

A SURVEY OF LITERATURE CONCERNING SELECTED UNITED STATES SUPREME
COURT CASES DEALING WITH THE INTEGRATION-SEGREGATION
PROBLEM IN AMERICAN PUBLIC SCHOOLS

by

ALBERT GEORG KALMAR

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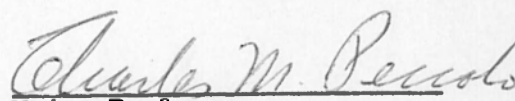
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INTRODUCTION

1

"All men are created equal". This famous statement is part of one of the doctrines that constitute the foundation of democracy in the United States. The interpretation of this statement in a democracy does not permit any discrimination on the basis of race, religion, or previous servitude. It calls for equal rights before the law and equal opportunities in employment and education.

In the development of America's institutions two basic principles concerning education and integration emerged. First, education was a state function and public schools would be provided for all who wished to attend. Second, every citizen regardless of race, color, or creed should have the opportunity to attend such schools.

Since World War II there has been a renewed interest in the public schools and in integration as two of the fundamental ways of preserving democracy in the United States. Although the majority of the people in the United States have accepted this theory, this did not negate the problem of conditions that existed in making such opportunities available.

Many cases have been appealed to the United States Supreme Court in an effort to obtain a legal decision on integration-segregation in public schools. Two such cases stood out as milestones in this dispute and have had a greater effect than all the other cases put together.

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Samuel Morison and Henry Commager. The Growth of the American Republic. New York: Oxford University Press, 1951, p. 196.

These two cases were:

1. Plessy v. Ferguson, 1896
2. Brown v. Board of Education of Topeka, 1954 and 1955

Statement of the Problem. The purpose of this study was (1) to examine the United States Supreme Court cases of 1896 and 1954-55 dealing with the integration-segregation problem in the public schools; (2) to analyze the opinions of the different justices on the cases; (3) to consider the interpretations of the decisions of the Court by various authorities; and (4) to determine the implications of these decisions.

Significance of the Problem. The legal basis for the integration-segregation cases appealed to the United States Supreme Court was the Fourteenth Amendment of the United States Constitution. This amendment stated:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.²

The main interpretation of the Fourteenth Amendment has been that all persons born or naturalized in the United States were citizens of the United States regardless of their color, religion, or creed. Thus, a Negro meeting these qualifications was as much a citizen as was a white

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Mrs. John L. Buel. D.A.R. Manual for Citizenship. Washington: D.C.: Judd and Detweiler, Inc., 1960, p. 104

man with the same qualifications. Furthermore, no state was to pass laws which would deprive certain citizens of their rights. A state law designed to discriminate against a certain portion of its population would be unconstitutional because it would violate the Fourteenth Amendment of the United States Constitution. No state could deprive a citizen of life, liberty, or property without due process of law, which included the right of a person to be informed of the charges made against him and the right for legal counsel and a jury trial. All citizens regardless of race, religion, or creed were equal before the law and had equal rights and obligations.

The United States Supreme Court clearly delineated the issue when it stated:

We must consider public education in the light of its full development and its present place in American life throughout the nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws. The question is: Does segregation of children in public schools, solely on the basis of race, even though the physical facilities and other tangible factors may be equal, deprive the children of the minority group of equal educational opportunities?³

Limitations of the study. The study was limited to an analysis of two pertinent cases which have been adjudicated before the United States Supreme Court. These cases were:

1. Plessy v. Ferguson, 1896
2. Brown v. Board of Education of Topeka, 1954 and 1955

The two cases dealt with the same subject, segregation-integration in

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Virgil Clift. Negro Education in America. New York: Harper & Brothers, 1962, p. 112.

public schools, but the interpretations handed down by the Supreme Court were different. The cases will be introduced in the above mentioned order.

The study was also limited to the segregation-integration problem of the Negro race.

Definition of Terms. Segregation - as used in this study means the separation or isolation of a race, class, or ethnic group by enforced divided educational facilities and other discriminatory means.

Integration - as used in this study means the incorporation into society or an organization (such as a public school) on the basis of common and equal membership of individuals differing in some group characteristic (such as race).

Procedures. The procedures used in making this study were:

1. An examination of the texts of the selected cases
2. A survey of the literature available in the Kansas State University Library concerning the problem of integration-segregation in public schools with special emphasis on the selected cases.

THE HISTORICAL DEVELOPMENT OF SEGREGATED PUBLIC SCHOOLS IN THE UNITED STATES

The Negro has been a part of the American scene from the time the nation was discovered. Negroes were part of the crews of Spanish and Portuguese explorers who came to the New World and explored its vast reaches. However, people were not concerned with the education

of the Negro in these early days.⁴ The story of the American education of the Negro began with the African slave trade. This slave trade was opened formally in 1517 when Bishop Las Casas advocated the encouragement of immigration to the New World by permitting Spaniards to import twelve slaves each.⁵ The development and exploitation of vast resources found in the New World made cheap labor a necessity. Soon it was found that Negroes were much abler to do the work that had to be done than were the American Indians. Consequently, the slave trade flourished and a seemingly inexhaustible supply of slaves flowed into America.

During the colonial period, the institution of slavery was recognized as being incompatible with ideas of education. It was felt that the education of the Negro slave would bring about the end of slavery because educated slaves would soon realize the gross inequality and injustice that had been pressed upon them. Thus, the Negro was taken away from his African homeland and culture, but was not acknowledged as an American. The Negro was in somewhat of a no-man's-land.

Not all people in America during the colonial period agreed with the view that slavery and education were incompatible. Certain organizations and individuals felt an obligation and duty to help the Negro slaves and educate them. The Society for the Propagation of the Gospel in Foreign Parts, for example, urged the slave holders to educate their

⁴ William Brickman. A Countdown on Segregation of Education. New York: Society for Advancement of Education, 1960, p. 14.

⁵ Morison and Commager, op.cit., p. 311

6
 slaves. When the majority of the slave holders refused the Society took it upon themselves to educate the Negro slaves. The Society taught some slaves to read, write, and study the Scripture. The Quakers of Pennsylvania were another group that tried to improve the conditions amongst the slaves.⁷ They, too, tried to educate the Negro slaves and even started working toward the abolishment of slavery which at that time was considered an unthinkable thing.

In the New England states Negroes benefited from the intellectual activities that had taken place around 1700. Some outstanding educators of the time started educating Negroes as well as whites. John Elliot,⁸ for example, took time out from his busy schedule to instruct Negroes. Cotton Mather started an evening school for Indians and Negroes in 1717.⁹ Consequently, the New England Negro was the best trained of all Negroes in the New World. Despite this more advanced stage of learning that the New England Negro received, Dr. Lorenzo Green, an authority on the Negro in this section of the country, asserted that "most of the Negroes in the New England as in other colonies were still infidels at the end of the colonial period".¹⁰

The French and Spanish settlers were more active in trying to educate slaves because of their concern for indoctrinating them with

6

Ibid, p. 313

7

Ibid, p. 317

8

Clift, op.cit., p. 22

9

Ibid, p. 24

10

Ibid, p. 25

Christianity. Now the question arose; Could a country have Christianity and slavery at the same time? Did not Christian theory hold that all men were equal in the sight of God and brothers under His fatherhood? Thus, Christianity and slavery were incompatible. On the other hand, however, merchants desired to continue their lucrative profits from the slave trade and slave owners were reluctant to give up their property. So most religious groups in America sanctioned slavery while at the same time they endorsed and professed Christianity.

The influence of Anthony Benezet in the education of Negroes was significant. He began an evening school for Negroes in his home in Philadelphia in 1750 and continued instruction of Negroes there for ¹¹ twenty years. He was greatly opposed to the accepted idea of his time that Negroes were inferior in their learning capacity and that educating these inferior people was a waste of time. Benezet stated;

I can with truth and sincerity declare that I have found amongst the Negroes as great a variety of talents as amongst a like number of whites; and I am bold to assert, that the notion entertained by some, that the blacks are inferior in their capacities, is a vulgar prejudice, founded on the pride or ignorance of their lordly masters, who kept their slaves at such a distance, as to be unable to form a right judgement of them. ¹²

During the American Revolution the doctrine of the natural rights of man was established. The opponents of slavery used this doctrine to demand education of the Negroes for citizenship. Not everyone agreed. Jefferson, for example, thought that Negroes should be given industrial

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George S. Brooks. Friend Anthony Benezet. Philadelphia: University of Pennsylvania Press, 1937, p. 46.

12

Ibid, pp. 47-48

and agricultural education, but did not believe in the intellectual equality of Negro and white and therefore did not envision the incorporation of the Negro into the white community.¹³ Benjamin Franklin, on the other hand, favored and encouraged the full education of the Negro.

Between the time of the American Revolution and the Civil War little progress was made in educating the Negroes in large numbers. Amos Dresser carried out a study on the literacy rate of the Negro slaves during this period and found that one out of every fifty slaves was able to read and write.¹⁴ In another study D. G. Parsons estimated that about 5,000 of Georgia's 400,000 slaves were literate and could at least read and write to a certain extent.¹⁵ Some isolated slave owners took it upon themselves to educate their Negro slaves because they felt that an educated slave was more valuable and would bring a higher price than an illiterate slave. In some instances Negroes attended mixed schools in the South during this period. In 1840, for example, Negroes were permitted to attend schools with white children in Wilmington, Delaware.¹⁶ These instances were isolated and few in numbers, however. The Negro in the North again benefited more than the Southern Negro

¹³
Ina Brown. Race Relations in a Democracy. New York: Harper & Brothers, 1949, p. 37

¹⁴
Brickman, op.cit., p. 26

¹⁵
Ibid, p. 27

¹⁶
Harry Ashmore. The Negro and the Schools. Chapel Hill: University of North Carolina Press, 1954, p. 81

from the general trend to establish and improve schools after the American Revolution. Separate schools for Negroes were established in many Northern cities. One of the best known Negro schools during this period was the New York African Free School which began with forty students in 1787 and had an enrollment of 500 by 1820.¹⁷

In 1849 a case was brought before the Massachusetts Supreme Court contesting segregated schools. The case was called Roberts v. City of Boston.¹⁸ Charles Sumner argued against separate schools on behalf of a Negro girl who had been barred from a white school under the local ordinance providing for separate education of the races. The Massachusetts Supreme Court held against Sumner and the plaintiff and upheld the separate school ordinance. However, by 1855 sufficient public opinion had been mobilized on the issue to persuade the Massachusetts Legislature to repudiate the Court's decision and in fact prohibit separate education of the races.

