IN THE

Supreme Court of the United States

October Term, 1952

No. 8

OLIVER BROWN, MRS. RICHARD LAWTON, MRS. SADIE EMMANUEL, ET AL.,
Appellants,

VS.

BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS, ET AL.,
Appellees.

BRIEF ON BEHALF OF AMERICAN CIVIL LIBERTIES UNION AMERICAN ETHICAL UNION AMERICAN JEWISH COMMITTEE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH JAPANESE AMERICAN CITIZENS LEAGUE AND UNITARIAN FELLOWSHIP FOR SOCIAL JUSTICE AS *AMICI CURIAE*

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Interest of the *Amici*

This brief is filed, with the consent of both parties, on behalf of the American Civil Liberties Union, the American Ethical Union, American Jewish Committee, the Anti-

Defamation League of B'nai B'rith, the Japanese American Citizens League and the Unitarian Fellowship for Social Justice. The Appendix contains a description of each of these organizations.

The present case and the companion cases, all involving the constitutionality of racial segregation in public elementary and secondary schools, present an issue with which all six organizations are deeply concerned because such segregation deprives millions of persons of rights that are freely enjoyed by others and adversely affects the entire democratic structure of our society.

We have read the briefs of the appellants, with the appendix thereto, and we unequivocally endorse the arguments, legal, educational and sociological, therein advanced. In this *amici* brief we are urging arguments which have not been made in the appellants' briefs and which we believe should be presented to this Court.

Statement of the Case

The adult appellants are Negro citizens of the United States and of the State of Kansas (R. 3-4) while the infant appellants are their children eligible to attend and now attending elementary schools in Topeka, Kansas, a city of the first class within the meaning of Section 13-101, General Statutes of Kansas, 1949. Appellees are State officers empowered by State law to maintain and operate the public schools of Topeka, Kansas.

On March 22, 1951, appellants instituted this action seeking a declaratory judgment and an injunction to compel the State to admit Negro children to the elementary public schools of Topeka on an unsegregated basis on the ground that segregation deprived them of equal educational opportunities within the meaning of the Fourteenth Amendment (R. 2-7). In their answer, appellees admitted that they acted pursuant to the statute, that infant appellants were not eligible to attend any of the eighteen "white" elementary schools solely because of their race and color (R. 12, 24), but that they were eligible to attend the equivalent public schools maintained for Negro children in the City of Topeka (R. 11, 12). The Attorney General of the State of Kansas filed a separate answer defending the validity of the statute in question (R. 14).

The court below was convened in accordance with Title 28, United States Code, §2284 and on June 25-26 a trial on the merits took place (R. 63 *et seq.*). On August 3, 1951, the court below filed its opinion, 98 F. Supp. 797 (R. 238-244), its findings of fact (R. 244-246), and conclusions of law (R. 246-247), and entered a final judgment and decree in appellees' favor denying the relief sought (R. 247).

Appellants filed a petition for appeal on October 1, 1951 (R. 248), and an order allowing the appeal was duly entered (R. 250). Probable jurisdiction was noted on June 9, 1952 (R. 254). Jurisdiction of this Court rests on Title 28, United States Code, §§1253 and 2201 (b).

The Statute Involved

Segregated elementary schools in Topeka, Kansas, are maintained solely pursuant to the authority of Section 72-1724 of the General Statutes of Kansas (1949) which reads as follows:

> Powers of board; separate schools for white and colored children; manual training. The board of education shall have power to elect their own officers, make all necessary rules for the government of the schools of such city under its charge and control and of the board, subject to the provisions of this act and the laws of this state; to organize and maintain separate schools for the education of white and colored children, including the high schools in Kansas City, Kans.; no discrimination on account of color shall be made in high schools except as provided herein; to exercise the sole control over the public schools and school property of such city; and shall have the power to establish a high school or high schools in connection with manual training and instruction or otherwise, and to maintain the same as a part of the public-school system of said city. (G. S. 1868, Ch. 18, §75; L. 1879, Ch. 81, §1; L. 1905, Ch. 414, §1; Feb. 28; R. S. 1923, §72-1724.)

The Question Presented

The question presented by this appeal is whether the State of Kansas, or indeed any State, by establishing racial segregation in its public elementary school system, has violated the equal protection of the laws clause of the Fourteenth Amendment to the United States Constitution.

SUMMARY OF ARGUMENT

This Court has never ruled directly on the constitutionality of racial segregation in public elementary schools. *Plessy* v. *Ferguson,* 163 U. S. 537 (1896) and *Gong Lum* v. *Rice,* 275 U. S. 78 (1927), relied upon by the court below, are not controlling here.

Segregation in State-supported educational institutions violates the equal protection of the laws guaranteed by the Fourteenth Amendment in that it is an inadmissible classification. This Court has consistently rejected differential treatment by State authority predicated upon racial classifications or distinctions.

The finding of the lower court that Negro children are disadvantaged by the segregated public school system necessitates granting the relief requested. That which is unequal in fact cannot be equal in law and, therefore, segregation and equality cannot co-exist in public education.

POINT I

The validity under the equal protection of the laws clause of the Fourteenth Amendment of racial segregation in public educational facilities has never been decided by this Court.

The issue now squarely before this Court is whether the State of Kansas, pursuant to statute, may maintain and operate racially segregated public elementary schools, without heed to the damage inflicted by segregation upon its Negro victims. Despite the transcendent importance of the question, this Court has never ruled directly on the constitutionality of racial segregation in public education. The Court has ruled on related problems, such as the validity of racial segregation in transportation and in housing. Regretfully, it has, but always in *dictum,* appeared to accept racial segregation where the validity of segregation was not actually before the Court. Historically, these dicta reflect the fact that prior to World War I, the status of the American Negro was such that he could make no realistic demand for equality of treatment in those sections of the country in which he lived in substantial numbers. Because of his depressed economic condition and concentration in agriculture, his children could not even obtain the most elementary education. Myrdal, An American Dilemma, Ch. 8-9 (1944).

