

Cite as 431 F.2d 1313 (1970)

"whether or not a reopening is granted is a matter of substance". *Mulloy v. United States*, *supra* at 415, 90 S.Ct. at 1770. It might well be that the registrant is incapacitated, physically or mentally incapable of acting for himself, or so deluded or misled as not to be able to appraise his own condition. Indeed, the report of a responsible doctor with ample opportunity to diagnose a registrant might be more credit-worthy than the request of the registrant himself. This does not mean that every request or any information rises to the level where reopening is required. But the board must at least make the assessment as to whether "nonfrivolous allegations of facts" of sufficient significance were presented. If it concludes that the contents of the correspondence meet this standard, it must reopen the classification and afford the registrant the procedural rights provided by regulation. As we cautioned in *United States v. Stopelman*, 406 F.2d 127, 130 (1st Cir. 1969), cert. denied 395 U.S. 981, 89 S.Ct. 2141, 23 L.Ed.2d 769, where we dealt with a far less pertinent communication, "* * * clerks file such communications without calling them to the board members' attention at considerable risk to the validity of subsequent proceedings."

[3] In the case at bar, the information in the doctors' letters not only evidenced apparently serious and competent medical advice based on adequate opportunity to observe, but contained statements of professional opinion which could have entitled appellant to a different classification.⁶ The failure of the board to consider the letters is not, as

the district court thought, cured by the subsequent special psychiatric examination conducted by the Army, since appellant at this point had been denied his rights to appear and appeal within the Selective Service system. This deprivation of procedural rights was such that the final order to report for induction was invalid and appellant's conviction cannot stand. *Mulloy v. United States*, *supra*.

[4] Accordingly, we do not consider the appellant's further contentions concerning other practices of the local board, Selective Service headquarters and AFEES. Nor must we resolve the question of appellant's intent in failing to report for induction. Let it suffice to say that the lodging of broad discretion in local Selective Service boards carries the concomitant duty of its exercise and that such exercise is predicated upon consideration of available information.

Reversed.



UNITED STATES of America,
Plaintiff-Appellant,

v.

TEXAS EDUCATION AGENCY et al.,
Defendants-Appellees.

No. 30368.

United States Court of Appeals,
Fifth Circuit.

Aug. 18, 1970.

Action to secure conversion of dual school systems to unitary systems be-

6. The Army Regulations list as cause for rejection for induction personality disorders including the following:

"a. Character and behavior disorders, as evidenced by

(1) Frequent encounters with law enforcement agencies, or antisocial attitudes or behavior which, while not a cause for administrative rejection, are tangible evidence of an impaired characterological capacity to adapt to the military service.

431 F.2d—83

* * * * *

(4) Drug addiction.

b. Character and behavior disorders where it is evidence of history and objective examination that the degree of immaturity, instability, personality inadequacy, and dependency will seriously interfere with adjustment in the military service as demonstrated in school, with employers and fellow-workers, and other society groups." Army Regulation 40-501.

fore start of school year. The United States District Court for the Northern District of Texas, at Dallas, Joe Ewing Estes, Chief Judge, ordered a preliminary pretrial conference, and government appealed. The Court of Appeals held that with respect to school districts in question, desegregation plans were to be implemented which accomplished a unitary system of pupil attendance with start of fall 1970 school term, although it may have been appropriate in one or all instances to order a delay in opening of schools, as it was less disruptive to postpone opening of school for a very brief interval rather than effect total desegregation after schools were in operation.

Reversed and remanded with directions.

Opinion D.C., 316 F.Supp. 1310, conformed to mandate.

1. Courts $\hookrightarrow$ 405(12.1)

Court of Appeals had jurisdiction to consider appeal from order requiring pretrial conference in suit to secure integration of school districts before start of school year, where effect of order was to deny an injunction, in that desegregation plans would not be put into operation until some time after opening of schools. 28 U.S.C.A. § 1292 (a).

