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Recent Decisions

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NEIGHBORHOOD SCHOOL SYSTEM DECLARED UNCONSTITUTIONAL

Barksdale v. Springfield School Comm.[1]

Recently, in the case of *Barksdale v. Springfield School Comm.*,[2] a United States district court declared that a neighborhood school system must be abandoned or modified if it results in de facto segregation.[3] Assuming the circuit court of appeals will affirm, the decision could well bring the question of the constitutionality of the neighborhood system before the Supreme Court, which has twice refused certiorari to cases from different circuits which were diametrically opposed to *Barksdale*.[4] This, alone, has serious implications, but the true impact of the decision is realized only after an examination of *Barksdale* in the light of previous cases in point.

In 1963, *Bell v. School City of Gary, Ind.*,[5] a seventh circuit decision, held that a pupil assignment plan based on neighborhood schools was not unconstitutional even if it resulted in segregation in fact.[6] The conclusion was reached after an examination of the facts indicated that the districts had been drawn and re-drawn over a period of years with no emphasis on racial discrimination and that the school board had no present intent to segregate the races. Further, the facts indicated that there had been no variance in policy in the face of a rapidly growing Negro population and that all district lines were drawn with the safety of the students and the ease of transportation in mind.

The year 1964 brought another attempt to invalidate the neighborhood system, this time in Kansas. In *Downs v. Board of Educ. of Kansas City*,[7] the tenth circuit upheld its constitutionality. Here, the facts were very similar to those in *Bell*. The court found no intent on the part of the school board to segregate the races and found that the district lines had evolved over a period of time without consideration of race and with safety

1. 237 F. Supp. 543 (Mass. 1965).

2. *Ibid.*

3. *Id.* at 546.

4. Downs v. Board of Educ. of Kansas City, 336 F.2d 988 (10th Cir. 1964), *cert. denied*, 380 U.S. ___ (1965); Bell v. School City of Gary, Ind., 324 F.2d 209 (7th Cir. 1963), *cert. denied*, 377 U.S. 924 (1964).

5. 324 F.2d 209 (7th Cir. 1963), *cert. denied*, 377 U.S. 924 (1964).

6. *Id.* at 213.

7. 336 F.2d 988 (10th Cir. 1964), *cert. denied*, 380 U.S. ___ (1965).

and convenience of transportation as the principal factors. The holding in the case was that the school board was not required to destroy and abandon a school system developed on a neighborhood plan, even though it resulted in racial imbalance in schools.[8]

The Supreme Court declined to review either *Downs* or *Bell*,[9] and there the matter rested until *Barksdale* was decided. The decision is astonishing. The court specifically found that *all* of the elements used in *Downs* and *Bell* to *uphold* the constitutionality of the neighborhood system were present.[10] Nevertheless, the court held that although the neighborhood school system is not unconstitutional per se, it must be abandoned or modified when it results in segregation in fact.[11] On its face, the decision renders school districts in every city vulnerable to attack if de facto segregation exists, regardless of the good faith and lack of intent to segregate on the part of those drawing the district lines. *Barksdale* places integration ahead of student safety. It imposes upon every municipality a massive financial and administrative burden of transporting ever-growing numbers of students great distances, often under adverse and unsafe conditions.

Although the surface effects are not insignificant, they are overshadowed by the import of the legal implications of the decision. Prior to *Barksdale*, it was uniformly held that there was no affirmative constitutional duty to integrate the races.[12] To be sure, there existed a legally imposed duty not to segregate wilfully, but this was severely circumscribed by the cases which held that Negro pupils did not have a constitutional right to have white students attending the same school.[13] *Barksdale* has voiced a strong dissent to these propositions, and the ramifications are startling. School boards might now be required to act to integrate whereas before they were only required not to segregate.

8. *Id.* at 998.

9. See note 4 *supra.*

10. *Barksdale,* 237 F. Supp. 543, 544 (1965).

11. *Id.* at 546.

12. [T]here is no affirmative U. S. Constitutional duty to change innocently arrived at school districts by the mere fact that shifts in population either increase or decrease the percentage of either Negro or white pupils.
Bell, 324 F.2d 209, 213 (7th Cir. 1963), *cert. denied,* 377 U.S. 924 (1964); *accord, Downs,* 336 F.2d 988, 998 (10th Cir. 1964), *cert. denied,* 380 U.S. ___ (1965).

13. Negro children have no constitutional right to have white children attend school with them.
Downs, 336 F.2d 988, 998 (10th Cir. 1964), *cert. denied,* 380 U.S. ___ (1965).

The only rational basis for such a position is the supposition that a Negro pupil has a right to have white students in the same classroom with him, a conclusion which is opposite to that reached by previous cases.[14]

Barksdale represents a point of view that is becoming more prevalent each day: Where the cause of integration is concerned, the end justifies the means and "no holds are barred" in attaining that end. The lines of battle have been fairly drawn. On the one hand stands an evolved system of neighborhood school districts drawn with the safety of children in mind, and on the other, integration at any price. Only time can determine which will prevail, but it appears that rational thought rests with safety and the neighborhood school system.

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14. *Ibid.*