Following the adoption in 1868 of the Fourteenth Amendment, the earliest case in which some reference was made by this Court to racial segregation in education was *Hall* v. *DeCuir,* 95 U. S. 485 (1878). That case involved the validity of a State statute prohibiting segregation in

public carriers. The statute was declared unconstitutional as an improper regulation of foreign and interstate commerce. In a concurring opinion, Mr. Justice Clifford reviewed with approval the conclusions of a number of State cases which had upheld the reasonableness of racial segregation in education and stated in *dictum* that segregation in the public schools did not violate the Fourteenth Amendment if physically equal facilities for Negroes were provided. It is probably unnecessary for us to note that no evidence was offered in that case, because it would have been irrelevant, that school segregation must in fact involve inequality.

In 1896 this Court decided *Plessy* v. *Ferguson,* 163 U. S. 537 (1896), which sustained the constitutionality of a Louisiana statute requiring public carriers to furnish separate but equal coach accommodations for whites and Negroes. The Court as before, in *dictum,* cited with approval several old State cases which had held that a State could require the segregation of racial groups in its educational system.

The constitutionality of "separate but equal" facilities in education was concededly not before the Court in either the *Hall* or the *Plessy* cases. Yet, although there was no evidentiary or psycho-sociological basis for a discussion of equal facilities in education, and in spite of the fact that the statements of the Court were clearly *dicta,* the *Plessy* case has been cited to this date by State and lower Federal courts to sustain the constitutionality of segregation in public educational institutions. See cases cited, 46 Mich. L. Rev. 639, 643 (1948).

Three years later, this Court decided *Cumming* v. *County Board of Education,* 175 U. S. 528 (1899). There an injunction was sought to restrain a board of education

in Georgia from maintaining a high school for white children where none was maintained for Negro children. The State court had upheld the board, saying that its allocation of funds did not involve bad faith or abuse of discretion. In affirming the decision of the State court, this Court speaking through Mr. Justice Harlan, the lone dissenter in *Plessy,* stated expressly that racial segregation in the school system was not in issue. (542, 546)

The next case before this Court which involved compulsory educational segregation was *Berea College* v. *Kentucky,* 211 U. S. 45 (1908), wherein the validity of a State statute which prohibited domestic corporations from teaching white and Negro pupils in the same private educational institution was attacked. While the scope of the statute was broad enough to include individuals as well as corporations, this Court said:

> . . . it is unnecessary for us to consider anything more than the question of its validity as applied to corporations. . . . Even if it were conceded that its assertions of power over individuals cannot be sustained, still it must be upheld so far as it restrains corporations. (54)

This Court agreed with the reasoning of the State court that the statute could be upheld as coming within the power of a State over one of its own corporate creatures. The statute was not deemed to have worked a deprivation of property rights. The rights of individuals were not considered.[1]

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[1] Interestingly, since the decisions of this Court in *Sweatt* v. *Painter,* 339 U. S. 629 (1950) and in *McLaurin* v. *Oklahoma,* 339 U. S. 637 (1950), Berea College accepts Negro students.

Not until 1927 did racial classification in educational institutions again become the subject of controversy before this Court. In *Gong Lum* v. *Rice,* 275 U. S. 78 (1927), a Chinese girl contested the right of the State of Mississippi to assign her to a Negro school under the State's segregated school system. Mississippi contended that under its statute requiring separate schools to be maintained for children of the white and colored races, the plaintiff could not insist on being classed with the whites and that the legislature was not compelled to provide separate schools for each of the non-white races.

The issue of segregation was not presented in that case. The plaintiff accepted the system of segregation in the public schools of the State but contested her classification within that system.

Nor was the validity of segregation before the Court in the case of *Missouri ex rel. Gaines* v. *Canada,* 305 U. S. 337 (1938). There the petitioner was refused admission to the University of Missouri Law School, a State-supported institution, solely because he was a Negro. He brought mandamus to compel the University to admit him. The State, having no law school for Negroes, sought to fulfill its obligation to provide equal educational facilities by offering to pay the petitioner's tuition for a legal education in another State. This the Court held did not satisfy the constitutional requirement. It said that the petitioner was entitled to be admitted to the University of Missouri Law School in the absence of other and proper provision for his legal training within the State of Missouri. The issue was whether an otherwise qualified Negro applicant for law training could be excluded from the only State-supported law school. This Court assumed that

the validity of equal facilities in racially separate schools was settled by earlier decisions and cited the *Plessy* case, *McCabe* v. *Atchison, T. & S. F. R. Co.,* 235 U. S. 151 (1914), both of which involved segregation in public carriers, and the *Gong Lum* case. But the constitutional validity of segregation was not decided.

The next consideration of a related problem was in 1948 in *Sipuel* v. *Board of Regents of the University of Oklahoma,* 332 U. S. 631. This Court, in a *per curiam* decision, said that the State must provide law school facilities for the Negro petitioner "in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group" (633). The facts in the *Sipuel* case were similar to those in the *Gaines* case, in that no law school facilities were afforded Negroes by the State of Oklahoma.

