Text of Bryan's Arlington Desegregation Order

Following is the text of major portions of the opinion of Alexandria Federal Judge Albert V. Bryan in the Arlington County desegregation case. A section of his opinion dealing with the handling of individual students has been summarized. Where this has been done, italic type has been used.

Findings of Fact and Conclusions of Law

Now, for the first time, this case comes before the court upon an assignment of pupils made by State and local authorities and founded on local conditions. Decision is reduced to an administrative review. The case signally demonstrates the soundness and workability of these propositions: (1) that the Federal requirement of avoiding racial exclusiveness in the public schools—loosely termed the requirement of integration and with justice if the guide adopted is the circumstances of each child, individually and relatively; (2) that it may be achieved through the pursuit of any method wherein the regulatory body can, and does, act after a fair hearing and upon evidence; and (3) that when a conclusion is so reached in good faith, without influence of race, though it be erroneous, the assignment is no longer a concern of the United States courts.

In this court's 1956 opinion, referring to the right of the pupils to seek enforcement of the injunction, these same propositions were suggested. But in 1957 no ground whatsoever was tendered for such considerations. The opinion then commented. " . . . we have no administrative decision with which to commence, save in one instance." Now the premises are offered.

Weighing these, the court cannot say that as to 26 of the 30 pupil-plaintiffs their applications for transfer to "white" schools were refused without substantial supporting evidence. As to the remaining four, refusal of their applications for transfer is not justified in the evidence. They are Ronald Deskins, Michael Gerard Jones, Lance Dwight Newman and Gloria Delores Thompson.

These four are all applicants for Stratford Junior High School: they have asked to enter the seventh grade, the first year of junior high. Before this decision can be effectuated by a final decree, ten days or more would routinely elapse, carrying the effective date into October. In the judgment of the court it would be unwise to make the transfers as late as that in the term. The decree, therefore, will be made effective at the commencement of the next semester, January, 1959. This short deferment will not be hurtful. Indeed, if the basic problem can be solved by time, the price is not too dear.

I. The evidence upon which the assignments were made was taken subject to several motions and these should be passed upon before the evidence is considered. Counsel for the Pupil Placement Board, appearing in association with the attorneys for the defendants, has moved the court to dismiss the entire proceeding on the ground that his client is an indispensable party to an action of this kind and has never been brought into the case. He relies on the Pupil Placement Act of Virginia, 1958 Acts of the General Assembly, c. 500, 1950 Code of Virginia, as amended, 22-232.1, supplementing the 1956 Pupil Placement Act. This legislation purportedly vests in the Pupil Placement Board, exclusively, all authority to determine the school to which any child shall be admitted. It is argued that as the present action involves the admission of the plaintiff-pupils into the schools, the Board should be a party. The motion must be denied.

While the Pupil Placement Act has been amended, since the 1957 holding of this court that the procedure there stipulated was not an adequate administrative remedy, it is still not expeditious. The student would be too far delayed into the session before his application would be finally determined. Then, at the end, the school closing and fund-cut-off statutes automatically shut the school, and withhold any money for its operation, should the student be assigned to a school then teaching children of the other race. Acts of the General Assembly of Virginia, 1956, Ex. Session c. 68, 1950 Va. Code, as amended, 22-188.5; Acts, 1958, c. 642, Item 129 (Appropriations for schools).

It may be, however, that the first stage prescribed in the Act is adoptable—some State or local authority must process the applications and make the assignments — but the point is moot. The applications in suit were considered by the Placement Board and the Arlington County School Board together. The results, the refusals to grant the transfers, were in effect assignments. There is no reason to decide now whether this was Placement Board or School Board action.

Nevertheless, in no event need the Placement Board be impleaded here. The impact of any decree would be upon the persons immediately in charge of the schools. They it is who actually admit or reject the students. Ordinarily they would be the employes of the School Board, such as the principals and the teachers. From the fact that the School Board and its employes may be controlled in their acceptance of students by the Pupil Placement Board, it does not follow that the court cannot judge the validity of such regulations without having the Placement Board before it.

The plaintiffs move to strike from the evidence the findings of the Director of Psychological Services of the Virginia State Department of Mental Hygiene in regard to the psychological problems of certain of the applicants. It is conceded that the School Board or the Placement Board had the right to consider this report. The objection is that in trial it is hearsay, because the director was not called as a witness. So far, the motion is good. However, it does not preclude the court from considering the report in measuring the evidence that was before the Boards.