After the Civil War and during Reconstruction, education for the Negro took on a new course. The first great program of organized education for the Negro was established. Negro schools increased and were paid for by taxes. The southerner, with regard to Negro education, may be divided into three groups: (1) The Conservatives who attempted to reinstate as far as possible the servile status of the Negro. This group was opposed to any form of education of the Negro. (2) The Moderates who realized

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Ibid, p. 83

18

Brickman, op.cit., p. 27

that slavery was dead and that the new status of the Negro should be recognized in creating a new society in the South. This group favored a limited amount of education for the Negro. (3) The Radicals who had no real interest in the slave system and thus were in favor of all-out education of the Negro. The majority of the southern whites accepted the moderate view as long as the education of the Negro would take place in segregated facilities.¹⁹ Furthermore, no one had made any rules concerning the extent and quality of education that the Negroes were to receive and therefore it was up to the southerners to give as good or as marginal an education to the Negroes as they wanted. The idea of Negro intellectual inferiority was brought up again in the South. A Virginian, under the penname of "Civis", wrote:

I oppose public education because its policy is cruelty to the Negro himself. It instills in his mind that he is competent to share in the higher walks of life, prompts him to despise those menial pursuits to which his race has been doomed, and invites him to enter into competition with the white man for those tempting prizes that can be won only by a quicker and profounder sagacity, by a greater energy and selfdenial, and a higher order of administrative talent than the Negro has ever developed.²⁰

The chief result of the Reconstruction government concerning the education of the South was the establishment of public tax supported education for the masses as a democratic right to which citizens were entitled. This included the education of the Negro financed by public taxes.

In 1896 the famous case of Plessy v. Ferguson was brought before

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Brickman, op.cit., p. 30

20

Helen Fuller. "The Defiant Ones in Virginia". The New Republic, Jan. 12, 1959, pp. 9-10

the United States Supreme Court. The ruling of the Court was that "separate but equal" education was perfectly alright.²¹ The Court stated that "segregation in education was a general American practice, not a uniquely Southern one".²² Thus, the Court firmly embedded the durable doctrine of "separate but equal" and caused the perpetuation and strengthening of the dual school system. This doctrine was a great setback to the cause of Negro education and was used by the segregationists until the handing down of the 1954 United States Supreme Court decision.

The leader and spokesman of the Negroes around the turn of the century was Brooker T. Washington. When the southerners offered a compromise to the Negroes in which the Negroes were supposed to remain politically inarticulate and disfranchised in return for a modicum of education, Washington accepted. This came to be known as the "Atlanta Compromise".²³ Washington felt that it was time to be pragmatic and realistic rather than emotional. He concluded that a program of cooperation with the white, even if it did not bring all the Negro's wants and rights with it, was likely to bring the Negro highest utilitarian

21

Lawrence Evans. Cases on American Constitutional Law. Chicago; Callaghan & Co., 1957, p. 921

22

Ibid, p. 922

23

Charles Johnson. Patterns of Negro Segregation. New York; Harper & Brothers, 1943, p. 171

success and greatest personal safety and security. Washington felt that the question of social equality of the Negro at this time was an extremist folly. He advised the Negroes to "cast down your buckets where you are"²⁴ and educate the "head, hand, and heart".

The southern white hailed the Compromise as a platform upon which blacks and whites could stand with full justice to each other. However, not all Negroes accepted Brooker T. Washington's advice. Some felt that he had sold them out. W. DuBois, a Negro scholar, led the opposing forces. He denounced the Compromise and insisted that all free Negroes were entitled to every right and privilege of any other American. DuBois stated his views in a speech at Atlanta in 1906:

We want full manhood suffrage, and we want it now, henceforth and forever. Second; We want discrimination in public accommodations to cease. Third; We claim the right of free men to walk, talk, and be with them who wish to be with us. Fourth; We want our children educated. And we call for education meaning real education. We believe in work. We ourselves are workers but work is not necessarily education. Education is the development of power and ideal.²⁵

The twentieth century saw an increase in Negro activities in their fight for equality and educational opportunity. Negroes soon realized that strength corresponded to numbers and that an isolated individual could accomplish very little. Groups such as the "National Association for the Advancement of Colored People" and the "Congress For Racial Equality"²⁶ emerged. These groups started organized attacks

²⁴

Ibid, p. 173

²⁵

Lilian Smith. Now is the Time. New York: Viking, 1955, p.211

²⁶

"Integration without Turmoil". Look, April, 1960, p. 55

on discrimination measures with such tactics as sit-ins and picketing. The United States Supreme Court handed down decisions ordering several universities to admit Negro students to their graduate schools. This did not invalidate the "separate but equal" doctrine, however. More and more public schools opened their doors to Negroes on an integrated basis. The gap between the education received by the white and that received by the Negro was made narrower between 1940 and 1950. The following chart illustrated this point:

	<u>Year</u>	<u>White</u>	<u>Negro</u>
1. Current expenditures per pupil	1940	100%	42%
	1950	100%	70%
2. Capital Outlay per pupil	1940	100%	23%
	1950	100%	82%
3. Salaries of teachers	1940	100%	55%
	1950	100%	85%
4. Training of teachers	1940	100%	75%
	1950	100%	95%
5. Length of school year	1940	100%	95%
	1950	100%	100%
6. Number of school library books	1940	100%	25%
	1950	100%	40%

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However, in the 1950's there were still thirteen southern states that had either complete or partial segregation. These thirteen states were Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi,

27

Don Shoemaker. With All Deliberate Speed. New York: Harper & Brothers, 1957, p. 221

North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and
 28
 Virginia.

In 1954 the most important case in the battle against segregation was ruled upon by the United States Supreme Court. It was the case of Brown v. Board of Education of Topeka.²⁹ The United States Supreme Court explicitly overruled the "separate but equal" doctrine of the Plessy case and ruled unanimously that segregation of the races in public education was unconstitutional. Some states and school districts complied with the decision promptly and integrated. Others put up a fight and only complied after violence had erupted and order had to be restored by the Federal Government. Still other places put up a fight and adopted
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 measures designed to circumvent the ruling.

Negroes continued to contest segregation in states that failed to obey the 1954 United States Supreme Court decision. In 1955 the case of Lucy et al. v. Adams was brought before the United States Supreme Court. The Court ordered the University of Alabama to admit Miss Lucy, a Negro, to the University as a student. In 1958 the case of Cooper v. Aaron was brought before the United States Supreme Court. In this case the Court denied the Little Rock, Arkansas, high schools a petition requesting the right to delay the start of integration for two and one half years.

28

Albert Blaustein. Desegregation and the Law. New Brunswick: Rutgers University Press, 1957, p. 71

29

Ibid, p. 127

30

Fuller, op.cit., p. 12

SEPARATE BUT EQUAL EDUCATION IS CONSTITUTIONAL

In 1890 the Legislature of Louisiana passed an act requiring all railway companies carrying passengers in that state to provide "equal but separate" accommodations for the white and colored races and that "no person or persons shall be admitted to occupy seats in coaches other than the ones assigned to them on account of the race they belong to".³¹ Any violator of this statute was subject to a fine. Homer Adolph Plessy was a citizen of the United States, a resident of the State of Louisiana,³² and was by descent seven-eighth Caucasian and one-eighth African. On June 7, 1892, Plessy purchased a ticket on the East Louisiana Railway, entered a passenger train and took possession of a vacant seat in a coach where passengers of the white race were accommodated. The railway company was incorporated by the laws of Louisiana as a common carrier and therefore fell under the above mentioned statute which had been passed by the Louisiana Legislature concerning common carriers. The conductor asked Plessy to vacate the coach in which he was sitting and take a seat in the coach assigned to people of the colored race. Plessy refused to comply and was forcibly ejected from his seat and carried to prison. Plessy was charged with violating the statute passed by the Louisiana Legislature requiring the separation of races on railway carriers. Plessy charged that the statute was unconstitutional because it was in violation

31
Evans, op.cit., p. 100.

32
Ibid

of the Thirteenth and Fourteenth Amendments of the United States Constitution. The Thirteenth Amendment abolished slavery and involuntary servitude. The Fourteenth Amendment prohibited the states from making any laws which abridged the privileges and immunities of citizens of the United States. The criminal court in New Orleans which heard the case upheld the statute passed by the State Legislature and ruled against Plessy. John Ferguson was presiding over the New Orleans court. Plessy appealed to the Louisiana State Supreme Court. The State Supreme Court upheld the constitutionality of the statute in question and refused the relief sought by Plessy. Plessy again appealed and the case reached the United States Supreme Court.

The majority and dissenting opinions of the United States
Supreme Court

Justice Henry Brown was the spokesman for the majority which included Justices Melville Fuller, Stephen Field, Morace Gray, George Shiras, Edward White, and Rufus Peckham. Justice Brown felt that it was too clear for argument that the statute in question was not a violation of the Thirteenth Amendment of the United States Constitution as Plessy had asserted. The Thirteenth Amendment, which dealt with slavery and involuntary servitude, could not be applied in this case because the Louisiana statute made no mention of reinstating slavery and involuntary servitude. Justice Brown stated:

A statute which implies merely a legal distinction between the white and colored races - a distinction which is founded in the color of the two races, and which must always exist as long as white men are distinguished from the other race by color - has no tendency to destroy the legal equality of the two races, or re-

establish a state of involuntary servitude.

Justice Brown referred back to and agreed with the statement made by Justice Bradley in a case of United States v. Stanley which dealt with the interpretation of the Thirteenth Amendment and in which Justice Bradley stated;

It would be running the slavery argument into the ground to make it apply to every act of discrimination which a person may see fit to make as to the guests he will entertain, or as to the people he will take into his coach or cab or car, or admit to his concert or theater, or deal with in other matters of intercourse or business.³⁴

Plessy also claimed that a violation of the Fourteenth Amendment of the United States Constitution had taken place. Under the Fourteenth Amendment all persons born or naturalized in the United States were citizens of the United States and also of the state in which they resided and fell under the jurisdiction of the United States. This Amendment also held that no state could make or enforce laws which would abridge the privileges and immunities of citizens of the United States, nor could any person be deprived of life, liberty, or property without due process of law. Furthermore, all citizens were equal before the law.³⁵

Justice Brown in speaking for the majority interpreted the Fourteenth Amendment as follows:

The object of the Amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distin-

³³
Plessy v. Ferguson 163 US 513 (1896)

³⁴
Ibid

³⁵
Blaustein, op.cit., p. 171

guished from political equality, or a comingling of the two races upon terms unsatisfactory to either.³⁰

Thus, the state legislature under its "police power" could pass laws requiring the separation of races at certain places or at certain times if they felt it necessary. This would not be a violation of the Federal Constitution because internal problems within each state came under the jurisdiction of the state legislature. Under the state's "police power" the state could make rules and laws designed to maintain order and insure the citizens' safety. Justice Brown noted that all states made use of this "police power". The establishment of separate schools for white and colored children was a valid exercise of the legislative power of a state. Even in the states where the political rights of the colored race had earnestly been enforced, the courts had upheld the establishment of separate facilities. Justice Brown made it evident that laws requiring or permitting segregation of the races in certain places did not imply the inferiority of either race.