Segregation was not at issue in the *Sipuel* case. This Court stated in *Fisher* v. *Hurst,* 333 U. S. 147 (1948), that:

> The petition for certiorari in *Sipuel* v. *University of Oklahoma* did not present the issue whether a state might not satisfy the equal protection clause of the Fourteenth Amendment by establishing a separate law school for Negroes. On submission, we were clear it was not an issue here. (150)

The most recent cases involving segregation in public institutions of learning were *Sweatt* v. *Painter,* 339 U. S. 629 (1950) and *McLaurin* v. *Oklahoma State Board of Regents,* 339 U. S. 637 (1950). Although the petitioners and numerous *amici* in those cases urged this Court to rule expressly that discrimination inevitably results from enforced segregation in educational institutions, the Court did not reach that question. In *Sweatt,* Mr. Chief Justice Vinson, speaking for a unanimous Court, said, "Nor need we

reach petitioner's contention that *Plessy* v. *Ferguson* should be reexamined in the light of contemporary knowledge respecting the purposes of the Fourteenth Amendment and the effects of racial segregation'' (636). The judgment of the court below was reversed and the University of Texas Law School was ordered to admit the petitioner because equivalent educational opportunity was not afforded by the hastily organized Negro law school.

In *McLaurin,* again speaking for a unanimous bench, Mr. Chief Justice Vinson expressly limited the decision:

> In this case, we are faced with the question whether a state may, after admitting a student to graduate instruction in its state university, afford him different treatment from other students solely because of his race. We decide only this issue . . . (638)

Thus in no case previously before this Court, in which racial segregation in public education has been the subject of comment in an opinion, has the Court felt called upon to rule squarely on the issue: Does segregation in public educational institutions meet the requirements of the equal protection of the laws clause of the Fourteenth Amendment?

We emphasize that absence of a specific ruling at the outset of this brief because of the thread of urgency running through the fabric of much previous argument on the crucial issue in this case, namely, that the ''separate but equal'' doctrine, as it has been thought to apply to public educational institutions, should be ''overruled''. Indeed, in that framework, there is nothing to overrule. But there are *dicta* which must be disavowed. The constitutionality of segregation in educational institutions was clearly not involved in *Plessy* or *Gong Lum,* the two cases relied upon by the court below.

POINT II

Racial segregation in public educational institutions is an unconstitutional classification under the equal protection of the laws clause of the Fourteenth Amendment.

This Court's decisions in cases involving the constitutionality of governmental action reveal a special scrutiny and constant vigilance in those instances where such action was predicated upon alleged racial distinctions or where racial classifications were involved. Except in times of overriding peril or crisis, this Court has rejected all obvious or devious efforts to establish racial or religious lines of demarcation for the enjoyment of civil rights.

Whereas in cases involving other types of legislative classifications, the "one who assails the classification . . . must carry the burden of showing that it does not rest upon any reasonable basis", *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 79 (1911), "all legal restrictions which curtail the civil rights of a single racial group are immediately suspect". *Korematsu* v. *U. S.*, 323 U. S. 214, 216 (1944).

Again, "only the most exceptional circumstances can excuse discrimination on that basis in the face of the equal protection clause." *Oyama* v. *California*, 332 U. S. 633, 646 (1948). In *Hirabayashi* v. *U. S.*, 320 U. S. 81 (1943), this Court said:

> Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doc-

> trine of equality. For that reason, legislative classification or discrimination based on race alone has often been held to be a denial of equal protection. (100)

In the application of these principles, the Court has, with one exception (discussed *infra*), always declared governmental classification based on race or color to be constitutionally invalid.

This Court has ruled that Negroes must be treated the same as whites with respect to the privilege and duty of jury service. *Strauder* v. *West Virginia,* 100 U. S. 303 (1880). It has stricken down state statutes aimed at keeping the Negro "in his place." *Bailey* v. *Alabama,* 219 U. S. 219 (1911); *U. S.* v. *Reynolds,* 235 U. S. 133 (1914). Common carriers engaged in interstate travel have been prevented from segregating and discriminating on the basis of race or color. *Mitchell* v. *U. S.,* 313 U. S. 80 (1941); *Morgan* v. *Virginia,* 328 U. S. 373 (1946); *Henderson* v. *U. S.,* 339 U. S. 816 (1950). Repeated instances of prejudice in criminal cases evidenced by brutal treatment of Negroes have been condemned. *Brown* v. *Mississippi,* 297 U. S. 278 (1936); *Chambers* v. *Florida,* 309 U. S. 227 (1940); *Shepherd* v. *Florida,* 341 U. S. 50 (1951). Racial segregation through zoning and attempts to institutionalize ghettos by restrictive covenants have been outlawed. *Buchanan* v. *Warley,* 245 U. S. 60 (1917); *Shelley* v. *Kraemer,* 334 U. S. 1 (1948). Discrimination has been forbidden in labor unions that receive their collective bargaining and representation powers by virtue of statute. *Steele* v. *Louisville & Nashville Railroad Co.,* 323 U. S. 192 (1944); *Tunstall* v. *Brotherhood of Locomotive Firemen,* 323 U. S. 210 (1944); *Brotherhood of R. R. Trainmen* v. *Howard,* — U. S. —, 72 S. Ct. 1022 (1952).

From time to time, this Court has stricken down all the various devices used to prevent or limit Negroes from participating in elections. *Guinn* v. *U. S.*, 238 U. S. 347 (1915); *Nixon* v. *Herndon*, 273 U. S. 536 (1927); *Smith* v. *Allwright*, 321 U. S. 649 (1944). So, too, laws which in their administration have effected a limitation or denial of the right to carry on a business or calling because of race or ancestry, have been declared unconstitutional. *Yick Wo* v. *Hopkins*, 118 U. S. 356 (1886); *Yu Cong Eng* v. *Trinidad*, 271 U. S. 500 (1926); *Takahashi* v. *Fish and Game Commission*, 334 U. S. 410 (1948).

