Understanding Legal History - *Green v. County School Board of New Kent County, VA*, 1968

GRADE LEVEL: Grades 9-10; Adaptable for Grades 6-8

SUBJECT: Desegregation Qualifications; U.S. History; Politics and Government

TIME REQUIRED: 90 minutes
This lesson explores the nature of desegregation and the effects of the *Brown* and *Green* cases on social and political life in the American Southeast.

RATIONALE
This lesson supports foundational learning about desegregation legal history at the intersection of concepts (desegregation and integration) and historical practices (source analysis and contextualization).

NOTE: While this lesson is intended for a 90-minute class session, it could be paced for more time, or activities could be cut to accommodate a shorter class period.

This lesson plan and materials needed to teach it can be found at the Thurgood Marshall Institute: https://tminstituteldf.org/

ESSENTIAL QUESTIONS

1. What is desegregation?
2. How would you know if a school or community organization is integrated?
3. How do leaders decide when or how to act?

OUTCOMES AND OBJECTIVES

After the lesson, students will…

1. Describe a nuanced view of integration in schools/public institutions.
2. Apply the Green Factors to assess desegregation needs/efforts in a school.
3. Explain varied perspectives of social movement leaders and political leaders on the legal history and court decisions around desegregation of schools in the American Civil Rights Movement of the 1950s and 1960s.

PREPARING TO TEACH

Review the materials included and brush up on the historical context. The *Green* case and the Green Factors are far less well known than what students typically learn. Check on access to links to make sure they work and are not blocked. Make copies of worksheets and texts to be used with activities.

SCAFFOLDS AND ACCOMMODATIONS TO SUPPORT LEARNERS

Reading support…

- For the discussion of perspectives from the oral history article, provide access to the entire article so students can investigate the source and author.

- Offer sentence starters or frames for students to respond to the questions. For example:
    a. The prompt is: How would you describe the perspective in your own words?
    b. The sentence frame could be: The perspective of the [*name the person*] quote is [*here describe what that person is talking about in your own words; are they arguing for or against something?*], because the phrase/sentence says [*here include a short phrase or sentence that is evidence of the perspective you described*].

Adjusting for middle school grades…

Note: You know your students best, and we encourage you to use these activities and resources in ways that support rigorous and challenging learning. Below are some ideas for adapting these activities to middle grades:

- Adjust pacing. Some activities could be made longer, and the lesson could span two class sessions.
- Eliminate or revise activities and learning objectives to align better with your grade level goals and standards.
- Extra reading supports:
    - Read with a purpose: Set a clear and explicit goal for what students should learn from reading.
    - Read with a partner: Take turns reading aloud, or read quietly with timed breaks to explain what they read to each other.
    - Offer an everyday language version of the reading materials: Provide the original as well, but excerpts in typical everyday language can be a helpful scaffold or resource for students.

INSTRUCTIONAL ACTIVITIES SEQUENCE

1. Review *Brown v. Board of Education* 1954 (set historical context—see short summary in materials section) – 10 minutes
    - This could be read or distributed to students or be the foundation for a short lecture. You might consider asking students what they already know (KWL Chart).
    - The LDF "Winding Road to *Brown* and Beyond" pamphlet offers a comprehensive overview of events leading up to the *Brown* decision and what followed (see materials at the end of this lesson).
    - An enrichment activity that would require more time could be to have students read the Supreme Court opinion from *Brown v. Board of Education*, attached to the end of the materials section. This would provide a more robust understanding of the arguments and perspectives but also some additional scaffolding contextualizing language use and understanding the text. A highlighting strategy following some context-setting would be valuable to supporting readers. Also, you should review the materials yourself prior to teaching and tamper with the document to make it appropriate for your students.

2. Summary/Review of *Green* case, including the Green Factors and the importance of the case. *Brown* required schools to desegregate, but did not define desegregation (see short summary in materials section). – 25 minutes
    - This could be read or distributed to students or be the foundation for a short lecture. You might consider asking students what they already know (KWL Chart).
    - Excerpts from the court case syllabus are in the materials section. Divide students into groups and respond to the questions:
        i. What is a "free choice plan" in this case?
        ii. What did the Court see "wrong" with free choice plans? (multiple answers in the text)
        iii. What was an important outcome of the case?
    - The Green Factors are used to assess whether a school district has done everything they can to desegregate. School districts under federal desegregation orders are required under law to eliminate even the vestiges of *de jure* segregation.
        i. **When we examine to see if racial disparities still exist in the Green Factors, we examine at the district level, school level, grade band level, grade level, and classroom level because of a mandate from the Supreme Court to eliminate *de jure* vestiges of racism "at root and branch."**
        ii. These factors can all overlap: *Swann v. Charlotte-Mecklenburg* emphasized that student assignment and facilities go hand in hand.
        iii. Formal discovery is a request for information to collect this data and includes site visits (going to school, taking pics, and speaking to admin), hosting community meetings, and speaking with the plaintiff class.

    - The Green Factors and application notes to be shared with students are in the materials list at the end of this lesson.

