Supreme Court of the United States

OCTOBER TERM, 1952

No. 8

OLIVER BROWN, *et al., Appellants,*

vs.

BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS, *et al., Appellees.*

Appeal from the United States District Court for the District of Kansas

BRIEF OF
AMERICAN VETERANS COMMITTEE, INC. (AVC)
Amicus Curiae

PHINEAS INDRITZ
National Counsel
American Veterans Committee

October 9, 1952
Washington, D. C.

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The issue in this case. This case raises the issue whether a State may require the separation, by race or color, of pupils in the public elementary schools, where such separation retards the educational and mental development of the Negro pupils and admittedly deprives them of educational benefits available to the white pupils, even though the physical facilities provided "are comparable."

The Interest of the American Veterans Committee.

The American Veterans Committee (AVC) is a nation-wide organization of veterans who served honorably in the Armed Forces of the United States during World Wars I and II, and the Korean conflict. We are associated to promote the democratic principles for which we fought, including the elimination of racial discrimination. Most

of us served overseas. There was no "community pattern" of racial discrimination and segregation when the chips were down and there was only the mud, the foxholes, and the dangers of the ocean and of mortal battle in the fight to preserve our Nation's democratic ideals. We believe that the segregation here involved is of the same cloth as the racism against which we fought in World War II, and that its continuance is detrimental to our national welfare, both at home and abroad.

The Facts in This Case.

Chapter 72-1724, General Statutes of Kansas, Ann. (1949), authorizes the maintenance of "separate schools for the education of white and colored children, including the high schools in Kansas City, Kan.; no discrimination on account of color shall be made in high schools, except as provided herein..." Pursuant to this statute, the City of Topeka, Kansas, provides public elementary education through the sixth grade in 18 schools for white children and 4 schools for colored children. The City does not segregate white and colored children in the junior high schools (beginning with the 7th grade) or in the high schools (R. 12). The appellants, Negro parents and pupils, seek to enjoin the appellees from denying to Negro pupils the privilege of attending public schools within the school territory where they live, without racial segregation (R. 7, 11).

The court below "found as a fact" that the white and colored elementary schools "are comparable" insofar as concerns "the physical facilities, the curricula, courses of study, qualification of and quality of teachers, as well as other educational facilities in the two sets of schools" and that "in the maintenance and operation of the schools there is no willful, intentional or substantial discrimination in the matters referred to above between the colored and white schools" (R. 239, 240). But the court further found (Finding VII; R. 245-246) that:

> "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 retain [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial integrated school system."

Notwithstanding the latter finding, however, the court below refused to enjoin the segregation of white and colored children in the public elementary schools, solely because the court felt that the decisions of this Court in *Plessy* v. *Ferguson,* 163 U. S. 537 (1896) and in *Gong Lum* v. *Rice,* 275 U. S. 78 (1927) support the constitutionality of a segregated school system in the lower grades, and that this Court's decisions in *Sweatt* v. *Painter,* 339 U. S. 629 (1950) and *McLaurin* v. *Oklahoma State Regents,* 339 U. S. 637 (1950), which dealt with racial distinctions in professional and graduate education, have not affected the authority of *Plessy* and *Gong Lum* insofar as elementary school education is concerned. *Brown* v. *Board of Education of Topeka,* 98 F. Supp. 797 (D. C., D. Kans. 1951).

ARGUMENT

I. Psychological Discrimination Imposed By Government On Account of Race Violates the Constitutional Guarantee of Equal Protection of the Laws.

Although the court below recognized that compulsory racial segregation in public elementary schools is unconstitutional where the physical facilities (such as school buildings, teachers, books, courses of study, etc.) are provided unequally for white and colored pupils, it held, in effect, that the government may constitutionally retard

