The Burger Court Opinion Writing Database

Alexander v. Holmes County Board of Education

396 U.S. 19 (1969)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University

App. 1

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

CHAMBERS OF
THE CHIEF JUSTICE

October 25, 1969

CONFIDENTIAL

MEMORANDUM TO THE CONFERENCE

Justice Harlan, Justice White and I met today and working from three rough, preliminary drafts of alternative dispositions developed the enclosed order to be followed by an opinion.

The draft reflects not necessarily our final view but a "passable" solution of the problem.

We have concluded, tentatively, to avoid fixing any "outside" date. I am partly persuaded to do this because of the risk that it could have overtones which might seem to invite dilatory tactics.

WEB

October 25

SUPREME COURT OF THE UNITED STATES

October Term, 1969.

No. 632.—*Alexander* v. *Holmes County.*

PROPOSED ORDER AND JUDGMENT.

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 early argument. The question presented is one of paramount importance, involving as it does the continued denial of fundamental rights of some 137,000 school children—Negro and White—who are presently attending Mississippi schools under segregated conditions notwithstanding and in violation of numerous pronouncements of this Court from May 17, 1954, to date. Because of the gravity of the issues and the exigency of prompt compliance with the Constitution, we deem it appropriate to enter the following order, based on our review of the submissions and consideration of oral argument, with opinion to follow this judgment. Cf. *Ex Parte Quirin,* 317 U. S. 1.

The petitioners having urged immediate termination of a dual school system based on race and the Attorney General having urged that result without awaiting the beginning of the 1970–1971 school year,

It is hereby adjudged, ordered, and decreed:

1. The Court of Appeals order of August 28, 1969, is vacated and the case is remanded to the Court of Appeals for a determination forthwith as to whether the recommendations submitted by the Department of Health, Education, and Welfare on August 11, 1969, as amended, if amended, together with any modification deemed necessary or advisable by said Court of Appeals, are reasonable and adequate interim means to achieve immediate termination of any system of dual schools based on race or color.

4:30 PM.
(has been due before 2:00)

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

CHAMBERS OF
THE CHIEF JUSTICE

October 27, 1969

MEMORANDUM TO THE CONFERENCE:

Following lunch today I put my hand to a brief opinion and an order.

Although I followed the precept that "a committee cannot draft" orders and opinions efficiently, I was aided on the opinion by a rough draft which Justice White had put together for himself and by Justice Marshall's proposed order which was very much like what I had initially submitted.

I believe the order now proposed tracks both my early version and Justice Marshall's except that I have omitted his November 10, 1969 deadline for the interim relief order and the December 31, 1969 deadline as the "outside" date for execution. I do this, notwithstanding my belief that the order would be stronger with fixed dates. Open end directives have not worked too well since 1955.

I believe the proposed opinion and the preamble to the order express every view of "here and now" which anyone has proposed. I will, of course, welcome suggestions and comments, particularly having in mind the brief time available to do this drafting.

[illegible signature]

WEB

#632 10-27-1969

Opinion of the court by THE CHIEF JUSTICE, MR. JUSTICE

MR. JUSTICE MR. JUSTICE

MR. JUSTICE MR. JUSTICE MR. JUSTICE

and MR. JUSTICE

These cases are here on a petition for certiorari to the Court of Appeals for the Fifth Circuit which was granted October 9, 1969 and expedited for argument on October 23, 1969. There are nine cases involving 14 separate school districts in the State of Mississippi which were filed by private parties and private parties intervened in the two cases brought by the United States. In July 1968, petitioners moved the District Court to require each school board to adopt new desegregation plans. Following a Court of Appeals order to hold early hearings, the District Court consolidated the cases with 16 other cases brought by the United States which involved 19 additional school districts and held hearings in October and December 1968. Some months later, on May 13, 1969, the District Court held the existing freedom of choice plans constitutional. Proceeding on an expedited schedule, the Court of Appeals on July 3, 1969, reversed the District Court in all 25 cases, unequivocally holding that the existing school segregations plans were unconstitutional.

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Supreme Court of the United States
Washington 25, D. C.