    Green Factors:
    - Student Assignment
    - Faculty Assignment
    - Staff Assignment
    - Transportation
    - Extracurricular Activities
    - Facilities

3. Read demographic data of a school (their school?) and community to consider which Green Factors are not as integrated as they could be and make suggestions for desegregation needs. – 30 minutes

- Urban Institute (for student race and ethnicity demography from the 1980s to present): https://www.urban.org/data-tools/explore-your-schools-changing-demographics
- Most school districts have a state report card or open data set that would allow you to explore more in-depth data about the schools' racial and ethnic integration: For example, Tennessee DOE, John Trotwood Middle School https://tdepublicschools.ondemand.sas.com/school/001900490
- A third option could be to help students engage in a survey or gather their own data about the racial and ethnic demography of students, teachers, staff, participation in extracurricular groups, and assessment of transportation and facility use and resource allocation.

4. Read and discuss varied perspectives from the oral history article and respond to questions: – 20 minutes (see perspectives resource in materials list at the end of the lesson)
   - Where are the quotes from?
   - Who was the author?
   - Who published it?
   - When was it published?
   - What type of text is it?
   - Whose perspective is represented in the quote?
   - How would you describe the perspective in your own words?

   Teaching Tip: The Library of Congress has guidance for analyzing primary sources that might be helpful.
   https://www.loc.gov/static/programs/teachers/getting-started-with-primary-sources/documents/Analyzing_Primary_Sources.pdf

   https://www.loc.gov/static/programs/teachers/getting-started-with-primary-sources/documents/Primary_Source_Analysis_Tool_LOC.pdf

5. Debrief the oral history article and varied perspectives on desegregation cases from the 1950s around the question of: **When/how do political leaders decide to take action?** (5 min.)

6. **Larger Scale Assessment Ideas**: Make an oral history or do a podcast interview to share about experience in schools (classmates or self) related to student, teacher, staff, transportation, facilities, and extracurricular activities.

   - Alternative Assessment or Enrichment: Interview an older family member about their interactions in school related to the Green Factors. Use the interview to make a slideshow or movie trailer about their experience.

ASSESSMENTS

1. Adequate application of the Green Factors to a demographic report of schools or community organizations.
2. Discussion in class of the Green Factors and case contexts, including varied perspectives.
3. Sorting/graphic organizer for the varied perspectives from the oral history article.

MATERIALS NEEDED AND ADDITIONAL RESOURCES FOR ENRICHMENT

Short Summary of *Brown v. Board of Education* 1954 (for more detail, see the Supreme Court opinion attached at the end of the materials section)

Brown v. Board of Education was a landmark case in the United States that challenged the constitutionality of racial segregation in public schools. The case originated in Topeka, Kansas, where Black children were required to attend separate schools for Black students, which were often inferior in quality to those attended by white students. The plaintiffs argued that this segregation violated the Equal Protection Clause of the 14th Amendment, which guarantees equal rights to all citizens.

The case reached the Supreme Court in 1954, and in a unanimous decision, the Court, led by Chief Justice Earl Warren, declared that state laws establishing separate public schools for Black and white students were inherently unequal and unconstitutional. This decision overturned the precedent set by the 1896 case *Plessy v. Ferguson*, which had upheld the "separate but equal" doctrine.

The *Brown v. Board of Education* decision marked a pivotal moment in the Civil Rights Movement, as it laid the groundwork for desegregation efforts across the country and challenged the legal basis of segregation in other public facilities. It played a crucial role in the ongoing struggle for racial equality in the United States.

Short Summary of *Green v. New Kent County School Board*

Green v. County School Board of New Kent County (1968) was a significant United States Supreme Court case that dealt with the issue of school desegregation. The case involved the New Kent County School Board in Virginia, which had implemented a "freedom-of-choice" plan to supposedly comply with the Supreme Court's earlier decision in *Brown v. Board of Education* (1954).

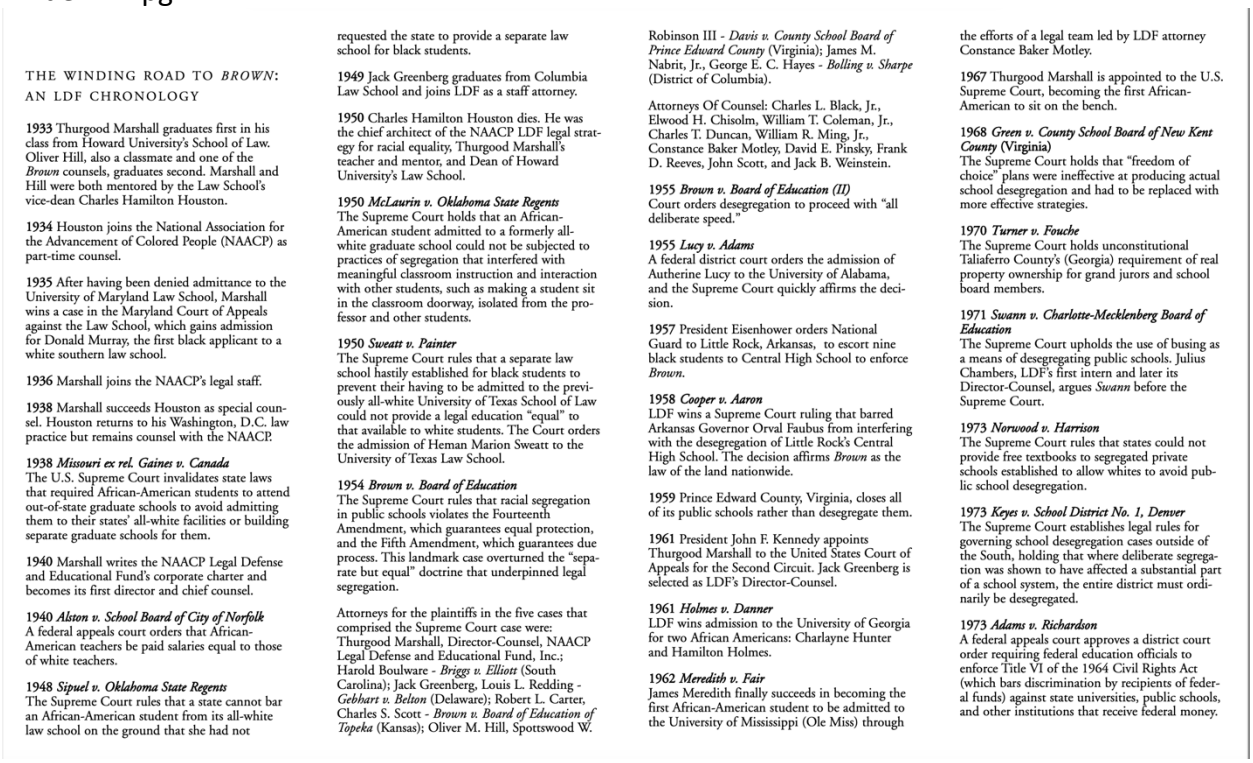
In *Brown*, the Court had ruled that racial segregation in public schools was unconstitutional, and it required school boards to take affirmative steps to eliminate segregation "root and branch." However, the New Kent County School Board's "freedom-of-choice" plan, which allowed

