In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 632

BEATRICE ALEXANDER, et als.,
Petitioners,

vs.

HOLMES COUNTY BOARD OF EDUCATION, et als.,
Respondents.

(Including Consolidated Cases)

On Writ Of Certiorari To The United States Court
Of Appeals For The Fifth Circuit

RESPONSE TO BRIEFS AMICUS CURIAE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER THE LAW NATIONAL EDUCATION ASSOCIATION

John C. Satterfield
Satterfield, Shell, Williams and Buford
Post Office Box 466
Yazoo City, Mississippi 39194
Special Counsel for the Respondents, other than the United States of America, associated with other attorneys of record in each of the Consolidated Cases

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I

RESPONSE TO BRIEF AMICUS CURIAE OF LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER THE LAW

1.

Preliminary Statement

This brief is filed in typewritten form in accordance with leave of this Court. All emphasis herein is ours, unless otherwise stated. This brief is filed in behalf of the Respondent School Districts and all other respondents (other than the United States of America) to the Brief Amicus Curiae filed by the Lawyers' Committee For Civil Rights Under The Law.

This response to the Memorandum Amicus Curiae for the Lawyers' Committee for Civil Rights Under the Law is filed by the undersigned both as one of the attorneys of record for the respondents and personally as an original and present member of the Lawyers' Committee for Civil Rights Under the Law. The writer of this brief was present at the organization of the Committee on June 21, 1963 at the conference to which reference is made in the Memorandum and has been a member of the Committee since that date. As a member of the Committee, I am greatly embarrassed by the nature and content of the memorandum for the reasons hereinafter set forth.

The present "Co-Chairman"of the Committee for Civil Rights Under the Law have been recently chosen, appointed or otherwise designated. In an attempt to lend an aura of responsibility to this Memorandum, the following sentence appears on page 2 of the Motion and also appears on page 1 of the Memorandum:

> The membership of the Committee includes 11 past presidents of the American Bar Association and to former Attorneys General.

As one of the said eleven past presidents of the American Bar Association, it is my opinion that neither the filing of the Memorandum nor the contents thereof have been approved by such past presidents. While Messrs. Timothy B. Dyk, Michael R. Klein and Deanne C. Siemer, of counsel on the Memorandum, the present Co-Chairman of the Committee and the individuals whose names have been placed upon the Memorandum are free to act as they see fit, the statements therein contained should be considered as reflecting their feeling individually and not as reflecting the opinion of the other members of the Committee (which from time to time has been composed of numerous individuals from many states who have been asked that they become members of the Committee).

It was through the personal efforts of the writer of this brief that the Committee was enabled to set up an office in the State of Mississippi which, for a number of years under the then outstanding and able lawyers who acted as Chairmen of the Committee, rendered a signal service to the public and to the legal profession. More recently, the situation is quite different.

However, this memorandum demonstrates that although it appears probable that many persons still remain as technical members of the "Committee", the work of the Committee is now determined by a few activists upon their own responsibility.

2.

Authorities Quoted by the Committee

It is interesting and tremendously disappointing that a committee which technically claims as its members many distinguished lawyers, has filed a memorandum in which the chief authorities relied upon are (1) a newspaper article in the New York Times dated September 30, 1969 by a Mr. Fred P. Graham and (2) another newspaper article in the New York Times dated October 3, 1969, of which the author is unknown. Quotations, mis-quotations, prejudicial unsworn and unauthenticated statements, expression of personal opinions, partial quotations from "Dissident Groups" are rather flimsy authorities upon which to base a Memorandum in the Supreme Court of the United States.

The routine citations of several well known judicial decisions is of no real value. Its only effect is to create the facade of responsibility.

