10-1971

United States v. Scotland Neck

Lewis F. Powell Jr.

Conf. 3/3/72

Court .....
Argued ....March 1,....., 1972
Submitted ....., 19...

Voted on....., 19...
Assigned ....., 19...
Announced ....., 19...

No. 70-130
70-187

U. S.

vs.

SCOTLAND NECK

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING	
		G	D	N	POST	DIS	AFF	REV	AFF	G	D			
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Rehnquist, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Powell, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Blackmun, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Marshall, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
White, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Stewart, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Brennan, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Douglas, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Burger, Ch. J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

2/26/72

No. 70-130

U. S. v. Scotland Neck City Board of Education

No. 70-187

Cotton v. Scotland Neck City Board of Education

Cert to CA 4; ~~Haynsworth~~ Haynsworth, Boreman, Bryan, Craven; dissenting: Sobeloff, Winter

This case and its companion, No. 70-188, Wright v. Council of the City of Emporia, involve attempts ~~by~~ by ~~cities~~ cities in black majority ~~counties~~ counties to separate from the county school district and to form their own. In both cases, district court judges enjoined the ~~secession~~ secession. ~~CA 4~~ CA 4, sitting en banc, considered both cases together, along with a third case which is not before the Court, and reversed the district courts. This court granted cert. Because

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CONTROLLING CASES: Green v. School Board of New Kent County, 391 U.S. 430 (1968); Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

of the similarity of the legal issues, I intend to discuss the case law first, before dealing with the factual situation in both cases.

In 1968, the states that had a segregated school system had still made virtually no real steps to comply with their Constitutional duties to desegregate. Freedom of choice was the system under which most school districts were organized. The Court dealt with freedom of choice in the case of Green v. School Board of New Kent County, 391 U.S. 430 (1968), in a unanimous opinion written by Justice Brennan. That case established that the school boards where de jure segregation existed had an affirmative duty to desegregate those schools. The Court used the strongest language:

> "It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the district court to weight that claim in light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness. Where the court finds the board to be acting in good faith and the proposed plan to have real prospects for dismantling the state-imposed dual system at the earliest practable date,' then the plan may be said to provide effective relief. Of course, the availability to the board of other more promising courses of action may indicate a lack of good faith; and at the least it places a heavy burden upon the board to explain its preference for an apparently less effective method."

The present cases arose under this mandate in Green. But they were decided in both the district and circuit courts before the Court indicated, in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971), exactly how serious it was.

Swann, another unanimous opinion, this time written by the Chief Justice, attempted to express the breadth of

discretion which a district court had in enforcing the duty of school boards to dismantle the dual system. It was held that there was no substantive right that requires every school in a community to reflect the racial composition of the school system as a whole. But the Court did hold that mathematical ratios should be used as a starting point in the process of shaping a remedy. But less than perfect balance was permissible if such an achievement proved to be impractical. It is clear, however, that the Court's definition of impractical was a stringent one. For in Swann, the Court approved such drastic steps as rearranging school disrticts and attendance zones as well as massive bussing in order to achieve the racial balance needed to break up dual systems.

From these two pronouncements, I draw the following conclusions: School boards have an immediate duty to eradicate all traces of the dual system. District Courts have the responsibility of supervising this process. In performing that function, the district courts are granted enormous equitable discretion. Because of the pervasive nature of the dual system over patterns of living, the courts must often compel massive changes. While they are not required to achieve racial balance, they must attempt to come as close to it as the limits of practicality allow.