In *Buchanan* v. *Warley*, 245 U. S. 60, which involved a racial residential zoning ordinance, the State invoked its authority to pass laws in the exercise of its police power, and urged that this compulsory separation of the races in habitation be sustained because it would "promote the public peace by preventing race conflicts" (81). This Court rejected that contention, saying:

> The authority of the state to pass laws in the exercise of the police power . . . is very broad . . . [and] the exercise of this power is not to be interfered with by the courts where it is within the scope of legislative authority and the means adopted reasonably tend to accomplish a lawful purpose. But it is equally well established that the police power . . . cannot justify the passage of a law or ordinance which runs counter to the limitations of the Federal Constitution . . . (74).

The police power of the State, broad as it is, does not justify a racial classification where rights created or protected by the Constitution are involved.

In *Shelley* v. *Kraemer*, 334 U. S. 1, this Court, by unanimous decision, held that the enforcement of racial restrictive covenants by State courts is State action,

prohibited by the equal protection clause of the Fourteenth Amendment. In the course of its decision, the Court measurably strengthened the equal protection clause as a formidable barrier to restrictions having the effect of racial segregation. The contention was there pressed that since the State courts stand ready to enforce racial covenants excluding white persons from occupancy or ownership, enforcement of covenants excluding Negroes is not a denial of equal protection. This Court rejected the equality of application argument, decisively dismissing it in the following language:

> This contention does not bear scruitiny. . . . The rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual. The rights established are personal rights. It is, therefore, no answer to these petitioners to say that the courts may also be induced to deny white persons rights of ownership and occupancy on grounds of race or color. Equal protection of the laws is not achieved through indiscriminate imposition of inequalities. (21, 22)

There has been but one recent departure from this rule. This Court stated that "in the crisis of war and of threatened invasion" when the national safety might appear to be imperilled, it will permit a racial classification by the Federal Government. *Hirabayashi* v. *U. S.*, 320 U. S. 81, 101. That case involved a prosecution for failure to obey a curfew order directed against citizens of Japanese ancestry. *Korematsu* v. *U. S.*, 323 U. S. 214, arising out of the same war emergency, involved the validity of a governmental order excluding all persons of Japanese ancestry from the West Coast military area. The Court, on the grounds of overriding pressing public urgency in time of war, sustained the racial classification

in these cases, but it emphasized that this was an extraordinary exception. "[L]egislative classification or discrimination based on race alone has often been held to be a denial of equal protection. . . . We may assume", continued the Court, "that these considerations would be controlling here were it not for the fact that the danger of espionage and sabotage, in time of war and of threatened invasion" has made necessary this racial classification, which "is not to be condemned merely because in other and in most circumstances racial distinctions are irrelevant." *Hirabayashi* v. *U. S., supra,* 101.

Clearly, State laws providing for racial segregation in public educational facilities are not accompanied by any "pressing public necessity". The record here is barren of any such showing, as indeed it would have to be. Rather, there is a pressing public necessity to give all American citizens their due—equality of opportunity to use educational facilities established by the State for its inhabitants.

POINT III

The finding of the court below, that Negro children are disadvantaged by the segregated public school system of Topeka, requires this Court to disavow the "separate but equal" doctrine as it has been applied to public educational institutions.

In one vital respect, the problem posed by this record is sharpened to the point of unique narrowness. The unchallenged finding that segregation irreparably damages the child lifts this case out of the murky realm of speculation on the issue of "equality" of facilities, into the

area of certainty that segregation and equality cannot co-exist. That which is unequal in fact cannot be equal in law.

It is respectfully submitted that the finding of the court below, that Negro children were disadvantaged by the segregation of white and colored students in the public elementary schools, requires this Court to reverse the lower court's refusal to grant the requested relief. The lower court found as a fact that the segregation of white and Negro children in the public schools "has a detrimental effect upon the colored children"; that such segregation creates in Negro children a "sense of inferiority" which "affects the motivation of a child to learn"; that legally sanctioned segregation "therefore has a tendency to retard the educational and mental development of [N]egro children and to deprive them of some of the benefits they would receive in a racially integrated school system."

Educators and social scientists have long proclaimed that these and other social evils necessarily flow from racially segregated education. *Segregation in Public Schools—A Violation of "Equal Protection of the Laws"*, 56 Yale L. J. 1059, 1061 (1947). See also Long, *Some Psychogenic Hazards of Segregated Education of Negroes*, 4 J. of Negro Ed. 336, 343 (1935); Long, *The Intelligence of Colored Elementary Pupils in Washington, D. C.*, 3 J. of Negro Ed. 205-222 (1934); Gallagher, American Caste and the Negro College, 109, 184, 321-2 (1938); Bond, Education of the Negro in the American Social Order, 385 (1934); President's Commission on Higher Education, 2 Higher Education for American Democracy 35 (1947); Heinrich, The Psychology of a Suppressed People, 52, 57-

61 (1937); Myrdal, An American Dilemma, 54-5, 97-101, 577-8, 758; Frenkel-Brunswik, *A Study of Prejudice in Children,* 1 Human Relations 295, 305 (1948); Goodman, Race Awareness in Young Children (1952); Adorno, Frenkel-Brunswik, Levinson and Sanford, The Authoritarian Personality, Ch. IV, V (1950).

Whenever this Court has been presented with a record that established inequality in fact as between educational opportunities offered by the State to its white and Negro inhabitants, it has ordered the immediate termination of the inequality. *Missouri ex rel. Gaines* v. *Canada,* 305 U. S. 337; *Sipuel* v. *Board of Regents,* 332 U. S. 631; *Fisher* v. *Hurst,* 333 U. S. 147; *Sweatt* v. *Painter,* 339 U. S. 629. In *McLaurin* v. *Oklahoma,* 339 U. S. 637, this Court went even further to hold that officially imposed racial segregation within a State-maintained school violated the equal protection clause. It is noteworthy that the court below said in its opinion, where "segregation *within* a school as in the *McLaurin* case is a denial of due process, it is difficult to see why segregation in *separate* schools would not result in the same denial." *Brown* v. *Board of Education of Topeka,* 98 F. Supp. 797, 800 (Emphasis added).