CHAMBERS OF
THE CHIEF JUSTICE

Bill
Several colls have indicated willingness to "go along" with the changes marked in red. Will you consider & let me know before I draft a FINAL version

over

All of them seem entirely reasonable & I cannot conceive that any [illegible]

XIV

CJ's revised version of WJB draft - Tuesday 10-28 at about 4:00. Agreed on at meeting btw CJ & WJB in WJB's chambers

No. 632 - Alexander v. Holmes County

PROPOSED ORDER AND JUDGMENT

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 early argument. The question presented is one of paramount importance, involving as it does the continued denial of fundamental rights to many thousands of school children, who are presently attending Mississippi schools under segregated conditions notwithstanding numerous pronouncements of this Court from May 17, 1954 to date. Against this background the Court of Appeals should have denied all motions for additional time because continued operation of segregated schools under a standard of allowing "all deliberate speed" for desegregation is no longer constitutionally permissible. Under explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary school systems ~~from~~ which no person is effectively barred or to which they are assigned because of race or color. Griffin v. School Board, 377 U.S. 218; Green v. New Kent County, 391 U.S. 430; accordingly,

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

CHAMBERS OF
THE CHIEF JUSTICE

October 28, 1969

MEMORANDUM FOR THE CONFERENCE

Re: No. 632 - Alexander v. Holmes County Bd. of Education

Enclosed "another try" in light of various proposals received. It returns to what I proposed to the Conference except (a) the preamble is altered and (b) the dates are omitted. Indeed, it contains most elements of what all of us agree to. If all agree, I suggest that we consider a "Cooper and Allen", reciting of all members of the Court rather than a per curiam because of the importance of the problem.

W.E.B.

SUPREME COURT OF THE UNITED STATES

October Term, 1969.

No. 632.—*Alexander* v. *Holmes County.*

PROPOSED ORDER AND JUDGMENT.

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 early argument. The question presented is one of paramount importance, involving as it does the continued denial of fundamental rights of some 137,000 school children—Negro and White—who are presently attending Mississippi schools under segregated conditions notwithstanding and in violation of numerous pronouncements of this Court from May 17, 1954, to date. Because of the gravity of the issues and the exigency of prompt compliance with the Constitution, we deem it appropriate to enter the following order, based on our review of the submissions and consideration of oral argument, with opinion to follow this judgment. Cf. *Ex Parte Quirin,* 317 U. S. 1.

The petitioners having urged immediate termination of a dual school system based on race and the Attorney General having urged that result without awaiting the beginning of the 1970–1971 school year,

It is hereby adjudged, ordered, and decreed:

1. The Court of Appeals order of August 28, 1969, is vacated and the case is remanded to the Court of Appeals for a determination forthwith as to whether the recommendations submitted by the Department of Health, Education, and Welfare on August 11, 1969, as amended, if amended, together with any modification deemed necessary or advisable by said Court of Appeals, are reasonable and adequate interim means to achieve immediate termination of any system of dual schools based on race or color.

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

CHAMBERS OF
THE CHIEF JUSTICE

Revision of final CJ-WJB version - early morn 10-29

October 29, 1969

MEMORANDUM FOR THE CONFERENCE

Re: No. 632 - Alexander v. Holmes County

Enclosed is a draft order embracing what I believe are detailed changes suggested since yesterday.

In some respects it resembles the proverbial "horse put together by a committee" with a camel as the end result. But then even the camel has proven to be useful.

I trust this will now enlist universal support and if you indicate approval we will have the order entered today.

As to the form, there is some view, which I now tend to share, that a recital of all names at the head of the order has a tendency to give it undue emphasis. I will therefore have this entered as a routine order and decree letting the contents convey their own urgent message.

W.E.B.

SUPREME COURT OF THE UNITED STATES

No. 632.—October Term, 1969.

Beatrice Alexander et al., Petitioners, *v.* Holmes County Board of Education et al.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[October 29, 1969.]

Per Curiam.

These cases come 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 early argument. The question presented is one of paramount importance, involving as it does the denial of fundamental rights to many thousands of school children, who are presently attending Mississippi schools under segregated conditions contrary to the applicable decisions of this Court. Against this background the Court of Appeals should have denied all motions for additional time because continued operation of segregated schools under a standard of allowing "all deliberate speed" for desegregation is no longer constitutionally permissible. Under explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools. *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 hereby adjudged, ordered, and decreed:

1. The Court of Appeals' order of August 28, 1969, is vacated, and the cases are remanded to that court to issue its decree and order, effective immediately, declaring

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

September 23, 1969

MEMORANDUM FOR THE CONFERENCE

632

In re: Mississippi School Board Cases
Alexander v. Holmes County Board of Education and 8 other cases involving the same issues.