students to choose between an all-white school and an all-Black school, was deemed insufficient by the Court.

In the *Green* case, the Supreme Court, in a unanimous decision, held that the "freedom-of-choice" plan did not constitute adequate desegregation. The Court emphasized that the school board had the affirmative duty to dismantle dual school systems based on race and ensure that the new system was genuinely integrated.

The decision in *Green* established the principle that school boards had to take proactive measures to eliminate segregation, rather than relying on superficial or token efforts. It contributed to the ongoing legal and social efforts to enforce desegregation in public schools and was part of the broader legal landscape that sought to address the racial inequalities stemming from the era of segregation in the United States.

LDF "The Winding Road to *Brown* and Beyond"
Binder 1 – pg. 172



THE WINDING ROAD TO *BROWN*: AN LDF CHRONOLOGY

1933 Thurgood Marshall graduates first in his class from Howard University's School of Law. Oliver Hill, also a classmate and one of the *Brown* counsels, graduates second. Marshall and Hill were both mentored by the Law School's vice-dean Charles Hamilton Houston.

1934 Houston joins the National Association for the Advancement of Colored People (NAACP) as part-time counsel.

1935 After having been denied admittance to the University of Maryland Law School, Marshall wins a case in the Maryland Court of Appeals against the Law School, which gains admission for Donald Murray, the first black applicant to a white southern law school.

1936 Marshall joins the NAACP's legal staff.

1938 Marshall succeeds Houston as special counsel. Houston returns to his Washington, D.C. law practice but remains counsel with the NAACP.

1938 ***Missouri ex rel. Gaines v. Canada***
The U.S. Supreme Court invalidates state laws that required African-American students to attend out-of-state graduate schools to avoid admitting them to their states' all-white facilities or building separate graduate schools for them.

1940 Marshall writes the NAACP Legal Defense and Educational Fund's corporate charter and becomes its first director and chief counsel.

1940 ***Alston v. School Board of City of Norfolk***
A federal appeals court orders that African-American teachers be paid salaries equal to those of white teachers.

1948 ***Sipuel v. Oklahoma State Regents***
The Supreme Court rules that a state cannot bar an African-American student from its all-white law school on the ground that she had not requested the state to provide a separate law school for black students.

1949 Jack Greenberg graduates from Columbia Law School and joins LDF as a staff attorney.

1950 Charles Hamilton Houston dies. He was the chief architect of the NAACP LDF legal strategy for racial equality, Thurgood Marshall's teacher and mentor, and Dean of Howard University's Law School.

1950 ***McLaurin v. Oklahoma State Regents***
The Supreme Court holds that an African-American student admitted to a formerly all-white graduate school could not be subjected to practices of segregation that interfered with meaningful classroom instruction and interaction with other students, such as making a student sit in the classroom doorway, isolated from the professor and other students.

1950 ***Sweatt v. Painter***
The Supreme Court rules that a separate law school hastily established for black students to prevent their having to be admitted to the previously all-white University of Texas School of Law could not provide a legal education "equal" to that available to white students. The Court orders the admission of Heman Marion Sweatt to the University of Texas Law School.

1954 ***Brown v. Board of Education***
The Supreme Court rules that racial segregation in public schools violates the Fourteenth Amendment, which guarantees equal protection, and the Fifth Amendment, which guarantees due process. This landmark case overturned the "separate but equal" doctrine that underpinned legal segregation.