We respectfully urge this Court to follow the principles it recently enunciated in *Sweatt* and *McLaurin,* rather than the unsound ones of *Plessy* and *Gong Lum,* and to hold unequivocally that racial segregation *per se* in all State educational institutions, is a violation of the equal protection of the laws clause of the Fourteenth Amendment.

The Need to Disavow *Plessy*

As we explained in Point I, we believe that *Plessy* is not controlling. Assuming, *arguendo,* that the court below was justified by *Plessy* in refusing to hold that segregation

in public elementary schools is *per se* discrimination under the Fourteenth Amendment, this Court should now expressly overrule *Plessy* and reverse the court below. This Court has not hesitated in the past to overrule or reconsider and reverse earlier decisions where the nature and consequences of discrimination became fully disclosed or apparent upon later consideration. *Murdock* v. *Pennsylvania,* 319 U. S. 105 (1943), reversing *Jones* v. *Opelika,* 316 U. S. 584 (1942); *West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624 (1943), overruling *Minersville School District* v. *Gobitis,* 310 U. S. 586 (1940); *Smith* v. *Allwright,* 321 U. S. 649, overruling *Grovey* v. *Townsend,* 295 U. S. 45 (1935). "In constitutional questions, where correction depends upon amendment and not upon legislative action this Court through its history has freely exercised its power to reexamine the basis of its constitutional decisions." *Smith* v. *Allwright, supra,* 655 and cases cited in footnote 10 thereto.

Lower courts, State and federal, have indicated clearly that they believe a break with the "separate but equal" doctrine in education is "in the wind", but they insist that they must await such a holding by this Court. *Belton* v. *Gebhart,* decided by the Delaware Court of Chancery, April 1, 1952, affirmed by the Supreme Court of that State on August 28, 1952; *Banks* v. *San Francisco Housing Authority,* decided October 1, 1952, by the Superior Court of San Francisco; *Brown* v. *Board of Education of Topeka,* 98 F. Supp. 797, 798; *Briggs* v. *Elliott,* 98 F. Supp. 529, 535 (1951).

It is not surprising that American courts are questioning the validity of *Plessy* in view of the tremendous changes which have taken place since the turn of the century in the understanding of the nature of the individual

and his relationships to racial groupings and to society. Scientific research in the fields of anthropology, sociology, biology and education has demonstrated the fallaciousness of the racial and blood strain concepts which are basic to the majority opinion in *Plessy.*

Peaceful Integration Will Follow

The defenders of racial segregation have frequently expressed the fear that compulsory destruction of the barriers in the public schools would increase racial tensions and even cause strife. Such results, obviously, should be avoided if possible, without yielding constitutional principles. Experience, however, has clearly demonstrated that these dire predictions are unfounded.

Following this Court's decision in *McLaurin* v. *Oklahoma,* 339 U. S. 637, Negro students applied for admission and were admitted in large numbers to that State's colleges and universities. By June 1951, approximately 400 Negroes were enrolled at the University of Oklahoma and at Oklahoma A & M, all without the slightest increase in racial tension, but rather with every sign of increased mutual understanding and respect. The Oklahoma City Daily Oklahoman, June 7, 1951.

In Texas, after the decision in *Sweatt* v. *Painter,* 339 U. S. 629, two Negroes were admitted to the University of Texas Law School and two others were admitted to the Dental School. 52 American Jewish Yearbook 42 (1951); The Houston Chronicle, Sept. 10, 1952. Negroes have also been admitted to private institutions of higher learning in Texas following *Sweatt.* Southern Methodist University (The Houston Post, January 9, 1951), Amarillo College (Dallas Times Herald, October 2, 1951) and several other junior colleges (The Houston Informer, December 5, 1951) have all found that the admission of Negroes was

possible without any adverse effect upon interracial relations. Quite the contrary. The Austin Statesman of November 14, 1950, reported the white students at Southern Methodist University advised the president that "SMU student opinion favors admitting Negroes to the school."

The University of Arkansas has accepted Negroes for LL.B. and M.D. degrees. Little Rock Arkansas Gazette, July 1, 1951; New York Post, August 24, 1948. Notwithstanding the fact that the University of Florida has thus far refused to admit Negroes, the Florida Student Government Association, an organization of student leaders representing all colleges and universities in the State, unanimously passed a resolution calling for an immediate end to racial segregation in the State's institutions of higher learning. Miami Herald, May 6, 1951. The University of Kentucky since 1949 has enrolled Negro students. New York Herald Tribune, June 23, 1949. By July 1950, twelve Negroes were attending classes at the University and "[t]hey took their places quietly in the student body without any open hostility." Dawkins, *Kentucky Outgrows Segregation,* The Survey, July 1950. Private educational institutions have followed the lead of the University of Kentucky. Berea College led the way. Three Roman Catholic colleges in Louisville, Nazareth, Ursuline and Bellarmine Colleges, immediately followed suit. Next to fall in line was the University of Louisville with a student body of seven thousand. Southern Baptist Theological Seminary and Louisville Theological Seminary now also admit Negroes on an unsegregated basis.

