

The Solicitor General

December 19, 1957

JD:EKL:dll

John Doar
Assistant Attorney General
Civil Rights Division

Green v. County School Board of
New Kent County, Virginia,
O.T. 1957, No. 695

On December 11, 1957, the Supreme Court granted certiorari in this case. Briefs supporting the position of the petitioners would be due by January 24, 1958. I recommend that the United States seek leave to participate as amicus curiae.

The issue is whether the district court and court of appeals erred in approving the school board's freedom-of-choice plan. The petitioners contend that free choice is not a permissible plan in New Kent County because the plan is not likely to disestablish the dual system, and there are other methods available which are not difficult to administer and which would immediately produce substantial desegregation.

I believe that this is a case of substantial public importance in which we have a responsibility to make known to the Supreme Court the views of the United States. The Supreme Court has seldom granted review of school desegregation cases. When it has, the decision has usually represented an important addition to the law. This case will be no exception. Undoubtedly, the court will review the mandate issued in Brown v. Board of Education in light of the subsequent history. Whatever the decision of the Court may be, it will have an impact on our litigation under Titles IV, VI, and IX of the

cc: Records
Chrono
Doar
Pollak
Owen

✓ Norman - Landsberg - Schwelb - Greenberg

Civil Rights Act of 1964. Finally, the Court will almost certainly have to consider the HEW Guidelines and the Jefferson County Decree in reaching its decision.

If the United States participates, I would envision taking the position that the courts below erred in failing to consider the school board's obligation to desegregate from the standpoint of the school system as a whole. Instead, the opinions below almost solely speak in terms of the availability to Negro students of a desegregated education instead of speaking in terms of the obligation of the school board to conduct all of its activities so as to bring about a unitary, non-racial school system.

I attach a draft memorandum on this case which was prepared by one of the Division attorneys. I am not prepared to adopt at this time all of the positions taken by the draft. I include it in the event it may prove helpful to your staff in obtaining an understanding of the case.