The clear purpose of the memorandum is to irresponsibly challenge the good faith of the Department of Justice, the Attorney General of the United

States, the Secretary of Health, Education and Welfare and the public authorities of Mississippi and particularly members of the Bar of Mississippi. As an illustration:

> Page 3 - "The ring is familiar if the source is not."
>
> Page 4 - "The supposed administrative and logistical difficulty inserted in support of the request for further delay are wholly inadequate."
>
> Page 5 - (Referring to the Department of Justice) - ". . . and upon an asserted lack of adequate manpower in the Civil Rights Division to enforce immediate desegregation. The Department's reliance on these factors is, in our view, unwarranted. . ."
>
> Page 6 - (Referring to the United States Department of Justice) - "Moreover the Department's contentions are without factual foundation."

Such unfounded charges are parallel to similar charges made concerning the good faith of public officials and members of the Bar of the State of Mississippi. An illustration is the statement on page 3 --

> As the record painfully reveals, however, good faith and compliance has not been forthcoming.

The writer of this brief, as a member of the Committee, challenges any person whose name appears on the cover page of this Memorandum to state that they have actually read any portion of the record in this case, much less any portion thereof which "painfully" or otherwise reveals a lack of good faith on the part of public officials or lawyers of Mississippi. It is doubtful if they have even read the briefs filed in these twenty-five consolidated cases.

The Committee Apparently Is Wholly "Innocent Of The Facts" In This Case

There is no indication whatsoever in the Memorandum that any member of the committee has read any portion of the record in these cases. Certainly they have not taken the pains to read the appendices filed with our Brief in Response to the Petition for Writ of Certiorari which details the good faith of the school authorities in several counties in Mississippi, time not permitting a full review.

The Memorandum further evidences a complete ignorance of all principles of the educational process. As a member of the Committee, it is my personal belief that the statement contained therein that "there is nothing in the record to demonstrate that the redrawing of bus routes could take more than a few days" is a statement from lack of knowledge and not an intentional and affirmative misrepresentation. The testimony of the officers of the Department of Health, Education and Welfare is directly to the contrary.

Again there is a reference to the "long over-due promise of equality." To the contrary, the evidence in these cases is clear that there is an equality of facilities, faculty, curricular and all other phases of school services and activities. The issue is the extent of desegregation or of integration.

Again is my personal hope that the statement at the top of page 5 is one made through negligence and inadvertence. There is nothing whatsoever in the record indicating a lack of adequate manpower in the Civil Rights Division of the Department of Justice. The strain upon available personnel

in preparing and presenting (33) plans of desegregation applied only to the Department of Health, Education and Welfare. The statements made at the top of page 5 of the Memorandum is the figment of the imagination of some newspaper writer which this "distinguished committee" now seems to swallow without verification either by study of the record or through verification by the public officials or individuals involved.

Response To Argument

A committee indulges in presenting hornbook law by arguing the well-worn and well-recognized principle that constitutional rights will not be denied because of community resistance. No such issue has been formed in this case. The record does not contain any defense based upon any such ground.

Again I would "throw the cloak of charity" around the authors of this memorandum when they say the following:

> Specifically rejected there was the very concept upon which respondents' contentions are, in large part, premised: the capacity of opposition to create practical difficulties in enforcement and then to successfully offer those difficulties as proof of the prematurity of a decree to desegregate now.

To the contrary the good faith of the school boards has been stipulated in most of these cases and good faith has been proved in several cases by the undisputed testimony of an agent of the Federal Bureau of Investigation. Irresponsible and prejudicial statements of this nature are not worthy of this Committee.

Being a member of the Committee and knowing the majority of those whose names are listed on the memorandum (other than Messrs. Dyk, Klein and Siemer), I am very hopeful that the individuals listed do not intend to personally vouch for any statement made in the Memorandum. It would lengthen this response beyond appropriate bounds to point out the inaccuracies and unintentional misstatements contained therein. Three illustrations from the quoted paragraph will suffice:

(a) Prejudicial references made on page 5 to "race conflicts". The only reference in this record to such thing is to racial conflicts which existed in the Natchez School District many years ago and which have long since subsided, with the result that tremendous progress has been made in that district.

(b) This record does not reveal any action "to create technical difficulties in enforcement." This prejudical statement is a figment of the imagination of one of the writers of the brief.

