Duquesne Law Review

Volume 3 | Number 1 Article 16

1964

Constitutional Law

Irwin B. Wedner

of prenatal development. "The real catalyst of the problem is the current state of medical knowledge on the point of the separate existence of a foetus."[22] In deciding the present case the court forgot the "catalyst". This omission caused a distorted view of the entire area of prenatal injury.

JOSEPH A. NICKLEACH

CONSTITUTIONAL LAW—Supreme Court's Equity Decree Opens Integrated Public Schools for the First Time in Prince Edward County, Virginia.

Griffin v. County School Bd. of Prince Edward County, 84 Sup. Ct. 1226 (1964).

Does the decision in *Griffin v. County School Bd. of Prince Edward County* indicate that the Supreme Court of the United States has lost its patience? What happened in Prince Edward County, Virginia is a good example of what may result when wide latitude is given to local authorities in solving a particular problem in the area of education.

Petitioners began this action in 1951, alleging that Virginia laws requiring all white public schools denied them equal protection of the laws in violation of the fourteenth amendment. The County School Board of Prince Edward County, thereafter, attempted to circumvent any relief that might be achieved by several legal maneuvers. Prince Edward County, acting pursuant to the recently amended Virginia Constitution,[1] appropriated funds to assist students to attend nonsectarian private schools, in addition to local or state operated schools. The Supervisors of Prince Edward County refused to levy school taxes for the 1959-1960 school year which resulted in all public schools being closed since 1959. In 1960, Prince Edward's Board of Supervisors passed an ordinance providing tuition grants of $100, enabling children to attend nonsectarian private schools. Also, in that year, the Board passed an ordinance allowing property tax credits up to 25% for contributions to any non-profit nonsectarian private school in the county. Finding that the two latter measures had as their prime object the preservation of the separation of the

22. *Id.* at 272, 164 A.2d at 95.

1. In 1956 Section 141 of the Virginia Constitution was amended to authorize the General Assembly and local governing bodies to appropriate funds to assist students to go to public or to non-sectarian private schools in addition to those owned by the State or by the locality.

races in the schools of Prince Edward County, the district court in *Allen v. County School Bd. of Prince Edward County,*[2] enjoined Prince Edward County from paying tuition grants or giving tax credits so long as the public schools remained closed. This same district court, subsequently, in *Allen v. County School Board of Prince Edward County,*[3] held that the public schools of Prince Edward County could not be closed to avoid the effect of the law of the land as interpreted by the Supreme Court while the Commonwealth of Virginia permitted other public schools to remain open at the taxpayers' expense. The Court of Appeals for the Fourth Circuit reversed this action of the district court, holding that the district court should have awaited state court determination of the validity of the tuition grants and the tax credits as well as the validity of the closing of the public schools.[4] The United States Supreme Court, granting certiorari,[5] decided thirteen years after this litigation began ". . . that . . . closing the Prince Edward County Schools while public schools in all other counties of Virginia were being maintained, denied the petitioners and the class of Negroes they represent, the equal protection of the laws guaranteed by the Fourteenth Amendment."[6]

Initially, the problem posed to the Court was whether equal protection of the laws meant that all counties had to have the same type of educational system in order that Negro children be afforded equal protection under the law. Was there a denial of equal protection of the laws to petitioners because all of the public schools in every county in Virginia remained open and integrated while only Prince Edward County's public schools were closed? In reversing the Court of Appeals, the Supreme Court answered the question in depth, finding that there is no body of law compelling counties as counties to be treated equally. The Court, citing *Salsburg v. Maryland,*[7] emphasized that "the Equal Protection Clause relates to equal protection of the laws 'between persons as such rather than between areas'."[8] Because of local problems which may be financial, transportation, population or geographical, local authorities cannot al-

2. Allen v. County School Bd. of Prince Edward County, 198 F. Supp. 497 (E.D. Va. 1961).

3. Allen v. County School Bd. of Prince Edward County, 207 F. Supp. 349, 355 (E.D. Va. 1962).

4. Griffin v. Board of Supervisors of Prince Edward County, 322 F.2d 332 (4th Cir. 1963).

5. Griffin v. County School Bd. of Prince Edward County, 375 U.S. 391, 392 (1964).

6. Griffin v. County School Bd. of Prince Edward County, 84 Sup. Ct. 1226, 1230 (1964).

7. Salsburg v. Maryland, 346 U.S. 545 (1954).

8. *Id.* at 551.

