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Senator Stennis Civil Rights Correspondence B03F19L01

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September 10, 1970

MEMORANDUM TO SENATOR STENNIS

From: Lester Fant

re: Speech on schools

Below is a rough draft of the speech materials we discussed in your office on Monday:

The Courts of this land have in their opinions in school cases referred to two types of schools systems: Dual and Unitary. There are two primary differences between these two types of school systems:

1. Unitary school systems are in the North and Dual school systems are in the South, and
2. Immediately prior to 1954 Dual systems had laws requiring segregation of school children by race, but Unitary School systems did not have such laws.

The Courts have upheld the principle that Unitary schools do not need to take steps to desegregate. On May 5, 1970, I discussed on this floor a number of cases in which the courts approved and found to be unitary school systems in the North which extraordinarily high degrees of segregation among the children, and I won't detail those cases again, but will invite your attention to my remarks on May 5, 1970. At that time I pointed out that in those cases the United States Supreme Court denied to consider the cases which permitted segregation in Unitary School Districts, and thereby made approval of those conditions the law of the land.

The President of the United States, in his statement on schools stated:

To Summarize: There is a Constitutional mandate that dual system and other forms of de jure segregation be eliminated totally.

...

exists

De facto segregation, which/in many areas both North and South is undesirable but is not generally held to violate the Constitution.

Thus, the President, along with the courts have stated that all the constitution requires is the establishment of a Unitary School system.

Fianlly, the Congress is also on record as approving the Unitary School system as presently found in the North as a standard consistent with National policy. Last Spring I introduced an amendment which would have the effect of requiring the executive branch of government to withhold funds from "Unitary" Districts if there was a substantial amount of Segregation. The members of the Senate who opposed this amendment generally took refuge in the actions of the courts, and expressed the opinion that the policies prescribed by the Courts should be the National Policy. Senator Muskie stated:

Wherever de jure segregation exists, North, South, East or West, it ought to be given the constitutional treatment that the courts have decreed. But if we now, by adopting the Stennis Amendment dilute out actions to give that constitutional protection wherever it exists, in order to pursue another form of segregation that has not yet been treated by the courts in a constitutional way, then it seems to me that we are making the decision that there are two constitutions in this country, one that applies to the South and one that applies to other parts of the country. (CONG. R. FEB 8, 1970, S 1906)

The Republican Majority leader dealt with the Amendment and the suggestion that something should be done to increase the degree of segregation in Unitary Schools with somewhat less subtlety:

Mr. President, the amendment offered by the Senator from Mississippi as modified for the worse by the Senator from Connecticut, opens up the largest can of worms which we have had to consider here for a very long time. (Cong. Rec. February 18, 1970, S 1908)

I believe that these remarks, and many others like them made by other members of the Senate, coupled with the Senate's rejection of the Stennis Amendment amount to an affirmative statement of this body that the schools in the North, the Unitary Schools are in complete accordance with National policy.

To summarize, we have the Three branches of our government giving their approval to the Unitary Schools in the North as they are presently constituted.

Now, I think that we should take a look at the Schools in the South, the formerly dual schools, particularly since on October 18 the Supreme Court is going to hear ^{on} several important cases involving school systems in the South. Within the Normal concepts of Law, it would seem that the courts, and the Executive branches of government, when faced with the schools in the South, which are held to be unconstitutional have two choices:

1. They can leave the schools as they are, or
2. They can seek to bring the schools into conformity with the approved National standard as found in the Unitary School systems in the North.

If the purpose is to correct the former deficiencies in the dual system, then the path seems clear: the Second alternative should be adopted, the such actions as are required to bring southern schools into conformity with the racial patterns of Northern schools should be undertaken, . This seems altogether reasonable, and this is what should have been done.

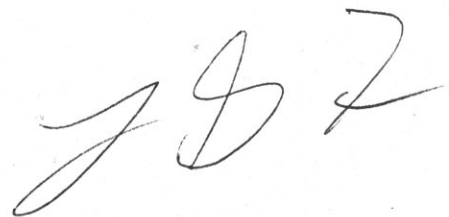
In Stead, however, the Courts, and the HEW administrators seem to have adopted another course of action, one that is not contemplated by traditional jurisprudence: They have said that since Dual Schools once were dual, it is not enough to become Unitary, like the Northern Model, but they must go further and take steps not required by the Northern Unitary school Districts.

This is to me, an unprecedented anomaly. Not only is it abstractly incomprehensible, in practice it is disastrous. The action of the Courts and the Administrators are imposing on the students of the South a degree of chaos which is incompatible with the goals of education. And they are doing it, not in the name of making the schools like the Unitary models approved in the North by the Courts the Congress and the President, but in the name of dealing properly with Dual School systems.

To me, this is straight out of criminal jurisprudence. The Civil law would bring the Southern Schools into conformity with the approved model on the Northern Schools, only criminal law says that becoming right is not enough, more steps have to be taken as punishment. The goal in the South is not to achieve conformity, but to somehow go further because of past sins.

To the extent that punishment is an insuperable element of criminal jurisprudence, it follows that in the South, those punished are the Southern school children whose opportunities to achieve an education and become productive members of society are being destroyed by the efforts to punish the region for its prior practices. I think that all of us should see this as what it is: criminal jurisprudence going beyond enforcing conformity with the Northern Model, and destroying schools in the name of percentage figures never contemplated in the approved north.

I also hope that the Supreme Court will see it for what it is in the cases to be considered in October, and to the extent action is required limit that action to enforcing compliance with the approved Northern Model.

A handwritten signature in dark ink, consisting of the letters 'J', 'B', and 'Z' in a stylized, cursive-like font. The 'J' and 'B' are connected, and the 'Z' is separate.