In my chambers opinion in these cases I suggested to the Petitioners that they bring the cases to the attention of the full Court at as early a date as possible. The Petitioners have now moved the Court to advance consideration and disposition of the cases. Petitioners pray that we shorten the time for filing responses to their petition for certiorari to 15 days; consider their petition for certiorari during the conference week of October 6, 1969; and grant certiorari, summarily reversing the judgments of the court of appeals. These cases involve grave and important issues in connection with the operation of the Mississippi schools. It is my belief that the motions to shorten the time for filing a response to 15 days and to consider the petition during our conference the week of October 6th should be granted. The Chief Justice being away, I am therefore circulating these two motions to the members of the Court who are available with the hope that you will notify me at once whether you favor expediting consideration of the petition as prayed by the Petitioners.

H. L. B.

phoned HLB 9/25/69 Oct 9
agreed
WO

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

October 26, 1969

MEMORANDUM TO THE MEMBERS OF THE CONFERENCE

Re: No. 632 - Alexander v. Holmes County

* * * * * *

The letter from the Chief Justice circulated in connection with the proposed order and judgment in this case suggests that the proposal now has the approval of three members of the Court. It is possible that this proposal will obtain a majority and that the Court may want to issue the order on Monday. Should that be the case, I would not want to delay such action, but will dissent as I have in the opinion circulated herewith.

While a dissent at this time may seem premature, this procedure has been followed only to avoid further delay.

One more thought should be added about the Court's suggestion that a Court opinion will later follow this order. I am opposed to that. There has already been too much writing and not enough action in this field. Writing breeds more writing, and more disagreements, all of which inevitably delay action. The duty of this Court and of the others is too simple to require perpetual litigation and deliberation. That duty is to extirpate all racial discrimination from our system of public schools NOW.

Respectfully,

Hugo L. Black

hlb:fl

Sunday afternoon
October 26 1969

SUPREME COURT OF THE UNITED STATES

October Term, 1969

No. 632 - Alexander v. Holmes County

MR. JUSTICE BLACK, dissenting.

In 1954, after arguments and mature consideration, this Court unanimously decided in an opinion by Mr. Chief Justice Warren, that separate educational facilities for whites and Negroes in the public schools are inherently unequal and are therefore a denial of equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution. Brown v. Board of Education, 347 U.S. 483, 495 (1954). In that case we requested further arguments as to whether this Court could 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." Id. at 495, n. 13. In Brown v.

Come on Tuesday - about noon

October 28, 1969

Dear Chief,

In re No. 632 - Alexander v. Holmes County

I regret that I again find myself unable to agree with the opinion and order circulated yesterday afternoon in the above case.

I do substantially agree, however to the suggested Per Curiam of Brother Brennan circulated this morning. I use the words "substantially agree" because there are three words that in my judgment would make his position clearer:

First, I would like to add one word to his sentence on page 2, which provides that the obligation of every dual school system is to desegregate now. I would say " is completely to desegregate now. "

Second. I would like to add the word "continuing" immediately before the words "operation of a unitary school system" at the bottom of page 3.

Third. I would like to add the word "immediately" after the word "mandate" at the end of the paragraph on page 5.

These suggestions, I think, would simply clarify what he has said but they are not essential to my agreement with his circulation precisely as it was sent around.

Sincerely,

H. L. B.

The Chief Justice

cc: Members of the Conference

10/26/69

SUPREME COURT OF THE UNITED STATES

October Term, 1969

I agree
WO

No. 632 - Alexander v. Holmes County

MR. JUSTICE BLACK, dissenting.

In 1954, after arguments and mature consideration, this Court unanimously decided in an opinion by Mr. Chief Justice Warren, that separate educational facilities for whites and Negroes in the public schools are inherently unequal and are therefore a denial of equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution. Brown v. Board of Education, 347 U.S. 483, 495 (1954). In that case we requested further arguments as to whether this Court could 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." Id. at 495, n. 13. In Brown v. Board of Education, 349 U.S. 294 (1955), after full reargument

