The Burger Court Opinion Writing Database

Carter v. West Feliciana Parish School Board

396 U.S. 226 (1969)

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

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

CARTER ET AL. v. WEST FELICIANA PARISH SCHOOL BOARD ET AL.; and

SINGLETON ET AL. v. JACKSON MUNICIPAL SEPARATE SCHOOL DISTRICT ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Nos. 944 and 972. Decided January __, 1970

PER CURIAM.

Insofar as the Court of Appeals authorized deferral of the implementation of plans for unitary schools beyond February 1, 1970, that court misconstrued our holding in Alexander v. Holmes County Board of Education, 396 U. S. 19, accordingly, the petitions for writs of certiorari are granted, the judgments of the Court of Appeals are reversed, and the cases remanded to that court for further proceedings in accordance with our opinion in Alexander v. Holmes County Board of Education, supra. The judgments in these cases are to issue forthwith.

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

CHAMBERS OF
THE CHIEF JUSTICE

December 11, 1969

MEMORANDUM FOR THE CONFERENCE:

Re: Carter v. West Feliciana Parish School Board

I have Justice Black's December 11 memo on the above case.

It may be that we will not complete all our business tomorrow and will continue over on Monday.

This case appears to warrant prompt consideration, but I assume we are in no position to act on the petition for certiorari until we have a response.

I will place the petition on the Friday Conference List.

WEB

W.E.B.

cc: The Clerk

Memorandum of the Chief Justice and Mr. Justice Stewart.

We would not peremptorily reverse the judgments of the Court of Appeals for the 5th Circuit. That court, sitting en banc and acting unanimously after our decision in Alexander v. Holmes County Bd. of Educ., 396 U.S. 19, has required the respondents to effect desegregation in their public schools by February 1, 1970, save for the student bodies, which are to be wholy desegregated during the current year, no later than September. In light of the measures the Court of Appeals has directed the respondent school districts to undertake, with total desegregation required for the upcoming school year, we are not prepared summarily to set aside its judgments. That court is far more familiar than we with the various situations of these several school districts, some large, some small, some rural and some metropolitan and has exhibited responsibility and fidelity to the objectives of our holdings in school desegregation cases. To say peremptorily that the Court of Appeals erred in its application of the Alexander doctrine to these cases, and direct summary reversal without argument and without opportunity for exploration of the varying problems of individual school districts, seems unsound to us.

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

John Are Bill B's changes in the P.C. Order O.K. with you? Wes

COVER

Dear Chuy.

I think the change should be modified to say

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

December 11, 1969

MEMORANDUM FOR THE CONFERENCE

Re: Robert Carter, et al. v. West Feliciana Parish School Board, et al.

There has been presented to me an application for a temporary injunction, together with a motion to the Court to grant certiorari, in another southern school case (Louisiana) along the lines of our recent Mississippi case. This is the day before conference tomorrow, which will likely be the last one until after New Year's.

For this reason I am distributing the papers to the whole Court so that we may consider it at conference tomorrow.

Sincerely yours,

H. L. B.

hlb:fl

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

December 13, 1969

MEMORANDUM TO THE CONFERENCE

Re: Applications in Southern School Cases

There are presently pending before me three applications similar to the one in Carter, et al. v. West Feliciana Parish School Board, et al., No. 944 OT 1969, and the Clerk informs me that more such applications will be coming soon. It is my present inclination to issue the attached order in these cases as the Circuit Justice. I do not, however, want to take any action inconsistent with the views of other members of the Conference and will change my plans to accomodate suggestions for changes in the order or procedure.

Sincerely yours,

H. L. B.

(4) Applicants are directed to ---

944 & 972

December 13, 1969

Re: Robert Carter, et al., v. West Feliciana Parish School Board, et al.

Dear Potter:

I thought you might like to see what I intend to file should the order circulated last evening, or anything close to it, be approved by the Conference. At this juncture, I am sending this only to you.

Sincerely,

JMH

Mr. Justice Stewart

Re: Robert Carter, et al., v. West Feliciana Parish School Board, et al.