II. By the assignments of the Boards, 30 Arlington County Negro pupils have been refused transfer from the previously all-Negro schools to several previously all-white schools. The assignments were the result of a screening of the pupils against criteria of five categories designated as: Attendance Area, Over-crowding at Washington and Lee High School, Academic Accomplishment, Psychological Problems, and Adaptability. Five of the 30 are the children who were ordered admitted by this court in September 1957, but the order was stayed pending appeals. Contrary to their argument, however, these pupils have not by virtue of that order a vested position for this session. Admissions must be judged on current conditions, the rule to be applied to all students.

In this discussion the children will be designated according to the letters and numbers used in the trial.

A: Attendance Area

Eleven transfers were declined on the grounds the pupils live within the Hoffman-Boston School district. Four of these applied to Wakefield High School but no other high school, white or colored, is nearer them than Hoffman-Boston.

Seven applied to three white junior high schools, all of which are slightly nearer their homes.

However, the school authorities had other factors to consider, such as the adoption of presently established school bus routes, walking distances and the crossing of highways, as well as that Hoffman-Boston was but a 20-minutes bus ride for these pupils.

B: Academic Accomplishment

A total of 22 pupils were refused transfer because of their academic standing. Included in this number are 10 who were also rejected because they live within the Hoffman-Boston School District.

The California Achievement Test was the principal factor controlling these rejections. School Board authorities concede the IQ of the pupils is not low. They acknowledge the individual averages of the 22 pupils range from low to high.

But they emphasize that these standings are related only to then grade and school of the children. The basis for refusal of the transfers was not those standings.

The basis was that the scholastic standing in the classes to which they asked entry was above the individual standings of the applicants to the extent that the transfers could not be justified under sound educational principles.

Median achievement level of the white schools which the Negroes sought to enter is higher than the national norm, and two-thirds of the students in these white schools are above the national norm.

Median of the Negro schools is more than a year below the norm, and four-fifths of the Negro students are below it.

So a transfer might result in placing the pupil in an achievement group one or more years above the achievement category of his present group.

C: Psychological Problems

Seven pupils were rejected for psychological problems, including six also refused for academic deficiency. In rejecting the seven, the School Board relied chiefly upon the conclusions of the state director of psychological services.

In substance, the opinion of the Director was that "it would be unwise and possibly harmful to this child to subject him to the pressures which might result from attending a school" having children of a different or another race . . .

Thus, the Director's determinations to involve race.

D: Overcrowding at Washington-Lee

In years past, a Negro neighborhood in North Arlington was classified by the School Board as the North Hoffman-Boston School District. Negro students were transported across the county to Hoffman-Boston School.

The School Board has abolished that district. Five Negroes there applied to the Washington-Lee High School

Before the desegregation case began, Washington-Lee had become congested. To relieve overcrowding there, the School Board took a large northwest part of the county out of the W-L district and sent the 10th graders living there to Wakefield.

The School Board rejected the transfers of the five Negro pupils to Washington-Lee because of overcrowding.

In maintaining the assignment of these students to Hoffman-Boston, rather than to Washington-Lee, the defendants referred to corresponding treatment of Caucasian pupils.

They point to the students living in the territory severed from Washington-Lee. These white pupils in the tenth grade (the first year of the senior high school) must go to Wakefield High School.

This is a distance as great, if not greater, than the trip to Hoffman-Boston from its former northern district.

They note still another comparable transportation of white students. Those living at Fort Myer, in the southeast part of the county, are not permitted to go to the nearer Washington-Lee High School, but are required to attend Wakefield, on the other side of the county.

The Hoffman-Boston School is superior to any of the other schools in the county in its 18.5 pupil-teacher ratio.

E: Adaptability

Five Negroes were rejected solely on the basis that they failed the test of adaptability. School Superintendent Ray E. Reid testified that adaptability includes the ability to accept or conform to new and different education environment.

The superintendent concedes that the pupils would be entitled to enter white schools on the grounds of scholastic ability and place of residence. But, he contends, the students woudl lose their present position of superiority and leadership if admitted to white schools.

The Superintendent feels that this would be discouraging and possibly emotionally disturbing to them. Race or color is not the basis for his opinion, though, he owns, the necessity for his decision is occasioned by the removal of racial bars.

Conclusion

1. The very formulation and use of the criteria is pleaded by the plaintiffs as racial discrimination. With this the court disagrees. True, previously no such tests were known; they came into being in the latter part of August 1958 in connection with the instant school assignments. But this does not prove discrimination.

