

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

Civil Action No. 7210

FILED

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MILLER C. FOSTER, JR., CLERK

BOBBY BRUNSON, ELIZABETH BRUNSON)
and ELLIS BRUNSON, by McQUEEN)
BRUNSON, their father and next)
friend, et al.,)

Plaintiffs,)

-versus-

O R D E R

BOARD OF TRUSTEES OF SCHOOL)
DISTRICT NO. 1 OF CLARENDON)
COUNTY, SOUTH CAROLINA, L. B.)
McCORD, COUNTY SUPERINTENDENT)
OF EDUCATION; C. E. BUTTES,)
DISTRICT SUPERINTENDENT OF)
EDUCATION; J. W. SCONYERS,)
CHAIRMAN, BOARD OF TRUSTEES;)
C. N. PLOWDEN, W. A. BRUNSON,)
HENRY EVERETT, and L. RICHARD-)
SON, MEMBERS OF THE BOARD OF)
TRUSTEES,)

Defendants.)

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School District Number One of Clarendon County, South Carolina, is one of the twenty-one school districts in this State which were required by a consolidated (en banc) order of March 31, 1969, to confer with H.E.W. officials with a view of arriving at agreeable, acceptable and effective school desegregation plans for their districts. It is located in the southern part of Clarendon County. Its population center is the town of Summerton. The School Board operates four elementary schools designated as Summerton Elementary, Scotts Branch Elementary, St. Paul Elementary, Spring Hill

Elementary, each of which serves grades 1-8. It operates two high schools - Summerton High and Scotts Branch High, each serving grades 9-12. The student population for the year 1968-69 was 2261 Negro and 264 white.

Litigation involving this School District under the caption of Briggs v. Elliott was one of the cases before the United States Supreme Court in Brown v. Board of Education, 347 U.S. 483. Subsequent to the Supreme Court decision, decisions in Brown I and Brown II the three-judge District Court in Briggs v. Elliott, 132 F.Supp. 776-777 (1955) directed the School District to comply with the Brown decision by opening all public schools in the District to all children.

Thereafter in the present action this Court by its order of August 19, 1965 (244 F.Supp. 859) directed the School Board to desegregate its school systems and to assign pupils on criteria detailed in that order.

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The Board apparently complied fully with the provisions of that order and under it admitted to the school of the parent's choice every Negro child requesting assignment to a school where the pupils were predominantly of the white race. The court has received no complaint from anyone asserting that the district was not operating a completely free and untrammelled "freedom of choice" plan as required by the court order. Because of later decisions by the United States Supreme Court and the Fourth Circuit Court of Appeals this desegregation plan was updated by the order of this Court of February 28, 1967 under which the schools are now operated, which also have been complied with fully by the defendants.

The plan approved by that order insofar as pupil assignment is concerned is a "freedom of choice" plan. After advertisement as detailed in the plan the Board received in writing from the parent or from the child a school preference. To date every preference has been honored by the Board. The bus system operated by the School Board and all school activities are available to all children regardless of race.

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Upon motion of plaintiffs after the decision of the United States Supreme Court in Green v. County Board of New Kent County, 20 L.Ed.2d 716; Ramey v. Board, 20 L.Ed. 727, and Monroe v. Board, 20 L.Ed. 733, the court has undertaken to review its 1967 order to ascertain whether the plan there approved complies with these recent interpretations by the United States Supreme Court and the Fourth Circuit Court of Appeals. By its March 31, 1969 order in this and companion cases the court sitting en banc directed the various school boards to submit to the Office of Education, H.E.W., their existing method of operation, together with any changes proposed, and to develop in connection with the experts at H.E.W. a plan conformable to the constitutional rights of the litigants in keeping with the most recent decisions, and consonant with the practical and administrative problems faced by the particular district.