Attorneys for the plaintiffs in the five cases that comprised the Supreme Court case were: Thurgood Marshall, Director-Counsel, NAACP Legal Defense and Educational Fund, Inc.; Harold Boulware - *Briggs v. Elliott* (South Carolina); Jack Greenberg, Louis L. Redding - *Gebhart v. Belton* (Delaware); Robert L. Carter, Charles S. Scott - *Brown v. Board of Education of Topeka* (Kansas); Oliver M. Hill, Spottswood W. Robinson III - *Davis v. County School Board of Prince Edward County* (Virginia); James M. Nabrit, Jr., George E. C. Hayes - *Bolling v. Sharpe* (District of Columbia).

Attorneys Of Counsel: Charles L. Black, Jr., Elwood H. Chisolm, William T. Coleman, Jr., Charles T. Duncan, William R. Ming, Jr., Constance Baker Motley, David E. Pinsky, Frank D. Reeves, John Scott, and Jack B. Weinstein.

1955 ***Brown v. Board of Education (II)***
Court orders desegregation to proceed with "all deliberate speed."

1955 ***Lucy v. Adams***
A federal district court orders the admission of Autherine Lucy to the University of Alabama, and the Supreme Court quickly affirms the decision.

1957 President Eisenhower orders National Guard to Little Rock, Arkansas, to escort nine black students to Central High School to enforce *Brown*.

1958 ***Cooper v. Aaron***
LDF wins a Supreme Court ruling that barred Arkansas Governor Orval Faubus from interfering with the desegregation of Little Rock's Central High School. The decision affirms *Brown* as the law of the land nationwide.

1959 Prince Edward County, Virginia, closes all of its public schools rather than desegregate them.

1961 President John F. Kennedy appoints Thurgood Marshall to the United States Court of Appeals for the Second Circuit. Jack Greenberg is selected as LDF's Director-Counsel.

1961 ***Holmes v. Danner***
LDF wins admission to the University of Georgia for two African Americans: Charlayne Hunter and Hamilton Holmes.

1962 ***Meredith v. Fair***
James Meredith finally succeeds in becoming the first African-American student to be admitted to the University of Mississippi (Ole Miss) through the efforts of a legal team led by LDF attorney Constance Baker Motley.

1967 Thurgood Marshall is appointed to the U.S. Supreme Court, becoming the first African-American to sit on the bench.

1968 ***Green v. County School Board of New Kent County*** **(Virginia)**
The Supreme Court holds that "freedom of choice" plans were ineffective at producing actual school desegregation and had to be replaced with more effective strategies.

1970 ***Turner v. Fouche***
The Supreme Court holds unconstitutional Taliaferro County's (Georgia) requirement of real property ownership for grand jurors and school board members.

1971 ***Swann v. Charlotte-Mecklenberg Board of Education***
The Supreme Court upholds the use of busing as a means of desegregating public schools. Julius Chambers, LDF's first intern and later its Director-Counsel, argues *Swann* before the Supreme Court.

1973 ***Norwood v. Harrison***
The Supreme Court rules that states could not provide free textbooks to segregated private schools established to allow whites to avoid public school desegregation.

1973 ***Keyes v. School District No. 1, Denver***
The Supreme Court establishes legal rules for governing school desegregation cases outside of the South, holding that where deliberate segregation was shown to have affected a substantial part of a school system, the entire district must ordinarily be desegregated.

1973 ***Adams v. Richardson***
A federal appeals court approves a district court order requiring federal education officials to enforce Title VI of the 1964 Civil Rights Act (which bars discrimination by recipients of federal funds) against state universities, public schools, and other institutions that receive federal money.

1974 ***Milliken v. Bradley***
The Supreme Court rules that, in almost all cases, a federal court cannot impose an inter-district remedy between a city and its surrounding suburbs in order to integrate city schools.

1978 ***Bakke v. Regents of the University of California***
The Supreme Court rules that schools can take race into account in admissions, but cannot use quotas.

1982 ***Bob Jones University v. U.S.; Goldboro Christian Schools v. U.S.***
The Supreme Court appoints LDF Board Chair William T. Coleman, Jr. as "friend of the court" and upholds his argument against granting tax exemptions to religious schools that discriminate.

1984 ***Geier v. Alexander***
As part of a settlement of a case requiring desegregation of its public higher education system, Tennessee agrees to identify 75 promising black sophomores each year and prepare them for later admission to the state's graduate and professional schools. A federal court of appeals approves this settlement in 1986 despite opposition from the Reagan Administration.

1984 Julius L. Chambers is named LDF's Director-Counsel.

1993 Elaine R. Jones is named LDF's first female Director-Counsel.

1995 ***Missouri v. Jenkins***
The Supreme Court rules that some disparities, such as poor achievement among African-American students, are beyond the authority of the federal courts to address. This decision reaffirms the Supreme Court's desire to end federal court supervision and return control of schools to local authorities.

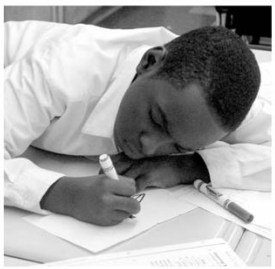
1996 ***Sheff v. O'Neill***
In this LDF case, the Supreme Court of Connecticut finds the State liable for maintaining racial and ethnic isolation, and orders the legislative and executive branches to propose a remedy. LDF would have to return to the Court in 2003 to force the legislative body to fulfill the Court's mandate.

1996 ***Hopwood v. Texas***
U.S. Court of Appeals for the Fifth Circuit rules that the affirmative action plans used by Texas universities are unconstitutional; the Supreme Court refuses to review the case.