These tests were not used previously because there was no necessity. The removal of the rule and custom of segregation was an abrupt change. It was a social epoch, beginning a new era. Accommodation to its demands meant new methods as well as facilities. The assignment of pupils took on an added obligation. At some time and place, assignment regulations had to be adopted. Therefore, the instant criteria are not discriminatory as born of a social change. Otherwise, after the erasure of race as a factor in pupil placement, no assignment plan could ever be validly adopted.

2. This recital of the evidence is not written with the implication that the evidence as to the tests were not questioned. In refutation the plaintiffs offered evidence of considerable weight and relevance. But the court does not in a case of this kind resolve such differences. It examines the conflicting evidence only to see if the rebuttal evidence destroys any weight that might be given to the defendants' proof. Its inquiry is to ascertain if the defendants' evidence, independently of influence of race or color, was sufficient to sustain the action of the Placement Board and the School Board.

3. The reasons given for disqualifying the seven students upon the test of the Psychological Problems obviously give consideration to race and color. On the other hand, the rejection was not due solely to these features. The court, however, does not rule on the weight to be accorded this test because the evidence before it upon the point is too scant. The psychologist was not called as a witness and the court does not have the benefit of his exposition. Therefore, this test must be disregarded for this case.

4. Plaintiffs urge that invalidity of the assignments is conclusively established by the result, that is, that all Negro pupils remain in the Hoffman-Boston School. Though plausible, the argument is not sound. Actually, the principal reason for the result is the geographical location of the residences of the plaintiffs, indeed of the entire Negro population in Arlington County. It is confined to two sections, the Hoffman-Boston area and the previous, small northern division of the Hoffman-Boston, several miles apart. Hoffman-Boston is by far the larger Negro area. This situation seemingly would be frequently found in areas, like Arlington County, urban in character.

It occurs, too, from the relatively small Negro population in the County. The condition now does not differ greatly from that noted in this court's opinion of September 1957. Then there were 1432 Negroes in all of the County's schools. This compared to some 21,000 white students. The latter are scattered throughout the County. The concentration of Negro population is confirmed in this case by the fact that only one white-school parent was available to testify as a resident of Hoffman-Boston District.

Nor is discrimination proved by the stipulation that 100 Negro pupils are transported to Hoffman-Boston from the now dissolved northern division of Hoffman-Boston. As many as 250 white pupils are carried from the severed portion of Washington-Lee District to Wakefield. Only 18 of these Negroes are complainants here. They are D. 1, 12, 19, 21, B. C. E. 5. 6. 7. 8. 10. 11. 13. 16. 20 and 22. Without ignoring the record and without presuming bad faith in the Boards, it cannot be said that they were sent to Hoffman-Boston simply to segregate the Negro children. For example, D. 1, 12, 19 and 21 were sent specifically because of the overcrowding at Washington and Lee. Either these or some other pupils, white or colored, had to be rejected at Washington-Lee. It was not illogical to turn away those who had more recently become eligible, in favor of those who were already in, or had studied for entrance into Washington and Lee. Again, proof that the assignments to the Hoffman-Boston school were not arbitrary is seen in the specific finding in respect to B. C. D. E. 5. 6, 8. 10. 11. 12. 19. 20. 21 and 22—want of academic accomplishment.

5. The court is of the opinion that Attendance Area, Overcrowding at Washington and Lee, and Academic Accomplishment clearly are valid criteria, free of taint of race or color. It concludes also that these criteria have been applied without any such bias. It cannot say that the refusal of transfers on these grounds is not supported by adequate evidence.

The court may have made a different decision on this evidence; is may not agree with the conclusions of the Boards. But that is of no consequence once it is found that the administrative action is not arbitrary, capricious or illegal. Thus the denial of 25 of the applications must now be sustained.

6. The remaining five applications—A. 7, 13, 16 and 20—failed on the test of Adaptability. This is the most difficult criterion to evaluate. It is certainly not frivolous, especially when it is the opinion of an educator of 32 years experience. In certain circumstances, undoubtedly, the line of demarcation between it and racial discrimination can be so clearly drawn, that it can be the foundation for withholding a transfer. Pupil A exemplifies this hypothesis.

Ten or eleven years old, with an academic achievement "on a grade level," this boy wishes to transfer from Hoffman-Boston Elementary School to Patrick Henry, also elementary. The latter is nearer his residence than is Hoffman-Boston. But he leaves a school with lowest of all pupil-teacher ratio. His only advantage is one of distance; in good weather and subject to pedestrian traffic dangers, he could walk to Patrick Henry, about a half mile away, while the school bus would take him to Hoffman-Boston, 1.2 miles off, in perhaps less than his walking time.

