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10-28-1969

10-28-1969 Correspondence from Brennan to Burger

William J. Brennan
US Supreme Court Justice

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

October 28, 1969

RE: No. 632 - Alexander v. Holmes County

Dear Chief:

For me, the prime objective of what we file in these cases is to remove the impression of HEW and the Justice Department that the standard of "all deliberate speed" retains some vitality. I fear that that message is obscured by your proposed opinion. My view is that we should state the message in the briefest and plainest possible words. The proposal you circulated at Conference yesterday based on Hugo's suggestions strikes me as a model upon which to build. I suggest the following:

Per Curiam.

This case comes to the Court on a petition for certiorari to the Court of Appeals for the Fifth Circuit. The petition was granted on October 9, 1969, and the case set down for oral argument on October 23, 1969. We hold that the Court of Appeals erred in granting the motion of the Office of Education for additional time

to study and to recommend terminal desegregation plans. Desegregation of segregated dual school systems according to the standard of "all deliberate speed" is no longer constitutionally permissible. The obligation of every dual school system is (completely) to desegregate *now*. To that end the Court of Appeals should have denied the motion and directed that each school system begin immediately to operate as a unitary school system within which no person is to be barred from any school because of race or color. *Griffin* v. *School Board*, 377 U.S. 218, 234 (1964); *Green* v. *County School Board of New Kent County*, 391 U.S. 430, 438-439, 442 (1968). Accordingly,

It is ordered adjudged and decreed:

1. The Court of Appeals' order of August 28, 1969, is vacated, and the case is remanded to that court to issue its decree and order, effective immediately, declaring that each of the school systems here involved may not operate a dual school system based on race or color, and directing that each system begin immediately to operate as a unitary school system from within which no person is to be barred from any school because of race or color.

2. The Court of Appeals may in its discretion direct each school system here involved to accept all or any part of the August 11, 1969 recommendations of the Department of Health, Education and Welfare, with any modifications which that court deems proper insofar as those recommendations insure a totally unitary school system for all eligible pupils without regard to race or color.

The Court of Appeals may make its determination and enter its order without further arguments or submissions.

3. While each of these school systems is being operated as a unitary system under the order of the Court of Appeals, the District Court may hear and consider objections thereto or proposed amendments thereof, provided, however, that the Court of Appeals' order shall not in any manner be suspended pending decision on such objections or amendments.

4. The Court of Appeals shall retain jurisdiction to assure prompt and faithful compliance with its order, and may modify or amend the same as may be deemed necessary or desirable for the operation of a unitary school system.

5. The Order of the Court of Appeals dated August 28, 1969, having been vacated and the case remanded for proceedings in conformity with this order, the mandate shall issue forthwith and the Court of Appeals is directed, so far as possible and necessary, to lay aside all other business of the Court to carry out this mandate, immediately.

W. J. B. Jr.

cc: The Conference