1999 Thirty years of court-supervised desegregation ends in Charlotte-Mecklenburg school district.

2003 ***Gratz v. Bollinger; Grutter v. Bollinger***
The Supreme Court considers challenges to the University of Michigan's affirmative action program for its undergraduate and law schools, respectively. LDF represents African-American and Latino student intervenors in the *Gratz* undergraduate school case; LDF Associate Director-Counsel Theodore M. Shaw is lead counsel. In *Grutter*, the Court preserved the core principle of affirmative action, finding that the consideration of race in pursuit of a diverse student body is a compelling state interest.

2004 Theodore M. Shaw becomes LDF's fifth Director-Counsel.



ABOUT THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. (LDF)
LDF was founded in 1940 under the leadership of Thurgood Marshall, who led the legal team that won *Brown v. Board of Education*. LDF's mission is to transform the promise of equality into reality for African Americans and, ultimately, all individuals in the areas of education, political participation, economic justice and criminal justice.

Although LDF works primarily through the courts, its strategies include advocacy, educational outreach, monitoring of activity in the executive and legislative branches, coalition building and policy research.

Fifty years after *Brown*, education is still LDF's main program area. LDF continues to play a major role in the decades-long struggle to win equal access to primary, secondary and higher education for all of our nation's youth. Additionally, through its scholarship and fellowship programs, LDF has helped over 4,000 exceptional African-American students to graduate from many of the nation's best colleges, universities and law schools.

LDF is based in New York City, with offices in Washington, DC and Los Angeles.

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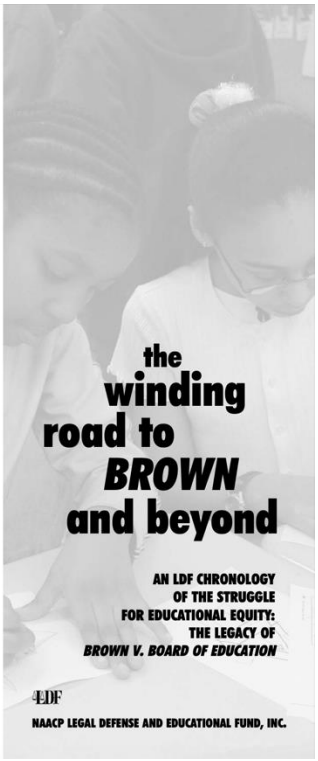

Perspectives on Integration and Desegregation

From: Jody Allen and Brian Daugherity, "Recovering a 'Lost' Story Using Oral History: The United States Supreme Court's Historic *Green v. New Kent County, Virginia*, Decision," *Oral History Review (2006) 33(2): 25-44 is available online at:* doi:10.1525/ohr.2006.33.2.25

"[I]n the tradition of the old guards, who would die rather than surrender, a new and hastily constructed roadblock has appeared in the form of planned and institutionalized tokenism. Many areas of the South are retreating to a position where they will permit a handful of Negroes to attend all-white schools.... Thus, we have advanced in some places from all-out, unrestrained resistance to a sophisticated form of delaying tactics, embodied in tokenism. In a sense, this is one of the most difficult problems that the integration movement confronts."
– Martin Luther King, Jr., 1962, Pg. 13

In the end, it was Supreme Court Justice Felix Frankfurter who most presciently described the school desegregation process in the later 1950s and early 1960s. During the 1953 Supreme Court debate over *Brown*, Frankfurter had warned, "Nothing could be worse from my point of view ... than for this Court to make an abstract declaration that segregation is bad and then have it evaded by tricks." Pg. 10

The filing of the lawsuit, as expected, provoked a strong reaction among New Kent County's white population. County leaders, as well as more conservative New Kent blacks, pressured Green to withdraw the suit. When Green refused, his wife's teaching contract was not renewed, ending her long-time involvement with the county's public schools and placing the family in financial jeopardy. Green explains, "I knew from history and other kinds of things that people who filed suits were in great danger and we soon, we found ourselves in it. We already knew that and when they did not give my wife a job it was a big financial burden for us. A great big financial burden for us. OK?... It gets rough ... when you lose a job and you've got obligations that are depending on having that job." In general, threats and intimidation against blacks increased, and several local black leaders publicly declared that they would defend themselves in the event of physical attacks on themselves or their families. Pg. 18

Civil rights activists—and scholars—have long bemoaned President Eisenhower's lack of support for the high court's decision. A supporter of gradual change, and a Republican president who sought to increase support for his party in the largely Democratic South, Eisenhower refused to publicly endorse the decision. Later, the President referred to his appointment of Earl Warren—the author of the *Brown* decision—as Chief Justice of the U.S. Supreme Court as "the biggest damnfool mistake I ever made." Pg. 9

Within only a few years, the nation witnessed the achievement of a key goal of the early Civil Rights Movement—the integration of the nation's public schools. Referring to *Green*, the National Park Service's year 2000 study of school desegregation in the United States notes: "The results were startling. In 1968-69, 32 percent of black students in the South attended integrated schools; in 1970-71, the number was 79 percent." Former NAACP attorney, Henry L.

