IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 632

BEATRICE ALEXANDER, ET AL., *Petitioners,*

v.

HOLMES COUNTY BOARD OF EDUCATION, ET AL., *Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND FOR IMMEDIATE CONSIDERATION THEREOF AND BRIEF AMICUS CURIAE FOR THE NATIONAL EDUCATION ASSOCIATION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND FOR IMMEDIATE CONSIDERATION THEREOF

The National Education Association hereby moves, pursuant to Rule 42(3) of the Rules of this Court, for leave to file the attached brief amicus curiae in

the above-entitled cause. Petitioners and respondent United States of America have consented to the filing.[1] Consent has been denied by the respondent school boards. Because of the expedited schedule that has been established by the Court in this case, movant requests immediate consideration of this motion, without awaiting the receipt of written opposition by the respondent school boards, so that the attached brief may be considered along with the other briefs that will be filed before argument. . .

The National Education Association ("the Association") is an independent, voluntary organization of educators open to all professional teachers, supervisors and administrators. It presently has over one million regular members, and is the largest professional organization in the world. The Association was first organized in 1857 and was chartered by a special act of Congress in 1906. Its statutory purpose is

> . . . to elevate the character and advance the interests of the profession of teaching and to promote the cause of education in the United States.

Overall policies of the Association are determined by its Representative Assembly, a body composed of approximately 7,000 delegates representing affiliated local and state education associations. The Association has long been committed to the principle that racial segregation in education adversely affects the quality of the education received by both black and white students. It has conducted detailed studies of the educational implications of the maintenance of

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[1] The written consent of these parties has been filed with the Clerk.

dual segregated school systems. At its June, 1969 Convention, the Representative Assembly adopted a formal resolution urging adherence by the Federal government to the established timetable for complete desegregation of Southern school districts. The resolution instructed the officers and staff of the Association "to exert every effort to reestablish the September, 1969 deadline for full compliance."

It has long been settled that the complete disestablishment of formerly *de jure* segregated school systems is required under constitutional mandates. The issue before the Court in this case does not so much concern legal requirements, but rather educational reasons purportedly justifying a further delay in the implementation of those requirements. While movant fully supports the position of the petitioners that there are no acceptable reasons justifying further delay in school desegregation, it, as the principal association of educators in this country, is particularly well equipped to inform the Court as to the substance, or lack thereof, of the non-legal justifications for delay on which the court below, the Government and the respondent school boards have relied.[2]

Accordingly, the National Education Association respectfully requests that this Court grant leave to file the attached brief amicus curiae, without waiting for the receipt of papers in opposition, and that the Court

[2] The National Education Association and its state associations have participated as amicus curiae in other major proceedings involving issues of education and race. See *Smuck* v. *Hobson,* 408 F. 2d 175 (D.C. Cir. 1969); *Lee* v. *Macon County Board of Education,* 283 F. Supp. 194 (M.D. Ala. 1968).

consider said brief together with the briefs of the parties, and with the other papers in the case.

Rspectfully submitted,

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October 17, 1969

IN THE

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BRIEF AMICUS CURIAE FOR THE NATIONAL EDUCATION ASSOCIATION

I.

INTEREST OF THE NATIONAL EDUCATION ASSOCIATION

The National Education Association is an independent, voluntary organization of professional educators. It has over one million members, including teachers, supervisors, and administrators. As stated in the As-

sociation Charter, its purpose is "to elevate the character and advance the interests of the profession of teaching and to promote the cause of education in the United States." Both the Association and its members have a deep interest in the quality of education received by the children of all races. For this reason, it has conducted investigations of the problems of race and education in the school systems of Wilcox County, Alabama, Baltimore, Maryland, Hyde County, North Carolina, and Detroit, Michigan. For this reason also, it has actively supported litigation in numerous school desegregation cases.

II.

SUMMARY OF THE ARGUMENT

Segregated education imposes enormous and irreparable injury on black children. *First,* there is the psychological damage to the black student, recognized by this Court in 1954, flowing from official maintenance of separate black schools. *Second,* it is established that black children, particularly in the South, are substantially less able to learn in an environment of racial isolation than in an integrated educational setting. *Third,* some school districts across the South still provide facilities for black students that are markedly inferior to those provided for whites, thus further reducing the quality of the education afforded black children.

