

TO THE COMMISSIONER OF EDUCATION
STATE OF NEW YORK

In the Matter
of
Petition of Certain Parents
and Taxpayers of Hillburn, N.Y.

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MEMORANDUM BRIEF FOR PETITIONERS

Donald Crichton
New York, N.Y.

Attorney for Petitioners

Thurgood Marshall
New York, N.Y.

Of Counsel

PART ONE
STATEMENT OF THE CASE

There is no dispute as to the essential facts in this case. Many of the facts appear in the records of the office of the Commissioner of Education.

Prior to 1888 Negro children of Hillburn were taught in the Log Chapel, a school financed by private subscription. In 1889 a two-room public school building was erected for Negro children and became a part of the public school system. In 1912 a new school for white pupils was erected and called Main School. In 1913 a two-room addition was affixed to the Negro school, Brook School, so that six grades might be taught there. The seventh and eighth grades were taught in the Main School. (See letter of March 4, 1931 of Deputy Commissioner of Education, Ernest E. Cole, attached hereto and prayed to be read as a part thereof).

As of 1931 the records in this office show that: "All the colored children attend the Brook School and are not admitted to the Main School." (See letter of March 4, 1931 attached hereto).

In 1931 protest was made to the Commissioner of Education against the system of segregation in the public schools of Hillburn. The Deputy Commissioner of Education by letter of February 13, 1931, attached hereto, ruled that the separate schools of Hillburn were established pursuant to Section 921 of the Education Law of the State of New York and were not illegal.

Up to September 8, 1943 all Negro school children had been excluded from the Main School. A kindergarten teacher spends half of her time in the Main School and half in the Brook School. The pupils of Brook School are required to go to the local Fire Hall for certain physical education classes.

On September 8, 1943, the opening day of schools, Negro parents of Hillburn refused to send their children to the segregated Brook School. On the same day the local school board was notified by the office of the

Commissioner that segregated schools were illegal under the New York Education Law.

A special meeting of the school board was held and the following resolution was passed:

"All pupils living east and north of Route 17 and on Route 17 east of the western property line of Mrs. Zenda Sterling will attend the Main School. This will include children brought from Ramapo and from the New Jersey line.

"All pupils living west and south of Route 17 between the western property line of Mrs. Zenda Sterling and the intersection of Lake Avenue with Route 17 at the northerly end of the village, will attend the Brook School.

"Both the Brook and the Main Schools will remain closed until Monday, September 13, when all pupils will be expected to go to the schools in accordance with the established geographical outline."

All children of school age "living west and south of Route 17 between the western property line of Mrs. Zenda Sterling and the intersection of Lake Avenue with Route 17 at the northerly end of the village" are Negroes.

On the south side of Route 17 all of the property west of the property line of Mrs. Zenda Sterling is occupied by Negroes, many of whom have children of school age. The property of Mrs. Zenda Sterling and adjoining properties east of this property is occupied by white persons, many of whom have children of school age.

On September ¹³~~8~~, 1943, all of the parents presented their children to the Main School. All parents of children "living west and south of Route 17 between the western property line of Mrs. Zenda Sterling" were refused admission to the Main School and were instructed to go to the Brook School. All of these parents were Negroes. The total enrollment of Main School at that time was 88, including 32 Negroes living north of Route 17. The capacity of Main School is 180 to 240. The enrollment of Main School at the present time is reported to be 103 pupils. Fifty-four Negroes have been assigned to Brook School.

Other facts concerning a comparison of the Main and Brook Schools are set out in the original petition.

No question is made in this brief as to the right of a school board to draw boundaries for public schools providing such boundaries are drawn for the best interest of the community, in good faith, and not for an unlawful purpose. There are certain facts in this case which must be considered on the question of whether or not the school board has abused its discretion in the matter. Although the particular act may be done pursuant to a lawful statute, if the act itself is done in an unlawful manner and for an unlawful purpose it is just as invalid as if done without statutory authority.

The United States Supreme Court in a case involving the administration of a San Francisco ordinance concerning the maintenance of laundries which ordinance was fair on its face but was so administered as to discriminate against Chinese laundrymen, held such acts illegal and established the principle that:

"Though the law itself be fair on its face and impartial in appearance yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

Yick Wo v. Hopkins, 118 U. S. 356. (1886)

Mr. Associate Justice Frankfurter of the United States Supreme Court in declaring illegal under the 15th Amendment the action of election officials of the State of Oklahoma in excluding Negroes from registration by an ingenious method stated:

"The Amendment (15th Amendment) nullifies sophisticated as well as simple-minded modes of discrimination."

There is no question in this case that the school board had maintained separate schools on the basis of race from 1888 until September 8, 1943. There is no question that on the same day the present boundary was drawn the school board had been notified that the Negro parents had refused to send their children to the segregated school and intended to appeal to the Commissioner of Education. It is also true that on the same day and prior to the meeting of the school board the Commissioner of Education had notified the school board that segregated schools were illegal under the laws of the State of New York. When these facts are considered along with the fact that

PART TWO

LEGISLATIVE BACKGROUND

Prior to 1938 the law of the State of New York was not clear as to the question of the separation of races in public schools. Section 920 of the New York Education Law (L. 1910, Ch. 140) provides that:

"No person shall be refused admission into or be excluded from any public school in the State of New York on account of race or color."

