



349 U.S. 294

Oliver BROWN, et al., Appellants,

v.

**BOARD OF EDUCATION OF TOPEKA,
Shawnee County, KANSAS, et al.**

Harry BRIGGS, Jr., et al., Appellants,

v.

R. W. ELLIOTT, et al.

Dorothy E. DAVIS, et al., Appellants,

v.

**COUNTY SCHOOL BOARD OF PRINCE
EDWARD COUNTY, VIRGINIA,
et al.**

**Spottswood Thomas BOLLING, et al.,
Petitioners,**

v.

C. Melvin SHARPE, et al.

Francis B. GEBHART, et al., Petitioners,

v.

Ethel Louise BELTON, et al.

Nos. 1-5.

Argued April 11, 12, 13 and 14, 1955.

Decided May 31, 1955.

Class actions by which minor plaintiffs sought to obtain admission to public schools on a nonsegregated basis. On direct appeals by plaintiffs from adverse decisions in United States District

holds a new hearing and renders a new decision on his application for discretionary relief. Although the Board has already found that he has a good moral character, he should have the opportunity at the new hearing to offer evidence

75 S.Ct.—48

Courts, District of Kansas, 98 F.Supp. 797, Eastern District of South Carolina, 103 F.Supp. 920, and Eastern District of Virginia, 103 F.Supp. 337, on certiorari before judgment on appeal to the United States Court of Appeals for the District of Columbia from adverse decision in United States District Court for the District of Columbia, and on certiorari from decision favorable to plaintiffs in the Supreme Court of Delaware, 91 A.2d 137, the Supreme Court, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873, and 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884, held that racial discrimination in public education was unconstitutional and restored cases to docket for further argument regarding formulation of decrees. On further argument, the Supreme Court, Mr. Chief Justice Warren, held that in proceedings to implement Supreme Court's determination, inferior courts might consider problems related to administration, arising from physical condition of school plant, school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve system of determining admission to public schools on a nonracial basis, and revision of local laws and regulations, and might consider adequacy of any plans school authorities might propose to meet these problems and to effectuate a transition to racially nondiscriminatory school systems.

Judgments, except that in case No. 5, reversed and cases remanded with directions; judgment in case No. 5 affirmed and case remanded with directions.

1. Constitutional Law ⇨220

All provisions of federal, state, or local law requiring or permitting racial discrimination in public education must yield to principle that such discrimina-

tion is not and never has been a racketeer. For it may be that, in so characterizing Accardi, the Attorney General has confused him with someone else of the same name." 219 F.2d 77, 83.

tion is unconstitutional. U.S.C.A.Const. Amend. 14.

2. Schools and School Districts ⇨13

School authorities have primary responsibility for elucidating, assessing, and solving problems arising from fact that racial discrimination in public education is unconstitutional.

3. Appeal and Error ⇨1177(1)

Question whether school authorities' actions constitute good faith implementation of principle that racial discrimination in public education is unconstitutional could best be appraised by courts which originally heard cases raising question of constitutionality of such discrimination, and it was appropriate to remand cases to such courts. 28 U.S.C.A. §§ 2281, 2284.

4. Equity ⇨1, 423

Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs.

5. School and School Districts ⇨13

Courts of equity, in implementing Supreme Court's determination that racial discrimination in public education is unconstitutional, may properly take into account the public interest in elimination, in a systematic and effective manner, of obstacles to transition to school systems operated in accordance with constitutional principles, but constitutional principles cannot be allowed to yield because of disagreement with them.

6. Appeal and Error ⇨1206

On remand from Supreme Court after determination in several cases that racial discrimination in public education is unconstitutional, inferior courts should, while giving weight to public considerations and private interest of litigants, require that school authorities make prompt and reasonable start toward full compliance with ruling.

7. Schools and School Districts ⇨13

In proceedings to implement Supreme Court's decision that racial discrimination in public education is unconstitutional, public school authorities have burden of establishing that grant of additional time for transition is necessary in public interest and is consistent with good faith compliance at earliest practicable date.

8. Schools and School Districts ⇨13

Inferior courts, in implementing Supreme Court's determination that racial discrimination in public education is unconstitutional, may consider problems related to administration, arising from physical condition of school plant, school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve system of determining admission to public schools on a nonracial basis, and revision of local laws and regulations, and may consider adequacy of any plans school authorities may propose to meet these problems and to effectuate a transition to racially nondiscriminatory school system.

9. Schools and School Districts ⇨13

Inferior courts, on remand from Supreme Court's determination that discrimination in public education is unconstitutional, were directed to retain jurisdiction of cases during period of transition to nondiscriminatory school systems.

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Mr. Robert L. Carter, New York City, for appellants in No. 1.