Justice Brown further clarified the majority opinion judges' interpretation of the Fourteenth Amendment by citing and agreeing with the statement made by Justice Shaw in the case of Roberts v. City of Boston. This was the earliest case which dealt with segregation. Justice Shaw made the following statement:

The great principle advanced by the learned and eloquent advocate of the plaintiff, Mr. Charles Sumner (who argued against segregation) is, that by the Constitution and laws of Massachusetts, all persons without distinction of age or sex, birth or color, origin

or condition, are equal before the law. But, when this great principle comes to be applied to the actual and various conditions of persons in society, it will not warrant the assertion that men and women are legally clothed with the same civil and political powers and that children and adults are legally to have the same functions and be subject to the same treatment, but only that the rights of all, as they are settled and regulated by law, are equally entitled to the paternal consideration and protection of the law for their maintenance and security.³⁷

The United States Supreme Court drew a distinction between state laws interfering with the political equality of the Negro and those merely requiring the separation of the races in schools, theaters, and railway carriages. Justice Brown cited the case of Strader v. West Virginia where the United States Supreme Court held that

.... in the selection of jurors to pass upon the life, liberty, and property of a colored man, there shall be no exclusion of his race and no discrimination against them because of their color.³⁸

Thus, Negroes could not be excluded from being jurors because of their color. However, state laws dealing with the separation of the races in schools, theaters, railways, and lunchcounters were considered part of the regulatory power of the individual state as was the establishment of separate schools for poor and neglected children.

The United States Supreme Court also made a distinction between interstate and intrastate passenger traffic. Justice Brown cited the case of Hall v. DeCuir in which the United States Supreme Court held that

.... passengers traveling among the states must have equal rights and privileges in all parts of the vessel with outer distinctions such as race or color being disregarded, and subjected to an action for damages, the owner of such a vessel who excluded colored passengers for no other reason than their previous condition of servitude and

37

Evans, op.cit., pp. 1005-6

38

Flessy v. Ferguson, 163 US (1896), op.cit., p. 259

their color from the cabins set aside by him for the use of whites, it was held to be unconstitutional and void as far as it applied to interstate commerce.³⁹

However, the United States Supreme Court in this case disclaimed that its ruling had anything whatever to do with the regulation of internal commerce not crossing state lines. Justice Brown, furthermore, cited the case of Louisville N.O.& T Railroad v. Mississippi which dealt with a railway company solely involved in intrastate transportation. In this case the Supreme Court held that

.... if it be a matter respecting commerce wholly within the state, and not interfering with commerce between the states, then, obviously, there is no violation of the commerce clause of the Federal Constitution. There is no question as to the power of the state to separate in different compartments intrastate passengers.⁴⁰

Justice Brown used these precedent cases and decisions to determine the constitutionality of the Louisiana statute which required separation of races on railways. The question now was: Did the statute in question cover railways engaged in interstate commerce and was the railway in question engaged in interstate commerce? Justice Brown ruled that the statute did not apply to railways engaged in interstate commerce and that the East Louisiana Railway was only operating in the State of Louisiana. Thus, since the railway in the case under consideration strictly limited itself to intrastate commerce and transportation, its compliance with the Louisiana statute separating the races into different railway coaches was not in violation of the Fourteenth Amendment

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Ibid

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Ibid

of the United States Constitution. The Supreme Court held:

We think that the enforced separation of the races, as applied to the internal commerce of the state, does not abridge the privileges or immunities of the colored man. It does not deprive him of his property without due process of law nor does it deny him the equal protection of the law within the meaning of the Fourteenth Amendment.⁴¹

Justice Brown further strengthened his argument by using the acts of Congress requiring separate schools for the colored children in the District of Columbia as a parallel. If these acts were constitutional - and their constitutionality had never been questioned - then there could be no question on the constitutionality of the Louisiana statute requiring the separation of the races in public conveyances.

The plaintiff argued that if a state had the right to require the separation of races on public conveyances the state could also require segregation on other arbitrary basis. For example, what would stop the state from requiring that people of one race walk on one side of the street and people of another race walk on the other side of the street? Or what would stop the state from separating certain nationalities from others or distinguishing between alien citizens and native citizens? The United States Supreme Court took this argument into consideration and Justice Brown expressed the Court's stand:

The reply to all this is that every exercise of the "police power" must be "reasonable", and extend only to such laws as are enacted in good faith for the promotion of the public good, and not for the annoyance or oppression of a particular class.⁴²

⁴¹

Ibid, p. 260

⁴²

Ibid

The key word in this statement was "reasonable". As long as a statute passed by the state legislature was a piece of legislation which was in agreement with established usages, customs, and traditions of the people, the statute passed the test of reasonableness and was therefore constitutional. The Supreme Court again made it clear that the separation of races on public conveyances as required by the Louisiana statute was considered reasonable and thus constitutional.

Plessy's argument that the separation of races stamped the colored race with a badge of inferiority was not accepted by the majority opinion judges. The judges felt that there was nothing found in the statute in question which would have advanced the idea of Negro inferiority. The judges also pointed out that social prejudices could not be overcome by legislation. If the two races were to meet on terms of social equality, it had to be the result of natural affinities, a mutual appreciation of each other's merits, and a voluntary consent of individuals. Justice Brown cited the decision handed down by the Court of Appeals of New York in the case of People v. Gallagher:

Social equality of the two races can neither be accomplished nor promoted by laws which conflict with the general sentiment of the community upon whom they are designed to operate.⁴³

Legislation can not eradicate social instincts or abolish distinctions based upon physical differences. Laws which conflict with the general sentiment of the community would only accentuate the difficulties of the existing situation.

⁴³

Evans, op.cit., p. 1006

Thus, the Supreme Court went out of its way to make it clear that the separation of races in schools was considered just as constitutional as the separation of races on public carriers. Separate schools have existed and have been found to be constitutional. The individual states exercised their "police power" and established separate schools with equal facilities for different races. This was a valid prerogative of the state's powers.

The majority decision may be summarized as follows:

1. A state statute requiring separate accommodations for white and colored persons on railways does not violate the Thirteenth Amendment of the United States Constitution.
2. The provision of separate railway carriages for the white and colored races by railway companies engaged in intrastate passenger transportation was not a violation of the Fourteenth Amendment of the United States Constitution. This provision did not deprive a colored person of any basic rights.
3. A law requiring the separation of the white and colored races in public conveyances was a "reasonable" exercise of the "police power" of a state.
4. "Separate but equal" schools were constitutional since education was a state function and the states had the right under their "police power" to regulate schools and establish standards. Since separate schools for different races existed in Washington, D.C., which is under the direct jurisdiction of Congress, it must be assumed that Congress sanctioned segregation in education.

Justice Harlan voiced a strong dissent.⁴⁴ He regarded railways as public highways. To substantiate this point Justice Harlan introduced the precedent case of Worcester v. Western Railway Corporation, in which the United States Supreme Court had held the following:

The establishment of railways is regarded as a public work, established by public authority, intended for the public use and benefit, the use of which is secured to the whole community, and constitutes therefore, like a canal, turnpike, or highway, a public easement.⁴⁵

These public highways not only had to transport all citizens regardless of race, but could not require separation of the races either. The statute requiring separation of the races passed by Louisiana was inconsistent with (1) the equality of rights pertaining to citizenship, national and state, (2) the personal liberty enjoyed by everyone within the United States.⁴⁶

Justice Harlan saw a gross violation of the Fourteenth Amendment. He felt that the purpose of this Amendment was to guarantee to the newly emancipated Negro race all the civil rights that the white race already possessed. Justice Harlan further interpreted the Fourteenth Amendment as having meant that the laws of the states have to be the same for the black as well as the white and that the colored should have equal standing before the law. Furthermore, states could not discriminate against the colored solely on the basis of skin pigment. Harlan reminded the Court

⁴⁴ Plessy v. Ferguson 163 US (1896), op.cit., p. 261

⁴⁵ Ibid, p. 262

⁴⁶ Ibid

that in previous cases the Fourteenth Amendment had been interpreted by the Supreme Court as follows:

The words of the amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity, or right, most valuable to the colored race, the right to exemption from unfriendly legislation against them distinctively as colored - exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps toward reducing them to the condition of a subject race.⁴⁷

Justice Harlan felt that the statute in question was an interference with the personal freedom of citizens. He interpreted personal freedom as "the right of locomotion, the power to move oneself to wherever one wanted to, without imprisonment or restraint unless by due process of law".⁴⁸ Thus, if a white man and a Negro chose to occupy the same coach in a railroad, they could do so and no government could prevent it without infringing upon the personal liberty of each. Justice Harlan was very concerned with the argument advanced by the plaintiff that states requiring segregation of races because of color could also require segregation on any other arbitrary basis such as nationality or religion. He argued that if the state has the power to pass statutes of the kind in question, then what would keep the state from passing laws requiring white citizens to walk on one side of the street and Negroes on the other, or separating naturalized citizens from native born citizens, or separating Protestants from Catholics? Harlan saw a snowballing of

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Ibid

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Evans, op.cit., p. 1007

discriminatory laws if this statute in question was found constitutional.

Justice Harlan pointed out that in view of the Constitution and in the eyes of the law there existed in this country no superior, dominant ruling class of citizens. The United States Constitution was colorblind and neither knew nor tolerated classes amongst its citizens. Justice Harlan underscored this point by stating:

In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or his color when the civil rights as guaranteed by the supreme law of the land are involved. It is therefore to be regretted that this high tribunal has reached the conclusion that it is competent for a state to regulate the enjoyment of citizens of their civil rights solely upon the basis of race.⁴⁹

Justice Harlan felt that the majority opinion handed down would have grave consequences. He saw the seeds of race hatred planted under the sanction of law. State enactments proceeding on the grounds that colored citizens were so inferior and degraded that they could not be allowed to sit in the same coaches with whites would arouse class hatred. Harlan reminded the Supreme Court that it had accepted the doctrine that states could not exclude qualified Negro jurors from a jury because of race. In the case in question the Supreme Court sanctioned the separation of races on public conveyances and schools on the basis of color. These two doctrines conflicted and could not be reconciled.

Justice Harlan's dissenting opinion may be summarized as follows:

1. The Louisiana statute was a violation of the Thirteenth and Fourteenth

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Plessy v. Ferguson 163 US (1896), op.cit., pp. 263-64

Amendments of the United States Constitution.

2. The rights guaranteed to the Negro in these amendments must be enforced in reality rather than just on paper.
3. Separate facilities on the basis of race were in violation of the individual's personal liberties guaranteed in the Fourteenth Amendment.
4. The majority opinion will cause race hatred and disunity within the United States.
5. "Separate but equal" schools were unconstitutional and should be discontinued.