The median of academic achievement for his grade at Hoffman-Boston is 3.9. As he is "on grade level" this would indicate his standing. In Patrick Henry the same median is 6.0. The average mental maturity for the fifth grade in Hoffman-Boston is 87, while in Patrick Henry it is 113, a difference of 26. Laying aside the physical circumstances, the court cannot say that Adaptability, in view of the intelligence factors, is a capricious standard when applied to A. His transition could well be discouraged, if not disparaging, one from which a student may be lawfully saved by the judgment of the more experienced.

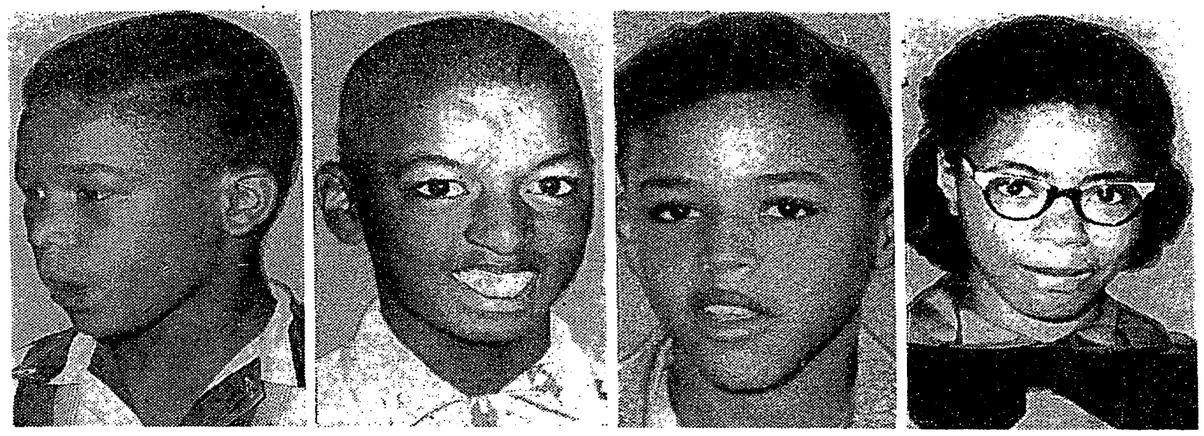
The circumstances of 7, 13, 16 and 20 are different from A's. They live in the former northern district of Hoffman-Boston; their homes are near Stratford Junior High School and within its region. Each of them stands above the median achievement score of Stratford. They have a common age of 12 years and they all would enter the first year of junior high school. They are a group formerly attending Langston Elementary School together, presumably friends having common interests.

In these circumstances, having in mind also their relative academic standing, Adaptability could hardly bar them. The court finds no ground in the record to uphold the Board's refusal of the transfers of 7, 13, 16 and 20—Ronald Deskins, Michael Gerard Jones, Lance Dwight Newman and Gloria Delores Thompson.

Colophon

The length and detail of this statement were necessary to assure care and solicitude for the actions of state and local administrative agencies. It is an effort, too, to establish for cases of this character some design for decision.

Signed: ALBERT V. BRYAN,
United States District Judge.



RONALD DESKINS MICHAEL JONES LANCE NEWMAN GLORIA THOMPSON
. . . Federal Judge Albert V. Bryan orders their enrollment in white Arlington school, effective next January.

4 Arlington Negroes Have Much in Common

The four Negro children admitted to Arlington's Stratford Junior High School yesterday by Federal Judge Albert V. Bryan have a good many things in common.

All are 11 years old, in the seventh grade and graduates of Langston Elementary School. All live in north Arlington and, as Bryan pointed out, all are above the "median achievement score of Stratford."

There are other similarities, including their common love of books and their ambitions. Most of them are active in extracurricular activities and expect to put their new Stratford education to good advantage.

Ronald Deskins, born in Washington, wants to go to medical school. He is an amateur actor, has been in several school dramatic productions and is in the youth choir at Calloway Methodist Church.

Lance D. Newman, son of a chauffeur at the Naval Gun Factory, spends his spare time in reading books about engineers and in playing baseball. His best subject: arithmetic.

Michael G. Jones, one of the plaintiffs in the original 1956 Arlington desegregation suit, also spends his spare time at baseball and, like the others, likes reading. He is the son of a Navy machinist.

Only girl in the group is Gloria D. Thompson, daughter of a government clerk. She too likes to read and hopes to become a teacher on graduation.