9-1972

School Board of the City of Richmond, Virginia v. State Board of Education of the Commonwealth of Virginia

Lewis F. Powell Jr.

WCK 10/11/72

10/13

Recuse

DISCUSS

Motion to advance and for interim relief NO RESPONSE
No. 72-549 OT 1972
Richmond School Board v. Virginia Board of Education

RECUSE 550

Out

Out

DISCUSS

Judge:
You should be noted as not participating. I thought, at any rate, that you might be interested in the novel memo on this case.
LAH

Preliminary Memo

LAH

Conf. Dec. 1, 1972
List 3, p. 12

No. 72-549
SCHOOL BD. OF RICHMOND
v.
VA. STATE BD. OF EDUC.

No. 72-550
BRADLEY
v.
VA. STATE BD. OF EDUC.

Cert. to Fourth Cir. (en banc)
(Craven, Haynsworth, Bryan, Russell, Field)
(Winter dissenting)

Timely

1. The present dispute is an outgrowth of a suit originally brought in 1961 by black parents and students to desegregate the Richmond public schools. The history of the litigation is exceedingly complex. After a finding that the public schools were being racially operated under a dual system several remedial plans were

proposed and rejected. Others were implemented and superseded. The present dispute arose in an attempt by black petrs. to end a freedom of choice plan in effect. In 1970 the petr school board of the City of Richmond moved to join in the case the school boards of the surrounding counties of Henrico and Chesterfield to obtain arguments concerning a metropolitan plan. At this time the district court judge (Mehrige) began consideration of a metropolitan plan of desegregation that would include both the City of Richmond and the surrounding two counties. In January 1972 Judge Mehrige handed down an opinion ordering the consolidation of the school divisions of Richmond and the surrounding counties to be henceforth operated administratively as a unified school system. This single division was to be operated as a unitary system to achieve area-wide desegregation. This decision was reversed 5-1 (Craven) by the Fourth Cir. sitting en banc. Judge Winter dissented. This petition by the original plaintiffs and the Richmond City School Board followed.

2. Facts: The facts underlying this dispute and the opinions of the courts below are exceedingly complex. The opinion by Judge Mehrige alone is nearly 400 pages in length.

The total population of the Richmond metropolitan area is just under one half million, approximately 25% of whom are black. While the proportion of blacks in the area has remained relatively constant over the past few decades the distribution of blacks within the

metropolitan area has changed dramatically. As in many metropolitan areas the center city is becoming increasingly black and the surrounding suburbs are dominated by whites. The precise reason for the white flight is as impossible to state here as in other areas experiencing the same phenomenon. It does, however, appear to coincide in many respects with the desegregation efforts in Richmond.

The total school population in the metropolitan area as of 1970 was 107,000. 65% of the students are white and 35% black. In Richmond the students number approximately 48,000, 30% white and 70% black. Henrico County has 35,000 students, 92% white and 8% black. Chesterfield County has 24,000 students, 90% white and 10% black.

The school divisions in this area have been based on county lines for over a century. However, there was a good deal of testimony that the Richmond metropolitan area has no natural geographical or man-made obstacles isolating the counties from the city or from one another. Indeed, there has been increasing and substantial social, economic and some political interdependence in recent years. For example fire protection often is a matter that crosses the political boundaries in the metropolitan area.

Judge Mehrige's decision to order the consolidation of the school districts rested, first, on a lengthy history of resp state school board efforts to retard the progress of desegregation in all of Virginia since the decision of this Court in Brown I and,

second, on the fact that to eliminate effectively the dual systems in the area would require the consolidation of the districts. As to the first point many alleged foot-dragging efforts by the state board of education are cited. The conclusions of Judge Mehrige based on these efforts are as follows:

> In the years since [Brown], the powers of the State Board of Education and the State Superintendent of Public instruction have varied but slightly; what changes in law have been made have principally been to expand its powers. Other State educational agencies have come into existence and disappeared in intervening years as well. For the major part of this seventeen year period the State's primary and subordinate agencies with authority over educational matters have devoted themselves to the perpetuation of the policy of racial separation. They have been assisted in this effort by new legislation creating such programs as the tuition grant and pupil scholarship systems, the pupil placement procedures, and, by enactments passed while this case was pending, placing new limitations on the power of the State Board to modify school division boundaries. They have employed established techniques and powers as well to perpetuate segregation.

The best documented technique by which the state is supposed to foster segregation is the site selection and the construction of schools to keep the races separate.

Judge Mehrige advances several reasons for the need to and justification for consolidating the school divisions. The principal ones are the following:

a. the state and local officials had "by their actions directly contributed to the continuing existence of the dual school system which now exists in the metropolitan area of Richmond."

b. "desegregation of the schools of the city and the counties as well cannot now be achieved within the current school division bounds" owing in substantial part to the deliberate deferral by the state and local authorities of plaintiffs' constitutional rights.

c. the minimum size school district required "to eliminate the effect of state-imposed segregation, would be that of the division created by the merger of the systems of Richmond, Henrico and Chesterfield."

d. "the State Board has been deeply implicated in the administration of . . . programs, which were operated completely independently of the wishes of local school officials and resulted in mass movement of pupils across political boundaries in the Richmond . . . to the extent that it was necessary to appeal to local school boards to confer in order to coordinate the exchange of pupils."