Interpretation of the 1896 decision by authorities.

Some people felt that this decision had a far reaching effect and had bad implications. John Marshall Harlan, a United States Supreme Court judge, had these misgivings:

Our Constitution is colorblind and neither knows nor tolerates classes among citizens. In my opinion the judgement this day rendered will, in time, prove to the people of the United States to be quite as pernicious as the decision of the Dred Scott case.⁵⁰

Other individuals disagreed with the decision but on different grounds. Robert Leflar, Dean of the Arkansas Law School, made this statement:

It is generally conceded that the experiment, so far as it depended in areas of governmental regulation upon a judicial guaranty of separate but equal facilities for Negroes and other minority races in the country, has failed to effectuate the theory

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Blaustein, op.cit., p. 98

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Brickman, op.cit., p. 104

underlying it. Until recently, the governmental conduct required in public education by the "separate but equal" rule has seldom been clear, and when clear, has seldom been forthcoming.⁵¹

The segregationist whites had achieved a major victory with the Plessy v. Ferguson decision. John W. Davis, a chief spokesman for segregation in the South and a lawyer, stated:

Judicial statesmanship required the Court to accept the settled practices of the South. It was too late in the day to disturb the existing standards on any theoretical or sociological basis.⁵²

The result of the 1896 decision was the perpetuation and expansion of the dual school system which existed in the United States. Governor Vardaman of Mississippi spoke out against this dual system. He recommended that the legislature strike out all appropriations for Negro schools on the ground that

.... money spend today for the maintenance of the public school for Negroes is robbery of the white man and a waste upon the Negro. It does him no good, but it does him harm you spend it upon the Negro in an effort to make of the Negro that which God Almighty never intended should be made, and which man cannot accomplish.⁵³

Thus, Governor Vardaman was against the Plessy ruling because he wanted education of whites only.

Congressman William H. Fleming of Georgia made this statement:

We do not know what shifting phases this vexing race problem may assume, but we may rest in the conviction that its ultimate solution must be reached along the lines of honesty and justice. Race differences may necessitate social distinction. But race differences cannot repeal the moral law. Let us solve the Negro problem by giving the Negro justice and applying to him the recog-

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Brickman, op.cit., p. 104

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William Peters. The Southern Temper. New York: Doubleday & Co., 1959, p. 121

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Albert Hart. The Southern South. New York and London: D. Appleton & Co., 1910, p. 327

nized principles of the moral law. This does not require social equality. But it does require that we recognize his fundamental rights as a man.⁵⁴

Henry Grady, a southern segregationist, stated:

The whites and blacks must walk in separate paths in the South. As near as may be, these paths should be made equal - but separate they must be now and always. This means separate schools, separate churches, separate accommodation everywhere.⁵⁵

Governor Thomas Banson Stanley of Virginia made the following statement concerning the United States Supreme Court decision:

I contemplate no precipitate action, but I shall call together as quickly as practicable representatives of both state and local governments to consider the matter and work towards a plan which will be acceptable to our citizens and in keeping with the edict of the Court.⁵⁶

Acceptance of the Decision.

States that had separate school facilities for Negroes and whites continued to do so with the minimum amount of expenditures on the Negro schools. Between 1900 and 1930, for example, the average salary of a white teacher rose from \$200 to \$900 while the average salary of a Negro teacher rose from \$100 to \$400.⁵⁷ States with few or no schools for Negroes made no move to comply with the separate but equal decision of the United States Supreme Court. The result was that by 1916 there were

⁵⁴ Brooks Hays. A Southern Moderate Speaks. Chapel Hill: University Press, 1959, p. 235

⁵⁵ "Court's decision and the South". H. Carter. Reader's Digest, Sept. 1954, 65:51-6

⁵⁶ Benjamin Muse. Virginia's Massive Resistance. Bloomington: Indiana University Press, 1961, p. 5

⁵⁷ Brickman, op.cit., p. 34

only sixty-seven Negro public high schools in the South with fewer than 20,000 students.⁵⁸ The schools remained throughout the South "separate but unequal".

The Negroes accepted the United States Supreme Court decision as law but lost no time in contesting this ruling. In 1899 a group of Negroes in Augusta, Georgia, brought an appeal before the United States Supreme Court. They demanded either admittance of Negro children to the white high school or reopening of the public high school for Negroes which had been discontinued. The case was Cumming v. County Board of Education.⁵⁹ Since Atlanta had segregated schools Negro children had no way of getting an education after the closing of the only Negro high school. Furthermore, Negroes as taxpayers were in essence supporting the segregated white school without the community providing a tax supported Negro school. The United States Supreme Court not only held the Georgia school segregation law constitutional, but went on to say that public funds could be used for a white high school even if the community had no equal provisions for a Negro high school.

These temporary setbacks did not discourage the Negroes from trying again. A continuous stream of test cases was brought by the Negroes before the United States Supreme Court, all contesting the constitutionality of segregation. Some of the more important cases were Berea College v. Commonwealth of Kentucky, 1908, where the United States Supreme Court upheld Kentucky's educational segregation law. In Jones v. Board of Education, 1923, the United States Supreme Court held that there was inequality in

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Ibid, p. 35

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Ashmore, op.cit., p. 17

the education received by a Negro if an evaluation of the Negro school was made and it was found to be much lower than the white schools. In Gong Lum v. Rice, 1927, the United States Supreme Court ruled that Chinese were classified as colored and upheld the educational segregation laws of Mississippi. In State of Missouri ex rel. Gaines v. Canada, Registrar of the University of Missouri, 1938, the United States Supreme Court held that the Negro applicant must be admitted to the University of Missouri Law School since no Negro law school was available in Missouri. In Alston v. School Board of City of Norfolk, 1940, the United States Supreme Court ruled that it was a violation of the Fourteenth Amendment to pay a Negro teacher, with the same qualifications as a white teacher, a smaller salary. In Sweatt v. Painter, 1950, the United States Supreme Court ruled that the Negro applicant must be admitted to the university. The cases Sipuel v. Board of Regents of the University of Oklahoma and McLaurin v. Oklahoma State Regents, 1950, were decided in favor of the Negro plaintiffs by the United States Supreme Court.

The Southern states were not alone in capitalizing on the "separate but equal" ruling of the Plessy v. Ferguson case. Some states in the North and West of the United States were equally guilty of maintaining large scale segregation in their schools and providing separate but unequal education for the Negroes. William R. Ming Jr. pointed this out in 1952 when he stated:

There are public schools and local school systems in the North

and West with racial patterns and practices hardly distinguishable from the segregated school patterns of the Deep South. Among these states are New York, Pennsylvania, Illinois, Ohio, Arizona, and New Mexico.⁶¹

Much of this segregation in public schools was brought about by residential restrictions. There were certain sections of towns where Negroes were not able to buy real estate nor rent. This was accomplished either by exhorbantly high prices for the real estate or refusal on the part of the owners to sell or rent. Consequently, these particular sections of town did not have to worry about mixed schools because no other race but the white one lived in the school district.

The dual system which expanded greatly after the Plessy v. Ferguson ruling was an expensive venture. When a town build a school for its children and wanted to maintain segregation, it had to build, theoretically, two schools in order to meet the separate but equal requirement. Insistence on segregation, thus, doubled the cost of education. Ironically, the states that did insist on segregation of children in education could not really afford this double expense. The seventeen states which, prior to 1954, had made it mandatory to have a dual system of education all fell in the low per capita income belt of the United States.⁶² Thus, the states which had a difficult time to provide adequate educational facilities for one school system were most insistent on maintaining the dual system of education and thereby increase the cost even more. This resulted

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V. T. Thayer. The Role of the School in American Society. New York: Dodd, Mead, and Co., 1963, p. 474

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Ibid, p. 478

in a lowering of educational standards of both white and Negro schools. The money that could have provided adequate facilities for joint use was split up and resulted in inadequate facilities for both. The children of both races lost in the process.

The Southern states soon realized that they could not fulfill the "separate but equal" ruling with the grossly unequal facilities that were provided for the education of the Negro. Several states started an all-out drive to improve Negro educational facilities in order to create a greater resemblance of equality between Negro and white schools. It was the purpose of this program to spend the necessary money to insure the perpetuation of segregation. Thus, the Southern states were even willing to dip deep into their own pockets if they could be assured that segregation could be maintained by this action. Some cities and counties wanted to be doubly certain that segregation would be maintained and proceeded to build superior Negro educational facilities. This way they could feel certain that their Negro population could not bring suit before the courts because of unequal and inferior facilities. This point was illustrated by the statement made by a Virginia state court when it declared that

.... it is evident that in twenty-nine of the even hundred counties in Virginia, the school facilities for the colored are equal to the white schools; in seventeen more they are now superior, and upon completion of work authorized or in progress, another five will be superior. Of the twenty-seven cities, five have Negro schools and facilities equal to the white and eight more have better schools than the white.⁶³

In 1940-49, for example, Missouri had a per capita expenditure of \$175.32 for colored pupils and \$166.31 for white pupils.⁶⁴

This sudden increase in expenditures for Negro education on the part of the South was designed to show the United States Supreme Court and the country as a whole, that Negroes were getting an equal education. The South was unable to convince the Negro, the United States Supreme Court, or the country as a whole.

Implications.

1. The decision handed down by the United States Supreme Court in the Plessy v. Ferguson case was a setback for democracy. The Court gave its stamp of approval to the perpetuation and expansion of segregation.
2. Even though the Plessy v. Ferguson case dealt only with segregation in education and transportation, the segregationists were quick to interpret the ruling as applying to other fields as well, such as housing, theaters, restaurants.
3. Segregated schools resulted in inferior education for the Negroes. This in turn resulted in charges of Negro intellectual inferiority.
4. The "separate but equal" doctrine was a myth and the education received by the Negroes was actually separate but unequal.⁶⁵
5. The Plessy v. Ferguson ruling became law and a precedent. Any subsequent segregation cases with the same or similar conditions, circumstances, and facts were decided according to this precedent. The

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Ibid

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Brickman, op.cit., p. 33

Plessy v. Ferguson ruling was in effect for fifty-eight years.

6. The Plessy decision opened the door to the expansion of segregation and race prejudice. No one is born with race prejudice. Prejudice is learned. Separate and segregated schools sanctioned by the law of the land were breeding grounds for race prejudice. Children looked upon the existing conditions as the only correct way.
7. The Plessy decision resulted in a lowering of the educational quality and standards. Communities and states that were barely able to support one school system could not support a dual school system to satisfy the "separate but equal" decision and still maintain the same level of education.
8. The children of both, whites and Negroes, suffered because of the drop in the quality of education.
9. Certain sections of the United States Constitution, such as the Bill of Rights, seemed to be valid on paper only since the Negro citizens were not able to enjoy these rights. Negroes could reason that they were not obligated to fulfill their constitutional duties since their constitutional rights were not realized.