"the educational and mental development of Negro children and . . . deprive them of educational benefits available to white children" by imposing psychological feelings of inferiority. The finding by the court below that compulsory separation by race denotes the colored child as of an inferior group and that a "sense of inferiority affects the motivation of a child to learn" is supported by the uncontradicted evidence in this case (R. 118, 155-156, 165, 169-172, 176-177), and is in accord with the scientific findings of many eminent psychologists and sociologists. Deutcher and Chein, *The Psychological Effect of Enforced Segregation: A Survey of Social Science Opinion,* 26 Journ. of Psych. 259 (1948); Cooper, *The Frustrations of Being a Member of a Minority Group: What Does It Do to the Individual and to His Relationships With Other People?,* 29 Mental Hygiene 189 (1945); McLean, *Psychodynamic Factors in Racial Relations,* 244 Annals of the Amer. Acad. of Pol. and Soc. Sci 159, 161 (Mar. 1946); Goff, *Problems and Emotional Difficulties of Negro Children Due to Race,* 19 Journ. of Negro Ed. 152 (1950); see also authorities cited in *Appendix to Appellants' Brief* in this case. A person, whether adult or child, who is beset by such psychological tension "simply cannot function efficiently" (Deutcher and Chein, *supra,* 272), and where it is imposed simply because of his race he is not being treated equally, no matter how "equal" may be the physical facilities afforded to him. Even such experts in physical discrimination as Hitler's Nazis did not disdain ostentatious ostracism as a device to impose psychological discrimination.

Under our Constitution and the decisions of this Court, racism is no justification for any governmentally imposed discrimination. This Court has consistently held that "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality" [*Hirabayashi* v. *United States,* 320 U. S. 81, 100 (1943)]; that "discriminations based on race alone are

obviously irrelevant and invidious'' [*Steele* v. *Louisville & Nashville R. Co.*, 323 U. S. 192, 203 (1944)]; and that ''racial discrimination .... is at war with our basic concepts of a democratic society'' [*Smith* v. *Texas*, 311 U. S. 128, 130 (1940)].

The fact that the discrimination here imposed on colored elementary school children of Topeka, Kansas, is partially psychological and relates to community attitudes and individual feelings does not make it any less cognizable in law. Anglo-American law has long granted judicial protection against defamations which tend to ''disgrace'' a person or ''lower him in or exclude him from society or bring him into contempt or ridicule.''[1] The essence of the injury is psychological—the imposition of public obloquy and odium, whether done with or without writing or words, *e.g.*, ''riding skimmington'' to ridicule a henpecked husband publicly;[2] portraying a person as the Beast in a painting of Beauty and the Beast;[3] painting a man ''playing at cudgels with his wife'';[4] making a drawing of a person in a pillory;[5] or setting a lamp in front of a person's dwelling where the popular significance, in the social setting and circumstances of the place and time, was to impute reproach, odium and ignominy.[6]

Moreover, the numerous decisions of Southern courts awarding damages for ''humiliation'' to a white person who has been compelled to ride in the Negro section of a train,[7] or who is excluded from an office-building elevator set

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1 Newell, *The Law of Slander and Libel*, p. 2 (4th ed. 1924); Odgers, *Libel and Slander*, p. 16 (4th ed. 1905); *Cropp* v. *Tilney*, 3 Salk. 225, 226, 91 Eng. Repr. 791 (1699); *Beauharnais* v. *Illinois*, 343 U. S. 250, 254-257 (1952).

2 *Mason* v. *Jennings*, Sir T. Raym. 401, 83 Eng. Repr. 209 (1680); *Sir William Bolton* v. *Deane*, cited in *Austin* v. *Culpepper*, 2 Show. K. B. 313, 89 Eng. Repr. 960 (1682).

3 *Du Bost* v. *Beresford*, 2 Camp. 511, 170 Eng. Repr. 1235 (1810).

4 *Anon.*, 11 Mod. 99, 88 Eng. Repr. 921, 922 (1707).

5 *Austin* v. *Culpepper*, *supra*, ftnt. 2; Skin. 123, 90 Eng. Repr. 57 (1682).

6 *Jefferies* v. *Duncombe*, 11 East 226, 103 Eng. Repr. 991; 2 Camp. 3, 170 Eng. Repr. 1061 (1809).

7 *Louisville & N. R. Co.* v. *Ritchel*, 148 Ky. 701, 147 S. W. 411 (1912); *Missouri, K. & T. Ry. Co.* v. *Ball*, 25 Tex. Civ. App. 500, 61 S. W. 327 (1901); *Chicago, R. I. & P. Ry. Co.* v. *Allison*, 120 Ark. 54, 178 S. W. 401 (1915).

apart for whites and is compelled to ride in an elevator set apart for Negroes,[8] or who has been called "colored" or "mulatto",[9] are all based on the proposition that strong feelings of contempt and scorn are directly associated with the view that Negroes have an inferior caste status and that the compulsory segregation of Negroes is intended to reflect such inferior caste status.