Marsh III, agrees: “That’s when we had real meaningful desegregation—all over in 1968. Before we had the [*Green*] decision, desegregation was stymied because you only had desegregation where you had black applicants willing to run the gauntlet in white schools.” Pg. 24

Excerpts from the Supreme Court Decision *Green v. County School Board of New Kent County* (1968)

“During the [New Kent County ‘freedom-of-choice’] plan’s three years of operation [started August 2, 1965] no white student has chosen to attend the all-Negro school, and although 115 Negro pupils enrolled in the formerly all-white school, 85% of the Negro students in the system still attend the all-Negro school.”

“Racial identification of the system’s schools was complete, extending not just to the composition of student bodies at the two schools but to every facet of school operations—faculty, staff, transportation, extracurricular activities and facilities. In short, the State, acting through the local school board and school officials, organized and operated a dual system, part ‘white’ and part ‘Negro.’”

“... what is involved here is the question whether the Board has achieved the ‘racially nondiscriminatory school system’ *Brown II* held must be effectuated in order to remedy the established unconstitutional deficiencies of its segregated system.”

“In determining whether respondent School Board met that command by adopting its ‘freedom-of-choice’ plan, it is relevant that this first step did not come until some 11 years after *Brown I* was decided and 10 years after *Brown II* directed the making of a ‘prompt and reasonable start.’ Such delays are no longer tolerable...”

“Moreover, a plan that at this late date fails to provide meaningful assurance of prompt and effective disestablishment of a dual system is also intolerable.”

“... the District Court approved the ‘freedom-of-choice’ plan.... The Court of Appeals for the Fourth Circuit ... affirmed the District Court’s approval of the ‘freedom-of-choice’ provisions of the plan but remanded the case to the District Court for entry of an order regarding faculty ‘which is much more specific and more comprehensive’ ...”

“The New Kent School Board’s ‘freedom-of-choice’ plan cannot be accepted as a sufficient step to ‘effectuate a transition’ to a unitary system... no whites have gone to George W. Watkins school and 85% of blacks remain at George W. Watkins school.... In other words, the school system remains a dual system. Rather than further the dismantling of the dual system, the plan has operated simply to burden children and their parents with a responsibility which *Brown II* placed squarely on the School Board.”

“We do not hold that a ‘freedom-of-choice’ plan might of itself be unconstitutional, although that argument has been urged upon us.”

“Where a ‘freedom-of-choice’ plan offers real promise of achieving a unitary, nonracial system there might be no objection to allowing it to prove itself in operation, but where there are reasonably available other ways, such as zoning, promising speedier and more effective conversion to a unitary school system, ‘freedom of choice’ is not acceptable.”

“... it is evident that here the Board, by separately busing Negro children across the entire county to the ‘Negro’ school, and the white children to the ‘white’ school, is deliberately maintaining a segregated system which would vanish with non-racial geographical zoning.”

“The Board must be required to formulate a new plan and, in light of other courses which appear open to the Board, such as zoning, fashion steps which promise realistically to convert promptly to a system without a ‘white’ school and a ‘Negro’ school, but just schools.”

“Moreover, whatever plan is adopted will require evaluation in practice, and the court should retain jurisdiction until it is clear that state-imposed segregation has been completely removed.”

Notes on the Green Factors

Student Assignment

- Where Black students and white students are assigned to attend.
- When you have a school district that’s 90% white and 10% Black, if one of the high schools is 30% Black, then that school would be considered a one-race school.
- We look to determine whether racial comp/percentage of Black students falls within 10-15% of total district percentages.
- There is a desire in Black communities to maintain their schools. While the best way to approach desegregation normally seems like leveling out schools, we sometimes try to preserve predominantly Black institutions. But when we do desegregate, we do it in a couple of ways: 1) adjusting attendance boundaries or advocating by establishment of a magnet program; 2) through consolidating schools, which requires closing schools and bringing students together, sometimes to a neutral location or other times in one school while closing the other (controversial in terms of which community has to travel, where a school will be built, etc.).
- There are also majority-to-minority transfers.
    - Especially if a school district is putting more resources into predominantly Black schools (which happens through consent orders) and a white student in a majority-white school wants to transfer, they can.

    - Within-school student assignment: We want integration in the numerical sense but also within school programs. In the context of within-school student assignment, look into access to AP programs, dual enrollment, career and tech programs, and the context of special education.

Faculty and Staff Assignment

- Like student assignment, if there is a school where the faculty and staff ratios are balanced but one school where teachers are nearly all white or all Black, that particular school and district would be considered noncompliant.
- Refers to whether Black students have equal access to certified schoolteachers in comparison to white students.
- This applies to all district employees and is related to the hiring, retention, and promotion of faculty and staff.
    - Includes any advisors to extracurricular activities, central office employees, and the like.

Transportation

- Students have lived in an area where there are separate buses for white and Black students. Buses themselves need to be integrated to the extent practicable.
- Make sure busing times are reasonable—making sure Black students are not spending more time on buses than white students are.
    - Pick-up and drop-off times of Black students compared to white students.
    - There are cases of Black students being dropped off at home at night versus other students being dropped off during the daylight.
- This also includes the condition of buses: some cases where the buses dispatched to Black neighborhoods have no air conditioning, but white buses do.