SEPARATE BUT EQUAL EDUCATION IS UNCONSTITUTIONAL.

Background to the case of Brown v. Board of Education of Topeka.

The plaintiffs in this case were Negro children of elementary school age residing in Topeka. The suit was brought before the United States District Court for the District of Kansas to prevent enforcement of a Kansas statute which permitted cities of more than 15,000 population to maintain separate school facilities for Negroes and whites. Topeka had a population greater than 15,000 and its Board of Education had decided to establish segregated public elementary schools. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. The three judge District Court that heard the case ruled that segregation in public schools was indeed detrimental to the Negro children, but that relief could not be granted because the Negro and white school facilities were substantially equal with respect to buildings, transportation, curricula, and educational qualifications of teachers.³¹ The District Court, thus, followed precedent and decided in line with the "separate but equal" doctrine. The plaintiffs appealed the District Court's decision and a hearing was granted before the United States Supreme Court on December 8, 1953. The decision was handed down May 17, 1954.

Actually on the case in question the United States Supreme Court considered several cases together and gave a consolidated opinion because

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Lawrence Evans. Cases of American Constitutional Law. Chicago: Calligan & Co., 1957, p. 935

they all dealt with segregation in public schools. These cases came from Virginia, Delaware, South Carolina, and Kansas and even though they were premised on different facts and different local conditions, they still had a common legal question which justified their consideration together.

The opinion of the Court was delivered by Chief Justice Warren. The justices in agreement were Justices Hugo Black, Stanley Reed, Felix Frankfurter, William Douglas, Robert Jackson, Harold Burton, Tom Clark, and Sherman Minton. The decision of the United States Supreme Court was unanimous with no dissent. Justice Warren pointed out that it was the contention of the plaintiffs that segregated schools were not equal and could not be made equal and even if they could, they still would be in violation of the Fourteenth Amendment and thus unconstitutional. Justice Warren went back in history and traced the Fourteenth Amendment since its adoption as it affected public education. He summed up his historical examination of the Fourteenth Amendment as follows:

The most avid proponents of the post-war amendments undoubtedly intended them to remove all legal distinctions among "all persons born or naturalized in the United States". Their opponents, just as certainly were antagonistic to both the letter and the spirit of the amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty.³²

Justice Warren also found that the meaning and application of the Fourteenth Amendment with respect to public education was vague and inconclusive because a large part of the United States, especially the

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Brown v. Board of Education of Topeka 347 US 489 (1954)

South, did not have public education at that time. The education of the white children in the South was in the hands of private groups and education of Negroes was non existing in some states. In fact, education of Negroes was forbidden by law in many states (Mississippi, Alabama). Even though public schools existed in the North at that time, the Fourteenth Amendment affected them little because no one associated the Fourteenth Amendment with public education at the time of passage. These conditions brought Justice Warren to the conclusion that

.... it is not surprising that there should be so little in the history of the Fourteenth Amendment relating to its intended effect on public education.³³

Justice Warren felt that the basic question was to determine how segregation affected public education. He did not think it enough to compare tangible factors such as buildings of Negro and white schools and draw a conclusion from there. Nor did he feel it enough to turn back the clock to 1868 when the Amendment was adopted or 1896 when the Plessy v. Ferguson decision was handed down, and try to solve today's problems in public education. Justice Warren saw only one way by which to approach the problem:

We must consider public education in the light of its full development and its present place in American life throughout the nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.³⁴

Justice Warren pointed out the importance of education in our

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Ibid, p. 490

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Evans, op.cit., p. 935

society in our time:

Today education is perhaps the most important function of state and local governments. Compulsory school attendance laws and great expenditures for education both demonstrate our recognition of the importance of education in our democratic society.³⁵

Education was necessary for good citizenship and was essential for the perpetuation of democracy. Any child deprived of an education today has great difficulties in succeeding in life. Therefore, continued Justice Warren,

.... the opportunity of an education, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.³⁶

Justice Warren felt that the primary question to be answered was:

Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other tangible factors may be equal, deprive the children of the minority group of equal educational opportunities? We, the United States Supreme Court judges, believe that it does.³⁷

To substantiate his opinion, and that of the other judges in agreement, Warren went back to the ruling in the Sweatt v. Painter case where the United States Supreme Court had ruled that

.... a segregated law school for Negroes could not provide them equal educational opportunities even though the physical facilities may be of equal quality.³⁸

The Court in this case came to this conclusion because it took into consideration:

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Brown v. Board of Education of Topeka 347 US (1954) op.cit., p.493

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Ibid

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Ibid

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Ibid

.... those qualities which are incapable of objective measurement but which make for greatness in a law school. Tangible factors can not be used solely when determining equality of education.³⁹

Justice Warren cited the case of McLaurin v. Oklahoma State Regents where the Court again resorted to intangible considerations and ruled that a Negro admitted to a white school must be treated like all other students and that

.... his ability to study, to engage in discussions and exchange views with other students, and in general to learn his profession (must be made possible).⁴⁰

Justice Warren continued that these intangible considerations must also be applied to grade and high schools. There, too, a Negro was deprived of equal educational opportunity because merely having equal facilities did not constitute equal educational opportunity. Furthermore, to separate children of the same age in public schools solely because of race would generate a feeling of inferiority in the minds of the children of the minority race. This feeling of inferiority could affect the hearts and minds of these children in a way that may not be possible to be remedied. Justice Warren illustrated these points by citing a previous Kansas case where the Kansas court had declared:

Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law, for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to retard the educational and mental development of

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Ibid, p. 494

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Evans, op.cit., p. 936

Negro children and to deprive them of some of the benefits they would receive in racially integrated school systems.⁴¹

Justice Warren was of the opinion that these points brought out in the above decision were amply supported by modern authorities in sociology, psychology, psychiatry, and education.

After the examination of tangible as well as intangible factors Justice Warren and his fellow justices came to the following conclusion:

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violated the due process clause of the Fourteenth Amendment.

Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity the consideration of appropriate relief was necessarily subordinated to the primary question - the constitutionality of segregation in public education. We have now announced that such segregation is a denial of the equal protection of the laws. In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument.⁴²

Thus, the Court declared state enforced racial segregation in public schools unconstitutional and invalid. Yet the decision's effect was delayed by keeping the case on docket for further argument as to methods of enforcement.

The United States Supreme Court's decision may be summarized as

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Ibid, p. 938

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Brown v. Board of Education of Topeka 347 US (1954), op.cit., p.495

follows:

1. The question presented in these cases must be determined not on the basis of conditions existing when the Fourteenth Amendment was adopted, but in the light of the full development of public education and its present place in American life throughout the nation.
2. The history of the Fourteenth Amendment was inconclusive as to its intended effect on public education.
3. States must make education in public schools available to all on equal terms.
4. Segregation of children in public schools deprived children of the minority group of equal educational opportunities, even though the physical facilities and other tangible factors were equal.
5. The "separate but equal" doctrine adopted in Plessy v. Ferguson had no place in public education.
6. Segregation of white and Negro children in public schools of a state on the basis of race denied to the Negro children the equal protection of the laws guaranteed by the Fourteenth Amendment and was therefore unconstitutional.

The case of Brown v. Board of Education of Topeka was reargued on the question of relief and enforcement April 11-14, 1955. The decision was handed down May 31, 1955. Justice Warren again delivered the opinion of the United States Supreme Court which was again unanimous. Justice Warren stated:

.... the fundamental principle that racial discrimination in public education is unconstitutional, is incorporated herein by

reference (from the 1954 Brown v. Board of Education of Topeka decision).⁴³

Justice Warren explained that a reargument was granted because the cases had arisen under different local conditions with a variety of local problems. He further noted that the United States District Attorney, the States of Florida, North Carolina, Arkansas, Oklahoma, Maryland, and Texas had filed briefs for the rehearing and had participated in the oral arguments.⁴⁴

Justice Warren was aware of the complexity of the transition problems and stated:

Full implementation of these constitutional principles may require solution of varied local school problems court will have to consider whether the action of school authorities constitute good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearing, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to these courts.⁴⁵

Thus the United States Supreme Court charged the lower federal courts with the duty to carry out the decision handed down in the Brown case and to hear and decide any further litigation dealing with school segregation. Justice Warren further explained the Supreme Court's ruling:

.... while giving weight to public and private considerations, courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start had been made the burden rests upon the defendants to establish that additional time is necessary in the

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Brown v. Board of Education of Topeka 349 US 298 (1955)

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Ibid, p. 299

⁴⁵

Ibid

public interest and is consistent with good faith compliance at the earliest practicable date. During this period of transition the courts will retain jurisdiction of these cases.

.... these cases are made remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper and to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases.⁴⁶

The opinion of the United States Supreme Court in its 1955 decision of the Brown v. Board of Education of Topeka case may be summarized as follows:

1. Racial discrimination in public schools was unconstitutional as was brought out in the 1954 decision.
2. The cases were remanded to the District Courts whose duty it was to enforce the United States Supreme Court decision and abolish segregated public schools with "all deliberate speed".
3. Courts will have to determine whether the action of school authorities constituted good faith compliance with the constitutional principle or whether it was merely a delaying tactic.
4. The courts which originally heard the cases could best perform this judicial appraisal.
5. Defendants had to make a prompt and reasonable start toward full compliance with the ruling of the United States Supreme Court.
6. Additional time may be granted by the lower federal courts to certain defendants if proven necessary.
7. During the period of transition the lower federal courts will have jurisdiction over the cases.

Interpretation of the 1954 and 1955 decisions by authorities.