The Fourteenth Amendment was adopted precisely to abrogate the disadvantages resulting from an inferior caste status imposed by law. Chief Justice Taney, in the historic decision in *Dred Scott* v. *Sandford,* 60 U. S. (19 How.) 393, 407 (1857), had described Negroes as having "for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior that they had no rights which the white man was bound to respect." The Fourteenth Amendment was particularly intended to repudiate that view, and therefore reached beyond the Thirteenth Amendment (which abolished slavery and involuntary servitude) to elevate the Negro to full citizenship and complete equality before the law. It did not provide for "second-class citizenship" or prescribe "separate but equal" treatment; instead, it "made the rights and responsibilities, civil and criminal, of the two races *exactly the same.*" *Virginia* v. *Rives,* 100 U. S. 313, 318 (1880) (emphasis supplied).

The contemporaneous decisions of this Court fully reflected this understanding. In *Strauder* v. *West Virginia,* 100 U. S. 303 (1880), this Court pointed out that the Four-

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[8] *O'Connor* v. *Dallas Cotton Exch.*, 153 S. W. (2d) 266 (Civ. App. Tex. 1941).

[9] *Flood* v. *News & Courier Co.*, 71 S. Car. 112, 50 S. E. 637 (1905); *Wolfe* v. *Georgia Ry. & Elec. Co.*, 2 Ga. App. 499, 58 S. E. 899 (1907); *Collins* v. *Okla. State Hosp.*, 76 Okla. 229, 184 Pac. 946 (1919); *Upton* v. *Times-Demo. Publ. Co.*, 104 La. 141, 28 So. 970 (1900) ("outrageous wrong"); *Spotorno* v. *Fourichon*, 40 La. Ann. 423, 4 So. 71 (1888); *Spencer* v. *Looney*, 116 Va. 767, 82 S. E. 745 (1914); *Hargrove* v. *Okla. Press Publ. Co.*, 130 Okla. 76, 265 Pac. 635 (1928); *Jones* v. *R. L. Polk & Co.*, 190 Ala. 243, 67 So. 577 (1915). *Cf. King* v. *Wood*, 1 Nott. & McC. 184 (S. Car. 1818); *Atkinson* v. *Hartley*, 1 McCord 203 (S. Car. 1821); *Eden* v. *Legare*, 1 Bay 171 (S. Car. 1791).

teenth Amendment was framed and adopted to protect the colored people, who "had long been regarded as an *inferior* and subject race", against State action designed "to perpetuate the *distinctions* that had before existed" (at p. 306). The Fourteenth Amendment granted "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.... The very fact that colored people are *singled out* ... is practically *a brand upon them,* affixed by the law, *an assertion of their inferiority,* and a stimulant to that race prejudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others." (pp. 307-308) (emphasis supplied).

In *Ex Parte Virginia,* 100 U. S. 339, 344-345 (1880), this Court said: "One great purpose of these amendments was to raise the colored race from that *condition of inferiority* and servitude in which most of them had previously stood, *into perfect equality of civil rights* with all other persons within the jurisdiction of the States. They were intended to take away *all possibility of oppression by law because of race or color.*" (Emphasis supplied).

Equally perceptive of the true meaning of the Fourteenth Amendment was the contemporaneous decision by this Court in *Railroad Company* v. *Brown,* 84 U. S. (17 Wall.) 445 (1873). There, a railroad company which furnished a car for colored people "equal in comfort to the cars reserved for white people" contended that it was not discriminating against colored people by refusing them admittance to the cars reserved for white people. This Court unanimously rejected that early manifestation of the "separate but equal" theory as "an ingenious attempt to evade a compliance with the obvious meaning of the requirement

... this discrimination must cease, and the colored and white race, in the use of the cars, be placed on an equality." (at pp. 452-453).

Even *Plessy* v. *Ferguson, supra,* relied on by the court below, recognized the impact of the Constitution against a State-imposed inferior caste status. By asserting, as an assumed fact, that segregation laws "do not necessarily imply the inferiority of either race to the other" (163 U. S. 537, 544, 551), *Plessy* indicated that segregation laws would be unconstitutional where they in fact implied that one race is inferior to another race. And in this case, on the basis of full and uncontradicted evidence, the court below expressly found that segregation in the Topeka elementary schools denotes the inferiority of the Negro pupils and thereby tends to retard their educational and mental development.