Pursuant to this order the Board of Trustees of Clarendon School District No. 1 has conferred with representatives of H.E.W. and discussed the problems of the School District with these representatives. However, as yet the Board and the representatives of H.E.W. have been unable to

agree on a plan for the complete desegregation of the District. In keeping with the court's March 31, 1969 order, H.E.W. has submitted its proposed plan to eliminate the dual school system in the defendant School District, which would result in a very small percentage of white pupils attending each of the district schools.

Since only about 12% of the public school pupils in the District are white it is impossible to have any significant percentage of white students in each of the schools. Under the "freedom of choice" plan now in effect about 12% of the children attending the previously all-white schools in the District (Summerton High and Summerton Elementary) are Negro children. This percentage has increased each year since the original desegregation order, and it is felt by the court that more substantial progress toward the elimination of the dual system can be accomplished with ^{out} complete disruption of the public school system. To date no white children have applied for admission to the all-Negro schools at Scotts Branch, St. Paul and Spring Hill. There is an all-white private school in the town of Summerton which has taken many students away from the public school system. It is highly probable that if the white children were forced into previously all-Negro schools many more would transfer from the public schools to this private school. The factual situation in this district is comparable to that which exists in other small, predominantly rural districts where there is an overwhelmingly large percentage of Negro students attending the public schools. The difficulty of providing a desegregation plan superior to "freedom of choice" for such a district was

recognized by District Judge Robert R. Merhige in an order of December 12, 1968 in Bowman v. Charles City-County, Va., which approved a continuation of a "freedom of choice" plan.

In the circumstances presented here it is the view of the Court that it is not feasible to change the "freedom of choice" plan for the school year 1969-70 and that for that school session the plan now in effect should continue in operation.

To date there has been little faculty desegregation in the District. Clarendon School District No. 1 is one of the weaker districts in the state financially and the compensation paid its teachers is substantially below the state level. A recent statement issued by Secretary of H.E.W. Finch and Attorney General John Mitchell indicates that in such districts there may be available federal funds for teacher subsidies and school construction. This statement gives hope that were additional finances available the quality of the teaching in the District may be improved and a cross-over of teachers may be effected. It is, therefore

ORDERED AND ADJUDGED:

1. That for the school year 1969-70 the Trustees are authorized to continue to operate the defendant district's schools under the provisions of the court's order of February 28, 1967.

2. That the School Board is directed to apply to H.E.W. for such funds as may be needed for the purpose of improving the physical facilities of the school system and for the purpose of providing supplements to teacher salaries, and the Board shall endeavor to obtain as much faculties desegregation in all of its schools as is practicable under the circumstances.

3. That the Board shall report to the court not later than September 15, 1969 the racial composition of the student body of each of its schools, together with the racial composition of the faculty of its schools.

4. That the Board is directed to confer with the representatives of H.E.W. with the view of reaching an acceptable and agreeable plan for an operation of its school district for the school year 1970-71 and later years, which will effectually achieve a unitary non-racial school system. Such a proposed plan shall be submitted to the court not later than November 1, 1969. If a mutually acceptance plan cannot be agreed upon by defendants and H.E.W., then each shall submit its own proposed plan.

5. That the court shall retain active jurisdiction of this case so that either party may petition for a modification of this order, or for further relief.


Charles E. Simons, Jr.
UNITED STATES DISTRICT JUDGE

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Aiken, S. C. '

July 18, 1969.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

Civil Action No. 7210

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MILLER C. FOSTER, JR., CLERK

BOBBY BRUNSON, ELIZABETH BRUNSON)
and ELLIS BRUNSON, by McQUEEN)
BRUNSON, their father and next)
friend, et al.,)

Plaintiffs,)

-versus-

O R D E R

BOARD OF TRUSTEES OF SCHOOL DIS-)
TRICT NO. 1 OF CLARENDON COUNTY,)
SOUTH CAROLINA, L. B. McCORD,)
County Superintendent of Educa-)
tion; C. E. BUTTES, District)
Superintendent of Education; J. W.)
SCONYERS, Chairman, Board of Trus-)
tees; C. N. PLOWDEN, W. A. BRUNSON,)
HENRY EVERETT, and L. RICHARDSON,)
Members of the Board of Trustees,)

Defendants.)