The disastrous consequences of racial segregation in education have been established and accepted for many years, but the judicial attitude toward the question of speed of desegregation has often failed to consider that these consequences are accruing daily and cannot be reversed. A year's delay means that tens of thousands of black school children will endure another important

segment of their education in racial isolation; many of these children will complete their education during that period. It is time that the question of delay be put in these human terms. The National Education Association believes that neither administrative inconvenience, nor a general warning of "chaos, confusion, and a catastrophic educational setback" justified the delay granted in these cases. The administrative inconvenience in the immediate implementation of desegregation plans is, in the opinion of the Association, readily surmountable. Considerations of the quality of education call for speed, not for delay.

III.

ARGUMENT

A. Segregated Education Results in Enormous and Irreparable Injury to Black Children

In 1954, this Court recognized that the fact of officially-sponsored segregation, without more, causes serious psychological damage to children in elementary and secondary schools:

> To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.[1]

The isolation of black students from other children with varying backgrounds and aspirations is injurious in another respect. The United States Office of Education, in an official report based on a nationwide survey, found that "the achievement of minority group children increases" in proportion to the level of "the

[1] *Brown* v. *Board of Education*, 347 U. S. 483, 494 (1954).

educational aspirations and backgrounds of fellow students . . ." [2]

> It is those Negroes who are in the South whose achievement appears to vary most greatly with variations in the characteristics of their fellow students. Here, where the most educationally disadvantaged backgrounds are found, and where achievement is lowest, is where student body characteristics make most differences for Negro achievement. It is in these more stable, less urban areas where exposure to children of different educational backgrounds has in the past been least possible for Negro children.[3]

These findings are corroborated by the United States Commission on Civil Rights, which concluded that "the effects of racial composition of schools are cumulative. The longer Negro students are in desegregated schools, the better is their academic achievement. . . . Conversely, there is a growing deficit for Negroes who remain in racially isolated schools." [4]

A third major cause of educational harm to children attending all-black schools is the continued disparity in quality between black-attended and white-attended schools in the South. For example, the Commission on Civil Rights found that, in a sixteen-county area of Alabama, white-attended school buildings and their

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[2] Office of Education, United States Department of Health, Education and Welfare, *Equality of Educational Opportunity* (1966) at 302. In sec. 402 of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000c-1 (1964), Congress directed that this study be made.

[3] *Id.* at 304-05.

[4] *Racial Isolation in the Public Schools* (1967) at 204, Finding No. 9 on "Racial Isolation and the Outcomes of Education".

contents were worth an average of $981.00 per pupil. Those attended by blacks in the same area were worth only $283.00 per pupil.[5] The National Education Association found similar disparities in its investigation of the Wilcox County, Alabama school system.[6]

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[5] Transcript of Hearing held before the U. S. Commission on Civil Rights, Montgomery, Alabama (1968), Exhibit No. 26 at 863.

At the hearing, the State Superintendent of Education displayed a marked lack of interest in correcting these disparities:

> Mr. Glickstein [for the Commission]: Dr. Stone, have you been moving ahead to bring about this equalization of schools and consolidation and elimination of inadequate schools?
>
> Dr. Stone [Alabama State Superintendent of Education]: We have been obeying the court order.
>
> Mr. Glickstein: For example, Dr. Stone, our information indicates that five Negro schools each with an enrollment of less than 100 and one enrolling only 30 students continue to operate in Marengo County. Our information also indicates that in Clarke County only one white school has an insurance evaluation of less than $110,000, and that school has a valuation of $52,000. Eight of the other 11 Negro schools on the other hand have an insurance valuation of less than $20,000. Six of these have a valuation of less than $5,000, and two actually have a valuation of $750.
>
> * * *
>
> Dr. Stone: I would assume that the building that is assessed for $120,000 is a more expensive building than the one that is assessed for $750, that would be a reasonable assumption. Now, it is up to—the State had nothing to do with the building of either one of the buildings. All the plans were promulgated by the local school system. It is a little something that we call democracy and we think that it has worked pretty well.

Transcript at 547-48, 550.

[6] Commission on Professional Rights and Responsibilities, National Education Association, *Wilcox County, Alabama: A Study of Social, Economic and Educational Bankruptcy* (1967).

The NEA unit established per-pupil resources and expenditures for white-attended and black-attended schools showing twofold and sometimes greater discrepancies in favor of white students. *Id.* at 31, 37, 39, 41, 43, and 47.