I have spelled out what is probably obvious to someone who has been involved in these cases, only because I think the court of appeals has approached the problems before it in

a way that ignored this history (some of which had not been made at them time.) Instead of examining the problem to see whether the plans involved came as close to achieving a racial balance in the school systems as was possible within the bounds of practicality, CA 4 approached the problem like it was a normal equal protection problem. The analysis it went through was similar to the analysis of the equal protection argument made in the Texas welfare case heard last week. The CA 4 treated the school systems involved as if they were located in a state that had never engaged in de jure segregation. Had the school districts involved been located in such a state, that approach would have been correct, although even here it was not, to my mind, properly applied. (I do not want to run through equal protection again, but I will say this. I think, in a different setting, that judging a neutral law by its purpose, which I cannot distinguish from motive, is correct. I disagree however with the "dominant purpose" approach. It is impossible to apply because purposes cannot be measured with any degree of percision. I would think the proper rule is that if any of the purposes of the law are racial, than the law must withstand a "compelling state interest test." But even under the dominant purpose approach, I would have reached a different reault than the court below did, particularly in the Scotland Neck case for the reasons set out in Judge Sobeloff's dissent.) But these school districts were under an affirmative duty to dismantle the dual system. And the courts

were under a duty to make sure that the schools came as close as practical to reflecting the racial composition of the community. If the board adopted a plan which resulted in less, than, in the words of Green, that placed "a heavy burden upon the board to explain its preference for an apparently less effective method." This then is the proper test to be applied here. In order to justify a school plan that offers less desegregation than the racial composition of the community, the boards must satisfy a heavy burden of justification. Having laid that spadework, I turn to the facts of the Scotland Neck case.

Scotland Neck is a small town located in Halifax County, N.C. The school system has always been run on a county basis by a county board. The racial composition of the county is such that in 1968-69 school year, 77% of the students were black, 22% were white, and 1% were Indian. Halifax County maintained a segregated system long after the Brown cases. In 1965 it switched to a freedom of choice system which resulted in a system that was still virtually dual. During the 1967-68 term, the four traditionally white schools were 97% white and the traditionally black schools were 100% black. The Scotland Neck school was 94% white while the Brawley school, just one mile away, was all black. To maintain this system the county engaged in massive bussing via a segregated bus system.

After the Green decision in 1968, the Justice Dept notified

the County that it was not in compliance. A suit was not filed however because the County agreed to disestablish the dual system. As an interim step in the 1968-69 school year, the County agreed to assign the 7 and 8 grades of the all black Brawley to Scotland Neck school. Advice was sought from the state as to how to desegregate. The state recommended as in interim plan assigning pupils on the basis of geographic zones, which had not been done in the past, and some pairing. Under this plan, Brawley would have had 330 white pupils and 740 blacks; Scotland Neck school would have had 325 whites and 640 blacks. Under this plan, there would have been some white students in every school and there would have been no schools with white majorities. But the county refused to implement the interim plan or to implement its agreement with Justice. It went back to freedom of choice.

In March, 1969, the state legislature enacted Ch 31 which was a local law providing that a new school district be created that was contingent with the boundaries of Scotland Neck. This district stood as a whole in the donut of the county district. It was the first new district created since 1954 and it was by far the smallest school district in the state, with less than 700 students in all grades. (The County had about 10,000 students in addition to the Scotland Neck students.) The bill had been opposed by the black citizens of Scotland Neck and by the educational authorities. It was clear that the bill was to a substantial, if not dominant degree, racially motivated. The focus was on the problem of

whites leaving the school system if forced to attend black majority schools. Under this plan, the Scotland Neck schools would be 57% white and 43% black. Thus, the poeple of Scotland Neck had achieved, by means of local legislation, their goal of having a majority white system. In addition, a transfer plan, was devised whereby students in the county who paid a fee could attend Scotland Necks schools and students of Scotland Neck could attend the county schools for free. By August, 1969, 350 white and 10 black county students had applied for transfers to Scotland Neck; 44 black students and no white students had applied for transfer to the county schools. This meant that the Scotland Neck school system would have been 74% white.

