

# *Bush v. Orleans Parish School Board*

Federal Trials and Great Debates  
in United States History

## **Case Summary:**

- *Bush v. Orleans Parish School Board* was one several prominent cases challenging school segregation in the 1950s and 60s.
- Following the Supreme Court's decisions in *Brown v. Board of Ed.* (1954 and 1955), Judge J. Skelly Wright ordered the desegregation of New Orleans' schools.
- Local authorities rebelled against Judge Wright's orders, but he repeatedly ruled against attempts to evade desegregation.
- The case shows the complexity of federalism and the difficulty of enforcing unpopular rulings.

## **History of the Case:**

In September 1952, Oliver Bush, an African-American insurance salesman and father of eight, filed a federal suit in New Orleans, LA along with 34 other plaintiffs seeking to desegregate the city's schools. Like many African-American parents in the city, the plaintiffs were unhappy with the allocation of funds for "colored" schools, which received a disproportionately small share of the city's school budget. They also claimed that student-to-teacher ratios were significantly higher in these schools. This treatment, they argued, violated the Fourteenth Amendment, which forbade any state from denying "to any person within its jurisdiction the equal protection of the laws." Beginning in the late nineteenth century, federal courts had interpreted this language to permit separate facilities for members of different racial groups so long as those facilities were of equal quality. In a string of cases in the 1940s and early 1950s, however, the Supreme Court of the United States had begun to call this rule into question by invalidating segregation policies in some contexts. Bush, and plaintiffs like him around the country, hoped to persuade the courts to abandon the so-called "separate-but-equal" rule entirely.

The legal issues in the case were broadly similar to those in *Brown v. Board of Education*, a pending Supreme Court case involving segregated schools in Kansas, Delaware, South Carolina, and Virginia. The parties agreed to halt the proceedings in *Bush* in anticipation of the Supreme Court's ruling since lower federal courts are bound by Supreme Court decisions. The Supreme Court did not announce its decision until 1954. When it did so, Chief Justice Earl Warren wrote for unanimous Court that segregated school facilities were inherently unequal and thus violated the Equal Protection Clause of the Fourteenth Amendment. In 1955, the Court issued a further ruling in *Brown* holding that states must desegregate their schools with "all deliberate speed," an ambiguous phrase that some took as an invitation to delay and resist integration.

The courts have limited powers to enforce their judgements and often rely on state and local governments to follow and implement their orders. In most instances, policymakers and law enforcement officers respect the legitimacy of the courts and operate in good faith even if they personally disagree with rulings. Desegregation, however, provoked a vigorous and violent backlash in the south that threatened to undermine the rule of law and the balance of federal-state relations.

Louisianans were among the fiercest resisters of integration. In 1954, the state ratified an amendment to its constitution requiring school segregation on the grounds that it would further the health, safety, and morals of its inhabitants. The amendment made a clumsy attempt to sidestep *Brown* by stating school segregation was "not because of race." Proceedings resumed in *Bush* in 1955, and the following February a three-judge panel of the U.S. District Court for the Eastern District of Louisiana ruled that both the state constitutional provision and state statutes requiring segregation were unconstitutional. The same day as the panel issued its ruling, District Judge J. Skelly Wright, a member of the panel from

New Orleans who would preside over many of the proceedings in the case, issued an order requiring the city's schools to desegregate "with all deliberate speed."

However, these rulings did not end resistance to desegregation. In 1956, the state amended its constitution to bar lawsuits against school boards. Judge Wright declared the amendment unconstitutional. In 1958, the legislature passed laws empowering the governor to close any "racially mixed schools[.]" Another new state law commanded that no child could be forced to attend a racially "commingled school" and offered grants for students attending segregated private schools. Despite this activity, local and state authorities did little or nothing to desegregate schools as Judge Wright had required. In July 1959, Judge Wright issued an order compelling the city to develop a plan to desegregate its schools by May 1960. When officials refused to comply, Judge Wright initiated his own plan, ordering a staggered desegregation beginning with the first grade in the school term beginning in September (a deadline he later agreed to delay to November). The school board then proposed an alternative plan that required black students wishing to attend "white" schools to request a transfer. After testing the 137 black transfer applicants, the board allowed only five (eventually reduced to four) students to do so.

Even this limited plan sparked political turmoil. In November 1960, with desegregation imminent, the state legislature attempted to assume control of the city's school district itself. The body passed an "interposition" law prohibiting federal officers, including judges, from taking actions the state deemed unconstitutional. It also authorized the arrest of federal judges or other officials attempting to enforce desegregation. School officials called a holiday for the day desegregation was set to begin. Judge Wright issued another broad set of orders restraining the enforcement of the state policies and compelling the gradual desegregation of the city's schools in the face of the fierce political backlash. In decisions later upheld by the Supreme Court, another three-judge panel ruled the interposition law unconstitutional and issued a broad injunction restraining approximately 700 state and local officials from countermanding integration.

Although some black students began to attend schools previously reserved for white students, the fight did not end. Many white parents withdrew their students from school and state officials passed further measures designed to thwart desegregation. Shortly before he moved to the U.S. Court of Appeals for the District of Columbia Circuit in April 1961, Judge Wright ordered the desegregation of grades one through six, though his successor adopted a slower approach. While judicial intervention eventually ended de jure segregation in New Orleans, moreover, residential and school choice patterns meant that many schools remained racially homogeneous.

### **Legal Issues:**

- Were the measures the state legislature enacted to preserve segregation constitutional?
- What did it mean for New Orleans to desegregate with "all deliberate speed?"
- What powers did the federal courts have to compel desegregation?

### **Questions for Discussion:**

- The "all deliberate speed" standard relied on district courts and local officials to balance the difficulty of integrating schools in some areas against the risk of improper delays. Did Judge Wright strike that balance correctly in *Bush*? What might the response to a more rapid desegregation order have been?
- Critics of the courts' actions in *Bush* and similar cases argued that unelected federal judges were acting undemocratically. Was this critique correct? When should judges defer to elected legislatures?
- State officials argued that they had a duty to protect their citizens from unconstitutional acts by the federal government. Were they correct? Would your answer change if the federal courts had ordered re-segregation and the state authorities rebelled?