The Office of Education survey established that the quality of the educational facility has a stronger effect on the achievement of disadvantaged students than it does on the achievement of students from more advantaged backgrounds. It also found that the quality of the facility was most important for Negroes in the South.[7]

Since early 1967, almost every school district in the Fifth Circuit desegregating under court order has been ordered to equalize the facilities in its schools, *United States* v. *Jefferson County Board of Education,* 380 F. 2d 385 (5th Cir.) (*en banc*), *cert. denied,* 389 U.S. 840 (1967), but without discernible effect. In the opinion of the Association, the only practical procedure for the elimination of the qualitative differences in black and white schools is complete integration.

These three separate phenomena combine to produce irremediable educational harm. Thus, according to the Office of Education survey, in the rural South black students in the 12th grade are an average of 3.9 grades behind white students in reading comprehension.[8]

B. The Considerations Relied Upon by the Government and the Court Below Do Not Justify Delay in Desegregation

The action of the court below, suspending its earlier mandate that terminal desegregation plans be implemented this Fall, was premised entirely on an August 19, 1969 letter written by the Secretary of the Depart-

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[7] Office of Education, United States Department of Health, Education and Welfare, *Equality of Educational Opportunity* (1966) at 312.

[8] *Id.* at 274. In urban school systems in the South, black students in the twelfth grade were 3.5 grades behind whites in reading comprehension.

ment of Health, Education and Welfare, seeking such a delay. In his letter, Secretary Finch asserted that the plans submitted by the Office of Education, pursuant to the July 3rd mandate of the Court of Appeals, were developed without adequate time and that this implementation "in the terribly short space of time remaining" presented "administrative and logistical difficulties" which could not be met without producing "chaos, confusion and catastrophe. . . ." [9]

No explanation of those conclusions was afforded by the Secretary. Moreover, they run directly counter to all previous expressions of the Executive Branch on the issue. In acceding to the requested delay, the Court of Appeals noted that the Government had proposed a more rigid timetable than that established by the court in its July 3, 1969 decision:

> Questions were specifically directed to the Assistant Attorney General appearing on behalf of the Government. Without qualification, in response to precise inquiries, he affirmed the Government's view that the timetable proposed by the Government was reasonable. And . . . he affirmed that sufficient resources of the Executive Department would be made available to enable the Office of Education of the United States Department of Health, Education and Welfare to fulfill its role as specified in the order proposed by it. . . .[10]

The court further noted that, until Secretary Finch's August 19 letter, there had been no suggestion that the

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[9] The letter is set forth at pp. 53a-54a of the petition for certiorari in this case.

[10] *United States* v. *Hinds County School Board*, ___ F.2d ___, Docket Nos. 28030 and 28042, August 28, 1969, slip opinion at 5.

timetable ordered on July 3 "should be relaxed or extended, or that such timetable was unattainable." [11]

Moreover, Dr. Gregory R. Anrig, then Director of the Division of Equal Educational Opportunities in HEW's Office of Education, stated in his August 11 letter transmitting the plans to the district court:

> I believe that each of the enclosed plans is educationally and administratively sound, both in terms of substance and in terms of timing.[12]

Dr. Anrig never deviated from that view and declined to testify in support of Secretary Finch's position at the August 25, 1969, hearing in the district court.

Both of the HEW officials who did testify in the district court hearing following the Finch letter contradicted Secretary Finch by asserting that "adequate time was had to develop the basic plans in question." [13] But these officials did support Secretary Finch's argument that implementation of the plans in the available time would not be practicable.

In supporting that view, they listed the following factors:

(a) the necessity to publicize newly established zone lines; [14]

(b) the necessity to reorganize transportation systems; [15]

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[11] *Id.*, slip opinion at 6.

[12] The letter, addressed to Judge Cox, is contained in Appendix C to the petition for certiorari in this case, beginning at 40a. The quoted language appears at 44a.

[13] Findings of Fact and Conclusions of Law, in Appendix D of the petition for certiorari in this case, at 56a, 64a-67a. The quoted language appears at 66a.

[14] *Id.* at 67a.

[15] *Id.*

(c) the necessity to consider changes in curriculum;[16]

(d) the necessity to effect physical changes in classrooms, lavatories and other facilities;[17]

(e) the necessity to reassign some teachers;[18]

(f) the necessity to reconsider the expenditure of federal funds available under the Elementary and Secondary Education Act of 1965.[19]

The only additional points in justification for delay were references to the desirability of conditioning teachers, students and the community to the strains of school desegregation.[20]

The National Education Association does not believe that any of these reasons, or the combination of them, pose such educational or administrative problems as to justify further delay in desegregation. First, whatever may be the fact in large, complicated school systems, the asserted considerations have little relevance to small districts operating only a few schools. Yet very small systems[21] were lumped together with larger districts in the common assertions of difficulty.