Mr. Justice Harlan's prophetic dissent in *Plessy* against "state enactments, which, in fact, proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit" with white people (at p. 560), has been underscored by more than 56 years of experience. Every survey of racial segregation and every scientific study of its effects have confirmed "this basic fact: a law which forbids a group of American citizens to associate with other citizens in the ordinary course of daily living creates inequality by imposing a caste status on the minority group." *To Secure These Rights,* Report of the President's Committee on Civil Rights, p. 82 (Oct. 29, 1947). See also Gunnar Myrdal, *An American Dilemma, The Negro Problem and Modern Democracy,* p. 581 (1944); *Higher Education for American Democracy,* Report of the President's Commission on Higher Education, Vol. II, p. 31 (Dec. 11, 1947); *Segregation in Washington,* Report of the National Committee on Segregation in the Nation's Capital (Dec. 10, 1948).

By segregating colored children from other children in its elementary public schools, the City of Topeka, Kansas,

is using governmental power to impose an inferior caste status on the colored children. The Fourteenth Amendment to the Constitution "nullifies sophisticated as well as simple-minded modes of discrimination." *Lane* v. *Wilson,* 307 U. S. 268, 275 (1939); *Yick Wo* v. *Hopkins,* 118 U. S. 356 (1886); *Yu Cong Eng* v. *Trinidad,* 271 U. S. 500, 525-527 (1926); *Takahashi* v. *Fish & Game Commission,* 334 U. S. 410, 420 (1948); *Henderson* v. *United States,* 339 U. S. 816, 825 (1950).

II. This Case is Governed by This Court's Decisions in the SWEATT and McLAURIN Cases, Not the PLESSY and GONG LUM Cases.

In *Sweatt* v. *Painter,* 339 U. S. 629 (1950), this Court ruled that the refusal to admit a qualified Negro to the University of Texas Law School was unconstitutional even though the State provided law school education for him at a separate school for Negroes. This Court did not simply compare the physical facilities of the two schools. "What is more important," said this Court, are "qualities which are incapable of objective measurement," including, among others, "standing in the community, traditions and prestige," and factors of "isolation" from, and "academic vacuum, removed from the interplay of ideas and the exchange of views" with, the dominant majority (p. 634).

In *McLaurin* v. *Oklahoma State Regents,* 339 U. S. 637 (1950) there was no question as to the equality of the physical facilities provided for white and colored students. McLaurin used "the same classroom, library and cafeteria as students of other races," but was assigned to a seat or table designated for colored students (p. 640). This Court ruled that restrictions setting the colored student "apart from the other students .... impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and" (p. 641) ".... under these circum-

stances the Fourteenth Amendment precludes differences in treatment by the state based upon race'' (p. 642).

The logic and thrust of the *Sweatt* and *McLaurin* decisions cannot justifiably be restricted to professional and graduate schools or to any other level of public education. Any restriction in public institutions of learning, based on race, which retards educational and mental development of a student is as unconstitutional in an elementary school as at any other level of public education. Indeed, the constitutional right to freedom from such restrictions is even more important at the elementary level where the growing twig is being shaped. If racial restrictions are permitted to deform the student's mind and personality in his early stages of education, he cannot in later life hope to compete on an equal basis, either at the unrestricted graduate level or elsewhere, with those not so retarded. (*Cf.* R. 172). The *Sweatt* and *McLaurin* decisions therefore require the elimination in this case of that factor—racial segregation—which produces educational handicaps for the colored pupil *vis-a-vis* the white pupil.

This case is not governed by *Plessy* v. *Ferguson,* 163 U. S. 537 (1896) or *Gong Lum* v. *Rice,* 275 U. S. 78 (1927).

If, as held by the court below, the decisions in *Sweatt* and *McLaurin* are not applicable to racial segregation at the elementary school level (as here), simply because the racial segregation in those cases was in professional and graduate education, then *Plessy* is wholly irrelevant to this case. *First,* the ''only issue made'' in that case was as to segregation in transportation, not in schools (p. 549). *Second, Plessy* did not sanction a general standard of racial segregation as such. The *Plessy* standard was that only *reasonable* distinctions based on race are constitutional. It regarded as unreasonable, and therefore unconstitutional, any law ''requiring colored people to walk upon one side of the street, and white people upon the other, or requiring white men's houses to be painted white, and colored men's black, or their vehicles or business signs

to be of different colors, upon the theory that one side of the street is as good as the other, or that a house or vehicle of one color is as good as one of another color'' (pp. 549-550). *Third,* the dicta as to schools were intended only to show that segregation in transportation was less ''obnoxious'' than segregated schools ''the constitutionality of which does not seem to have been questioned'' (p. 551) and that segregated schools had not then been outlawed by State court action (pp. 544, 545). The insubstantiality of that dicta is emphasized by the absence of any evidence in that case as to either (a) the reasonableness of the distinction or (b) the inequalities resulting therefrom. In this case, however, the evidence shows both the unreasonableness of the distinction and the resultant inequalities.