Pursuant to the court's order of March 31, 1969,

HEW after conferring with the defendants filed with the court on June 2, 1969 a proposed desegregation plan for the defendant school district. The plan (pp. 15a, b and c) proposed an interim plan for the school year 1969-70, and a terminal plan (pp. 16 - 25) for the school year 1970-71 and subsequent years.

After conferring with counsel for the parties, and without objection from plaintiffs' counsel, the court by its order filed July 21, 1969 authorized the School District to continue to operate its schools under the provisions of the

court's order of February 28, 1967 (Freedom of Choice); the defendants were also directed to again confer with representatives of HEW with the view of reaching an acceptable and agreeable plan to achieve a unitary non-racial school system for the public schools in the District for the school year 1970-71 and subsequent years, and to submit such plan to the court not later than November 1, 1969.

To date no agreed plan has been submitted, neither have defendants offered any plan of their own. They have advised the court that if the schools cannot be operated on a continued "freedom of choice" basis, the terminal plan of HEW is as acceptable as any other. Plaintiffs' counsel have advised that HEW's terminal plan, which is the only one now before the court, is acceptable to them.

In considering this matter, it is deemed appropriate to review the lengthy history of this litigation, which is the first suit involving the desegregation of public schools commenced in South Carolina.

Background

In 1951 Negro parents of pupils in Clarendon School District No. 22 instituted a class action in the Eastern District of South Carolina under the caption of Briggs v. Elliott¹ for the purpose of obtaining injunctive and declaratory relief because the schools provided for Negroes were inferior and because the South Carolina constitutional and statutory provisions

¹ Briggs v. Elliott, 98 F.Supp. 929 (1951; 342 U.S. 350 (1952); 103 F.Supp. 920 (1952); 347 U.S. 483 (1954); 349 U.S. 294 (1955); 132 F.Supp. 776 (1955).

requiring separate schools for each of the two races were in conflict with the Fourteenth Amendment to the Constitution of the United States. During the course of that litigation certain school districts in Clarendon County were consolidated and District 22 became a part of District 1.

After the United States Supreme Court in this and companion cases, generally referred to as Brown v. Board of Education of Topeka, 347 U.S. 483, 495 (1954) ruled that school children compelled by state law to attend racially separate schools were deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment, the Court in a supplemental opinion several months later remanded the causes to the several District Courts for the purpose of implementing the constitutional principles announced in Brown I. Brown v. Board (Brown II), 349 U.S. 294, 299-301 (1955). In Brown II the Court held that the school authorities had the primary responsibility for solving the problems presented by the Court's ruling and that the district courts which were familiar with local conditions could best appraise the results of the district plans.

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On remand the several District Courts interpreted the Brown decisions as forbidding state enforced or state imposed separation of the races in public schools but they found no requirement that the states mix persons of different races or deprive them of their right of choosing the schools they attended. Briggs v. Elliott, 132 F.Supp. 776 (E.D.S.C. 1955), Brown v. Board, 139 F.Supp. 468 (D.C.Kan. 1955), Davis v. County Board, 142 F.Supp. 616 (E.D.Va. 1956). While these decisions were from three-judge district courts this interpretation of the

Brown decisions was approved by several of the Courts of Appeal. In the Fourth Circuit this support is found in School Board of City of Charlottesville v. Allen, 240 F.2d 59, 62 (1956), School Board of City of Newport v. Atkins, 246 F.2d 325, 327 (1957), and in Bradley v. School Board of City of Richmond, 345 F.2d 310 (1965). In Cooper v. Aaron, 358 U.S. 1, 5 (1958), the Supreme Court spoke of its ruling in Brown I as holding that "enforced racial segregation in the public schools" was a denial of equal protection.