Ch 31 and the accompaniying transfer plan never went into effect, however. The district court found after a suit by the government in which the parents of black students joined, that the new law was, at least in part, racially motivated and that it prevented the County from complying with desegregation orders. CA 4 reversed, on the dominant purpose theory discussed above. It found that in addition to the purpose of pandering to the racial prejudices of the whites in order to keep them in public schools, that there were two more purposes for Ch 31. They found a history of the people of Scotland Neck wanting more local control over schools and of wanting to increase expenditures for their schools. (I would dispute the finding that these were not racial motivations. For example, the history of a desire for local control may

well have been a reflection of the fact that local control meant white control. Also I would question the finding that the racial purpose was not the dominant one. Having lived all my life in place that had de jure segreagation, I simply do not believe a contrary finding. But more imporatntly, in finding that Ch 31, passed by the state legislature, was not motivated primarily by problems of race, CA 4 had to ignore the transfer system which was clearly designed for the perpetuation of the dual system--so clearly that CA 4 ruled it was impermissilbe. CA 4 said that the transfer plan was a creature of the local board while Ch 31 was a creature of the legislature and that there was no evidence that the legislature knew of the transfer plan. Not only is that argument the kind of ~~legal fiction~~ legalism rarely engaged in when courts attempt to protect civil rights, but it ignores the fact that it is state action not just legislative action or school board action that we are concerned with. It takes no piercing political insight to determine that the white majority of Scotland Neck utalized a compliant legislature and the school board to perpetuate the dual system.

Applying the correct test that I laid out earlier there can be but one result. The County had a duty to desegregate its schools. It had a duty, supervised by the district court, to approach racial balance if not achieve it. Instead, a part of the county split off and formed a white enclave where white majority schools were maintained. There was no compelling reason to do this--the interests in local

control and increasing local taxes are hardly compelling reasons. Indeed, it was against the fundamental educational policy of the state to establish shool systems that were so small. I see no way that the law can stand scrutiny.

Were the racial ~~fig~~ percentages reversed in this case, were Halifax Count 72% white and had the legislature passed a law cutting out the section that had the most blacks from the rest of the system, there is no way that this plan could stand. I ~~submit~~ that it is only because the percentages were such that it was a white minority segregating itself from a black majority that ~~xxxxx~~ the case has come this far. For some reason, we think that if the white go ~~xx~~ from an almost completely segregated system to a system in which there is a substantial black minority that that is sufficient to comply with the requirements of equal protection. But such a result simply does not comply with this Court's requirements about desegregating. And I submit that the fact that the minority in this case is white ~~xxx~~ makes no constitutional difference.

Another roadblock to seeing clearly what exactly is going on here, is the tendency of CA 4, and the resp's brief in the companion case, to focus on the city of Scotland Neck rather than on the county. If we look at the city as a separate entity, we can say that it ~~went~~ would have gone from a segreagted ~~xxxxxx~~ system ~~that~~ to a system that accurately reflects the racial composition of the city. But to so focus is to assume the conclusion that such a splitting off is constitutional The correct focus is on the county school system, including

Scotland Neck in the county. With that focus, we can see that the county went from a virtually dual system to a system that has majority white schools and majority black schools despite a county-wide racial composition that is overwhelmingly black. There is no question that viewed from that perspective, the last vestiges of the dual system are continued not stomped out. There is no question that this is educationally unjustifiable much less compelled. There is no question that CA 4 fell into the trap and must be reversed if we are not to see the same pattern repeated throughout the South.

REVERSE

Fox

Wallace (SG's office)

In 70-130, U.S. filed suit.

4th CA applied ennever standard.

See map - p 4 - appendix to Pet's Brief.

Halifax County School Dist included entire county except Weldon & R/Rapids — until summer of '68 when Justice Dept advised County that its schools were not in compliance. This resulted in an interim plan (see map 8 b), but this plan was not accepted by County School Bd. Shortly thereafter, N.C. leg. ~~created~~ by Ch. 31 — incorporated town of Scotland Neck (S/N). This would have 695 children — 57% black / 43% black. This had little effect on County as whole — but large effect in S/Neck & on schools adjacent to S/N.