Gong Lum involved only the question whether the word ''colored'' in the Mississippi constitution requiring separate schools for ''white and colored'' children applied to children of Chinese ancestry as well as to Negro children. The plaintiff there expressly agreed with the desirability and legality of segregating Negro and white children, and claimed only that a Chinese child should be classified as ''white'' in order to protect the Chinese child from the ''risks and dangers'' of association with Negro children (pp. 10, 14, 16, Brief of Plaintiff in Error, No. 29, Oct. Term, 1927; 275 U.S. 78-79). The Court assumed that the schools for Negro children were equal to those for white children and ruled only that the question of classification of a person was not one meriting ''full argument and consideration'' (pp. 85-86). *Gong Lum* did not involve the constitutionality of separating children by race in the public schools where such separation is shown, as here, to retard the educational and mental development of children of the minority group.

III. The Segregation in This Case Cannot Be Supported Under Any Proper Test. And Even if the PLESSY Rule of "Reasonable" Segregation Has Any Vitality, the Segregation Here is Unreasonable and Should Be Enjoined.

This Court has consistently ruled that the "ultimate test of validity" of most statutes is whether they are pertinent and have a rational relationship to a legitimate legislative objective. *Asbury Hospital* v. *Cass County,* 326 U. S. 207, 214 (1945); *Sage Stores Co.* v. *Kansas ex rel. Mitchell,* 323 U. S. 32 (1944); *Metropolitan Casualty Ins. Co.* v. *Brownell,* 294 U. S. 580, 583 (1935). Where the statute restricts personal rights and liberties, more is required—this Court will "weigh the circumstances and . . . appraise the substantiality of the reasons advanced in support of the" restriction. *Schneider* v. *State,* 308 U. S. 147, 161 (1939); *Thornhill* v. *Alabama,* 310 U. S. 88, 96 (1940); *cf. Minnesota* v. *Barber,* 136 U. S. 313, 320 (1890); *Nectow* v. *Cambridge,* 277 U. S. 183, 188 (1928). The requirements become even greater with respect to "legal restrictions which curtail the civil rights of a single racial group;" such restrictions "are immediately suspect" and are subjected to "the most rigid scrutiny." *Korematsu* v. *United States,* 323 U. S. 214, 216 (1944); *Takahashi* v. *Fish & Game Comm.,* 334 U. S. 410, 420 (1948). Indeed, this Court has said: "States may do a good deal of classifying that it is difficult to believe rational, but there are limits, and it is too clear for extended argument that color cannot be made the basis for a statutory classification affecting the right set up in this case." *Nixon* v. *Herndon,* 273 U. S. 536, 541 (1927). And at the last Term, this Court emphasized that "a requirement of color, as we have pointed out before, is not reasonably related to any legitimate legislative objective." *Ray* v. *Blair,* 343 U. S. 214, 226, ftnt. 14 (1952).

Under none of these tests can the racial restriction in this case be sustained. There is no evidence that segregation in the first six grades is pertinent to or has a rational

relationship to any legitimate legislative objective. Nor are there substantial reasons shown to support this segregation as a necessary measure to prevent any important and substantial harm, either to the community, to efficient public education, to the white children, or to anyone else.

Prejudice and private social views are obviously insufficient legal justification for the racial restriction. No one has the right to demand that the government discriminate, by exclusion or segregation or otherwise, against other citizens in the use of a public facility, simply on account of their race or color, merely because he does not wish to associate with them. *McLaurin* v. *Oklahoma State Regents,* 339 U. S. 637, 641 (1950); *Ferguson* v. *Gies,* 82 Mich. 358, 367-368, 46 N. W. 718, 721 (1890); *Shelley* v. *Kraemer,* 334 U. S. 1, 19 (1948).

