Perspective

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Design for Decision

by Raymond Moley

IN SUSTAINING the Alabama school placement law on November 25th, the Supreme Court has followed similar decisions concerning a school placement law of North Carolina. It is clear now that with reasonable administration of such laws in other states that have adopted them, and with reasonable quiet by Northerners who have only a dim understanding of the facts and conditions prevailing in the South, a peaceful solution of the integration issue can be reached.

The principle can best be illustrated by a very wise decision by Federal Judge Albert V. Bryan of the Eastern District of Virginia, rendered in September. In that case Judge Bryan was, as he said, seeking "a design for decision."

The Virginia case involved applications for transfer of 30 Negro pupils from all-Negro schools to previously all-white schools. The school boards had denied these applications.

The judge approached his decision guided by three propositions: (1) That the Federal requirement of avoiding racial exclusiveness in schools be carried out through a consideration of the circumstances of each child, individually and relatively; (2) that the school board or other regulatory body vested with jurisdiction over transfers provide a fair hearing and make its decision without consideration of race or color; (3) that when a conclusion is so reached "without influence of race . . . the assignment is no longer a concern of the United States courts."

SAFE CRITERIA

The school boards had used five criteria in deciding the 30 cases: Residence in the established attendance area; physical capacity of school to which admission is sought—i.e., overcrowded or not; academic accomplishment of pupil involved in relation to that prevailing in the school or grade sought; adaptability; psychological problems or elements.

The people representing the pupil applicants claimed the very establishment of such criteria was racial discrimination. Judge Bryan disagreed with this contention, but examined the criteria and found that four of the five might be applied safely. These were the first four which I enumerated. These, it will be seen, were matters of determinable fact which might be applied to Negro and white children alike. Thus the judge was confronted with a simple problem of administrative review.

END OF FEDERAL REACH

The judge sustained the school boards' rejection of 26 of the 30 cases. Then, in one of these cases he went into some detail because, in fact, the pupil lived nearer to the school to which application was sought than to the school which he attended. But the judge found that the pupil had an academic achievement mark of only 3.9, while the median in the school for which he applied was 6.0. Also, he found that the average mental maturity at the Negro school was 87, while that of the white school was 113. In the four cases in which he overruled the boards, the children qualified on all grounds.

In the Alabama case the lower Federal court, which was sustained by the Supreme Court, apparently did not go into minute examination of the cases as did Judge Bryan. The Federal court said that after the state had prescribed criteria it was to be presumed that they were applied without discrimination as to race. In short, that it is up to those who complain to show that the authorities were applying the test of race.

The Supreme Court can hardly do otherwise than to accept such tests, in the light of its own 1955 opinion implementing its sweeping decision in 1954. It said that school authorities at the local level must have the responsibility of managing the assignment of pupils, and that the Federal courts in the states and regions involved should determine the good faith of the action of those authorities. There, as Judge Bryan concluded, the reach of the Federal courts ends. Any assumption that any pupil may enter any school would wreck the entire educational process. If Negroes seek admission to schools from which they have been hitherto barred, they must possess the qualifications required of all others. The Fourteenth Amendment has been stretched extensively already, but it can hardly mean that educational anarchy must prevail.