

## *Bush v. Orleans Parish School Board* and the Desegregation of New Orleans Schools—Suggestions for Judges

Judges can make an important contribution to students' understanding of the cases included in the Federal Judicial Center's Teaching Judicial History project. When meeting with students who are studying the cases, judges may wish to draw on these suggested discussion topics.

### Overview

In 1952, parents of African American students in New Orleans, Louisiana, filed a lawsuit asking the U.S. district court to declare unconstitutional the state laws requiring racial segregation of public schools. The NAACP lawyers suspended the suit pending the Supreme Court decision in *Brown v. Board of Education*, but soon after the Supreme Court called for local school boards to desegregate schools "with all deliberate speed," the lawyers reopened the case in New Orleans and asked the district court to declare unconstitutional recent Louisiana state constitutional amendments reinforcing segregation of the state's schools. The district court declared those amendments unconstitutional, and in February 1956 Judge J. Skelly Wright ordered the Orleans Parish school board to desegregate the city's schools.

Segregationists in control of the state government challenged Wright and each of the subsequent desegregation orders of the federal courts in Louisiana. Despite consistent setbacks in the courts, the Louisiana legislature, with the support of the governor, the state attorney general, and the state courts, delayed even token desegregation until November 1960, when four African American students entered the first grade in a previously all-white school. Massive protests by white parents and the withdrawal of most white children from the school further slowed the process of desegregation. The New Orleans desegregation case made clear the local obstacles to realizing the promise of *Brown*, and it demonstrated the lonely challenges for federal judges in a largely new role of supervising the enforcement of court orders.

### *Understanding the court procedures and legal questions.*

In studying historic cases, students find it helpful to understand the differences between historical and current procedures in the federal courts. Students also want to learn how the current courts handle similar cases. The questions below high-light features of the *Bush v. Orleans* case that can frame conversations between

judges and students.

1. What was the legal basis of the challenge to school segregation in *Bush v. Orleans* and *Brown v. Board*? Did the federal courts agree?
2. What authority did Judge Skelly Wright have to enforce his order to desegregate New Orleans schools? Could he have accelerated the process? How did Judge Wright's supervision of his desegregation order reflect broader changes in the role of district judges in the second half of the twentieth century?
3. The Louisiana legislature based some of its challenge to Judge Wright's desegregation order on the doctrine of interposition, which asserted that states had the authority to nullify a federal action that the state legislatures determined violated the U.S. Constitution. On what grounds did the district court panel declare interposition unconstitutional?

### Focus on Documents

The following excerpted documents can be the basis of a classroom discussion with students who have read about the *Bush v. Orleans* case and reviewed these selections in advance of a judge's visit.

1. U.S. district court order to desegregate New Orleans public schools, February 1956

Judge J. Skelly Wright's original order to end segregation in the public schools included these remarks about the difficulty of imposing social change through a court order. What kind of social problems did Wright anticipate? What role could the federal courts play in ensuring the "fundamental justice" that Wright mentions?

. . . The granting of a temporary injunction in this case does not mean that the public schools in the Parish of Orleans would be ordered completely desegregated overnight, or even in a year or more. The Supreme Court, in ordering equitable relief in these cases, has decreed that the varied local school problems be considered in each case. The problems attendant desegregation in the deep South are considerably more serious than generally appreciated in some sections of our country. The problem of changing a people's mores, particularly those with an emotional overlay, is not to be taken lightly. It is a problem which will require the utmost patience, understanding, generosity and forbearance from all of us, of whatever race. But the magnitude of the problem may not nullify the principle. And that principle is that we are, all of us, freeborn Americans,

with a right to make our way, unfettered by sanctions imposed by man because of the work of God.

## 2. Decision affirming the desegregation order, U.S. Court of Appeals for the Fifth Circuit, March 1957

The U.S. court of appeals echoed Wright's concern for easing the tensions surrounding desegregation, but the court also declared that constitutional principle must prevail over the practical obstacles to enforcement and implementation. When, according to the court, is it necessary for the federal courts to restrict the actions of state governments? What is the basis of the courts' authority to restrict state actions? How do courts balance constitutional principle and practical challenges of enforcement?

It is evident from the tone and content of the trial court's order and the willing acquiescence in the delay by the aggrieved pupils that a good faith acceptance by the school board of the underlying principle of equality of education for all children with no classification by race might well warrant the allowance by the trial court of time for such reasonable steps in the process of desegregation as appears to be helpful in avoiding unseemly confusion and turmoil. Nevertheless whether there is such acceptance by the Board or not, the duty of the court is plain. The vindication of rights guaranteed by the Constitution can not be conditioned upon the absence of practical difficulties. However undesirable it may be for courts to invoke federal power to stay action under state authority, it was precisely to require such interposition that the Fourteenth Amendment was adopted by the people of the United States. Its adoption implies that there are matters of fundamental justice that the citizens of the United States consider so essentially an ingredient of human rights as to require a restraint on action on behalf of any state that appears to ignore them.

## 3. U.S. district court decision on interposition, November 1960

In a decision rejecting the Louisiana legislature's doctrine of interposition and the various state laws intended to reverse the federal courts' desegregation orders, three judges in the U.S. District Court for Eastern Louisiana offered a clear statement of the need for a Supreme Court with final authority on questions of constitutionality. What is the role of the lower federal courts on questions of constitutionality? Do the executive and legislative branches have to determine questions of constitutionality? This decision refers to the courts "great" but "necessary" power; does the Constitution provide any checks on this power of the judiciary?

Assuming always that the claim of interposition is an appeal to legality, the inquiry is who, under the Constitution, has the final say on questions of constitutionality, who delimits the Tenth Amendment. In theory, the

issue might have been resolved in several ways. But, as a practical matter, under our federal system the only solution short of anarchy was to assign the function to *one supreme court*. That the final decision should rest with the judiciary rather than the legislature was inherent in the concept of constitutional government in which legislative acts are subordinate to the paramount organic law, . . .

From the fact that the Supreme Court of the United States rather than any statute authority is the ultimate judge of constitutionality, another consequence of equal importance results. It is that the jurisdiction of the *lower* federal courts and the correctness of their decisions on constitutional questions cannot be reviewed by the state governments. Indeed, since the appeal from their rulings lies to the Supreme Court of the United States, as the only authoritative constitutional tribunal, neither the executive, nor the legislature, nor even the courts of the state, have any competence in the matter. It necessarily follows that, pending review by the Supreme Court, the decisions of the subordinate federal courts on constitutional questions have the authority of the supreme law of the land and must be obeyed. Assuredly, this is a great power, but a necessary one.