In July 1950, the first Negroes were admitted to the University of Missouri and less than two years later a Negro was appointed to the faculty. St. Louis Post-

Dispatch, July 7, 1950; St. Louis Globe-Democrat, April 17, 1952. St. Louis University has admitted Negroes to all its facilities for the past few years. They have been fully integrated into the University program with no unhappy results. During the academic year 1950-51, a total of 351 Negro students was enrolled and there were five Negro faculty members. The experience of institutions like St. Louis University has demonstrated that the admission of Negro students poses no problem of acceptance by white students. Morisey, *A New Trend in Private Colleges,* New South, Aug.-Sept. 1951. Another private university in St. Louis, Washington University, admits Negroes to all its branches and schools. St. Louis Post-Dispatch, May 11, 1952. Its experience has been identical with that of St. Louis University.

In July 1951, the University of North Carolina admitted its first Negro student. Washington Times-Herald, July 17, 1951. The following September, six additional Negro students attending the University, were excluded from the regular student cheering section at a football game. When the entire student body protested this action by the University authorities, it was quickly reversed. New York Herald Tribune, September 28, 1951.

Since 1951, the University of Virginia has been admitting Negro students and "the formerly 'all-white' schools which have accepted Negro students have found that their presence creates no special problem". Richmond News Leader, September 25, 1952.

The College of William and Mary, which next to Harvard University is the oldest of the country's colleges, has admitted two Negro students, both of whom are attending regular day classes. According to President

Chandler, "[t]he presence of these two Negro graduate students has not created any special problems on the campus." *Ibid.*

By July 1951, there were approximately one thousand Negro students in previously "all-white" institutions of higher education in the South. "They have encountered virtually no open objection to their presence." Saveth, *The Supreme Court and Segregation,* The Survey, July 1951.

Just as the admission of Negroes to formerly "all-white" colleges and universities has created no friction or other difficulties, so too experience has proved that integration of white and Negro children at the elementary and high school levels can be acieved without incident.

In the State of New Mexico where segregation is allowed, though not required, in the public schools, the town of Carlsbad maintained separate schools for the two races until 1951. Following the refusal of the State School Board to accredit the inferior Negro high school, the local school authorities voted to admit Negroes to the "white" school. "Carlsbad white students approved the move. The 1951 graduating class and the high school senior council voted unanimously to welcome the Negro students. The junior and senior class and faculty members were 95 per cent in favor of it." Santa Fe New Mexican, September 2, 1951. The integration has not caused a single untoward incident to date. Furthermore, racial segregation was abolished in Alamagordo's public schools in August of this year and the first Negro teacher was hired to teach in that New Mexico city's integrated public schools. There has been no disharmony as a result of either action.

Racial segregation in public schools is not required in Arizona. Local school boards are free to determine whether or not they will maintain a dual educational system. Under this local option provision, segregation has been abandoned in the public schools of every city and town in the State except Phoenix. The transition from segregation to integration was made in all these communities without any difficulty.

Despite the fact that segregation in public schools has been banned in Illinois for many years, segregation was the practice in most of the southern counties. A 1949 State statute provided that no State funds should be made available to any school district where racial segregation of students is practiced. This statute led to a movement to abolish segregation in the southern communities of Illinois. Notwithstanding an 85-year-old policy of racial segregation in the public schools of East St. Louis, the local board of education abandoned segregation and adopted a policy of integration. There was "no indication of any organized resistance to the change" which was effected without incident. The New York Times, January 30, 1950. Segregation in public schools was also abandoned in Harrisburg (Chicago Sun-Times, September 26, 1950), in Alton, a stronghold of racial discrimination even during World War II (Pittsburgh Courier, December 1, 1951), and in Cairo at the southernmost tip of the State.

A similar process of uneventful integration is underway in southern Ohio. In Glendale, a town about fifteen miles from the Kentucky border, segregation in the public schools was ended in October of this year when the local board of education was advised that exclusion of Negro pupils from a formerly "all-white" school violated the

Constitution. In Dayton, the school board abolished segregation in the use of two swimming pools at Roosevelt High School on June 22, 1950. Dayton Journal Herald, June 23, 1950.

New Jersey is another State which, while normally considered a Northern State, has a long-standing tradition of racial segregation in its southern regions. In November 1947, the people of New Jersey adopted a new State Constitution which prohibited any person from being "segregated in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin". When this Constitution was adopted, cynics remarked that the clause against racial segregation was an excellent statement of principle but they predicted that segregation would not be eliminated for at least a generation. In 1948, the New Jersey Department of Education made a survey of the 52 school districts in the State which were reported to practice segregation in one form or another. It found that in 43 districts, segregation was imposed by the school authorities. These districts ranged in size from rural areas with one-room schools to large cities with many schools. The end of the school year 1950-51 saw the complete elimination of segregation in 39 of the 43 school districts involved. In the other 4 districts, steps had by that time been taken and building proposals were underway which would bring about complete integration in the near future. The report of the New Jersey Department of Education states:

> A most significant factor in this transition is that it has been done with a minimum of friction and a maximum of good will.
>
> Another important factor has been the success with which colored teachers, who formerly taught classes

> consisting of all colored children, have been employed to teach classes of mixed races. While many individual examples could be cited, one in particular bears mentioning. The one in question contained the only junior high school operated on a segregated basis. This junior high school was a fairly large institution and naturally existed in a good sized city. Today, the student body of this school is approximately one-third Negro and two-thirds white. The teachers who formerly were teaching all-Negro junior high school classes have been completely integrated into the new setup and include teachers of all regular and special subjects. The morale of both the student body and faculty is excellent. *Biennial Report for the Years July 1, 1949, to June 30, 1951,* State of New Jersey, Department of Education, Division Against Discrimination 12, 13.