Memorandum of Mr. Justice Harlan. I cannot possibly subscribe to today's order which seems to me to offend the very rudiments of orderly judicial process. The order purports to grant only interim relief, but in fact it decides the merits of the case, and it does this without even awaiting a response to the petition for certiorari. This goes far beyond anything that the petitioners have requested.

I would enter an order (1) requiring respondents to file their response to the petition for certiorari on or before Dec. 22, 1969; and, (2) directing the going forward of the preparation of plans, consistent with our decision in Alexander v. Holmes County School Board, _____ U. S. _____, looking toward the complete disestablishment of the existing segregated school systems on or before February 1, 1970, in the event that petitioners prevail upon the issues tendered in their petition for certiorari. Consideration of petitioners' papers satisfies me that petitioners are, under settled principles governing applications for emergency relief, entitled to such an order. Magnum Import Co. v. Coty, 262 U. S 159.

Supreme Court of the United States

Memorandum

JAN 12 1970

----------, 19----

Dear Chief:

Here is my "try." I have not circulated it, but will have xeroxed copies ready for distribution to the Conference, if that seems desirable.

JMH

JMH
Looks good to me with small word point on page 2. I'd make copies for Conf. WEB

944

Supreme Court of the United States

Memorandum

January 12, 1970

Dear Chief:

The piece which I put together yesterday for a possible disposition of the Louisiana school cases is being typed this morning. I plan to go over it during the luncheon recess, and to have it ready for you by the 2:30 adjournment hour, if not during our afternoon sitting.

Sincerely,

J. M. H.

The Chief Justice

January 13, 1970

MEMORANDUM TO THE CONFERENCE

Re: Louisiana School Cases

Dear Brethren:

I thought I should let you know that, following overnight consideration, I intend to concur in the Court's order of reversal with a separate memorandum, along the lines of the proposed per curiam which I submitted for the Conference's consideration yesterday.

Sincerely,

J.M.H.

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

From: Harlan, J.

Circulated: JAN 13

Recirculated:

SUPREME COURT OF THE UNITED STATES

October Term, 1969

CARTER ET AL. *v.* WEST FELICIANA PARISH SCHOOL BOARD ET AL.; and

SINGLETON ET AL. *v.* JACKSON MUNICIPAL SEPARATE SCHOOL DISTRICT ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Nos. 944 and 972. Decided January —, 1970

MR. JUSTICE HARLAN, concurring.

I agree that the action of the Court of Appeals in these cases does not fulfill the requirements of our recent decision in *Alexander* v. *Holmes School Board,* 396 U. S. 19, and accordingly that the judgments below cannot stand. However, in fairness to the Court of Appeals and to the parties, and with a view to giving more guidance to litigants in future cases of this kind, I consider that something more is due to be said respecting the intended effect of the *Alexander* decision. Since the Court has not seen fit to do so, I am constrained to set forth at least my own understanding of the procedure to be followed in these cases. Because of the shortness of the time available, I must necessarily do this in a summary way.

Proposed *per curiam* in Louisiana school cases:

The intent of *Alexander,* as I see it, was that the burden in actions of this type should be shifted from plaintiffs, seeking redress for a denial of constitutional rights, to defendant school boards. What this means is that upon a prima facie showing of noncompliance with this Court's holding in *Green* v. *New Kent County School Board,* 391 U. S. 430 (1968), sufficient to demonstrate a likelihood of success at trial, plaintiffs may apply for immediate relief that will at once extirpate any linger-

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

SUPREME COURT OF THE UNITED STATES

October Term, 1969

From: Harlan, J.

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The intent of *Alexander,* as I see it, was that the burden in actions of this type should be shifted from plaintiffs, seeking redress for a denial of constitutional rights, to defendant school boards. What this means is that upon a prima facie showing of noncompliance with this Court's holding in *Green* v. *New Kent County School Board,* 391 U. S. 430 (1968), sufficient to demonstrate a likelihood of success at trial, plaintiffs may apply for immediate relief that will at once extirpate any linger-

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

Mr. Justice Harlan, J.