57
47
695

Wallace (cont.)

Ch 31 ~~was~~ was stayed & has never gone into effect.

Vice of Ch. 31 — is obstacle to integration of county (to disestablishment of segregation).

SG sees no difference bet. creation of a new school district & an assignment plan.

Read that case

Davis v. School Commission of Mobile — cited as analogous. (J Stewart said there was only one S/District in Davis & here there were two).

Wallace agreed that — if in process of desegregation — ~~[redacted]~~ a new S/Dist had been created, the Mobile situation would be analogous to this.

Test should be that state has "heavy burden" (Green) of showing that what it does is permissible.

x x x v

J. Stewart asked if Swann opinion did not recognize that "white flight" (re-segregation) is a relevant consideration — indicating S/Mech properly considered this.

Wallace (cont)

J. White asked whether an attendance district (identical to S/Neck) could not have been created

check argument transcript on this imp. admitted by SG.

SG does not contend for any principle of racial balance. Even if county were 80/20, there could be an attendance district with 50/50 (This was answer by Wallace in response to Q from J. White).

Stein (for Petitioners)

This case turns on facts.

Critical facts are impact in S/Neck area - especially Brawley school

S/Neck - fast since 1953 & smallest in state.

Awkardness & gerrymandering OK to desegregate - but not to retain segregation

→ Case controlled by N.C. vs Swann

70-187 (p4

Mr Jones

S/Neck's position:

1. Even if no danger of w/flight, the S/N plan is a better desegregation plan than the County plan.

2. S/N plan has a better chance of success.

x x x x

What is "remaining vestige" of state imposed segregation? Admits that public mental attitude towards "freedom of choice" was a vestige of seg.

But none remains in S/Neck plan.

Good faith of community not questioned or contradicted.

Concern as to white flight - caused primarily (not by fear of association) by concern as to quality of school.

Prop. in S/Neck is subject to County Tax levied by County Supervisors a % of which (County School Tax) is returned to S/Neck as an allocation per pupil (= ADA). But S/Neck can supplement this by a special tax.

Jorner (cont)

Emphasized white flight - See Ex E to Jorner Brief

Jorey (for S/Neck)

The per pupil allotment by County School Bd is not necessarily equal.

County wide vote elects County School Board - 6 members
Vote is dominated by Walden & R/Rotids which have about 50% of vote

County Commissioners levy the County wide taxes. They are elected by Districts. S/Neck is not a separate District - not populous enough. It is represented by a Commissioner who does not live in S/N.

lfp/ss 3/1/72

Scotland Neck Case

	W.	B.
1968/69 Halifax County District	22%	77%*

After Green, Justice Department moved in.

State Board recommended Plan, which County refused to accept. County went back to "freedom of choice".

In March 1969, State Legislature enacted Ch. 31 - a local law - creating a new school district with the boundaries of Scotland Neck. This was first new school district since 1954 and the smallest in the State (700 children).

Result of Bill:

	W.	B.
In Scotland Neck	57%	43%**
In County		

*1% Indian

**As a result of transfers into Scotland Neck from County, the white majority would have been 74% by 1969/70.

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

CHAMBERS OF
THE CHIEF JUSTICE

June 2, 1972

Re: No. 70-130) - U.S. v. Scotland Neck Board of Education
No. 70-187) - Cotton v. Scotland Neck Board of Education

Dear Potter:

Given that you have a court for the Emporia case, it is likely that from the point of view of the Emporia majority Scotland Neck is an a fortiorari reversal. I cannot speak for others, but on the basis of the Conference vote it is likely that a brief treatment of Scotland Neck could get nine votes. The dissent in Emporia would then make points along the line of what I have circulated already with a brief treatment of why some of us see differences in the two cases.

Regards,

WEB

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 15, 1972

RE: Nos. 70-130 & 70-187 - United States & Cotton v. Scotland Neck City Board of Education.

