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Recent Developments: Board of Oklahoma City v. Dowell: Federal Court Supervision of Previously Segregated Schools May Be Terminated if Substantial Compliance with Desegregation Objectives Has Been Attained

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nographer, but not by the defendant. The child was openly frightened of the defendant, therefore, the judge concluded that the child was not emotionally prepared to testify in open court before the defendant. Accordingly, the judge decided that a two-way television should be used in such a way that both the child and the defendant could see one another without actual confrontation. Gilbert's motion for a new trial was denied and he received a fifteen year prison sentence. *Craig*, 588 A.2d at 336. Gilbert appealed, but before the court of special appeals had an opportunity to decide the case, the court of appeals issued a writ of certiorari. *Id.* at 337.

The defendant claimed that the trial judge erred in permitting the section 9-102 procedure without first examining the child victim testifying in the presence of the defendant. *Id.* at 338. Nevertheless, the court of appeals upheld the trial court judge's findings, basing its decision on two rationales: (1) the trial court judge did not have the guidance of *Craig I* nor *Maryland v. Craig*, which favors the initial interview in front of the defendant; and (2) the court ruled that it was within the trial court judge's discretion whether or not to allow the defendant to be present. *Id.* at 338-39.

In summary, Gilbert's case was decided differently than *Craig's* due to the trial court judge's personal examination of the child prior to her testifying. The judge made a case-specific finding, and concluded that the child was unable to testify in open court without subjecting herself to serious emotional trauma. *Id.* at 339.

Craig and *Gilbert* established a set of guidelines, not a rigid formula, for trial court judges to follow in child abuse cases. The ruling in *Craig* leaves a tremendous amount

of discretion in the hands of the trial court judge. *Gilbert* indicates that so long as the trial judge makes an individualized evaluation of the child's emotional health, his or her decision to implement section 9-102 will be upheld. These cases demonstrate an effort to provide further guidelines in child abuse cases, and in so doing, the court of appeals has pushed the right of confrontation to its constitutional limits in an all out effort to protect abused children.

- Andrew S. Kasmer

Board of Oklahoma City v. Dowell: FEDERAL COURT SUPERVISION OF PREVIOUSLY SEGREGATED SCHOOLS MAY BE TERMINATED IF SUBSTANTIAL COMPLIANCE WITH DESEGREGATION OBJECTIVES HAS BEEN ATTAINED

In *Board of Oklahoma City v. Dowell*, 111 S. Ct. 630 (1991), the United States Supreme Court promulgated a standard for dissolving desegregation decrees. Specifically, the Court ruled that a federal district court may lift a desegregation decree if a school district can show that it has complied with the decree in good faith and that vestiges of past discrimination have been eliminated to the extent practicable. If a decree is to be terminated or dissolved, the parties are entitled to a detailed statement to that effect from the court.

In 1972, the Board of Education of Oklahoma City was ordered to adopt a court-supervised desegregation plan involving busing. This plan was designed to integrate the schools in its district and end de jure segregation. After complying with the desegregation decree for five years, the Board moved in 1977 to end court supervision of the plan. After finding that the Board had

substantially complied with the constitutional requirements and that lack of court supervision would not be detrimental to the unitary system the Board had achieved, the district court terminated its jurisdiction in the case.

In 1984, the Board adopted the Student Reassignment Plan (SRP). This plan was designed to alleviate greater burdens placed on black children caused by demographic changes in the area that resulted in longer busing routes. In 1985, the respondents, black students and their parents, asked the district court to reopen the case, contending that the school district had not achieved "unitary" status and that SRP was a return to segregation. *Id.* at 634. The district court refused to reopen the case, holding that its 1977 finding that the school system was "unitary" was res judicata and that the school system had remained unitary. *Id.* The Court of Appeals for the Tenth Circuit reversed, and held that the 1977 order did not terminate the original injunction. *Id.*

The court of appeals remanded the case for the district court to determine if the injunction should be lifted or modified. On remand, the district court vacated the injunction because it found that the previously ordered desegregation plan was unworkable due to demographic changes, the school district had maintained its unitary status, and that the SRP was not designed with discriminatory intent. *Id.* at 634-35.

The Court of Appeals again reversed. *Id.* at 635. Relying on *United States v. Swift*, 286 U.S. 106 (1932), the court ruled that the injunction should remain in effect until the school district could show that its existence was causing a "grievous wrong evoked by new and unforeseen conditions." *Dowell*, 111 S. Ct. at 635 (quoting *Swift*, 286

U.S. at 119 (1932)). The Supreme Court granted the Board's petition for certiorari and reversed.