Not all Americans agreed with and accepted the decision handed down by the United States Supreme Court. Professor Cahn, a lawyer, stated:

We should not have the constitutional rights of Negroes - or of other Americans - rest on such flimsy foundation as some of the scientific demonstrations in the records. It is one thing to use the current scientific findings, however ephemeral they may be, in order to ascertain whether the legislature has acted reasonably in adopting some scheme of social or economic regulation; deference here is shown not so much to the findings as to the legislature. It is quite another thing to have our fundamental rights rise, fall or change, along with the latest fashions of psychological literature.⁴⁷

Jack Greenberg, assistant counsel of the National Association for the Advancement of Colored People, commented on the Court's decisions and disagreed with the above argument:

Social scientist's testimony was used in wholly different and new ways in the recent school segregation cases. There, by placing before the Court authoritative scientific opinions regarding the effect of racial classification and of "separate but equal" treatment, the plaintiffs helped persuade the Court in the shaping of a judge-made rule of law.⁴⁸

Southern segregationists brought up the old argument of intellectual Negro inferiority. Judge Bradey, a southerner serving on a local court, stated:

We don't know what happens to the brain of man, but we do know that the Negro's brain pan seals and hardens quicker than the white man's. We do know that the Negro has, in certified instances, elliptical blood cells, which cause disease. We do know that his

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Albert Mavrinac. "From Lochner to Brown v. Topeka; the Court and Conflicting Concepts of the Political Process". The American Political Science Review, Sept. 1958, 52:641

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Helen Fuller. "The Defiant Ones in Virginia". The New Republic, Jan. 12, 1959, 140:9

skull is one-eighth inch thicker, and we do know he has to have two determiners to have his kinky black hair. We don't know what it takes to make his mind different from our mind. This Supreme Court seeks to set aside all laws of eugenics and biology.⁴⁹

A three judge district court in South Carolina interpreted the Brown decision as follows:

It is important that we point out exactly what the Supreme Court has decided and what it has not decided in these cases. It has not decided that the Federal Courts are to take over or regulate the public schools of the states. It has not decided that the states must mix persons of different races in the schools or must require them to attend schools or must deprive them of the right of choosing the schools they attend. What it has decided, and all it has decided, is that a state may not deny to any person on account of race the right to attend any school that it maintains The Constitution, in other words, does not require integration, it merely forbids discrimination. It does not forbid such segregation as occurs as a result of voluntary action. It merely forbids the use of governmental power to enforce segregation.⁵⁰

Federal district judge William H. Atwell of Dallas, Texas, criticized the United States Supreme Court decisions by this statement:

The Court bases its decisions on no law but rather on what the Court regarded as more authoritative, modern psychological knowledge. This is not enough.⁵¹

United States Senator Herman E. Talmadge of Georgia introduced a constitutional amendment in the United States Senate in 1960 which was designed to restore to the states exclusive control over public education. It was also designed to prohibit the enforcement of the Brown decision by the federal courts. Specifically Senator Talmadge stated:

⁴⁹ Albert Blaustein. Desegregation and the Law. New Brunswick: Rutgers University Press, 1957, p. 231

⁵⁰ Don Shoemaker. With All Deliberate Speed. New York: Harper & Brothers, 1957, p. 8

⁵¹ Ibid, p. 11

The Talmadge School Amendment is neither a segregation nor an integration measure. It rather is a proposal to reassert affirmatively the time honored right of local people to administer their schools on the state and local levels in accordance with prevailing conditions, circumstances and attitudes. Under it school patrons in each state would be free to determine for themselves through their elected representatives whether segregation, integration, or some median procedure would best serve the interests of their children and states.⁵²

Thus, Talmadge proposed that the citizens of each community and state should decide whether or not integration or segregation should be employed. Senator Talmadge was supported in his proposal by Senators Harry Byrd and Willis Robertson of Virginia, Olin Johnston of South Carolina, Lister Hill and John Sparkman of Alabama, James Eastland and John Stennes of Mississippi, and Russell Long of Louisiana.⁵³ The proposed amendment was not adopted.

Georgia's Attorney General Eugene Cook condemned the Brown decisions and the National Association for the Advancement of Colored People which

.... either knowingly or unwittingly has allowed itself to become part and parcel of the communist conspiracy to overthrow the democratic governments of this nation and its sovereign states.⁵⁴

Cook, therefore, equated the fight of the Negroes for their constitutional rights with conspiracy and an attempt to overthrow the democratic government of the United States.

The Southern Baptist Convention which was held in St. Louis in 1954 made their viewpoint known concerning the United States Supreme Court decisions in the Brown cases by this statement:

52

William Brickman. A Countdown on Segregation of Education. New York: Society for Advancement of Education, 1960, p. 149

53

Ibid, p. 147

54

Shoemaker, op.cit., p. 20

We recognize that these Supreme Court decisions are in harmony with the constitutional guarantees of equal freedom to all citizens and with the Christian principles of equal justice and love for all men We urge our people and all Christians to conduct themselves in this period of adjustment in the spirit of Christ.⁵⁵

The St. Louis Post-Dispatch, one of the most influential newspapers in the United States, made this comment on the Brown decisions:

In the friendliest possible way we would advise southern leaders that the time has come to stop explaining why they do not like the Supreme Court decision, and to start building public acceptance in the South for carrying out that decision. And we know of no better way to build public acceptance than to do what many communities have done - to begin integration.⁵⁶

The Jackson Daily News of Jackson, Mississippi, bitterly attacked the Brown decisions and vowed resistance at any condition and cost.

The Supreme Court tells the Federal tribunals in the various states to require school boards to make a prompt and reasonable start toward full compliance. It won't happen in Mississippi. We are slow starters, and this is one time we won't start at all. Any attempt toward a start in this state is going to be met with stern resistance right at the beginning.⁵⁷

Not all Southern newspapers adhered to the extreme opposition voiced by the Jackson Daily News. The Nashville Tennessean spoke for the moderate southerners when it stated:

The fact is that the decision of the Supreme Court, as the highest court of our own state has twice pointed out, has made a dead letter of compulsory segregation in Tennessee. The sooner that fact is accepted the better it will be for all concerned. For the Supreme Court's decisions are not going to be reversed by "manifesto" or circumvented by legislation.⁵⁸

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Herbert Hill and Jack Greenberg. Citizens Guide to de-Segregation. Boston: Miller Co, 1955, p. 221

56

Shoemaker, op.cit., p. 33

57

Ibid, p. 34

58

Brooks Hays. A Southern Moderate Speaks. Chapel Hill: University Carolina Press, 1959, p. 131

Acceptance and Evasion of the Brown decisions.

Just as the opinions of individuals varied so did the actions of different states and cities. Many states and cities complied immediately. On the day following the 1954 decision, for example, President Eisenhower announced that the District of Columbia would immediately become the nation's showcase in public school integration. It soon became evident that there was a different degree of compliance with the Supreme Court decision in border states and states constituting the Deep South. While there was considerable legal resistance to desegregation in the states of the Deep South, such as Alabama, there was an absence of significant resistance in border states, such as Missouri.⁵⁹ The large urban centers seemed to encounter less resistance to desegregation than did rural areas and small towns. One of the reasons for this occurrence was preconditioning. Negroes had been admitted to labor unions on an equal basis in the urban centers and cities. Thus, the integration in urban areas did not come about suddenly, but moved on a gradual scale over a period of years. In the rural areas there occurred no gradual integration. Strict segregation remained the rule rather than the exception in the rural South.⁶⁰

Southern segregationist states passed legal measures to circumvent the mandate of the Brown v. Board of Education of Topeka case. The various legal attempts adopted by some states to evade and avoid desegregation of

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Blaustein, op.cit., p. 311

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Ibid, p. 317

the public schools, fell into several categories. Many of the Southern states reintroduced the pre-Civil War doctrine of "interposition and nullification".⁶¹ This doctrine was part of the states rights philosophy. According to the states rights philosophy the central government was a compact among the several sovereign states. Since the states were sovereign, they had the right to determine the constitutionality of any act of federal authority. This meant that a state could declare a federal act unconstitutional, null, and void because the state had the right to interpose its sovereignty between the central government and the citizen of the states. Applying this doctrine to the integration-segregation dispute the states rights proponents maintained that the states could declare the ruling of the United States Supreme Court in the 1954 Brown v. Board of Education of Topeka case unconstitutional. The Federal Government denied that the doctrine of interposition was valid and that the states had the right to declare a federal act unconstitutional and nullify it. A 1903 case, the case of Marbury v. Madison, brought out that the United States Supreme Court had the ultimate power in determining the constitutionality of federal acts. Justice Marshall expressed the opinion of the Court and declared the doctrine of interposition invalid when he stated:

If the legislatures of the several states may, at will, annul the judgements of the courts of the United States, and destroy the rights acquired under these judgements, the Constitution itself becomes a solemn mockery; and the nation is deprived of the means⁶² of enforcing its laws by the instrumentality of its own tribunals.

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Clift, op.cit., p. 145

⁶²

Blaustein, op.cit., p. 213

Virginia was the first state to use the interposition doctrine after the 1954 decision of the United States Supreme Court. An interposition act was introduced into the Virginia General Assembly in 1956 asserting the right of the state to maintain a segregated school system. The act declared that

Virginia is under no obligation to accept supinely an unlawful decree of the Supreme Court of the United States based upon an authority which is not found in the Constitution of the United States or any amendment thereto.⁶³

A few weeks later the Virginia General Assembly adopted the proposed act and declared that it was interposing the sovereignty of Virginia against encroachment upon its reserved powers by the federal government. Other states followed suit and also adopted interposition acts.

Still other states enacted resolutions based upon the Tenth Amendment of the Constitution. The Tenth Amendment provided that all powers that were not delegated to the United States by the Constitution, and were not prohibited by it to the states, were reserved to the states respectively, or to the people.⁶⁴ Since the power to desegregate public schools was not specifically granted to the Federal Government in the Constitution nor prohibited by the Constitution to the states, some states felt that it necessarily was a prerogative of the states or the people to act on the segregation issue. These states used the "police power" clause in their argument. Louisiana, for example, used its police power as authority and adopted legislation requiring the separation of races in

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Fuller, op.cit., p. 11

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Evans, op.cit., p. 112

public schools. A statement of purpose followed the segregation requirement and the purpose of its action was "to promote and protect public health, morals, better education, and the peace and good order in the state and not because of race".⁶⁵ A special three judge federal district court dealt with this evasion tactic used by Louisiana and declared it invalid and unconstitutional because it violated the ruling of the United States Supreme Court in the Brown case.

Some Southern states had other tactics which were designed to forestall judicial enforcement of the 1954 decision (see Table I). The United States Supreme Court had charged the lower federal courts with the responsibility of enacting and implementing the decision handed down. However, the lower federal courts could not act until a desegregation case was in litigation before them. The South capitalized on this situation by creating legal barriers designed to keep a potential plaintiff from seeking judicial remedy. In the first place few Negroes could afford the expense of litigation. Consequently, it fell upon groups such as the National Association for the Advancement of Colored People and the Congress for Racial Equality to finance and back test cases. The Southern states retaliated by trying to prevent the National Association for the Advancement of Colored People from operating in the individual states because this group was an out-of-state corporation, directed from New York, which had failed to register as such a corporation

in the individual states. The National Association for the Advancement of Colored People went to court with the argument that the state groups were separate and not directed from New York. The court ruled in favor of the Southern states and ordered the National Association for the Advancement of Colored People to register. Registration meant publication of its members and contributors. This was where the Southern states were able to use a second method to keep the National Association for the Advancement of Colored People from operating and, in essence, keep cases from being brought before the federal courts. Now that the states knew the names of the members and backers of this group, the states enacted legislation which prohibited any state agency from hiring National Association for the Advancement of Colored People members or contributors. Furthermore, some Southern states, such as Alabama and Louisiana, passed laws making it a crime for organizations (such as the National Association for the Advancement of Colored People) to institute

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desegregation litigation in the courts.