State pupil placement statutes allowing school boards to establish criteria for the assignment of pupils were sustained by the Courts as not being in conflict with the Fourteenth Amendment if they provided a reasonably adequate and prompt remedy for aggrieved parents. Carson v. Board of Education of McDowell County, 227 F.2d 789 (4 Cir. 1955); Carson v. Warlick, 238 F.2d 724 (4 Cir. 1956); Covington v. Edwards, 264 F.2d 780 (4 Cir. 1959); Holt v. Raleigh City Board of Education, 265 F.2d 95 (4 Cir. 1959); Hood v. Board of Trustees of Sumter School Dist. No. 2, 232 F.2d 626, (4 Cir. 1956), and 286 F.2d 236 (4 Cir. 1961); Shuttleworth v. Birmingham, 162 F.Supp. 372 (Ala. 1958), aff. 358 U.S. 101 (1958).

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Though Briggs v. Elliott was then pending (it was later terminated by consent order on ^{JUNE 3, 1966} ~~April 13, 1960~~), the Brunson case was begun as a class action for declaratory and injunctive relief in behalf of the parents of Negro children in Clarendon District No. 1. After the District Court's holding that the action was not a proper class action had been reversed in Brunson v. Board, 311 F.2d 107 (4 Cir. 1962), this

court by its order filed August 19, 1965 directed the Board to admit the nine Negro plaintiffs to the school of their choice, and that beginning in the school year 1966-67 the Board should assign each pupil to the school chosen by his parent. Brunson v. Board, 244 F.Supp. 859. This ruling was in accord with controlling decisions of the Court of Appeals for the Fourth Circuit, Jeffers v. Whitley, 309 F.2d 621 (1962).

The case was again before this court upon motion of the plaintiffs for additional relief and to amend the court's order of August 19, 1965. After a hearing this court on August 25, 1966 held that the plan approved in 1965 did not comply with current controlling decisions. After further hearings the court by its order filed March 14, 1967 modified and approved an amended plan for the operation of the schools. That order found that the Board had complied with the prior orders of the court by admitting to the school of the parents' choice every Negro child whose parents had requested a particular school. However, decisions of the Court of Appeals of the Fourth Circuit filed subsequent to August 1965 required additional relief. The plan approved was a "freedom of choice" plan.

Prior to the Supreme Court's decision in Green v. New Kent County, 391 U.S. 430 filed in May 1968, the district courts approved "freedom of choice" school placement plans provided the choice was in fact free. In Green for the first time the Court announced that, while a "freedom of choice" plan per se was not unconstitutional, it was not acceptable if other methods such as zoning promised a speedier conversion of a dual into a unitary, non-racial school system. The Court held that the constitutionality of the plan for desegregation was to be determined by the "end result".

Faced with the Green decision the court by an en banc order of September 13, 1968, directed the defendant School Boards in this and other pending cases in the State, to file amended plans complying with the reasoning of Green. After plans and responses had been filed, the court in this and companion cases, on March 31, 1969 directed the defendant districts to confer with HEW and if possible file mutually acceptable plans. Whittenburg v. Greenville, et al., 298 F.Supp. 784.

The Facts

During the school year 1969-70 the approximate student enrollment at the several schools operated by the district and the racial composition of the schools as estimated by the Board in September 1969 as shown on the report filed with the court on September 11, 1969, are as follows:

<u>School</u>	<u>Grades</u>	<u>Student Enrollment</u>			<u>School Capacity</u>
		<u>Negro</u>	<u>White</u>	<u>Total</u>	
Spring Hill Elementary	1-8	428	0	428	450
Scotts Branch Elementary	1-8	613	0	613	570
Scotts Branch High	9-12	601	0	601	600
St. Paul Elementary	1-8	600	0	600	600
Summerton Elementary	1-6	12	145	157)	360
				)	
Summerton High	7-12	<u>16</u>	<u>111</u>	<u>127)</u>	
		2408	256	2626	

The total student enrollment as shown by the return filed by the District under date of September 8, 1969 is white 256, Negro 2408. Pupil enrollment in this district is declining.