In the majority opinion written by Chief Justice Rehnquist, the Court first considered whether the respondents could contest the 1977 order dissolving the desegregation decree. The Board argued that the 1977 finding of unitariness barred the respondents from challenging the order. *Id.* at 635. Because the lower courts inconsistently used the term "unitary," confusion arose in interpreting the 1977 order. As a result, the Court held that when a desegregation decree is to be terminated, all parties are "entitled to a rather precise statement" to that effect from the court. *Id.* at 636.

In its analysis, the Court focused on the standard for dissolving desegregation decrees and placed great weight on the nature of injunctions issued in desegregation cases. In distinguishing the nature of the *Swift* injunction on which the court of appeals had relied, the Court recognized that "federal supervision of local school systems was intended as a temporary measure to remedy past discrimination." *Id.* at 637. Accordingly, the Court found that dissolution standards, which applied to other injunctions that were designed to operate in perpetuity, were not the proper standards to apply to desegregation decrees that were temporary by their very nature. *Id.*

The Court held that after local authorities had complied with the desegregation decree for a "reasonable period of time," the decree's dissolution was proper. *Id.* In determining a school district's compliance with desegregation decrees, the court first must conclude that the school board had "complied in good faith with the desegregation decree since it was entered." *Id.* at 638.

In deciding the question of good

faith, "compliance with previous court orders is obviously relevant." *Id.* at 637. In this case, the Board complied with the decree from 1972 until 1985. The Court held, therefore, that the court of appeals had erred in relying on *United States v. W. T. Grant Co.*, 345 U.S. 629 (1953), for the proposition that "compliance alone cannot become the basis for modifying or dissolving an injunction." *Dowell*, 111 S. Ct. at 637. The Court also recognized that the "grievous wrong" test, which the court of appeals gleaned from *Swift*, would place school boards under judicial supervision indefinitely. *Id.* at 638. This result conflicted with the purpose of school desegregation injunctions, which sought only to remedy past segregation, prevent future discrimination, and ultimately return schools to local control. *Id.*

Next, the Court instructed lower courts to determine if the "vestiges of past discrimination had been eliminated to the extent practicable." *Id.* In evaluating this criteria, the Court stated that consideration must be given not only to student assignments, but also to "every facet of school operations - faculty, staff, transportation, extra-curricular activities and facilities." *Id.* (quoting *Green v. New Kent County School Board*, 391 U.S. 430, 435 (1968)).

On remand, the Court instructed the district court to determine (1) if the Board had complied in good faith with the desegregation decree since its imposition and (2) if the vestiges of past discrimination had been eliminated as far as practicable throughout every facet of the school district's operations. If the district court found that the Board was entitled to have the injunction lifted, it must then proceed to evaluate the SRP under the mandates of the Equal Protection Clause of the Fourteenth

Amendment. *Id.*

In dissent, Justice Marshall, joined by Justices Blackmun and Stevens, sought a stricter standard than the majority for ending court supervised desegregation. Drawing on *Brown v. Board of Education*, 347 U.S. 483 (1954), the dissenters argued that a decree should not be lifted while conditions likely to inflict the type of stigma identified in *Brown* still remained. So long as "racially identifiable schools" and other conditions likely to inflict such injury persisted, and while at the same time there were feasible means of eliminating them, the dissenters would not terminate desegregation decrees. *Dowell*, 111 S. Ct. at 639 (Marshall, J., dissenting).

The decision in *Board of Education of Oklahoma City v. Dowell* set down standards for dissolution of desegregation decrees, thus making it easier for school districts currently under supervision to be set on their own again. Under the new standards, a school system that was at one time segregated and subject to a desegregation order may have that order terminated upon a showing that it has complied with the order in good faith for a "reasonable period of time," has abandoned any discriminatory practices to the extent "practicable," and that it is unlikely that the school system would again resort to discriminatory practices.

- Robert D. Cole Jr.

***Feist Publications, Inc. v. Rural Telephone Service Co.*: ALPHABETIZED DIRECTORY LISTINGS CONSISTING OF SURNAMES AND TELEPHONE NUMBERS ARE NOT SUBJECT TO COPYRIGHT PROTECTION.**

In Feist Publications, Inc. v. Rural Telephone Service Co., 111 S.