Extracurricular Activities

- This is a question of whether all clubs or extracurriculars are equally open to students across the district, requiring racial balance amongst opportunities. Look at enrollment and participation.
    - Includes sports, homecoming, prom, student government, and honor societies.
- If we do find that racial disparities exist, we advocate for recommendations through experts, which may include eliminating subjective criteria or eliminating financial or cultural barriers.
    - Example of participation in beta club requiring teacher recommendation: The remedy was to remove the teacher recommendation requirement and keep just requisite 3.0 GPA.
    - There was a case where there existed a $100 fee for cheerleading, and the style of cheerleading was not reflective of Black culture. Lawyers obtained a consent

decree removing the fee and requiring the squad to be more reflective of the population.

Facilities

- Investigating whether schools have equalized their facilities—particularly important when you have predominantly white and Black schools within a district.
- Predominantly Black schools typically have inferior facilities. Analyze whether facilities of racially identifiable schools present with these racial disparities.
- In-school facilities are also something to look for. In an Alabama example, ISS rooms in trailers were segregated from the main campus, and students in ISS trailers were predominantly Black.

Quality of Education

- This is an ancillary, catch-all category: discipline, climate and culture, graduation pathways, graduation rates, in-grade retention, and student achievement data.
- Courts will consider this when determining whether the school district is unitary. Many times, issues overlap and intersect categories.
- Discipline cuts across factors because ISS is a student assignment issue, for example. This means lawyers do a lot of work with school districts on updating discipline policies to reflect best practices.
- Tends to be a big place for impact on a school's policies and course offerings.
- Climate and culture issues: In a desegregation case at a predominantly white high school, Black students and parents had repeated complaints about the lack of culturally relevant pedagogy. You can investigate climate questions under this prong.
- This did not come from the *Green* case, which is why you'll often hear "Green and ancillary factors."

Brown v. Board of Education **Supreme Court Opinion**

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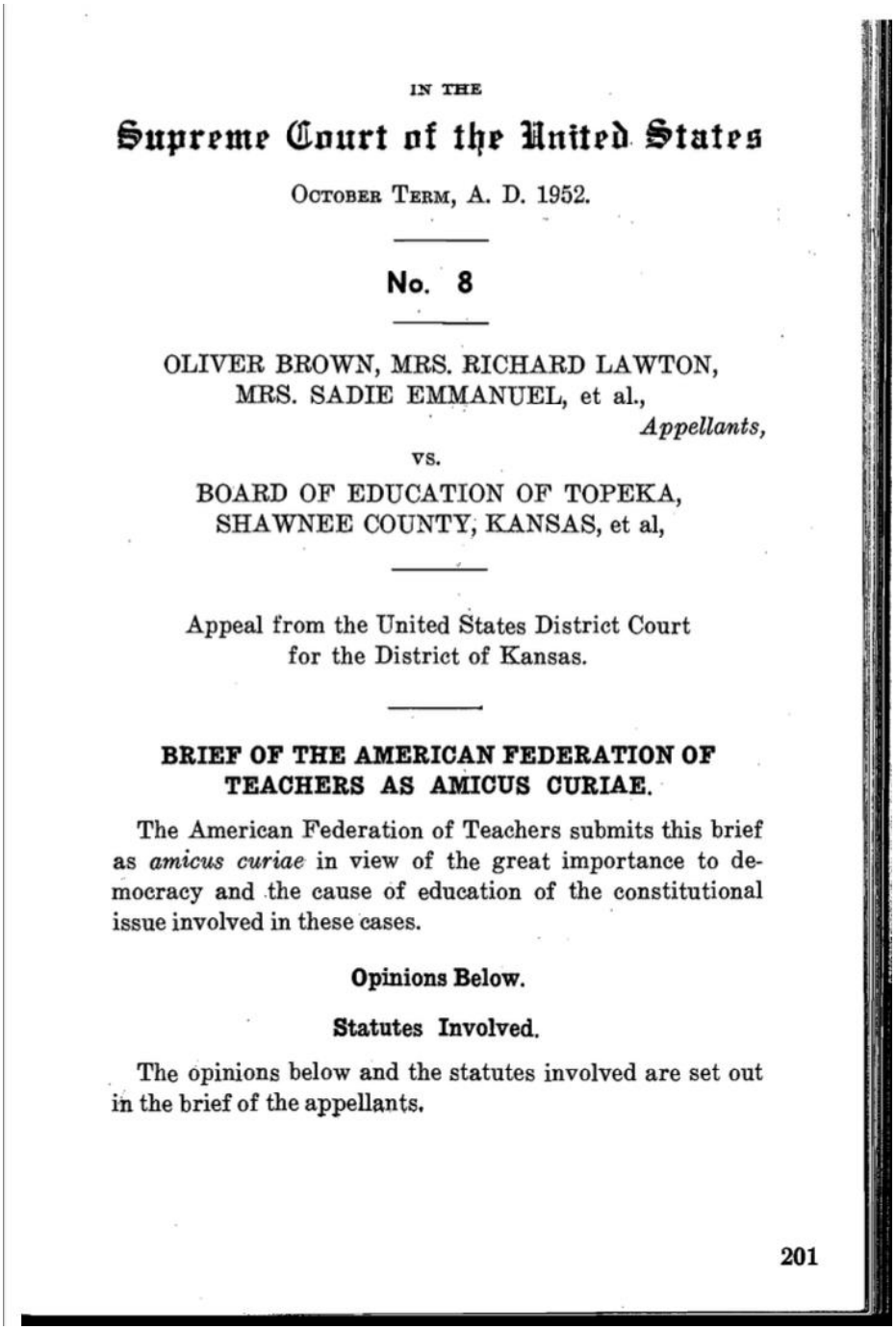

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 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,

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

BRIEF OF THE AMERICAN FEDERATION OF TEACHERS AS AMICUS CURIAE.