At the time of the filing of the August 1965 order the enrollment was white 330, Negro 2800. Subsequent to that date a private school was organized in the district. It now has an enrollment of approximately 110 white students.

Since the 1965 order the percentage of Negro students electing to go to the previously all-white schools (Summerton Elementary and Summerton High) has increased each year but the number is still small as compared with the total Negro enrollment in the district. No white child has elected to go to any of the all-Negro schools in the district.

Under HEW's proposed terminal plan Summerton Elementary and Summerton High School would be converted into a junior high school for grades 8 and 9 to house all students in those grades in the District. Its plan would result in the following assignment of pupils on the assumption that the pupils attending the public schools would be the same number and racial composition as those enrolled in 1968-69:

<u>School</u>	<u>Grades</u>	<u>Capacity</u>	<u>Students</u>		
			<u>W</u>	<u>N</u>	<u>T</u>
Summerton High & Elementary	8-9	360	40	350	390 (may require 1 portable)
Scotts Branch High	10-12	600	58	441	499
Scotts Branch Elementary	1-7	570	107	517	624 (may require 1 portable)
Spring Hill	1-7	450	31	363	394
St. Paul's	1-7	<u>600</u>	<u>28</u>	<u>498</u>	<u>526</u>
		2580	264	2169	2433

Under this plan and assuming that all of the white students would remain in the public school, the percentage of whites in each school would vary from a low of about 5% at St. Paul's Elementary to a high of about 17% at Scotts Branch Elementary.

It is probable as the court found in its order of July 18, 1969, that when this HEW plan is placed in effect in September 1970, many of the white children will transfer from the public schools. The end result could then be that the public school system will have less racial integration than under the present freedom of choice plan. When a somewhat similar plan was imposed on a neighboring district, Calhoun No. 2, all of the white children and teachers left the public schools. As a result that district now operates a public school system in which all students and teachers are Negro.

In October 1968 the Board sent forms to the parents of all students asking their preference as to a "freedom of choice" or a "zoning" plan for school selection. Eighty-five percent returned the forms and of these, some eighty-five percent favored the "freedom of choice" plan. In conferences with counsel for the plaintiffs and for the school board the court was informed that many but not all of the Negro parents preferred a "freedom of choice" plan.

At all times since the order of this court of August 19, 1965, the indication is that the defendant Board has been in good faith compliance with the commands of the court. The various supplemental orders have been necessitated by the change in controlling decisions by the United States Supreme Court and by the Court of Appeals of the Fourth Circuit.

The Application of the Law to the Facts

The Board urges that, because the percentage of white public school children in this district is such a small percent of the total student body, no effective racial integration can

be effected in the district. It calls attention to the fact that at St. Paul Elementary the white percentage is five which means that there are only one and one-half white children to twenty-eight and one-half Negro students in a class of thirty. The percentages in the other schools are not substantially higher. Appealing as is this argument it is foreclosed under the decisions Green, supra, and Walker v. County School Board of Brunswick County, Va., 413 F.2d 53 (4 Cir. 1969).

Again the Board points to the probability that most of the 256 white pupils in the district will flee the public school system rather than continue their education at schools where the white pupils represent such a small percentage of the total. The effect, it argues, will be an all-Negro school district which has resulted in Calhoun County School District No. 2 in this State and in districts in other southern states where the whites represent such a small part of the total school population. If the court is to look at the "end result" it should, the Board claims, weigh the evidence that there will be this exodus from the public schools. Controlling decisions render this argument ineffectual. Monroe v. Board of Commissioners, 391 U.S. 450, 459 (1968); Walker v. County School Board, supra.