Circulated: _____

Recirculated: 1/13/70 - 3

SUPREME COURT OF THE UNITED STATES

October Term, 1969

CARTER ET AL. *v.* WEST FELICIANA PARISH SCHOOL BOARD ET AL.; and

SINGLETON ET AL. *v.* JACKSON MUNICIPAL SEPARATE SCHOOL DISTRICT ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Nos. 944 and 972. Decided January —, 1970

MR. JUSTICE HARLAN, with whom MR. JUSTICE WHITE joins, concurring.

I join the Court's order. I agree that the action of the Court of Appeals in these cases does not fulfill the requirements of our recent decision in *Alexander* v. *Holmes School Board,* 396 U. S. 19, and accordingly that the judgments below cannot stand. However, in fairness to the Court of Appeals and to the parties, and with a view to giving further guidance to litigants in future cases of this kind, I consider that something more is due to be said respecting the intended effect of the *Alexander* decision. Since the Court has not seen fit to do so, I am constrained to set forth at least my own understanding of the procedure to be followed in these cases. Because of the shortness of the time available, I must necessarily do this in a summary way.

The intent of *Alexander,* as I see it, was that the burden in actions of this type should be shifted from plaintiffs, seeking redress for a denial of constitutional rights, to defendant school boards. What this means is that upon a prima facie showing of noncompliance with this Court's holding in *Green* v. *New Kent County School Board,* 391 U. S. 430 (1968), sufficient to demonstrate a likelihood of success at trial, plaintiffs may apply

January 15, 1970

RE: No. 244 - Robert Carter, et al. v. West Feliciana Parish School Board

Dear Chief:

SUPREME COURT OF THE UNITED STATES

October Term, 1969

CARTER ET AL. *v.* WEST FELICIANA PARISH SCHOOL BOARD ET AL.; and
SINGLETON ET AL. *v.* JACKSON MUNICIPAL SEPARATE SCHOOL DISTRICT ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Nos. 944 and 972. Decided January —, 1970

Memorandum of MR. JUSTICE STEWART.

I would deny the petitions for writs of certiorari. The Court of Appeals for the Fifth Circuit, sitting en banc and acting unanimously after our decision in *Alexander* v. *Holmes County Bd. of Educ.*, 396 U. S. 19, has required the respondents to effect the complete desegregation of their public schools by February 1, 1970, save for the student bodies, which are to be wholly merged no later than September. In light of the measures the Court of Appeals has directed the respondent school districts to undertake, with total desegregation required for the upcoming school year, I cannot say that that court, which is far more familiar than we with the various situations of these several school districts, has erred in its application of the *Alexander* doctrine to these cases.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 18, 1969

Re: No. 944 - Carter v. West Feliciana Parish School Board

Dear Chief:

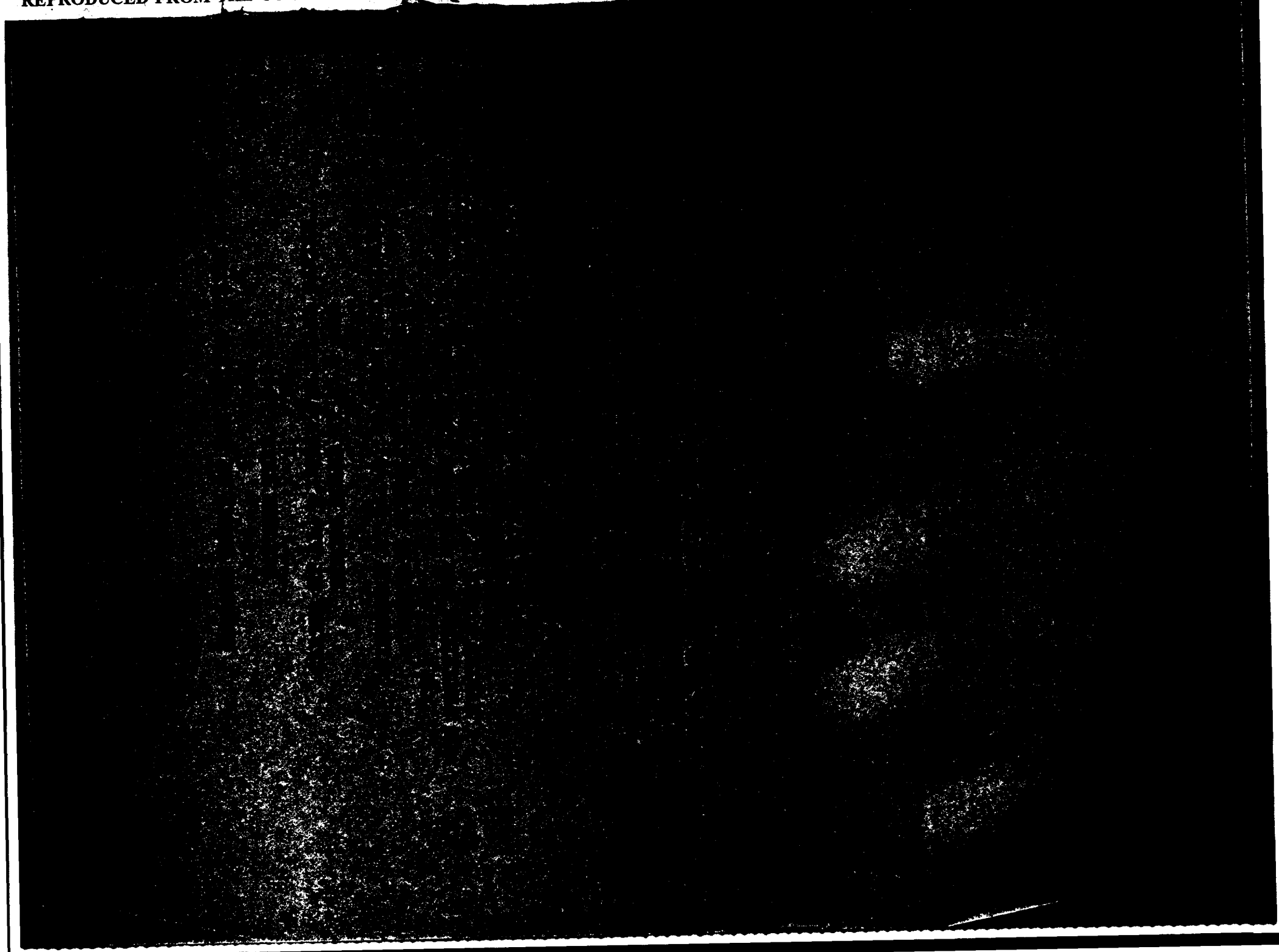
While I do not know how this Motion to reconsider our order should be handled, insofar as I am concerned I vote that it be denied.

Sincerely,

T.M.

The Chief Justice

cc: The Conference



ROBERT CARTER, et al.,

Petitioners,

v.

WEST FELICIANA PARISH SCHOOL BOARD, et al.,

Respondents

The application of the petitioners for temporary relief, pending this Court's disposition of the petition for a writ of certiorari, is granted to the following extent: the respondents are directed to do all things necessary to prepare for the complete conversion from dual to unitary school systems by February 1, 1970, in accordance with this Court's decision in Alexander v. Holmes County Board of Education, ___ U.S. ___.

If the respondents wish to submit briefs in opposition to the petition for writ of certiorari, they are directed to do so by Monday, December 22, 1969. In any such briefs, the respondents are requested to show why this Court should not treat their cases exactly as the Court of Appeals [illegible]