No. 632 - Alexander v. Holmes County

PROPOSED ORDER AND JUDGMENT

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 early argument. The question presented is one of paramount importance, involving as it does the continued denial of fundamental rights of many thousands of school children, who are presently attending Mississippi schools under segregated conditions notwithstanding numerous pronouncements of this Court from May 17, 1954 to date. Against this background the Court of Appeals should have denied all motions for additional time because continued operation of segregated schools under a standard of allowing "all deliberate speed" for desegregation is no longer constitutionally permissible. Under explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary school systems from which no person is effectively barred or to which they are assigned because of race or color. Griffin v. School Board, 377 U.S. 218; Green v. New Kent County, 391 U.S. 430; accordingly,

October 29, 1969

MEMORANDUM TO THE CONFERENCE:

Re: No. 632 - Alexander v. Holmes County

Dear Brethren:

Now that the fate of "all deliberate speed" has been resolved, I thought you might be interested in Thaler's (a professor of English) article With All Deliberate Speech, 27 Tenn. L. Rev. 510 (1960).

I send this note merely to entertain you, not convince you, which of course makes this a most unusual memorandum.

W. O. D.

The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

Tues
Morn.

WTB called WOD in Obama
& he called back. WTB cleared
w/WOD his first circulation on
Tues The 28th. WOD said
it was OK. It has already
been circulated.

September 23, 1969

MEMORANDUM FOR THE CONFERENCE

Re: No. 632 - Alexander, et al. v. Holmes County Board of Education, et al.

Dear Hugo:

I am in favor of expediting consideration of this case as proposed in your memorandum. As presently advised however -- and certainly pending receipt of a response -- I would not favor a summary disposition of the case on the merits.

Sincerely,

J.M.H.

CC: The Conference

circulated after Black's letter but before noon.

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

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

CHAMBERS OF
JUSTICE JOHN M. HARLAN

From: Harlan, J.
Circulated: OCT 28 196
Recirculated:

October 28, 1969

Re: No. 632 - Alexander v. Holmes County

Dear Chief:

I spent last evening reviewing the various circulations that have been made respecting the disposition of this case. In light of the variety of views that have been expressed at our recent Conferences, and looking at the matter from an institutional standpoint, I have come to the view that the most satisfactory disposition of the case would be that suggested in the proposed order embodied in Mr. Justice Marshall's circulation of October 27, preceded by the preamble of your circulations of October 25 and 27, but unaccompanied by an opinion as suggested in your second circulation of yesterday. I think, however, that both the Marshall order and preamble should be modified along the lines indicated below.

With respect to the Marshall order, I suggest that:

Paragraph 2 should be modified to read as follows: "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."

With respect to the last line in paragraph 3, I would substitute for "on or before" the phrase "forthwith and in no event later than."

I think that paragraph 6 of the order should be revised to read "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."

Finally, if the disposition of this case is delayed beyond the end of this week, I would change the date November 10, 1969," in paragraph 3, to "November 17, 1969."

As regards the preamble to the order, I suggest that its present form should be revised to read somewhat as follows: "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, to December 1, 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 the 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:"

You will doubtless note that I have suggested the omission in this preamble of the paragraph in your earlier drafts indicating in effect that the Government is in accord with the accelerated desegregation program which our order envisages. I think such an intimation is quite unpersuasive because, although the Government did envisage the accomplishment of steps towards desegregation prior to the commencement of the school year 1970-71, it has continued to maintain the proposition that the HEW should be given until December 1 to file its plans. Frankly, I think it undesirable to blink the fact that the Government stands in opposition to the central and only issue in the case before us.

Since the dictation of this letter was underway before Justice Brennan's proposals of today were received, I would like to add the following. As I see it the differences between his suggestions and those made in this letter relate (1) to the explicit provision of "outside" dates; (2) to the use in the Marshall order of the words "interim" and "terminal"; and (3) to the specific reference to the treatment of Holmes and Meridian. If these factors continue to stand as road blocks to obtaining as much unanimity among us as possible, then I would be prepared to cast my vote for the Brennan proposals. My preference, however, is for the two outside dates because I think such dates will strengthen the hand of the Court of Appeals in resisting dilatory tactics on the part of any of the litigants, and under the modifications proposed to the Marshall order the Court of Appeals is encouraged to act at earlier dates. As for the specific reference to Holmes and Meridian Counties, I think that the orders now under consideration, while plainly contemplating desegregation in those counties, do not make explicit the required relief and thus invite the possibility that the parties will seek to limit the effect of our decree to only those districts where termination of dual schools was originally envisaged for the 1969-70 school year.