The Fourth Circuit reversed Judge Mehrige's decision, holding that "absent invidious discrimination in the establishment or maintenance of local governmental units" a district judge has no power to order the consolidation of school districts. It reasoned that consolidation violates (1) the "fundamental principle of federalism incorporated in the Tenth Amendment" and (2) fails to recognize that Swann stated that there were limits on the powers of federal district judges to compel certain remedies for school desegregation. Moreover, the court seems to have rejected the findings of the district judge with respect to de jure segregation. The last paragraph of the decision states:

> "Because we think the last vestiges of state-imposed segregation have been wiped out in the public schools of the City of Richmond and the Counties of Henrico and Chesterfield and unitary school systems achieved, and because it is not established that the racial composition of the schools in the City of Richmond and the counties is the result of invidious state action, we conclude there is no constitutional violation and that, therefore, the district judge exceeded his power of intervention."

3. Contentions: The case boils down to one issue: the power of a federal judge, after a finding of de jure segregation, to order the consolidation of school districts to remedy the unconstitutional segregation.

a. Petr contends that the Fourth Cir. is in error in focusing solely on the individual school districts when the state involvement is clearly shown. In this context the state, not the local school districts, has the principal obligation to comply with Brown. Thus ordering the state to consolidate the districts as it has the power to do is entirely proper.

b. Petr contends that the Tenth Amendment cannot be construed to abolish Fourteenth Amendment rights to a desegregated education.

c. Petr contends that the motivation test adopted by the Fourth Cir. conflicts with this Court's holdings that the courts can properly look at the effect of state action to determine whether unconstitutional segregation exists.

d. Petr also contends that the decision below unduly restricts the district courts' traditional flexible equitable powers to deal with school desegregation matters.

e. Resps major contention is that the school systems in all three districts are unitary districts and there is no need to reach the question of the remedy. They assert that the "sole purpose and effect of the plan struck down by the Fourth Circuit was to assure substantial white majorities for children attending the Richmond schools" and that this is not a valid constitutional reason for requiring the consolidation of the school districts.

4. Discussion: The case is sui generis. One cannot say that the Fourth Circuit's decision conflicts with any other decision of the circuit courts or of this Court with respect to the issue of the consolidation of school districts. The case revolves around the issue of federalism. Since this issue is likely to arise in other cases (e.g., the Detroit case), this may be the appropriate vehicle for this Court to examine the limits of the federal judiciary's powers to delve into the internal political organization of the states in desegregation cases.

There is a response.

11/20/72 Wild Op ED Va and CA 4 in ptr's app.

jm

File with Richmond School consolidation Cert memo (I think we will have a cert on it)

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 1, 1972

MEMORANDUM TO THE CONFERENCE

Re: Detroit School Case (Bradley v. Milliken).

I telephoned Mr. James A. Higgins, the Clerk for the U. S. Court of Appeals for the Sixth Circuit, to inquire about the status of this case. He advised me that the case was argued on the merits last summer to a panel consisting of Chief Judge Phillips, and Judges Edwards and Peck. The court's decision has not yet been announced, but it is expected before the end of this month.

No hearing or rehearing en banc has been ordered. It is, of course, possible that there will be a rehearing en banc, but that will depend upon a motion for such a hearing being filed after the decision of the 3-judge panel, and upon such motion being granted. A different and quite unrelated school case from Chattanooga, Tennessee, which was originally decided by a 3-judge court has been set for rehearing en banc. That hearing is scheduled for December 14.

P.S.

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

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JUSTICE POTTER STEWART

FYI

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P.S.

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Conf. 10/13/72

Court .....
Argued ....., 19...
Submitted ....., 19...

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

No. 72-549

SCHOOL BD OF RICHMOND VA.

vs.

STATE BD OF EDUCATION OF VA.

OUT

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Burger, Ch. J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Conf. 12/1/72

Court .....
Argued ....., 19...
Submitted ....., 19...

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

No. 72-549
72-550

SCHOOL BD. OF CITY OF RICHMOND, VA. v. STATE BD. OF EDUCATION OF COMMONWEALTH OF VA.

BRADLEY V. STATE BD. OF EDUCATION OF COMMONWEALTH OF VA.

out

Relist for week.

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Stewart, J.			✓											
Brennan, J.		✓												
Douglas, J.		✓												
Burger, Ch. J.			✓		(or		Hold		for		Detroit)			

Conf. 12/8/72

Court .....
Argued ....., 19...
Submitted ....., 19...
Voted on ....., 19...
Assigned ....., 19...
Announced ....., 19...

No. 72-549
72-550

SCHOOL BD. OF CITY OF RICHMOND, VA. v.
STATE BD. OF EDUCATION OF COMMONWEALTH OF VA.

vs.

BRADLEY v. STATE BD. OF EDUCATION OF COMMONWEALTH OF VIRGINIA

(Relist)

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Conf. 12/15/72

Court .....
Argued ....., 19...
Submitted ....., 19...

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

No. 72-549
72-550

SCHOOL BD. OF CITY OF RICHMOND, VA.
v. STATE BD. OF EDUCATION OF COMMONWEALTH OF VA.

BRADLEY v. STATE BD. OF EDUCATION OF COMMONWEALTH OF VA.

(Relist)

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Conf. 1/12/73

Court .....
Argued ....., 19...
Submitted ....., 19...

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

No. 72-549
72-550

SCHOOL BD. OF CITY OF RICHMOND, VA. V. STATE BD. OF EDUCATION OF COMMONWEALTH OF VA.

BRADLEY V. STATE BD. OF EDUCATION OF COMMONWEALTH OF VIRGINIA

(Relist)

out

Relist.

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