SUPREME COURT OF THE UNITED STATES

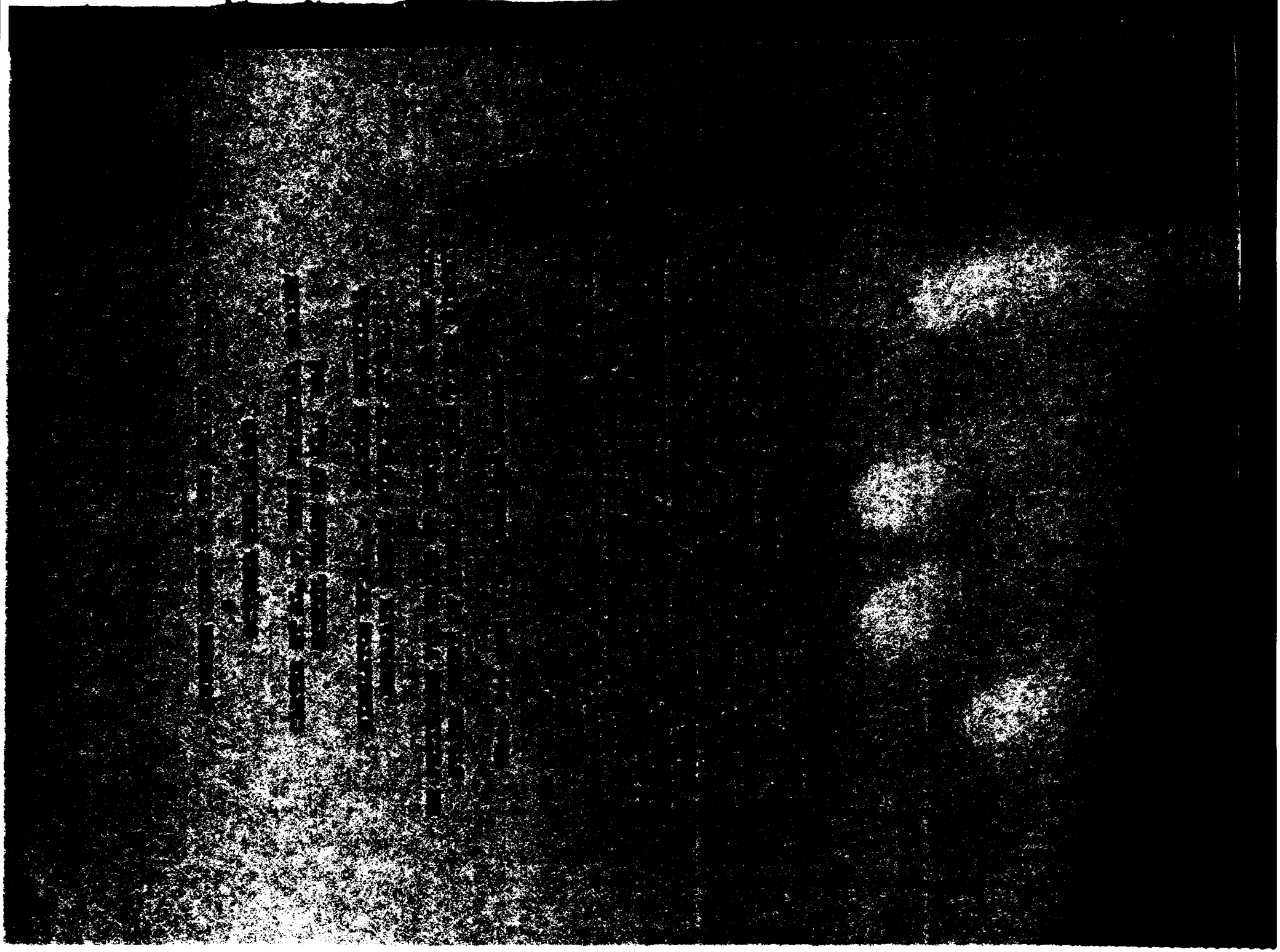
October Term, 1969

Carter, et al. v. West Feliciana Parish School Board, et al; and Singleton et al. v. Jackson Municipal Separate School District et al.

On Petitions for Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

Nos. 944 and 972. Decided January __, 1970.

Mr. Justice Black, Mr. Justice Douglas, Mr. Justice Brennan and Mr. Justice Marshall express their disagreement with the opinion of Mr. Justice Harlan, joined by Mr. Justice White. They believe that those views retreat from our holding in Alexander v. Holmes County Board of Education, 396 U.S. 19, that the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools.



SUPREME COURT OF THE UNITED STATES

October Term, 1969

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On Petitions for Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

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