ways conduct their affairs in accord with the majority of all the other counties in a given area. But here there was no question that a plain violation of the fourteenth amendment's equal protection of the laws clause "as it relates between persons" was present, manifesting itself in the form of Prince Edward County denying colored children the chance to go to school on an equal footing with white children. Though the county's tuition grants extended to both white and colored children, the end result was de facto segregation. This was so, as enrollment in the private schools was again on the basis of race, since the parents of the white children sent them to all white private schools. The Court, in piercing this purported veil of equality, did exactly what it saw fit to do in *Brown v. Board of Education,*[9] when it held separate facilities though of equal quality were unequal before the law. The Court here, in stating, "whatever nonracial grounds might support a State's allowing a county to abandon public schools, the object must be a constitutional one, and grounds of race and opposition to desegregation do not qualify as constitutional"[10], again emphasized that separate but equal is inherently unequal and separate but equal private facilities with public overtones are just as inherently unequal. The public overtones, of course, took the shape of racially segregated schools which, although designated as private, were actual beneficiaries of county and state support.

With the Court reinforcing the right of Negro children to attend non-segregated schools as laid down in the case of *Brown v. Board of Education,* the problem then centered around the all-important question of what remedies would be invoked to enforce this protected right. When the case at bar was previously heard before the Supreme Court in 1955 with several cases of similar import on the nature of relief to be afforded the wronged parties,[11] the Court, in remanding those cases to the respective district courts, called for ". . . such orders . . . as are necessary and proper to admit (complainants) to public schools on a racially nondiscriminatory basis with all deliberate speed. . . ."[12] There the Court was making use of one of the most effective weapons in the hands of the judiciary—the equity decree. The Court desired that the respective defendants make conscious efforts to remedy their peculiar situations, the Court taking into consideration the fact that local pressures would impede, somewhat, the progress intended by the *Brown* edict. But the equity decree did not gain the proper response from Prince Edward County as what the county's school board did with "all deliberate

9. Brown v. Board of Education, 347 U.S. 483 (1954).

10. *Supra* note 6 at 1233.

11. Brown v. Board of Education, 349 U.S. 294 (1955).

12. *Id.* at 301.

speed" was to affirmatively *prevent* the admittance of petitioners to public schools in that county on a racially nondiscriminatory basis.

The district court, recognizing the unwarranted delay, saw fit to enjoin the county officials from paying county tuition grants or giving tax exemptions and from processing applications for state tuition grants so long as the county's public schools remained closed.[13] The Supreme Court was in agreement with this remedy and cast wide latitude upon the district court in remanding the case to that court when it proclaimed that:

> . . . the District Court, may if necessary to prevent further racial discrimination, require the Supervisors to exercise the power that is theirs to levy taxes to raise funds adequate to reopen, operate, and maintain without racial discrimination a public school system in Prince Edward County like that operated in other counties in Virginia.[14]

The Supreme Court has undoubtedly lost its patience since its decision in the *Brown*[15] case and now declares, "the time for mere 'deliberate speed' has run out, ..."[16], and rightly so.

This decree is not really so drastic if it is squared against the wrong which has been corrected.[17] The delaying tactics of the Prince Edward County School Board were able to operate in the "necessary and proper boundaries" of the 1955 *Brown* decision because of the lack of a definite, detailed decree with specific directions. But the Court in that decision could not be too definitive because of the nature of the local problems peculiar to each political body that was named as a defendant in that case. However, after ten years of patient observation, with nothing but complete opposition to its decree in Prince Edward County, the Supreme Court could only do in all good conscience, what was required of it as the final arbiter of the law. Because it is our heritage to be a government of laws and not of men, the Supreme Court could not allow the Equal Protection Clause of the fourteenth amendment to be denied legal effect. While exhibiting the utmost restraint ten years after the *Brown* decision, the Supreme Court, in invoking the Equal Protection Clause to meet the test for which it was established, has revitalized this principle, making it a reality in Prince Edward County.

IRWIN B. WEDNER

---

13. *Supra* note 2 at 504.
14. *Supra* note 6 at 1234.
15. *Supra* at note 11.
16. *Supra* note 6 at 1235.
17. On September 8, 1964, public education returned to Prince Edward County, ending a five year attempt to preserve classroom segregation by locking the school doors.