2. Schools and School Districts $\hookrightarrow$ 13

With respect to school districts in question, desegregation plans were to be implemented which accomplished a unitary system of pupil attendance with start of fall 1970 school term, although it may have been appropriate in one or all instances to order a delay in opening of schools, as it was less disruptive to postpone opening of school for a very brief interval rather than effect total desegregation after schools were in operation. Civil Rights Act of 1964, § 407, 42 U.S.C.A. § 2000c-6; 28 U.S.C.A. § 1292(a).

Eldon B. Mahon, U. S. Atty., Dallas, Tex., David D. Gregory, Joseph B. Scott, Civil Rights Div., U. S. Dept. of Justice, Jerris Leonard, Asst. Atty. Gen., Dept. of Justice, Washington, D. C., for appellant.

Crawford C. Martin, Atty. Gen. of Texas, Austin, Tex., for appellees.

Before WISDOM, COLEMAN, and SIMPSON, Circuit Judges.

PER CURIAM:

We are asked to grant pendente lite relief or in the alternative to enter summary reversal in this district-wide school desegregation case appealed here from the Northern District of Texas. The defendants are the Texas Education Agency and six named school districts: Ferris, Garland, Lubbock, Richardson, San Angelo, and Wichita Falls Independent School Districts.

This case is similar to cases filed in numerous districts of this Circuit by the United States Department of Justice in an effort to secure before the start of the 1970-71 school year uniform compliance with *Alexander v. Holmes County Bd. of Ed.*, 1969, 396 U.S. 19, 90 S.Ct. 29, 24 L.Ed.2d 19, *Carter v. West Feliciana Parish*, 1970, 396 U.S. 290, 90 S.Ct. 608, 24 L.Ed.2d 477, and *Singleton v. Jackson*, 5 Cir. 1970 (En Banc) 419 F.2d 1211, reversed (as to timing) sub nom. *Carter v. West Feliciana*. The government instituted the first case of this type *United States v. Georgia*, C.A. 19,772 in the Northern District of Georgia, December 15, 1969. Suits have recently been filed in district courts of the following districts of this Circuit: Northern and Southern Districts of Mississippi; Northern, Middle, and Southern Districts of Florida; and the Eastern, Western, and Southern Districts of Texas. Similar suits have also been filed in several districts in the Fourth and Eighth Circuits. The relief uniformly sought is similar to that sought here.

We are informed that the following defendant school districts will begin

Cite as 431 F.2d 1313 (1970)

classes for the 1970-71 school year on the following respective dates:

Ferris ISD	August 20, 1970
Garland ISD	August 27, 1970
Lubbock ISD	August 26, 1970
Richland ISD	August 25, 1970
San Angelo ISD	August 24, 1970
Wichita Falls ISD	August 31, 1970

The complaint alleged:

With the knowledge and consent of the Texas Education Agency, its agents and officers, each of the defendant school districts, as instrumentalities of the State of Texas, has traditionally operated and continues to operate a dual school system based on race. The defendant school districts traditionally have assigned students and faculty to schools in accordance with an official state policy requiring racial segregation in the public schools of Texas resulting in the assignment of white students and faculty and black students and faculty to separate schools. These districts presently assign students to these public schools on the basis of plans which have resulted in the continued operation of their schools as dual school systems based on race.

The complaint further alleged that the Lubbock and San Angelo districts "are discriminating against Mexican-American students by assigning Mexican-American students to schools on the basis of their ethnic origin" and that such schools "are attended almost exclusively by Mexican-American and Negro students." The complaint requested that the defendants be enjoined from discriminating on the basis of race and ethnic origin and prayed "that the defendant school districts be ordered forthwith to adopt and implement [desegregation] plans * * * prior to the commencement of the 1970-71 school year." A certificate of the Attorney General as required by 42 U.S.C. § 2000c-6 is attached to the complaint.

As to the Lubbock and Wichita Falls districts for which school desegregation plans had been prepared and

recommended to the district by the United States Department of Health, Education and Welfare and the Texas Education Agency, the government applied August 8 to the Chief Judge of the District Court for the Northern District of Texas for an order to show cause why the plans should not be implemented immediately. The plans are attached to the application.