There is not even a serious assertion of possible race conflict if integration occurs, an assertion which usually accompanies the "convenient apologetics of the police power" evoked in race litigation. *Morgan* v. *Virginia,* 328 U. S. 373, 380 (1946); *Shelley* v. *Kraemer,* 334 U. S. 1, 21 (1948). The fear of race conflict is, of course, an insufficient legal basis for depriving a person of his constitutional rights by racial segregation. *Buchanan* v. *Warley,* 245 U. S. 60, 81 (1917); *City of Birmingham* v. *Monk,* 185 F. (2d) 859 (C.A. 5th, 1950), *cert. den.* 341 U. S. 940 (1951); *Mitchell* v. *United States,* 313 U. S. 80, 97 (1941). The problem of potential race conflict, if any, should instead be solved by education and by enforcing without racial discrimination the laws against violence and disorderly conduct. But any uneasiness on this score is wholly dissipated when we observe the success of integration in the Topeka public schools beyond the sixth grade, the happy experience of the integrated elementary schools on Federal areas throughout the South,[10] and the current experience in many

[10] See *Washington Post,* p. 3-B (Oct. 14, 1951); *cf.* President Truman's pocket veto of Enrolled Bill H. R. 5411, 82nd Cong. because it would have required segregation in these now integrated public elementary schools in the South. Message to Congress, Nov. 2, 1951, 97 Cong. Rec. 13787-13788.

other fields of human relations.[11]

Even if the segregation in this case is measured, not by any of these tests, but by that touchstone of racism, the outmoded doctrine of *Plessy* v. *Ferguson,*[12] the segregation in this case can not be sustained. *Plessy* did not say that all segregation is valid. It required that a legislative racial distinction "must be reasonable," and asserted that that question could be determined "with reference to the established usages, customs and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order" (163 U. S. at 550). But what might have been "reasonable", even on that basis, in the Deep South in 1896 when Jim Crow and the Ku Klux Klan were in their hey-day is certainly not reasonable in the law-abiding and enlightened City of Topeka, Kansas, in 1952. Furthermore, as already shown, segregation in the Topeka schools does not promote the "comfort" of its citizenry, and is totally irrelevant to the "preservation of the public peace and good order." It rests only on prejudice, a factor plainly unreasonable under the Constitution. *Yick Wo* v. *Hopkins,* 118 U. S. 356, 374 (1886).

On the other hand, the enforced segregation in this case admittedly retards the educational and mental development of the Negro children and deprives them of equal educational opportunity. It is a discrimination with far-reaching effects. Educational qualifications are often the basis for exercising citizenship rights and participating in civil government and military affairs. One's educational level also generally affects his opportunity to secure better employment and housing, to enjoy improved recreation, to create in literature and science, to achieve success in busi-

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11 See Comment, *Racial Violence and Civil Rights Law Enforcement,* 18 Univ. Chi. L. Rev. 769 (1951); Note, *Grade School Segregation: The Latest Attack on Racial Discrimination,* 61 Yale L. J. 730, 738-744 (1952); Frank, *Can Courts Erase the Color Line?,* 21 Journ. of Negro Educ. 304, 309-310 (1952).

12 The unsound foundations of *Plessy* v. *Ferguson* were analyzed in the Brief of the American Veterans Committee, pp. 21-30, in *Henderson* v. *United States,* 339 U. S. 816 (1950), No. 25, Oct. Term, 1949. See also Brief of the United States in that case.

ness and industry, and to obtain the decencies and amenities of social relations in a democracy. Moreover, segregation in schools stimulates and deepens divisiveness in our population, obstructs efforts to dissolve prejudices through the process of education and voluntary adjustments, and, by providing propaganda for our enemies abroad, adversely affects our relations with other countries. These ill effects, not only on the Negro children but also on the community and the Nation, should be weighed against the insubstantial reasons of "usages, customs and traditions" which are based wholly on prejudice. On such weighing, it is clear that the segregation in this case is unreasonable and therefore, even under the *Plessy* test, unconstitutional.

IV. The Road Ahead.

Segregated and unequal education, unfortunately, will not disappear overnight. The backlog of deficiency, the habits of the people, the accumulated patterns of residential segregation, and other factors remain as significant obstacles. But the elimination of State-imposed restrictions of law will provide opportunity for voluntary adjustment by the people. Intercultural problems which the abolition of segregation in education will raise in some schools will not be insoluble problems. Democratic education has the capacity to meet them. In any event, none of these possible inter-group problems will approach the magnitude of those raised by enforced segregation which discriminates against children of the minority group in violation of the Constitutional guarantee of "equal protection of the laws."

American Veterans Committee, Inc. (AVC)
Amicus Curiae

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October 9, 1952
Washington, D. C.