Second, for even the largest systems involved here, the asserted difficulties are not sufficiently significant to justify delay.

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[16] *Id.* at 64a-65a.

[17] *Id.* at 65a.

[18] *Id.*

[19] *Id.* at 67a.

[20] *Id.* at 65a, 67a.

[21] Among the cases at bar, the Anguilla Line Consolidated School District has only three schools, the Canton Municipal Separate School District has only four schools, and the Wilkinson County and the North Pike County Consolidated School Districts have only four schools apiece.

(a) Publicity for new school zone boundaries can be accomplished by a notice in a local newspaper and, to the extent necessary, by redirecting persons who report to the wrong school on opening day.

(b) Drawing up school bus routes in an integrated school system is far less complicated than the planning of school bus routes under a freedom-of-choice plan, and can normally be accomplished in a matter of days.

(c) The references to supposed changes of curriculum is unclear, but since neither the number of students at each grade level nor the number of teachers would necessarily change, the problem seems only that of allocating given numbers of students to given classes—a problem managed at the beginning of semesters by school systems across the country.

(d) The minor changes necessary to accommodate different ages of children than were formerly in a school building—installing desks, restroom facilities and water fountains of a different size—can be, and normally are, accomplished in a short period.

(e) The assignment of teachers to classes they are qualified to teach is a normal educational task, requiring but a few days to accomplish.

(f) Any change in the use of federal funds required by desegregation need not be resolved before school opening, and with the assistance of HEW officials, there is no reason why altering plans for the expenditure of Title I funds should present a burden of any size.

And the suggestion that the community, the teachers or the students need more time to become acclimated to desegregation is simply impermissible fifteen years after *Brown*.

The tasks referred to by the HEW witnesses should together require a week or, at most, two weeks to complete. Where a school district could not complete the necessary work in the available time,[22] the district court could have ordered a short delay in scheduled school opening. But there are no educational reasons—presented or existing—which would support a year's delay in effecting desegregation. Educators in the Office of Education concluded, after intensive investigations, that none of the districts here involved have sound reasons for delaying implementation of the plans submitted. There is nothing in this record to suggest that that conclusion was incorrect.

A further compelling reason for this Court to prohibit further delay in desegregation concerns the relationship of cases such as these, where compliance with constitutional requirements has not been achieved, to the many school districts in the South where school officials have eliminated the dual system. In many of the latter cases, compliance was possible in the face of substantial resistance in the community because of the assumption that the judicial and executive statements concerning the timetable for desegregation would be enforced. An abandonment of that timetable at this time seriously weakens the position of those who advocated the peaceful transition to a unitary system,

[22] As Secretary Finch's letter pointed out, some of the school districts involved did not begin their school year until September 11. Petition for certiorari at 53a.

and threatens to precipitate resegregation in many of these districts.[23]

Implementation of the plans proposed in these cases by HEW during the course of this school year presents problems of disruption that would not have been presented had the Government not sought delay in August. On balance, however, the National Education Association believes that the adverse effects of the continued maintenance of segregated schools for any additional period outweighs the adverse effects of a change during the school year, and urges this Court to order the immediate implementation of the HEW plans.

IV.

CONCLUSION

Any further delay in desegregation would result in enormous and irreparable harm to black children. The educational and administrative reasons that have been advanced to justify a delay in desegration in the case at bar are without merit. Sound educational policy calls not for delay, but for terminal desegregation, even at the cost of reassigning students during the course of a school year.

Accordingly, amicus National Education Association urges that the August 28, 1969 order of the Court of Appeals be reversed, that this Court hold that administrative difficulties will no longer be permitted to postpone desegregation in any case, and that this matter be

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[23] A report of the Department of Health, Education, and Welfare states that there were "29 last-minute reneges on plans" by school districts desegregating under HEW-approved voluntary plans, at the beginning of the 1969-70 school year. *Progress Report on Civil Rights* (1969) at 2.

remanded with instructions that the District Court enter orders requiring the immediate implementation of the plans drawn up by the Office of Education of HEW for these school districts.

Respectfully submitted,

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