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Research Seminar

Dr. Hicks

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The Rise and Fall of Order 5281

Justice William Wayne Justice, presiding over the United States District Court for the Eastern District of Texas, entered a ruling that would come to be one of the most heavy-handed attacks on the segregation of public schools in Texas- often referred to as Civil Order 5281. The case was brought by the United States Department of Justice, who charged nine school districts in Eastern Texas with practicing *de jure* or *de facto* segregation. In his ruling, Justice Justice gave power to the Texas Education Agency to and punish those schools that are found to be in non-compliance. This ruling is often considered to be the killing blow for *de jure* segregation in Texas, but as the years have passed, it has lost its teeth for various reasons- culminating in a ruling in 2008 (by Justice Justice himself, ironically) that declared Civil Order 5281 could not apply to any schools other than those included in the original 1970 case.

When looking individually at these later rulings, each give a reason limiting the order, but within the context of the specific facts of the respective case. But there seems to be no *prima facie* explanation for the gradual shift towards the belief that Order 5281 must have its power limited. But when looking at broader sociological studies and surveys conducted concerning educational segregation, as well as the conduct of the TEA in the years following 1970, a pattern begins to emerge that can explain why Civil Order 5281 was limited. These studies point towards an inverse relationship between segregation orders and the communal belief that segregation in schools is necessary or “right”. In other words, when there is mandatory segregation of schools, there is an initial push-back but overtime these same communities will become supportive of these orders and, in many cases, changed their views on segregation. This same trend can be

1 Kemerer, Frank. *United States v. Texas*. Texas State Historical Association. : 1. <http://www.tshaonline.org/handbook/online/articles/jru02> (accessed October 5, 2013).

seen on a larger scale and over a larger time period in the courts, as segregation became less common across the state the need for such a heavy-handed order began to decline. The TEA and other courts were also less than willing to pursue aggressive action in fulfilling the order because there was a widespread belief that school districts should have sovereignty over the make-up of their schools. These two factors both contribute to the downfall of the effectiveness of Civil Order 5281.²

I will begin the explanation of my thesis by first introducing the details behind *United States v. Texas* and the investigation leading up to the case being filed, and will then move onto an analysis of other scholarship that has been done regarding my topic. Then, I will move onto my legal analysis and sociological research and explain the underlying conditions that lead the order to become limited, before finally rendering a verdict on the success of the Order itself.

United States v. Texas or Civil Order 5281 has its beginnings with an investigation by the department of Health, Education and Welfare (HEW) into nine school districts in East Texas (Butler ISD, Cason ISD, Jeddo CSD, St. Paul CSD, St. Paul-Shiloh CSD, Trahin CSD, Vernon County Line CSD, Washington CSD, and White Rock CSD) (KERMER AND 5281), twenty-nine schools in total, on the basis that they were in violation of Title VI of the Civil Rights Act of 1964³, as well as the Fourteenth Amendment to the Constitution. Title VI prohibits any organization that receives federal funding from discriminating based on race, color, or national origin, and prescribed that steps be taken to eliminate discrimination or funding would be pulled.

2 Kim, Brown, et al. *School Desegregation in Texas: The Implementation of United States v. State of Texas*. Austin: University Of Texas, 1982., 49

3 *United States v. State of Texas* (United States District Court for the Eastern District of Texas 1970) LexisNexis.

The section of the fourteenth amendment that these schools districts were allegedly violating is the Equal Protection clause, which guarantees equal protection under the law. Essentially, this prohibits any law or practice of the state that would deprive any citizen their equality under the law. This clause was one of the primary factors that lead the the landmark *Brown v. Board* ruling, as well as many other desegregation orders in the years previous to *United States v. Texas*.