On the basis of the accumulated experience, instances of which we have described above, we are convinced that integration can and will be accomplished in the public schools of the South without "bloodshed and violence" if the law enforcement agencies, federal or local, demonstrate that they will not tolerate breaches of the peace or incitement. Americans are law abiding people and abhor klanism and violence.

Segregation Is An Economic Waste

There is another cogent reason that this Court should speak out clearly and definitively now. Since the "separate but equal" doctrine in public education will have to be abandoned ultimately, it should be abandoned sooner rather than later, to forestall the wasteful expenditure by many States of huge sums of money to build segregated schools when that money could be used more economically and enduringly to build and improve public schools where they will provide the greatest good for the greatest number. This we believe is a necessary consequence of the constitutional requirement that the State must grant each person equal protection of its laws.

The President's Committee on Civil Rights, in its historic report, To Secure These Rights (1947), states:

> The South is one of the poorer sections of the country and has at best only limited funds to spend on its schools. With 34.5 percent of the country's population, 17 southern states and the District of Columbia have 39.4 percent of our school children. Yet the South has only one-fifth of the taxpaying wealth of the nation. Actually, on a percentage basis, the South spends a greater share of its income on education than do the wealthier states in other parts of the country. (63)

The South has been struggling under a heavy financial burden to support its educational system, with the Negro schools admittedly inferior to the white. The southern States would have to expend over one and one-half billion dollars to bring the Negro schools to the level of the "white" schools and, in addition, approximately eighty-one million dollars annually just to maintain parity. Charles H. Thompson, Dean, Graduate School of Howard University, *Letter to the Editor,* The New York Times, April 6, 1952. This additional burden is beyond the capacity of the South to bear. Bond, in Education of the Negro in the American Social Order (1934) sums this up:

> If the South had an entirely homogeneous population, it would not be able to maintain schools of high quality for the children unless its states and local communities resorted to heavy, almost crushing rates of taxation. The situation is further complicated by the fact that a dual system is maintained. Considering the expenditures made for Negro schools, it is clear that the plaint frequently made that this dual system *is* a burden is hardly true; but it is also clear that if an honest attempt were made to maintain "equal, though separate schools", the burden would be impossible even beyond the limitation of existing poverty. (231)

Public schools should be planned and erected as part of the development of the total community. They should be built in those areas that have expanding populations and needs for such facilities, rather than in opportunistic response to random law suits or threats of law suits, as is now the case in many southern States.

Conclusion

The United States is now engaged in an ideological world conflict in which the practices of our democracy are the subject of close scrutiny abroad. We cannot afford, nor will the world permit us, to rest upon democratic pretensions unrelated to reality.

The people of other lands listen not only to our Voice of America which quite properly extols the virtues of democracy; they listen to broadcasts from Communist sources as well. We know that our enemies seize eagerly upon the weaknesses of our democracy and, for propaganda purposes, magnify, exaggerate and distort happenings in the United States. Not so well known, although possibly more significant, is that the liberal and conservative press abroad is constantly comparing our declarations and statements about democracy with our actual practices at home. Domestic incidents are noted and commented upon. Our discriminatory practices in education, in employment, in housing, have all been the subject of much adverse press comment in those foreign countries which we are trying to keep in the democratic camp.

While *McGee* v. *Mississippi,* 40 So. 2nd 160 (1949), was the subject of some considerable comment in Communist circles here and elsewhere, the Paris office of the American

Jewish Committee assembled characteristic press comment from liberal, conservative and Catholic European newspapers:

Semailles, a liberal Marseilles newspaper, said on May 18, 1951:

> In associating ourselves with the United States in the defense of liberty, we have included in the notion of liberty, a respect for all human beings, the notion of the common fraternity of all men. And it appears that in this association, we, too, have much to bring. What the world awaits from us is not cannons and atomic bombs, but the permanent and vigilant affirmation of the inalienable right of all men to be judged according to their acts and not according to the color of their skin or the latitude in which they were born. Otherwise, where is the difference between our enemies and ourselves?

An editorial, entitled "An American Tragedy", in the Vienna *Arbeiter-Zeitung,* one of the staunchest anti-Communist publications in Europe, said on February 4, 1951:

> The Communist reply to accusations made about the injustices and cruelties of their dictatorship, of forced labor, of the arbitrariness of their courts and their violation of human dignity, by pointing to the insincerity of American democracy which permits racial persecution and deprives millions of human beings of their equal rights on the basis of the color of their skin.
>
> One cannot appear before the world as a fighter for freedom and right when one is unable to eliminate injustice in one's own house.

L'Aube, Paris organ of the Popular Republican Movement (MRP), the second largest political party in France, led by Georges Bidault and Foreign Minister Robert Schuman, in its May 9, 1951, issue said:

> How much does a Negro weigh in a world where people of all colors are struggling with the bitter forces of nature and societies? Why is there so much noise about a trial which after all is an internal affair, not only of the United States of America, but of one of its states? He weighs exactly that of all those whose lot it is to protest an injustice. And the injustice in this instance has as its name, racism. Our reaction to injustice does not depend on the region of the world where the wrong was committed. It is the more bitter to know that it took place in a continent which gave for liberty enough of its sons not to deliver up to hatred of a poor Negro; that is what weighs heavily.

On April 7, 1950, the Cologne *Welt Der Arbeit,* official publication of the anti-Communist German trade unions, carried an article entitled, "The Negro Question in the U. S." That article contained the following significant language:

> In recent weeks, one found in the German press the following items: In Frankfurt-am-Main the proprietor of a cafe was fined 600 DM by American Occupation Authorities because he had ejected two colored American soldiers from his establishment. In Washington, the Capital of the U. S. A., Doctor Bunche, who made a name for himself as the UN intermediary in Palestine, was refused admittance to a movie house because he was colored. He then went to another movie house where he spoke French and was admitted because it was believed he was a foreigner. In the one case, the American authorities want foreigners to treat every colored soldier with dignity as an American citizen and punish any transgression of this principle. On the other hand, world-famous leaders of the colored population are deprived of their full equality. How are these two attitudes to be reconciled? It is only too natural that the average European can make no sense of such contradictions. The racial attitudes in the U. S. have no parallel in the entire world.