Dear Potter:

Please join me.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 15, 1972

Re: Nos. 70-130 and 70-187 - U.S. v. Scotland Neck, etc.

Dear Potter:

Please join me.

Sincerely,

T.M.

Mr. Justice Stewart

cc: Conference

June 17, 1972

Re: No. 70-130 & No. 70-187 - U.S.
v. Scotland Neck City
Bd of Education

Dear Potter:

Please join me.

Sincerely,

B.R.W.

Mr. Justice Stewart

cc: Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 19, 1972

Re: 70-130 - U.S. v. Scotland Neck
70-187 - Cotton v. Scotland Neck

Dear Chief:

Please join me in your opinion concurring in the result in this case.

Sincerely,

WHR

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 19, 1972

Re: No. 70-130 - U.S. v. Scotland Neck City Board of Education
No. 70-187 - Cotton v. Scotland Neck City Board of Education

Dear Chief:

Please join me in your opinion concurring in the result.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

June 20, 1972

Re: No. 70-130 U. S. v. Scotland Neck
No. 70-187 Cotton v. Scotland Neck

Dear Chief:

Please join me in in your opinion concurring in the result.

Sincerely,

The Chief Justice

cc: The Conference

THE C. J.	W. O. D.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.
~~3/6/72~~			3/6/72					
Concurring in result 6/16/72		join PS 6/15/72		join PS 6/19/72	join PS 6/16/72	join CJ 6/19/72	join CJ 6/20/72	
					70-130 U. S. v. Scotland Neck 70-187 Cotton v. Scotland Neck			

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: The Chief Justice

Circulated: JUN 16 1972

Recirculated: _____

Renewed 6/20 gorin

No. 70 - 130 -- United States v. Scotland Neck City Bd. of Education

No. 70 - 187 -- Cotton v. Scotland Neck City Bd. of Education

MR. CHIEF JUSTICE BURGER, concurring in the result.

I agree that the creation of a separate school system in Scotland Neck would tend to undermine desegregation efforts in Halifax County, and I thus join in the result reached by the Court. However, since I dissented from the Court's decision in Wright v. Council of the City of Emporia, ante, at p. _____, I feel constrained to set forth briefly the reasons why I distinguish between the two cases.

First, the operation of a separate school system in Scotland Neck would preclude meaningful desegregation in the southeastern portion of Halifax County. If Scotland Neck were permitted to operate separate schools, more than 2,200 of the nearly 3,000 students in this sector would attend virtually all-Negro schools located just outside of the corporate limits of Scotland Neck. The schools located within Scotland Neck would be predominantly white. Further shifts could reasonably be anticipated. In a very real sense, the children residing in this relatively small area would

continue to attend "Negro schools" and "white schools." The effect of the withdrawal would thus be dramatically different from the effect which could be anticipated in Emporia.

Second, Scotland Neck's action cannot be seen as the fulfillment of its destiny as an independent political unit. Scotland Neck had been a part of the county-wide school system for many years; special legislation had to be pushed through the North Carolina General Assembly to enable Scotland Neck to operate its own school system. The movement toward the creation of a separate school system in Scotland Neck was prompted solely by the likelihood of desegregation in the county, not by any change in the political status of the municipality. Scotland Neck was and is a part of Halifax County. The city of Emporia, by contrast, is totally independent from Greensville County; Emporia's only ties to the county are contractual. When Emporia became a city, a status derived pursuant to long-standing statutory procedures, it took on the legal responsibility of providing for the education of its children and was no longer entitled to avail itself of the county school facilities.

Third, the District Court found, and it is undisputed, that the Scotland Neck severance was substantially motivated by the desire to create a predominantly white system more acceptable to the white parents of Scotland Neck. In other words, the new system was designed to minimize the number of Negro children attending school with the white children residing in Scotland Neck. No similar finding was made by the District Court in Emporia, and the record shows that Emporia's decision was not based on the projected racial composition of the proposed new system.