Another device used by some states to circumvent the Supreme Court's decision was to require potential plaintiffs in desegregation suits to prepare a long and complicated statement in which they had to list the names of individuals or organizations that had contributed to or advised them in their suit. If the plaintiff refused to disclose this information he was refused a hearing and was punished for withholding information. If the plaintiff did reveal the names of individuals and organizations that

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John Osborn. "Strategist-inching toward Desegregation". Life,
Nov. 10, 1958, 45:122

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Blaustein, op.cit., p. 248

supported him then those persons or groups were subject to community reprisal such as economic sanction. This whole scheme was meant to lessen the number of desegregation proceedings introduced.

North Carolina adopted a different method to get around the desegregation decision. All public school children in that state were placed in elementary or high schools by the use of an "pupil assignment plan". This plan authorized the school boards to determine who would be sent to which school. The intentions and results were obvious. The school board assigned Negro students and white students to separate schools. Coupled with this assignment plan was the "exhaustion of remedies" doctrine. ⁶⁸ This doctrine capitalized on the fact that no appeal from any plaintiff contesting the assignment plan could be heard by any federal court until all the state courts had been exhausted. Thus, if a person wanted to contest the assignment plan he would first of all appeal before the school board. If the school board failed to grant him relief, he would have to appeal to the state superior court. The plaintiff would thus have to appeal his case all the way up to the state supreme court before being able to get his case before a federal court. This appealing process through the state court's hierarchy was not only time consuming but also costly. Not many individuals were willing to go through all the steps, expense, and trouble to contest the unjust measures and the Southern states knew this.

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"Token Integration - South's Answer to Mixed Schools." US News and World Report, Aug. 24, 1959, 47:38.

A further method used to avoid the consequences of the Brown v. Board of Education of Topeka case was the use of a classification factor such as a certain level of scholastic achievement or aptitude. Florida passed a law which stated:

The rules and regulations to be prescribed by the Board may include, but not limit themselves, to provisions for the conduct of such uniform tests as may be deemed necessary or advisable in classifying the pupils according to intellectual ability and scholastic proficiency to the end that there will be established in each school within the county an environment of equality among pupils of like qualifications and academic attainments. In the preparation and conduct of such tests and in classifying the pupils for assignment to the schools they will attend, the Board shall take into account sociological, psychological, and like intangible social scientific factors. In designating the school to which pupils may be assigned there shall be taken into consideration the availability of facilities and teaching capacity of the several schools. The scholastic aptitude, intelligence, mental energy, or ability of the pupil applying for admission and the psychological, moral, ethical, and cultural background and qualifications of the pupils previously assigned to the school in which admission is sought must compare favorably.⁶⁹

It was readily apparent that this vague statute provided ample chance for the State of Florida to achieve its underlying purpose, namely to continue segregation in public schools. The statute as such did not make any mention of race or segregation, but the end result and intent was that of racial segregation. If this statute would be enforced literally without regard to race or color, it would be constitutional. The burden of proof that the statute was not enforced literally was upon the Negro race.

Virginia used still another tactic to evade compliance with the 1954 decision. Under a plan adopted by Virginia any child that objected

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Blaustein, op.cit., p. 254

to being assigned to a non-segregated school would be free to attend a segregated school. This was a very sensible plan on the surface but the white Virginians knew all too well that no white child in Virginia would attend a non-segregated school. For all practical purposes, then, there would still be the dual school set-up of separate white and Negro schools. The school boards further encouraged the enactment of the above proposed plan by passing a resolution which stated;

No public revenue will be given for the support of public schools in counties wherein white and colored children are taught together under any plan or arrangement whatsoever.⁷⁰

Another popular method used was called the "neighborhood school
71 plan". Under this plan secondary schools were often zoned geographically or graduates of certain elementary schools were assigned to specific high schools within their residential zone. This policy has had its greatest effect at the elementary level because elementary schools usually serve smaller residential areas than do secondary schools. If the geographical area was kept small the chances for only one race living in that area were greater. Some people called this method a clear case of gerrymandering of school attendance boundaries. Nevertheless, some states have used it successfully.

Some Southern states realized that nothing was said in the 1954 and 1955 decisions concerning the status of private schools. The ruling of the United States Supreme Court applied only to public schools.

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Brickman, op.cit., p. 45

71

Ibid, p. 47

Southerners hoped to avoid desegregation by separating the public schools from the state and making private schools out of them. Some states did this by giving state money in form of tuition grants to white students to enable them to attend one of the private schools. Another way of accomplishing the same thing was to close all public schools and lease these facilities to private persons or organizations who then reopened them and called them private schools. These private schools were, of course, expected to carry on with segregated education.

Table I summarizes the evasive procedures used by the different states and the delaying legislation adopted. In computing the chart the author has used the Southern states because they were more concerned with and disturbed by the 1954 decision and these states knew what this ruling was designed to accomplish. However, this did not imply that the same tactics were not used in other states.

Studies were made to measure the effectiveness of the 1954 decision and the extent of success that segregationist states had experienced with their evasive measures and delaying techniques. In his book With All Deliberate Speed Don Shoemaker made a study on the effectiveness and acceptance of the 1954 decision. He concluded that the 1954 decision had been slowed down and not been carried out to the fullest extent and that the evasive and delaying techniques of certain states had been successful.⁷² His stand was supported by data which he collected and which comprises Tables I and II.

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Shoemaker, op.cit., p. 191

Types of Legislation Adopted by Segregationist States Since
1954 Designed to Prevent Desegregation.

	Ala.	Ark.	Fla.	Ga.	La.	Miss.	N.C.	S.C.	Tenn.	Texas	Va.
1. Abolition of schools by local (O)ption or (L)egislation	O			L		L,O	O	L			O
2. Grants for Private Education	x			x			x				x
3. Sale or Lease of School Facilities	x			x		x		x			
4. Use of Public Funds for Segregated Schools only				x	x			x			x
5. Specific Pupil Assignment	x	x	x		x	x	x			x	x
6. Compulsary attendance (R)epeal (M)odification	M	M		M	M	R	M	R	M		M
7. Extraordinary powers for Governor			x	x				x			
8. Teacher Employment Laws (R)epeal (M)odification	M		M		M		R	R			
9. Restriction on Pro-Integration groups	x	x	x		x	x		x	x		x
10. Interposition, Nullification, Protest	x	x	x	x	x	x	x	x	x	x	x
11. Use of State Sovereignty or Police power		x		x	x	x					x
12. Study Committee to Work on Segregation Issue	x			x	x	x	x	x			x
13. Provisions to keep schools segregated	x			x	x	x					x

TABLE II

Extent of Segregation and Desegregation as of June 30, 1957.

	Total	School District		Total Enrollment		Pupils in Integrated Situations	
		Biracial	Desegregated	White	Negro	White	Negro
Alabama	111	111	0	471,900	36.6%	0	0
Arkansas	423	228	5	316,709	24.3%	9000	940
Delaware	106	61	18	53,904	17.5%	25,706	5,145
Washington, D.C.	1	1	1	34,758	68.0%	34,758	73,723
Florida	67	67	0	594,220	21.8%	0	0
Georgia	200	195	0	644,238	31.8%	0	0
Kentucky	219	196	0	551,771	6.6%	200,000	22,000
Louisiana	67	67	0	375,000	37.5%	0	0
Maryland	24	23	20	397,417	21.6%	384,150	89,668
Mississippi	151	151	0	273,722	49.5%	0	0
Missouri	3,500	244	202	677,500	9.0%	0	59,000
North Carolina	172	172	0	724,302	19.3%	0	0
South Carolina	107	107	0	319,670	43.2%	0	0
Texas	1,800	841	103	1,565,568	13.7%	500,000	25,000
Virginia	114	114	0	566,696	24.5%	0	0

Another study was undertaken by the Civil Rights Commission in 1963. Its findings are tabulated in Tables III and IV. The findings of the Civil Rights Commission were similar to those in Shoemaker's study, namely that the 1954 decision was not as effective as it should have been and had not accomplished its objectives in many instances. After comparison of the figures quoted by Shoemaker in 1957 with the figures published by the Civil Rights Commission in 1963, it became apparent that tremendous progress had been made in several states concerning desegregation. At the same time it became obvious that other states had taken no steps whatsoever toward desegregation of their public schools. For example, when comparing the total number of school districts and number of desegregated school districts in Alabama in 1957 with the total number of school districts and number of desegregated districts in 1963, the reader will find that no steps towards compliance with the United States Supreme Court decision had been taken. In 1957 Alabama had 111 school districts none of which were desegregated; in 1963 it had 114 school districts and still none desegregated. Mississippi was another example of inactivity in the desegregation question. In 1957 Mississippi had 151 school districts and none of them desegregated; in 1963 Mississippi had 150 school districts and still none desegregated.

On the other hand, by examining Tables II and III the reader will find that some states made respectable progress in their desegregation

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Civil Rights. Report of the United States Commission on Civil Rights. Washington: Government Printing Office, 1963, p. 61

effort of public schools. Delaware, for example, had only eighteen out of 106 school districts desegregated in 1957. In 1963 the 106 school districts were unified into eighty-seven school districts and all eighty-seven were desegregated. Another glaring example was Kentucky which had 219 school districts in 1957 of which none were desegregated. In 1963, 119 of the 205 school districts were desegregated.

Several states used the "with all deliberate speed" clause of the Brown decision to their advantage. These states did not refuse to comply with the United States Supreme Court decision but desegregated at such a slow pace that their action bordered on non-compliance. Arkansas, for example, had 423 school districts in 1957 of which five were desegregated. In 1963 Arkansas had 416 school districts of which twelve were desegregated. This amounted to seven additional desegregated schools in six years. Another state using this slow pace of desegregation was Georgia. In 1957 Georgia had 200 school districts of which none were desegregated. In 1963 Georgia had 198 school districts of which one was desegregated. The same was true with Louisiana which had sixty-seven school districts in 1957 with none of them desegregated. In 1963 Louisiana had sixty-seven school districts with one of them desegregated.

Northern states, which had clauses requiring segregation in education in their state constitutions, had repealed these requirements by the mid-nineteenth century. Thus, the Brown decision affected these states little. However, there were charges brought by Negroes in several states alleging de facto segregation in education caused by segregated housing.