The Department of Justice deliberated on where would be best to file the case, as they needed someone sympathetic to the cause of desegregation, before finally settling on Justice Justice's court. This is due to the fact that Justice was a liberal (and a self appointed populist) and was known for his interest in spreading equality and fairness. Justice graduated from the University of Texas law school before coming back and practicing with his father in Athens, who was also known as a vocal proponent for fairness and equality, as well as a vicious litigant.⁵ Justice was eventually appointed to a federal judgeship by Lyndon Johnson where he made many powerful rulings, including a complete overhaul of the Texas prison system in 1980.⁶ This made Justice Justice a perfect selection, because he had the right combination of tenacity and fairness that would give the Department of Justice the overhaul they needed.

The Department of Justice and the Bureau of Health, Education and Welfare did not intervene into the operation of racially segregated schools and school districts. Along with funding and operating all black school districts, other violations of the TEA and the districts included: the redrawing of school line within a district that would

⁴ Kemerer, Frank R.. *William Wayne Justice: a Judicial Biography*. Austin: University of Texas Press, 2008.: 29

⁵ *Ibid.*, 13-18

⁶ Kermer, "*United States v. Texas*"

place all white-neighborhoods into one school and all-black areas into another, even if the white neighborhood was surrounded by black neighborhoods (referred to as “annexing”); the drawing of district lines around small communities in order to segregate districts, which resulted in small and uneconomical schools that should have been merged with neighboring black districts in order to make them more economically viable; and a general lack of effort on the TEA's part to “eliminate racial segregation both root and branch.”⁷ Justice Justice found that the accusations brought against the TEA and the school districts were valid and sound, and split his subsequent order into two major parts, the second more significant than the first.

The first part of Civil Order 5281 was intended specifically for the nine plaintiff school districts. Justice Justice declared that these districts were to create a comprehensive outline and plan for desegregation that will be given to the TEA, by the end of 1970. The second part of the order is what gave Civil Order 5281 its sweeping and heavy-handed nature, as it gives the burden of facilitating and enforcing desegregation of schools all across Texas to the TEA. He begins this section by enjoining the TEA and the former Texas Commissioner of Education from creating, supporting or otherwise associate with any law that would continue the operation of racially segregated schools including inter-district transfer or district line changes that would lead to racially imbalanced schools.⁸ Justice Justice also mandated that the TEA submit an outline of the plans and strategies intended to enforce his ruling, including a layout of potential sanctions against non-compliant schools (loss of funding and/or accreditation). The TEA was also required at the end of every school year to send the

⁷ *United States v. State of Texas, 1970.*: 5

⁸ *Ibid.*, 10-13

Department of Justice (Civil Rights Division) and the Department of Health, Education and Welfare the records of any inter-district transfers of students and the respective racial makeup of the schools the student left and entered; any instance of the redrawing of district lines, and the racial make-up of the schools within in the district before and after the change; any discriminatory actions by school administration, including the steps the TEA took to discipline the party involved; and the name of any school and school district with either a minority population greater than 66% or a white population greater than 90%.

In 1971, however, the Order was amended by the 5th Circuit of the United States Court of Appeals. The changes were insignificant, mainly dealing with the wording of the original order and confirmed that everything else that Justice Justice had ordered was the proper course of action to end educational segregation. In the decades following the case there were subsequent rulings which chipped away at the effectiveness of Order 5281, which limited the scope and sweeping nature of Justice Justice's ruling.

Looking at other scholarship regarding this topic, there have been studies of general desegregation orders and the general effect that they have on a community, as well as studies which analyzed the impact that *United States v. Texas* had on desegregation in Texas. There has not been a vast amount of research which explains some of the most basic reasons *why* the order was limited, outside of legal explanations. But these interact solely within the legal arena and do offer any explanation that is not based in precedent. My research intends to fill in this unexamined area by looking at a variety of sources, and piecing together different sociological surveys and legal

opinions to create a robust explanation that better explains the mindset and beliefs of those involved in limiting Order 5281.

