segregation. Smedley says that other judges could follow this legal reasoning to invalidate *de facto* conditions in a specific school system without getting involved in the question of the constitutionality of *de facto* segregation.

In effect, the judge wrote two decisions—one disposing of the complaints on a *de jure* basis, and the other approaching the case from the newer ground of *de facto.*

For more than 135 pages, the court gave "findings of fact" about the conditions in the Washington schools and built a *de jure* case for abolishing the track system, ending the racial and economic discrimination between schools, stopping student transfers to optional zones, ordering busing of Negro children who want to move from certain overcrowded schools to underpopulated white schools, and requiring a more extensive racial distribution of faculty. Among these findings were that the neighborhood school policy segregates Negroes from whites and the optional zone policy permits whites to escape from assignment to Negro schools. The court said that teachers and principals are assigned so that "generally the race of the faculty is the same as the race of the children."

Considerable physical differences were noted between white and Negro schools. "The median annual per pupil expenditure ($292) in the predominantly (85-100 per cent) Negro elementary schools in the District of Columbia has been a flat $100 below the median annual per pupil expenditure for its predomi-

"In Washington . . . a neighborhood policy . . . effectively separates white from Negro in the public schools."

nantly (85-100 per cent) white schools ($392). The "white" schools generally are underpopulated and all have kindergartens, while the "Negro" schools are overcrowded and some lack kindergartens.

Heavy criticism was directed at the track system, a form of ability grouping in which students are separated in self-contained tracks of curriculums ranging from "basic" for the slow students to "honors" for the gifted. The judge found that the aptitude tests used to assign children to the various tracks are standardized on white middle-class children and do not relate to the Negro and disadvantaged pupils, who are then assigned to the lower tracks. Their chance of escape from the lower track is "remote," the judge said, because of reduced curriculums and the absence of adequate remedial and compensatory education. This denies them the "equal opportunity to obtain the white-collar education available to the white and more affluent children" in the higher tracks.

Another interesting aspect of the Wright decision is his formulation of a "modern separate-but-equal rule," based on the ancestry of *Plessy v. Ferguson,* the 1896 decision of the Supreme Court that provided the legal basis for segregation until 1954. Instead of supporting a separation of the races, the new rule requires "equal protection." Judge Wright said "it should be clear that if whites and Negroes, or rich and poor, are to be consigned to separate schools, pursuant to whatever policy, the minimum the Constitution will require and guarantee is that for their objectively measurable aspects these schools be run on the basis of real equality, at least unless any inequalities are adequately justified."

The phrase "rich and poor" there points to another unusual feature of the Wright opinion, for instead of limiting the issue to race as have other civil rights opinions, the judge applies his ruling to socio-economic and class discrimination as well. This calls to mind the recent educational studies, the U. S. Office of Education's survey *Equal Educational Opportunity,* and the U. S. Commission on Civil Rights report on racial isolation, which emphasized the significance of class integration in addition to racial mixture. Quoting from a 1951 decision in *Griffin v. Illinois,* Judge Wright declared: "And even if race could be ruled out, which it cannot, defendants surely 'can no more discriminate on account of poverty than on account of religion, race, or color.'"

Civil rights lawyers in Northern cities already are reported adopting the Wright decision and its statements on *de facto* segregation. The impact of the opinion in other areas depends on several factors. Even though Judge Wright is a member of the District of Columbia federal circuit court, he heard the case at the district court level and his ruling has direct application only to the Washington school system. Until the Supreme Court rules on the issue, federal district and circuit judges will continue to have considerable leeway in handling such cases. As Judge Wright noted in his own opinion, the ruling of one court "does not bind the conscience of other chancellors confronted with other factual situations." ○