This section was, however, followed by the following provision,

Section 921 of the New York Education Law (L. 1894, sec. 29) which provided:

"The trustees of any union school district, or of any school district organized under a special act, may, when the inhabitants of any district shall so determine, by resolution, at any annual meeting, or at a special meeting called for that purpose, establish separate schools for the instruction of colored children resident therein, and such school shall be supported in the same manner and receive the same care, and be furnished with the same facilities for instruction, as the white schools therein."

By Chapter 134 of the Laws of 1938, Section 921 was expressly repealed.

Section 40 of the New York Civil Rights Law as originally enacted, provided that:

"All persons within the jurisdiction of this state shall be entitled to the full and equal accommodations, advantages, facilities, and privileges of inns, restaurants,....."

any many other public places and utilities, but not schools. By L. 1918 ch. 265, Section 40 was amended so as to cover a long list of additional public and semi-public places, including among others

"kindergartens, primary and secondary schools, high schools, academies, college and universities, extension courses, and all educational institutions under the supervision of the regents of the state of New York."

PART THREE

ARGUMENT

I

THE BOUNDARY LINE OF THE SEPTEMBER 8th RESOLUTION WAS SO DRAWN AS TO CONTINUE THE DISCRIMINATORY POLICY OF SEGREGATION.

while Route 17 is used as the main boundary the line drawn along Route 17 continued past all of the Negro properties and was drawn in direct right angle as soon as it reached the white properties so as to arrange for white parents on the south side of Route 17 to continue to send their children to the Main School. At the same time the line was so drawn as to require all of the Negro parents on the south side of Route 17 to send their children to the Brook School. The boundary line was so drawn as to make it impossible for any white pupil to be assigned to the Brook School. The Main School with a capacity of from 180 to 240 pupils at the present time has a total enrollment of between 88 and 103 pupils while 56 Negro pupils have been assigned Brook School.

Although this action of the school board is unique in legal circles there are several cases in which boundary lines for schools drawn in such grotesque fashion as to amount to gerrymandering have been declared illegal even though it has been decided that the board could draw boundary lines within its broad discretion.

In the case of Heaton v. Jackson (Ohio) 171 N.E. 364 (1930) it was held that a school board had unreasonably abused its discretion where one territory transferred from one school district to an adjoining one was so gerrymandered that it included major portions of numerous farms so that it appeared that one purpose of so drawing the boundary was to exclude objecting residents.

See also: Re Chicago, Etc. Ry. Co. (Wash.) 235 P. 355 (1925)

In a similar case, Myers v. Board (Miss.) 125 So. 718, 721 (1930), the Supreme Court of Mississippi stated:

"....We wish to say, also, that the method pursued in the present case of gerrymandering the districts so as to run around persons desired to be left out cannot be countenanced under the law. A proceeding to add territory must be operated in a fair, just, and sensible manner so as not to unduly discriminate against people living in the district."

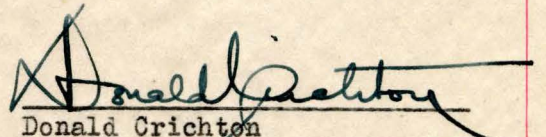
Myers v. Bd. of Supervision of De Soto County (Miss.) 125 So. 718 (1930)
Supreme Court of Mississippi.

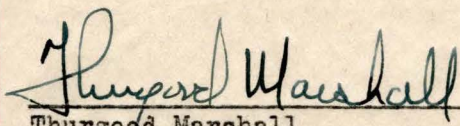
In Fisher v. Birkey (Ill.) 132 N. E. 498; 139 N. E. 126 (1921) where the county superintendent formed a district grotesquely irregular in shape the Court held that this was unreasonable and unjust, amounting to oppression and wanton disregard of rights and interests.

Where the territory transferred from one district to an adjoining school district was so gerrymandered that it included the major portions of numerous farms but in many instances excluded that part of the farm upon which the buildings were situated, and included the major part of the most valuable river bottom land and also valuable railroad property, so that it clearly appeared that one purpose of drawing the boundary was to exclude objecting residents while including valuable portions of their land, it was held that such gerrymandering coupled with other factors established that the county board of education had unreasonably abused its discretion in making the transfer.

The action of the school board in the present case is not only arbitrary and unreasonable under the decisions of the above cases but in addition thereto is in clear violation of the spirit and purpose of the laws of the State of New York and especially Section 920 of the Education Law and Section 40 of the New York Civil Rights Law.

It is therefore respectfully submitted that the present boundary line be declared invalid and all pupils of school age eligible for grades from kindergarten to seventh be admitted to the Main School without regard to race or color or previously set boundary lines.


Donald Crichton
Attorney


Thurgood Marshall
Of Counsel