Moving onto the subsequent cases following the original order, there is a progressive trend in these rulings that limit the power of the TEA to carry out its duties, but there are a few cases that were particularly damaging to the order's efficacy. The first of these was *United States and Gregory-Portland Independent School District v. Texas* (1981) which was heard by the Fifth Circuit Court of Appeals. Gregory-Portland ISD included two schools, one in Gregory Texas, the other in Portland, Texas. Prior to 1950 these schools were separate, but a vote in both of these cities passed which consolidated the schools under a single district. This fusion resulted in a 58/42 ratio of Hispanic/Caucasian for the entire district, but for purely benign and coincidental reasons 80% of hispanic students went the school in Gregory. The State of Texas and the TEA brought the case against the school district, alleging that they had not taken the proper action in evening out the races between the two schools which violated Civil Order 5281. The TEA then threatened the school district with a loss of funding if it did not comply with the desegregation plans it provided. The school district then filed a suit against the TEA and the State of Texas, saying that they were not in violation of the order because complying with it was uneconomical and presented challenges in busing children a city over. The lower court found in favor of Texas, and Gregory-Portland School district along with the United States appealed the ruling, which lead to the case being moved to the Fifth Circuit of Appeals.⁹

The Appeals Court reversed and remanded the lower court's ruling, and in its

9 *United States v. Gregory-Portland Independent School District* (United States Court of Appeals for the Fifth District 1982): 1-5

opinion laid out why it should not apply and also limited the absolute nature of Order 5281. The Appeals Court explained in its opinion that this was because the segregation was *de facto* and not *de jure*. This means that segregation was unintentional, and not a consequence of the actions of the school district. This fact was one of the deciding issues that lead the Appeals Court to overturn the ruling and limit Order 5281. What the Appeals Court determined was that if the school district administration has not directly “contributed to or intensified racial segregation”, then Order 5281 does not apply to them. This main implication of this ruling is that it limited the range over which the TEA could sanction a school district. Prior to this case, the TEA had the power to implement a mandatory desegregation order if there was merely the presence of segregation or other violations outlined in the Order. This case added the requirement that the violations must be a consequence of actions taken by the administration.¹⁰

One of the latest and most damaging to the survival of Order 5281 is *United States and LULAC-GI Forum vs. The State of Texas, et al* (2008). This case was heard by the Fifth Circuit Court of Appeals, and was presided over, in a stroke of irony, by Justice Justice. The case was another iteration of the original *United States v. Texas* case, but the defendants claimed that Order 5281 should be modified as set by another case, *Samnorwood Independent School District v. Texas*. In this case, the presiding judge ruled that the Order should not apply to Samnorwood ISD because they were not a part of the original defendant school districts in the 1970 case; they were not segregated prior to 1970; and have never shown any attempt to desegregate since 1970. This ruling compelled Justice Justice to modify the order so that it should not apply to schools similarly-situated to Samnorwood ISD, meaning that the order now only applies to the

¹⁰ *United States v. Gregory-Portland Independent School District*, 1982.: 13-30

nine school districts that were party to the original case.¹¹

This ruling signaled the end of the reign of Order 5281 in Texas, because the TEA no longer could monitor every single school district because the court felt that the cost of complying to this order, with no real danger of segregation, was too great. This newly modified order signaled an end to TEA's state-wide responsibility to safeguard against segregated school districts.

Now that a general scope and life of Civil Order 5281 has been established, it is time to shed light on the general conditions of the structure and philosophy of the Texas Education Agency, and the sociological study of the views of segregation around and after the original 1970 case was heard, which help to explain why the Order was limited.

In 1982 a group of professors and graduate students at the University of Texas Lyndon B. Johnson School of Public Affairs researched the success of Civil order 5281 in the decade following the ruling. In general, the study found that the order had achieved its intended goal, as segregation had disappeared in school transportation, extra-curricular activity, the drawing of district border lines. One of the major faults found was the TEA's organization of the group intended to carry out the order, called the Technical Assistance Division. This group was specifically designated to handle all the requirements of order 5281 across the state, but, at the time the study was conducted, only had fourteen people assigned to the department.)¹² There were various reasons to explain this, but the root lay with the TEA's belief that it was not their job to mandate to school districts what they believed was best, but rather preferred to let districts decide

11 United States and LULAC-GI Forum v. States of Texas (United States District Court for the Eastern District of Texas 2008) LexisNexis.: 20-24

12 Brown, "*Desegregation in Texas*" 49-55

matters for themselves. This hands-off view of education was not isolated to the TEA, but was a common belief held across the state at the time.¹³ This ingrained belief helps to understand why the court system was so willing to limit the order.