As to the other four districts the government on August 8 applied for an order directing the local school boards to collaborate with the Texas Education Agency in developing desegregation plans.

The district court on August 10, 1970, entered the order from which this appeal is taken. This order set for September 10 (after the opening of the school year) a "preliminary pretrial conference * * * at which conference questions concerning jurisdiction, venue, pleadings, parties, severance, and pending motions will be considered". The United States appealed from this order August 12, 1970.

[1] First of all, we hold under Title 28 U.S.C. § 1292(a) that we have jurisdiction to consider the appeal from the order of August 10, 1970. The effect of the order was to deny the injunction, since desegregation plans would not be put into operation until some time after the opening of schools for the 1970-71 term. See *U. S. v. Lynd*, 5 Cir. 1962, 301 F.2d 818, 822. Cf. *Dilworth v. Riner*, 5 Cir. 1965, 343 F.2d 226.

Courts all over this Circuit have labored through this summer, and are still laboring, to bring into uniform reality the compulsions of *Alexander*, *Carter*, and *Singleton* for conversion of dual systems to unitary school systems. *Singleton* requires that in "these and all other school cases now being or which are to be considered in this or the district courts of this Circuit" that desegregation plans are to be implemented which "accomplish a unitary system of pupil attendance with the start of the fall 1970 school term".

[2] Accordingly, we grant the appellant's motion for summary reversal and remand with the following directions to the court below.

(1) The Chief Judge of the Northern District of Texas shall enter the order to show cause applied for, returnable before himself or before another judge of the district on a short day with respect to the Lubbock and Wichita Falls school districts.

(2) The suit with respect to these school districts or any others may be severed from the main suit below.

(3) The Chief Judge shall set for hearing on a short day either before himself or another judge of the district the applications with respect to the Ferris, Garland, Richland, and San Angelo school districts.

(4) It may be appropriate in one or all instances to order a delay in the opening of schools for the 1970-71 term. We deem it less disruptive to postpone the opening of the school for a very brief interval than to effect total desegregation after the schools are in operation.

(5) These matters are to receive top priority in calendaring and dispositions.

The mandate shall issue forthwith.



BRODIE HOTEL SUPPLY, INC.,
Appellee,

v.

UNITED STATES of America,
Appellant.

No. 25702.

United States Court of Appeals,
Ninth Circuit.
Sept. 23, 1970.

Action to determine whether plaintiff or defendant, United States, had priority, under their respective chattel

mortgages, to proceeds of sale of restaurant equipment. The United States District Court for the District of Alaska, Raymond E. Plummer, Chief Judge, granted summary judgment for plaintiff and the United States appealed. The Court of Appeals, Hamley, Circuit Judge, held that, although person took possession of restaurant and plaintiff's restaurant equipment on June 1, it was not until November 12, when such person received bill of sale and executed chattel mortgage to plaintiff, that he became a "debtor" of plaintiff and equipment became "collateral" within statute providing that purchase money security interest prevails over conflicting interest in noninventory collateral if perfected within ten days after debtor receives possession, and since plaintiff's financing statement was filed within ten days after November 12, plaintiff had priority over United States as assignee of chattel mortgage perfected on November 4.

Affirmed.

1. Secured Transactions $\S$ 146

General rule of priority, if two security interests are perfected by filing, is that secured party who first files financing statement prevails, regardless of when his security interest attached, but purchase money security interest in collateral other than inventory prevails over conflicting interest in noninventory collateral if purchase money security interest is perfected by filing financial statement at time debtor receives possession of collateral or within ten days thereafter. AS 45.05.754(d), (e) (1).

2. Secured Transactions $\S$ 146

Within statute providing that purchase money security interest prevails over conflicting interest in noninventory collateral if purchase money security interest is perfected at time debtor receives possession of collateral or within ten days thereafter, "debtor" means person who owes payment or other performance of the obligation secured. AS