10-28-1969

10-28-1969 Correspondence from Harlan to Burger

John M. Harlan
US Supreme Court Justice

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

CHAMBERS OF
JUSTICE JOHN M. HARLAN

October 28, 1969

Re: No. 632 - Alexander v. Holmes County

Dear Chief:

Supplementing my earlier letter of today, I thought it might be convenient for you and the Brethren to have in "unitary" form the per curiam-order that would result from the proposals made in that letter. The following would eventuate.

"PER CURIAM:

We brought this case here upon an expedited writ of certiorari, _____ U. S. _____, to review a determination of the Court of Appeals for the Fifth Circuit extending from August 11, 1969, the filing of plans by the Department of Health, Education and Welfare and postponing from September 1, 1969, to an indefinite date the disestablishment of the presently segregated school systems in the 14 counties involved in this litigation and substituting therefor unitary school systems. The petition for certiorari was granted on October 9, 1969, and the case set down for argument on October 23, 1969. The question presented is one of paramount importance involving as it does the denial of fundamental rights of some 137,000 children, Negro and White, who are presently attending Mississippi schools under segregated conditions. Based on our review of the submissions and consideration of the oral arguments, and in light of this Court's recent decisions to the effect that the phrase "all deliberate speed" is no longer an acceptable formula for supplanting existing racially segregated school systems by unitary school systems in which neither race nor color plays any part in the attendance of pupils, see Griffin v. School Board, 377 U.S.

218; Green v. New Kent County, 391 U.S. 430, we conclude that the Court of Appeals erred in granting the extension and postponement referred to, and we issue the following order and judgment:

1. The Court of Appeals' order of August 28, 1969 is vacated and the case is remanded to the Court of Appeals for entry of an order, pending final resolution of this litigation, which will achieve the immediate termination of any system of dual schools based on race or color.

2. In formulating its order, the Court of Appeals may consider in its discretion the recommendations submitted by the Department of Health, Education and Welfare on August 11, 1969, together with any amendments or modifications necessary to provide reasonable means for achieving such immediate termination of a dual school system. The Court of Appeals shall in no event defer desegregation of the schools in Holmes and Meridian Counties until the beginning of the school year 1970-71.

3. The Court of Appeals may in its discretion enter the order herein mandated without further arguments or submissions. In any event, the Court of Appeals shall enter its order on or before November 10, 1969, requiring the termination of the dual school systems and the establishment of unitary school systems forthwith and in no event later than December 31, 1969.

4. After the Court of Appeals' order is entered the District Court may receive, hear and consider objections or amendments proposed by any party concerning the adequacy of plans ordered as terminal relief, providing however that the District Court shall have no power to affect in any way the interim relief ordered by the Court of Appeals pursuant to this mandate.

5. The Court of Appeals shall retain jurisdiction to assure prompt and faithful compliance with its order for interim relief pending ultimate disposition of the case and entry of a decree for terminal and permanent operation of a unitary school system. The Court of Appeals may modify or amend its order for interim relief from time to time as that may be deemed necessary or desirable, in order better to achieve the operation of a unitary school system pending final resolution of this litigation.

6. The mandate of this Court shall issue forthwith and the Court of Appeals is requested, so far as possible and necessary, to lay aside all other business of the Court in order to carry out this mandate."

Since the above was dictated, Brother Stewart's proposed per curiam has come in. While I prefer the shorter form per curiam suggested above, I would be prepared to join his per curiam should it commend itself to a majority of the Court.

Sincerely,

J. M. H.

The Chief Justice

CC: The Conference