Mr. Harold R. Fatzer, Topeka, Kan., for appellees in No. 1.

Messrs. Thurgood Marshall, New York City, and Spottswood W. Robinson, III, Richmond, Va., for appellants in Nos. 2 and 3.

Messrs. S. E. Rogers, Summerton, S. C., and Robert McC. Figg, Jr., Charleston, S. C., for appellees in No. 2.

Messrs. Archibald G. Robertson, Richmond, Va., and J. Lindsay Almond, Jr., Atty. Gen., for appellees in No. 3.

Messrs. George E. C. Hayes and James M. Nabrit, Jr., Washington, D. C., for petitioners in No. 4.

Mr. Milton D. Korman, Washington, D. C., for respondents in No. 4.

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Mr. Joseph Donald Craven, Wilmington, Del., for petitioners in No. 5.

Mr. Louis L. Redding, Wilmington, Del., for respondents in No. 5.

Messrs. Richard W. Ervin and Ralph E. Odum, Tallahassee, Fla., for State of Florida, I. Beverly Lake, Raleigh, N. C., for State of North Carolina, Thomas J. Gentry, Little Rock, Ark., for State of Arkansas, Mac Q. Williamson, Oklahoma, City, Okl., for State of Oklahoma, C. Ferdinand Sybert, Ellicott City, Md., for State of Maryland, John Ben Shepperd and Burnell Waldrep, Austin, Tex., for State of Texas, Sol. Gen. Simon E. Sobeloff, Washington, D. C., for the United States, amici curiae.

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Mr. Chief Justice WARREN delivered the opinion of the Court.

[1] These cases were decided on May 17, 1954. The opinions of that date,¹ declaring the fundamental principle that

1. 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884.

2. Further argument was requested on the following questions, 347 U.S. 483, 495-496, note 13, 74 S.Ct. 683, 692, 98 L.Ed. 873, previously propounded by the Court:

"4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment

"(a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or

"(b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

racial discrimination in public education is unconstitutional, are incorporated herein by reference. All provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle. There remains for consideration the manner in which relief is to be accorded.

Because these cases arose under different local conditions and their disposition will involve a variety of local problems, we requested further argument on the question of relief.² In view of the nationwide importance of the decision, we invited the Attorney General of the United

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States and the Attorneys General of all states requiring or permitting racial discrimination in public education to present their views on that question. The parties, the United States, and the States of Florida, North Carolina, Arkansas, Oklahoma, Maryland, and Texas filed briefs and participated in the oral argument.

These presentations were informative and helpful to the Court in its consideration of the complexities arising from the transition to a system of public education freed of racial discrimination. The presentations also demonstrated that substantial steps to eliminate racial discrimination in public schools have al-

"5. On the assumption on which questions 4 (a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4 (b),

"(a) should this Court formulate detailed decrees in these cases;

"(b) if so, what specific issues should the decrees reach;

"(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

"(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

ready been taken, not only in some of the communities in which these cases arose, but in some of the states appearing as *amici curiae*, and in other states as well. Substantial progress has been made in the District of Columbia and in the communities in Kansas and Delaware involved in this litigation. The defendants in the cases coming to us from South Carolina and Virginia are awaiting the decision of this Court concerning relief.

[2, 3] Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts.³

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[4, 5] In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies⁴ and by a facility for adjusting and reconciling public and private needs.⁵ These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. To effectuate this interest may call for elimination of a variety of

3. The cases coming to us from Kansas, South Carolina, and Virginia were originally heard by three-judge District Courts convened under 28 U.S.C. §§ 2281 and 2284, 28 U.S.C.A. §§ 2281, 2284. These cases will accordingly be remanded to those three-judge courts. See

obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.

[6-9] While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools

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on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system. During this period of transition, the courts will retain jurisdiction of these cases.

Briggs v. Elliott, 342 U.S. 350, 72 S.Ct. 327, 96 L.Ed. 392.

4. See Alexander v. Hillman, 296 U.S. 222, 239, 56 S.Ct. 204, 209, 80 L.Ed. 192.

5. See Hecht Co. v. Bowles, 321 U.S. 321, 329-330, 64 S.Ct. 587, 591, 592, 88 L.Ed. 754.

The judgments below, except that in the Delaware case, are accordingly reversed and the cases are remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases. The judgment in the Delaware case—ordering the immediate admission of the plaintiffs to schools previously attended only by white children—is affirmed on the basis of the principles stated in our May 17, 1954, opinion, but the case is remanded to the Supreme Court of Delaware for such further proceedings as that Court may deem necessary in light of this opinion.

It is so ordered.

Judgments, except that in case No. 5, reversed and cases remanded with directions; judgment in case No. 5 affirmed and case remanded with directions.