And finally, we have the following quotation from the liberal *Le Matin* of Antwerp, Belgium, in May 1951:

> The crime of racism is odious. And, without doubt, the world will never know true peace while there exist nations, peoples or races that believe themselves superior to other nations, peoples or races. It is a painful declaration to make at the moment when our American friends are presenting themselves in the United Nations as the sturdy defenders of the free world.

Legally imposed segregation in our country, in any shape, manner or form, weakens our program to build and strengthen world democracy and combat totalitarianism. In education, at the lower levels, it indelibly fixes anti-social attitudes and behavior patterns by building inter-group antagonisms. It forces a sense of limitation upon the child and destroys incentive. It produces feelings of inferiority and discourages racial self-appreciation.

For all of the reasons urged herein, State-imposed racial segregation in public schools, denies to the appellants herein, and to all similarly situated Negro children, equal protection of the laws in every meaningful sense of those words.

The judgment of the court below should be reversed.

Respectfully submitted,

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APPENDIX

American Civil Liberties Union

The American Civil Liberties Union is a private organization composed of individual citizens. It is devoted to supporting the Bill of Rights—for everybody. Founded in 1920, it has, day in and day out, actively championed the three-fold cause of civil liberties, the heart and core of democratic government, as set forth in the Constitution and the Declaration of Independence: (1) Government by the people, grounded on freedom of inquiry and expression—speech, press, assembly and religion—for everybody; (2) specific rights guaranteed to the people, such as due process and fair trial—for everybody; and (3) equality of the people before the law—for everybody, regardless of race, color, place of birth, position, income, political opinions, or religious belief.

The Union has no cause to serve other than civil liberties. It is dedicated simply and solely to furthering the actual practice of democracy. It defends the civil liberties of everybody, including those whose anti-democratic opinions it abhors and opposes, like Communists, Nazis, Fascists and Ku Klux Klanners.

American Ethical Union

The American Ethical Union is a national association of Societies for Ethical Culture. Its purpose is to bring into close fellowship of thought and action existing Ethical Societies and to promote the establishment of new societies. It is thus devoted, on a national scale, as is each society in its local setting, to the promotion of the knowledge, the love and the practice of the right in all the relationships of life. It asserts the supreme importance of the ethical factor in all the relations of life and affirms the belief that the greatest spiritual values are to be found in man's relationship to man. Through its religious and educational programs it seeks to make the individual more adequate in his personal relationships and better able to contribute to the life of his community. The Ethical Society has as one of its objectives the inspiring words of St. Paul: "He has made of one blood all nations of men to dwell on the earth."

American Jewish Committee

The American Jewish Committee is a corporation created by an Act of the Legislature of the State of New York in 1906. Its charter states:

> The object of this corporation shall be to prevent the infraction of the civil and religious rights of Jews, in any part of the world; to render all lawful assistance and to take appropriate remedial action in the event of threatened or actual invasion or restriction of such rights, or of unfavorable discrimination with respect thereto . . .

During the forty-six years of its existence it has been one of the fundamental tenets of the organization that the welfare and security of Jews in America depend upon the preservation of constitutional guarantees. An invasion of the civil rights of any group is a threat to the safety of all groups.

For this reason the American Jewish Committee has on many occasions fought in defense of civil liberties even though Jewish interests did not appear to be specifically involved.

Anti-Defamation League of B'nai B'rith

B'nai B'rith, founded in 1843, is the oldest civic organization of American Jews. It represents a membership of over 350,000 men and women and their families. The Anti-Defamation League was organized in 1913, as a section of the parent organization, in order to cope with racial and religious prejudice in the United States. The program developed by the League is designed to achieve the following objectives: to eliminate and counteract defamation and discrimination against the various racial, religious and ethnic groups which comprise our American people; to counteract un-American and anti-democratic activity; to advance goodwill and mutual understanding among American groups; and to encourage and translate into greater effectiveness the ideals of American democracy.

Japanese American Citizens League

The Japanese American Citizens League is the national organization of Americans of Japanese ancestry. Established in 1930, its story is an account of a group of young Americans treasuring their birthright of American citizenship, defending it and seeking to be worthy of it. Although its membership is composed primarily of Americans of Japanese ancestry, membership is open to all Americans who believe in its principles.

The purpose of the organization is to promote good citizenship, protect the rights of Americans of Japanese ancestry, and acquaint the public in general with this group of citizens toward their full acceptance into American life. The twin mottoes of "For Better Americans in a Greater America" and "Security Through Unity" express this purpose.

Unitarian Fellowship for Social Justice

The Rev. Dr. John Haynes Holmes and a group of other Unitarian clergymen established the Unitarian Fellowship for Social Justice in 1908. They sought "to sustain one another in united action against social injustice and in the realization of religious ideals in present-day society." Dr. Holmes served for three years as the Fellowship's first president.

The Fellowship concerns itself especially with freedom of conscience, the rights of minorities, the defense of public education, and substantial efforts to strengthen the United Nations and to plan for peace.

The Fellowship participates in the United Unitarian Appeal for its funds, and it is affiliated with the American Unitarian Association through the Association's Department of Adult Education and Social Relations. The society has individual members, organizational affiliates, and chapters throughout the United States and Canada in Unitarian and liberal community churches.