Sincerely,

J. M. H.

The Chief Justice

CC: The Conference

Follows circulation of Stewart proposal

IN

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

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

JMH reaction to CJ's circulation — revised w. 2 version — late afternoon 10-28

CHAMBERS OF
JUSTICE JOHN M. HARLAN

October 28, 1969

Re: No. 632 - Alexander v. Holmes County

Dear Chief:

I am prepared to concur in your circulation of this afternoon, with the two minor modifications suggested below. My readiness to do this reflects what I hope was implicit in my two earlier letters of today, namely, that we have reached the point in our deliberations where the differences amongst us hang not on any matters of substance but on pure semantics. Frankly, I think the important thing now is to reach an agreement on some disposition which can be announced at the earliest possible moment, preferably not later than tomorrow afternoon.

The two modifications which I submit for your consideration follow:

1. I suggest that the third sentence in your draft be modified so as to eliminate the word "continued" [denial] and that the sentence end with the phrase "under segregated conditions." I think that we should be scrupulous in avoiding any implied criticism of the lower courts for sanctioning a course of events that has become "illegal" only since our decisions in Griffin and Green.

2. At the end of paragraph 3 of the proposed order I suggest the addition of the sentence "No amendment shall become effective before being passed upon by the Court of Appeals." My reason for this is that the phrase-

ology in your draft might lend itself to the misinterpretation that the District Court is free to set at naught provisions in the Court of Appeals' order before the District Court amendments have been reviewed by the Court of Appeals.

Sincerely,

J.M.H.

The Chief Justice

CC: The Conference

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

CHAMBERS OF
JUSTICE JOHN M. HARLAN

October 29, 1969

Re: No. 632 - Alexander v. Holmes County

Dear Chief:

I am in agreement with your circulation of this morning, and am glad to join. I also agree with the method of issuing the order suggested in your covering letter. I think we are all indebted to you for you patience in bringin this matter to a sucessful conclusion.

Sincerely yours,

J. M. H.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

September 23, 1969

RE: No. 632 - Mississippi School Board Cases

Dear Hugo:

I favor expediting consideration of the petition as prayed by the petitioners in the above case.

Sincerely,

Bill

Mr. Justice Black

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

Circulated
Tuesday Oct 28
about 10:00 a

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 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~~ effectively excluded 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 ~~[redacted]~~ no longer 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.

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.

W. J. B. Jr.

cc: The Conference

SUPREME COURT OF THE UNITED STATES

No. 632.—October Term, 1969.

Beatrice Alexander et al., Petitioners, *v.* Holmes County Board of Education et al.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[October 29, 1969.]

Per Curiam.

These cases come 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 early argument. The question presented is one of paramount importance, involving as it does the denial of fundamental rights to many thousands of school children, who are presently attending Mississippi schools under segregated conditions contrary to the applicable decisions of this Court. Against this background the Court of Appeals should have denied all motions for additional time because continued operation of segregated schools under a standard of allowing "all deliberate speed" for desegregation is no longer constitutionally permissible. Under explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools. *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 hereby adjudged, ordered, and decreed:

1. The Court of Appeals' order of August 28, 1969, is vacated, and the cases are remanded to that court to issue its decree and order, effective immediately, declaring

SUPREME COURT OF THE UNITED STATES

October Term, 1969.

No. 632.—*Alexander* v. *Holmes County.*

PROPOSED ORDER AND JUDGMENT.

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 early argument. The question presented is one of paramount importance, involving as it does the continued denial of fundamental rights of some 137,000 school children—Negro and White—who are presently attending Mississippi schools under segregated conditions notwithstanding and in violation of numerous pronouncements of this Court from May 17, 1954, to date. Because of the gravity of the issues and the exigency of prompt compliance with the Constitution, we deem it appropriate to enter the following order, based on our review of the submissions and consideration of oral argument, with opinion to follow this judgment. Cf. *Ex Parte Quirin*, 317 U. S. 1.

The petitioners having urged immediate termination of a dual school system based on race and the Attorney General having urged that result without awaiting the beginning of the 1970–1971 school year,

It is hereby adjudged, ordered, and decreed:

1. The Court of Appeals order of August 28, 1969, is vacated and the case is remanded to the Court of Appeals for a determination forthwith as to whether the recommendations submitted by the Department of Health, Education, and Welfare on August 11, 1969, as amended, if amended, together with any modification deemed necessary or advisable by said Court of Appeals, are reasonable and adequate interim means to achieve immediate termination of any system of dual schools based on race or color.