The group also found that the Texas Education Agency also limited the autonomy of the Technical Assistance Division. They were forced to act passively and with little independence because the TEA banned surprise visits to schools, and within only a decade of the original order many schools were outside of the jurisdiction of the TEA and Order 5281, or had never had any problems with segregation. At the time the survey was conducted, a large proportion of schools could not be overseen because they were currently in litigation concerning segregation or under another desegregation order at the time.¹⁴ Another result of the TEA and a majority of court's views on the order resulted in very few sanctions as serious as the loss of funding. This is because if a school was ever threatened, they could go to courts other than the Eastern District (where Justice Justice oversaw) and have the order overturned. The upshot of this report is this: there has been limited enforcement of Order 5281 because a majority of schools, courts, citizens, and even the TEA itself find that it is too overbearing and compromises power of school administration to determine which path towards desegregation is best suited for their individual needs.

Sociological surveys and other statistical research done around the same time supports this conclusion as well. Christine Rossell conducted a survey while at Duke to study the effect of mandatory segregation orders implemented by school administration or the courts that only effect at most a pair of school districts. She does not consider

13 Ibid., 24 49-55

14 Brown, "*Desegregation in Texas*", 36

Order 5281 in her research, but nonetheless finds certain patterns that can be applied to the districts affected by it. She finds that when white children are bused into schools that have a majority of black children white flight would be greater than the opposite occurring, but that over time white flight would level off as tolerance for segregation rises.¹⁵

This trend, along with the findings from the LBJ school, can explain why the Order was limited by the time the *Gregory-Portland ISD* case was decided in '81 and the second *US v. TX* case in 2008. Because many in Texas believed that there should be no central authority that controls school policy, and the leveling out of white flight and other reactions to segregation leveled out over time (as demonstrated in Rossell's study). Another study, conducted by Wade Smith in 1980, further demonstrates that negative views on segregation will decrease as more time passes after the institution of desegregation orders. Smith separates respondents to a survey of ~26,000 people into groups based on similar age ranges: Vietnam cohorts, World War II cohorts and World War I cohorts. The trend in these groups is an increased tolerance of segregation in younger generations.¹⁶ The Vietnam group showed the greatest tolerance, while WWII cohorts were in the middle, and WWI cohorts showed the least amount of tolerance.¹⁷

Assuming that the trend of tolerance will only increase as time goes by, this is further support for the claim that an increase in the tolerance of segregation means that Order 5281 became less and less necessary and more of a burden upon the school districts that it effects. This paired with a widespread belief of the courts that the TEA

15 Christine H. Rossell. *Law and Contemporary Problems* , Vol. 42, No. 3, *School Desegregation: Lessons of the First Twenty-Five Years: Part 1* (Summer, 1978), 168

16 Smith, A. Wade. *White Attitudes toward School Desegregation, 1954-1980: An Update on Continuing Trends*. *The Pacific Sociological Review* , Vol. 25, No. 1 (Jan., 1982), 8

17 *Ibid.*, 8-11

should take a hands-off approach, leading to minimal effort of the enforcement of Justice Justice's ruling, are the motivations that would eventually cause Order 5281 to become so neutered in the decades following 1970. Looking retrospectively at the Order, it is more successful than it seems at first glance. When Justice Justice heard the case segregation was rampant in Texas at the time, and drastic steps were needed to remedy the problem- which is what the order was successful in doing initially.¹⁸ But because of the strong belief by many in Texas, including judges and the TSA, that school districts should be autonomous and determine what is best for their own school district, the Order was eventually limited to the point of ineffectiveness in 2008. But this does not mean that it was a failure by any means, the Order was the watershed event that lead to the end of segregation of public schools in Texas, and William Wayne Justice should be credited with putting this effective plan into action.

18 Brown, *“Desegregation in Texas”*, 49-51

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