TABLE III

Status of Desegregation of School Districts ('62-'63)

	Total School Districts	Total with White and Negro Pupils	No. of School Dist. Desegregated	No. of School Dist. Segregated
Alabama	114	114	0	114
Arkansas	416	228	12	216
Delaware	87	87	87	0
Washington, D.C.	1	1	1	0
Florida	67	67	10	57
Georgia	198	182	1	181
Kentucky	205	166	149	17
Louisiana	67	67	1	66
Maryland	24	23	23	0
Mississippi	150	150	0	150
Missouri	1,607	213	203	10
North Carolina	173	173	18	155
Oklahoma	1,180	241	196	45
South Carolina	108	108	0	108
Tennessee	151	143	26	117
Texas	1,461	919	177	742
Virginia	130	128	32	96
W. Virginia	55	43	43	0
	<hr/>	<hr/>	<hr/>	<hr/>
	6,197	3,053	979	2,074
Total Percent			32.1	67.9

TABLE IV

Status of Segregation-Desegregation ('62-'63)

	Enrollment			Negroes enrolled in desegregated schools	Percent of total Negro pupils enrolled in desegregated schools
	Total	White	Negro		
Alabama	807,287	527,075	280,212	0	0
Arkansas	448,616	331,552	117,064	247	.211
Delaware	90,761	73,769	16,992	9,498	55.9
Washington, D.C.	132,900	22,141	110,759	87,749	79.2
Florida	1,183,714	956,423	227,291	1,551	.682
Georgia	987,385	562,255	325,141	44	.014
Kentucky	655,000	610,000	45,000	24,316	54.1
Louisiana	759,990	458,270	301,720	107	.035
Maryland	667,528	514,313	153,215	69,147	45.1
Mississippi	590,000	300,000	290,000	0	0
Missouri	857,620	767,620	90,000	35,000	38.19
North Carolina	900,641	800,289	341,352	879	.256
Oklahoma	560,000	515,200	44,800	10,557	23.6
South Carolina	630,628	365,340	265,288	0	0
Tennessee	829,686	670,387	159,299	1,810	1.14
Texas	2,255,593	1,951,613	303,980	7,000	2.3
Virginia	933,830	704,725	229,105	1,230	.537
W. Virginia	438,128	412,878	25,250	1,550	61.4
Total	13,970,307	10,643,839	3,326,468	264,665	8.0

Implications of the 1954 and 1955 Decisions.

1. The Negroes had the law on their side now and they were able to press for speedy desegregation.
2. The segregationists had received a setback but were not ready to give up the fight.
3. The result was much tension and disunity within the United States at a time when the world as a whole was full of crises.
4. The tension resulted in violence and in an increase in activity by the opposing forces.
5. The Negroes, equipped with the 1954 and 1955 decisions, were ready to bring numerous cases to the courts where compliance to the decisions had not been instituted.
6. The courts followed precedent, namely the Brown decisions, and decided in favor of the Negro plaintiffs.
7. The segregationists, unable to back their position with any legal decision, refused to cooperate and accept the validity of the United States Supreme Court decisions.
8. The United States received a black eye in its prestige standing around the world because it became apparent that the law abiding citizens of this democracy refused to abide the law established by the United States Supreme Court in its Brown decisions.
9. Even though the Brown decisions dealt only with segregation in public education and declared it unconstitutional, it implied that all other segregation, such as theaters, jobs, housing, lunchcounters, etc. was equally unconstitutional.

10. The Brown decisions were a step toward a better and truer democracy. As the leader in the fight for freedom and democracy in today's world, the United States could not practice discrimination within its borders and preach freedom and democracy to the world.
11. The Brown decisions constituted the official stand of the United States Government on the segregation question. This stand increased the United States' prestige around the world, especially in the newly developing countries of Africa.

Decisions since 1954 handed down by the United States Supreme Court dealing with segregation in education.

Several cases dealing with segregation have been brought to the United States Supreme Court since the 1954 and 1955 decisions. In the 1955 case of Lucy et al. v. Adams, the United States Supreme Court ordered the University of Alabama to admit Miss Lucy, a Negro, to the University as a student. She was admitted but expelled a few days later for disciplinary reasons. In the 1956 case of the State of Florida ex rel Hawkins v. Board of Central, the United States Supreme Court ordered admission of Hawkins, a Negro, to the Florida College of Law. In the 1958 case of the National Association for the Advancement of Colored People v. State of Alabama the United States Supreme Court ruled that the Fourteenth Amendment protected the right of the National Association for the Advancement of Colored People to keep its membership lists secret. In the 1958 case of Cooper v. Aaron the United States Supreme Court denied

the Little Rock, Arkansas, high schools a petition requesting the right to delay the start of integration for two and one half years. In the 1959 case of County School Board of Prince Edward County, Virginia, v. Allen, the United States Supreme Court denied a request by the county to nullify the decision of a lower federal court which had ordered immediate integration of schools. The most recent cases dealing with segregation-integration of educational institutions were the University of Alabama and the University of Mississippi cases. In both cases the federal courts ordered admission of the Negro applicants. The Federal Government proved that it was going to use all necessary means to enforce its decision. Other universities, such as Georgia Tech, integrated peacefully and without much publicity. According to a survey by the Southern Educational Reporting Service , by 1960 a total of 124⁷⁴ Southern white colleges and universities admitted Negro students.

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Shoemaker, op.cit., pp. 196-97

SUMMARY AND CONCLUSION

The purpose of this study was to (1) examine the United States Supreme Court cases of 1896 and 1954-55 dealing with the integration-segregation problem in public schools; (2) analyze the opinions of the different justices on the cases; (3) consider the interpretations of the decisions of the Court by various authorities; and (4) determine the implications of these decisions.

The procedures used in making this study were (1) an examination of the texts of the selected cases and (2) a survey of the literature available in the Kansas State University Library concerning the problem of integration-segregation in public schools with special emphasis on the selected cases.

The educational opportunities of the American Negro from the discovery of the New World to the present may be summarized as follows:

1. During the 17th and 18th centuries the American Negro had little opportunity to receive an education. Only a few organizations and individuals were interested in educating the Negro.
2. During the 19th and 20th centuries more and more educational opportunities were provided for the American Negro. However, this early education of the Negro took place on a segregated basis. Slowly the Negroes started contesting segregated education in the courts as being in violation of the Constitution of the United States of America.

In 1896 the United States Supreme Court dealt with the integration-segregation question in public education in the case Plessy v. Ferguson.

The Court's decision may be summarized as follows:

1. Separate but equal education is not in violation of the Thirteenth and Fourteenth Amendment of the United States Constitution and is therefore constitutional.
2. States under their police power have the right to regulate education.
3. The regulation of education in the states by use of the police power must be reasonable.

In 1954-55 the United States Supreme Court again dealt with the integration-segregation question in public education in the case of Brown v. Board of Education of Topeka. The Court's decision may be summarized as follows:

1. Separate but equal education is in violation with the Fourteenth Amendment of the United States Constitution.
2. The separate but equal doctrine has no place in today's education and is unconstitutional.
3. The lower federal courts were charged with the duty of enforcing the decision of the United States Supreme Court and abolish segregation in public schools with all deliberate speed.

The United States Supreme Court dealt with a specific situation in each case. However, the Justices, whether agreeing with the majority opinion or giving a dissenting opinion, elaborated on their conception of the meaning of the Thirteenth and Fourteenth Amendments. They also made it clear what their interpretation of "equality of opportunity" was. It was upon these opinions that lay persons based their interpretations of the Supreme Court's decisions. For the most part these lay persons chose to either interpret the opinion of the Supreme Court as simply an

approval or a ban on the practice dealt with in the case, or they drew wide implications from the opinions which encompassed practices other than the ones specifically dealt with in the case.

It is important to note that none of the Justices in their opinions dealing with a case denied the importance of equal opportunities and the importance of this ideal in a democracy and specifically in the public schools. Also, the same historical facts and interrelationship between a state and its people and a state and the national government were quoted by different Justices to support varying views on the meaning and purpose of the Amendments. The Justices of the Supreme Court involved in the cases discussed and the lay persons interpreting the decisions seemed to disagree as to when a state passed beyond the "verge of power" constitutionally given to them.

It may be concluded that the Plessy v. Ferguson decision retarded the establishment of equal education for all. The 1954 case of Brown v. Board of Education of Topeka reversed the Plessy v. Ferguson decision and declared segregation in public schools unconstitutional. Desegregation was to be brought about with all deliberate speed. However, the interpretation of "with all deliberate speed" has not been the same in the various states. It now appears that a more vigorous effort is being made to enforce the supreme law of the land.

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A SURVEY OF LITERATURE CONCERNING SELECTED UNITED STATES SUPREME
COURT CASES DEALING WITH THE INTEGRATION-SEGREGATION
PROBLEM IN AMERICAN PUBLIC SCHOOLS

by

ALBERT GEORG KAIMAR

B.A., KANSAS STATE UNIVERSITY, 1963

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The purpose of this study was to (1) examine the United States Supreme Court cases of 1896 and 1954-55 dealing with the integration-segregation problem in public schools; (2) analyze the opinions of the different justices on the cases; (3) consider the interpretations of the decisions of the Court by various authorities; and (4) determine the implications of these decisions.

The procedures used in making this study were (1) an examination of the texts of the selected cases and (2) a survey of the literature available in the Kansas State University Library concerning the problem of integration-segregation in public schools with special emphasis on the selected cases.

In Plessy v. Ferguson, 347 US (1896), the Supreme Court ruled that separate but equal facilities in education were constitutional. Justice Brown, spokesman for the majority of the Supreme Court, stated that it was within the police power of a state to require separate facilities for different races. This was not a violation of the Thirteenth or Fourteenth Amendment. However, the state must use its police power "reasonably".

Justice Harlan dissented. He felt that the requirement to separate races in transportation and education was a violation of the Thirteenth and Fourteenth Amendment and was therefore unconstitutional. It was a violation of basic rights guaranteed to all citizens by the Constitution regardless of race.

Not all lay persons agreed with the ruling and interpretation handed down by the Supreme Court. Some people felt that the Court had grossly misinterpreted the meaning of the Constitution.

In *Brown v. Board of Education of Topeka*, 354 US (1954), the Supreme Court reversed its previous interpretation of the Thirteenth and Fourteenth Amendments. The Court declared the separate but equal doctrine of the *Plessy* case unconstitutional. Justice Warren, spokesman for the majority opinion of the Supreme Court, declared the separation of races in education as being in violation with the Thirteenth and Fourteenth Amendments of the Constitution. Segregation of children in public schools deprived children of the minority group of equal educational opportunities. It also deprived them of the equal protection of the laws guaranteed by the Fourteenth Amendment.

Some lay persons agreed with the Court's decision and called for the abolishment of segregation in theaters, lunchcounters, housing, and churches. Other persons were of the opinion that the Court had falsely interpreted the meaning of the Constitution. No person denied the importance of "equality of opportunity". The difference came with the various interpretations of this "equality of opportunity".

There was much variation in the degree and speed of compliance by the different states with the Court's ruling. In 1963, nine years after the decision was handed down, Alabama still operated its 111 school districts on a segregated basis. On the other hand, Delaware, which had eighteen of 106 school districts desegregated in 1957, had all of its school districts desegregated by 1963.

Today equality is still only good on paper in many places in the United States. A more vigorous enforcement of the supreme law of the land must occur before equality becomes a reality in all parts of the United States.