XVIII

SUPREME COURT OF THE UNITED STATES

No. 632.—October Term, 1969.

Beatrice Alexander et al., Petitioners, *v.* Holmes County Board of Education et al.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[October 29, 1969.]

Per Curiam.

These cases come 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 early argument. The question presented is one of paramount importance, involving as it does the denial of fundamental rights to many thousands of school children, who are presently attending Mississippi schools under segregated conditions contrary to the applicable decisions of this Court. Against this background the Court of Appeals should have denied all motions for additional time because continued operation of segregated schools under a standard of allowing "all deliberate speed" for desegregation is no longer constitutionally permissible. Under explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools. *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 hereby adjudged, ordered, and decreed:

1. The Court of Appeals' order of August 28, 1969, is vacated, and the cases are remanded to that court to issue its decree and order, effective immediately, declaring

ROUTING SLIP 9/23/69

To: File

From:
Miss. School cases
No. 632

Instructions:
Justice Stewart
phoned his agreement,
talking with J. Black
personally.

circulated
early
afternoon
10-28

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

CHAMBERS OF
JUSTICE POTTER STEWART

October 28, 1969

No. 632 - Alexander v. Holmes County Bd. of Educa.

Dear Chief,

The enclosed suggested Per Curiam is diffidently submitted as a document to which a majority might subscribe. As I have previously indicated, I find difficulty in perceiving how the phrase "all deliberate speed" really has much to do with these cases, because even the District Court did not purport to rely on that concept, but instead approved freedom of choice plans as in compliance with the Constitution. Nonetheless, in deference to Hugo, Bill Brennan, and perhaps others, I have included in the enclosed their language about "all deliberate speed."

In addition, instead of setting out a separate order at the end of the Per Curiam, I have written the terms of our mandate into the text of the proposed opinion, in accord with our conventional practice. You will note that those terms do include terminal dates, which I think advisable in order to give real meaning to our disposition and real guidance to the Court of Appeals, but I would not insist upon such dates if unanimity could be otherwise achieved.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

From: Stewart, J.

Circulated: OCT 28 1969

Recirculated: _____

ALEXANDER v. HOLMES COUNTY BOARD OF EDUCATION

PER CURIAM.

These (nine) cases, involving fourteen separate school districts and ~~35,000~~ (thousands of) school children in the State of Mississippi, are here on a petition for a writ of certiorari to the Court of Appeals for the Fifth Circuit. We granted review on October 9, 1969, and expedited the cases for argument on October 23.

The present ~~litigations~~ (suits) began at various times from 1963 to 1967. In July, 1968, the petitioners moved the District Court for the Southern District of Mississippi to require each of the respondent school boards to adopt new desegregation plans in place of their "freedom of choice" programs. The District Court denied the motions. The petitioners then sought relief in the Court of Appeals for the 1968-69 school year. The Court of Appeals declined to reverse the lower court summarily, but

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

mid-day

October 29, 1969

No. 632 - Alexander v. Holmes County

Dear Chief,

With some substantial misgivings, I am prepared to join the order you circulated today, and do so upon the premise that it will be the order of the Court.

Without elaborating upon them, I should say that my misgivings closely parallel those expressed by Byron White in his letter to you today, and are also implicitly reflected in my circulation of yesterday. However, I also want to say that such misgivings as I have in no way detract from my appreciation of your patience and tact throughout the entire period of our consideration of this case.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

September 23, 1969

MEMORANDUM FOR THE CONFERENCE

632

In re: Mississippi School Board Cases
Alexander v. Holmes County Board of Education and 8 other cases involving the same issues.

In my chambers opinion in these cases I suggested to the Petitioners that they bring the cases to the attention of the full Court at as early a date as possible. The Petitioners have now moved the Court to advance consideration and disposition of the cases. Petitioners pray that we shorten the time for filing responses to their petition for certiorari to 15 days; consider their petition for certiorari during the conference week of October 6, 1969; and grant certiorari, summarily reversing the judgments of the court of appeals. These cases involve grave and important issues in connection with the operation of the Mississippi schools. It is my belief that the motions to shorten the time for filing a response to 15 days and to consider the petition during our conference the week of October 6th should be granted. The Chief Justice being away, I am therefore circulating these two motions to the members of the Court who are available with the hope that you will notify me at once whether you favor expediting consideration of the petition as prayed by the Petitioners.