Nor is the argument that the difference in educational achievement between the two races would necessarily affect adversely the education of the students under the HEW plan now tenable. The courts have ruled that this difference is constitutionally irrelevant in these cases. Stell v. Savannah-Chatham Board of Education, 220 F.Supp. 667, 333 F.2d 55 (5 Cir. 1964), cert. den. 379 U.S. 933; Brown v. Charleston District 20, 226 F.Supp. 819, aff. 328 F.2d 618 (4 Cir. 1964, cert. den. 379 U.S. 825.

While it is conceded that many Negro parents, though allied with the plaintiffs because of the class character of the action, prefer a "freedom of choice" plan rather than the modified zoning plan proposed by HEW, such preference is not permissible in the absence of a showing that all of the parents prefer this plan. On the record, the court cannot conclude that more than eighty-five percent are so minded. That being so a consent order leaving in effect the present plan is not appropriate.

For the foregoing reasons the court is compelled to the conclusion that under the controlling decisions of the United States Supreme Court and the Fourth Circuit Court of Appeals cited hereinabove and listed below² it cannot now allow the District to operate its schools under a "freedom of choice" plan, but must order into effect the HEW terminal plan, which sends all children (white and black) in grades 1-7 to the District's elementary schools on a zoning basis, all 8th and 9th grade pupils to Summerton High and Elementary, and all 10th to 12th grade pupils to Scotts Branch High. It may be that the end result will affect adversely the education of the children of this district, but under the decisions the absolute requirement is to move now to a racially unitary system, apparently without regard to any adverse effect such move may have on the quality of the education to be provided in the public schools.

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² Alexander v. Holmes County Board of Education, ___ U.S. ___ (1969), Carter v. West Feliciana Parish School Board, ___ U.S. ___, 38 L.W. 3265 (1970), Nesbitt v. Statesville City Board of Education, ___ F.2d ___ (4 Cir. 1969), Whittenburg v. School District of Greenville Co., ___ F.2d ___ (4 Cir. 1970), Stanley v. Darlington County School District, ___ F.2d ___ (4 Cir. 1970).

The court takes note of the efforts now being made in the Congress and by the present Administration to permit School Boards wider discretion in assigning pupils. If legislation to that effect is enacted the litigants may petition the court for such relief as that legislation justifies.

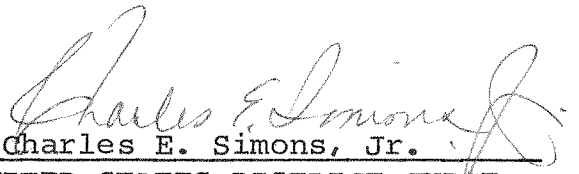
IT IS THEREFORE ORDERED:

(1) That effective for the school year 1970-71 and thereafter unless modified by the court the defendants shall place in effect the HEW terminal plan filed with the court on June 2, 1969, set forth in detail at pages 16 through 25 therein, and made a part hereof by reference.

(2) In advance of the opening of school in September 1970 the Board shall give notice to all parents or those persons standing in loco parentis by letter or otherwise of the school which each child shall attend in September. The Board shall also by letter, newspaper advertisement, or otherwise, give all interested parties notice of the provisions of this Order and of the HEW plan which it implements.

 (3) That the HEW plan made effective as of September 1970 by this order contemplates the use by the Board of all of the present school buildings and grounds. Since 1965 the school population of the district has decreased from approximately 3100 to about 2400. The Board believes that there will be a further decline in pupil enrollment as a result of the implementation of this order in September 1970. For that reason it may develop that all pupils can be accommodated adequately without using all of the buildings. Such a situation presents an administrative problem for the Board. This order is not intended to require the operation of an unneeded school building.

(4) That the court shall retain jurisdiction of this cause so that any party may seek further relief or a modification of this order.


Charles E. Simons, Jr.
UNITED STATES DISTRICT JUDGE

Charleston, S. C.

March 6, 1970.

#12.