(c) "And then to successfully offer these difficulties as proof of the prematurity of a decree to desegregate now." Such statement is an even worse imaginative exercise by a writer of the brief.

The close of the Memorandum is confusion worse confounded. There is no intimation in the record that the United States Department of Justice does not have sufficient personnel to handle all civil rights cases, including those here involved. Perhaps that portion of the brief was thought to be desirable as the basis of solicitation of further funds by the Committee. However, the writer of this brief is uninformed as to the motives which induced preparation of pages 6 and 7 of the Memorandum.

As above stated, the motion here involved was made in behalf of the Secretary of Health, Education and Welfare. It was necessary to permit

full consideration of educational factors entering into the 33 plans of desegregation affecting 33 school districts.

There is no pleading nor evidence in the record supporting the statement by the Committee that the United States Department of Justice, particularly its Civil Rights Division, requested or requires additional time in these or any other pending legal actions because of lack of available personnel in the Department of Justice.

II.

RESPONSE TO BRIEF AMICUS CURIAE OF THE NATIONAL EDUCATION ASSOCIATION

We do not wish to offend the National Education Association by ignoring the brief filed in its behalf by attorneys well known in the Civil Rights field.

We call attention to the fact that, with the exception of a reference to Brown, Hinds County and Jefferson II the Association cites itself as its chief authority along with the U.S. Commission on Civil Rights and HEW.

Insofar as the many factual statements in the brief (other than a few meager references to the Court record) they concern conditions alleged to exist throughout the South or in certain portions of Alabama.

References to the changes proposed in these 33 districts demonstrate the complete unfamiliarity of the Association with this case. The majority of the brief consists of broad statements not under the oath which, if offered at a hearing, would be ruled inadmissible. Of course, if witnesses were presented for testimony and cross-examination concerning issues involved in these consolidated cases, that would be another matter.

However, we for the benefit of the Court, call the attention to the fact that references to the resolution adopted by the 7,000 persons composing its assembly are incorrect. Such resolution does not refer to "complete desegregation in the Southern School Districts." There is no reference in such resolution to "dual desegregated schools system." There is certainly no reference therein to any deadline relative to the pending litigation which, although not stated, might be inferred from the brief.

This resolution appears in the reprint of "NEA Resolutions, 1969, Todays Education - NEA Journal," October 1969, pp. 42 and 43. It calls for action which "should be uniformly applicable throughout the nation's schools." It applies just as fully to the schools listed in our brief filed today as it does to southern schools, including Chicago, Boston, Detroit, New York, Los Angeles and all of the other areas of the nation.

There is no evidence whatsoever that the National Education Association is familiar with the 33 plans originally drawn by the Office of Education of Health, Education and Welfare applicable to these vary districts nor that the Association is familiar with the fact recited in the brief for the petitioners that "The Secretary of the Department of Health, Education and Welfare sent a letter to the Chief Judge of the Court of Appeals and to the Judges of the District Court, requesting that the plans submitted by the Office of Education be withdrawn."

It is difficult for the writer of this brief, having been the President of a national professional organization, to believe that the officers of the National Education Association are doing more here than merely

acquiescing in the advice of special counsel to oppose the request of the Secretary of Health, Education and Welfare and the Department of Justice.

Respectfully submitted,

John C. Satterfield
Satterfield, Shell, Williams and Buford
Post Office Box 466
Yazoo City, Mississippi 39194
as attorney of record in these consolidated cases and as special counsel for all other attorneys of record herein

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CERTIFICATE OF SERVICE

I, John C. Satterfield, a member of the bar of this Court, hereby certify that I have served the Brief for Respondents upon all attorneys of record in the above-captioned case on October 22, 1969, and have served the Response to the Briefs Amicus Curiae of the Lawyers Committee for and Rights under the law and the National Education Association on October 23, 1969 by handing a true copy thereof to each of them or by mailing a true copy thereof to their addresses of record in this cause.

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