H. L. B.

Dear Hugo -
OK with me to
expedite
Byron

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

Letters of agreement w/ CJ final circulation

XVI

CHAMBERS OF
JUSTICE BYRON R. WHITE

October 29, 1969

Re: No. 632, Alexander v. Holmes County Board of Education

Dear Chief:

I join your October 28 circulation (unless, in the flurry of paper, there is a later one I have not seen), hoping you would feel inclined (1) to change the language on p. 1 "notwithstanding numerous pronouncements of this Court from May 17, 1954, to date" to "contrary to applicable decisions of this Court"; (2) to indicate in the third and fourth lines from the bottom of p. 1 and in the last line of paragraph 1 on p. 2 that the exclusion is from schools rather than from systems. Also I suggest, with some hesitation, that the thrust of the second part of the last sentence on p. 1 is inconsistent with what will have to be done to create a unitary rather than a dual school system--I would suspect that in some districts, there will have to be assignments or exclusions on the basis of race if an effective remedy is to be had and the dual system is to be uprooted in these school systems. However, I withdraw any and all of these suggestions if they present the slightest obstacle to getting an order down today with at least five Justices agreeing thereto.

In the semi-tradition of these school cases, which any Justice may disown if he chooses, I shall not dissent from this order even though:

(1) Paragraph 1 of the order requires the Court of Appeals to enter an order which will be effective immediately but does not indicate when the order is to be entered--it neither says the order is to be entered now, within six months or even with deliberate speed. Although paragraph 5 indicates action is to be taken immediately, paragraph 1 cannot mean that the operative as distinguished from a

order is to be entered forthwith with immediate expected. This would be ordering the impossible graph 2 would permit further hearings on specific for to the entry of any order at all. The order does how long these permissible proceedings may take.

(2) Paragraph 2 leaves it to the discretion of the Court of Appeals as to whether it will or will not fashion an order which will direct any specific way of effecting a unitary system. Taking the two paragraphs together, it would be permissible for the Court at some unspecified time in the future to enter a general order which, consistent with paragraph 1 and exercising the discretion granted in paragraph 2 to put aside any of the plans presently before it, would require the 14 districts immediately to disestablish freedom of choice plans and to establish a unitary system.

(3) There is therefore no assurance that in the long run there will be much improvement over the schedule the Court of Appeals had already worked out and which we hesitate to say we are reversing. Of course, it is true that we are saying that the deliberate speed formula has been abandoned (which we have said before) and that as soon as possible is an adequate substitute.

Hugo is convinced that a mistake was made in 1954-55 with respect to the deliberate speed formula. I am beginning to understand how mistakes like that happen. Nevertheless, I join, expecting the Court of Appeals to make sure that the shortcomings of this order never come to light, even though it is that Court which entered the order which we now find unacceptable.

Sincerely,

B.R.W.

The Chief Justice

cc: The Conference

circulated
early Monday morning
before the Conference
Henry at Conference

October 27, 1969

MEMORANDUM TO THE MEMBERS OF THE CONFERENCE

Re: No. 632 - Alexander v. Holmes County

Here are my suggestions for changes in the proposed Order by the Chief Justice. As you will note, these changes are suggested to replace the Order itself as contrasted to the preliminary paragraphs.

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 shall consider whether the recommendations submitted by the Department of Health, Education and Welfare on August 11, 1969, together with any amendments which the Court of Appeals may receive from the Department, provide reasonable means for achieving such immediate termination of a dual school system.

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 on or before 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 directed to lay aside all other business of the Court to carry out this mandate.

Respectfully,

Thurgood Marshall

mid afternoon 10-28 before the CJ circul... (about 2:...)

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

October 28, 1969

No. 632 - Alexander v. Holmes County Bd. of Education

Dear Chief:

I now assume that it is impossible to get unanimity on cut-off dates. On that assumption I could agree to the draft of WJB even though I would otherwise prefer the Harlan draft.

Sincerely,

TM

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

October 29, 1969

No. 632 - Alexander v. Holmes County Bd. of Education

Dear Chief:

I have read and digested your last circulation, and am happy to join it.

Sincerely,

TM

The Chief Justice

Copies to the Conference