The American Federation of Teachers submits this brief as *amicus curiae* in view of the great importance to democracy and the cause of education of the constitutional issue involved in these cases.

Opinions Below.

Statutes Involved.

The opinions below and the statutes involved are set out in the brief of the appellants.

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Question Presented.

The general question presented by this appeal is whether the State of Kansas is violating the mandates of the Fourteenth Amendment by its practice of maintaining separate schools for the education of white and colored children.

Statement.

This is a class action in which plaintiffs seek a decree declaring Section 72-1724 of the General Statutes of Kansas, 1949 to be unconstitutional insofar as it empowers the Board of Education of the City of Topeka "to organize and maintain separate schools for the education of white and colored children."

Pursuant to this statute, the City of Topeka, Kansas, has established and maintains a segregated system of schools for the first six grades. The City of Topeka is one school district. The district maintains eighteen schools for white children and four for colored children.

The case was heard by a three judge statutory court. The court found as a fact that the facilities in the schools for colored children were substantially equal. Hence the issue here is whether segregation of children in the grade schools is *per se* a denial of equal protection of the laws.

Summary of Argument.

In this brief *amicus curiae* the American Federation of Teachers will argue that segregation in the schools violates basic principles of the educational process; that Negroes forced by state law to attend segregated schools are, by virtue of such segregation denied the equal protection of the laws, in violation of the Fourteenth Amendment.

ARGUMENT.

I.

The Statute of Kansas, providing for segregation of students in the Public Schools, violates the requirements of the equal protection clause of the Fourteenth Amendment. The doctrine of "Separate but Equal" facilities is fallacious.

The Fourteenth Amendment to the Constitution, in Section 1, provides:

> "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."

The Fourteenth Amendment made Negroes citizens of the United States and was intended further to protect them fully in the exercise of their rights and privileges. To make sure that this intent was fully known, Congress refused to readmit Southern States or seat their representatives until the states accepted the Fourteenth Amendment.

Its adoption, however, did not stop the practice of segregation in the Southern States, and when that issue was presented to this Court in 1896, in *Plessy* v. *Ferguson,* 163 U. S. 537, 550 (1896), involving a Louisiana statute which required separation of Negro and white passengers, this Court said:

> ". . . We cannot say that a law which authorizes or even requires the separation of the two races in public

conveyances is unreasonable, or more obnoxious to the Fourteenth Amendment than the acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures."

In *Missouri ex rel. Gaines* v. *Canada, registrar,* 305 U. S. 337, 349, this Court said:

"The admissibility of laws separating the races in the enjoyment of privileges afforded by the State rests wholly upon the equality of the privileges which the laws give to the separated groups within the State."

Recently, the doctrine of "separate by equal" facilities expressed in the *Plessy* and *Gaines* cases was held to be a menace to American democracy and indefensible by the President's Committee on Civil Rights which unequivocally advocated that it be eliminated. In its report, the Committee said:

"The separate but equal doctrine has failed in three important respects. First, it is inconsistent with the fundamental equalitarianism of the American way of life in that it marks groups with the brand of inferior status. Secondly, where it has been followed, the results have been separate and unequal facilities for minority peoples. Finally it has kept people apart despite incontrovertible evidence that an environment favorable to civil rights is fostered whenever groups are permitted to live and work together. There is no adequate defense of segregation."

Furthermore, recent decisions of this Court enunciate principles in conflict with the rationale of the *Plessy* and *Gaines* cases. These include: *Takahashi* v. *Fish & Game Commission,* 332 U. S. 410; *Oyama* v. *California,* 332 U. S. 633, 640, 646 (1948); *Sipuel* v. *Board of Regents of the University of Oklahoma,* 332 U. S. 631 (1948); *Shelley* v. *Kraemer,* 334 U. S. 1 (1948).

In the *Shelley* case, this court, in considering private agreements to exclude persons of designated race or color from the use or occupancy of real estate for residential purposes and holding that it was violative of the equal protection clause of the Fourteenth Amendment for state courts to enforce them said (at p. 23):

"The historical context in which the Fourteenth Amendment became a part of the Constitution should not be forgotten. Whatever else the framers sought to achieve, it is clear that the matter of primary concern was the establishment of equality in the enjoyment of basic civil and political rights and the preservation of those rights from discriminatory action on the part of the States based on considerations of race or color."

These principles cast doubt on the soundness of the rule laid down in the *Plessy* and *Gaines* cases. We submit that it should no longer be followed.

Nowhere has the fallacy of the doctrine of "separate but equal" facilities been more apparent than in the grade and high schools of the country. Elsewhere, in this brief we shall point out the sociological effects of this practice.

In *Sweatt* v. *Painter,* 339 U. S. 629, 70 S. Ct. Rep. 848, the court held that a separate law school established by Texas for Negro students could not be the equal of the University of Texas Law School.

In *McLaurin* v. *Oklahoma State Regents,* 339 U. S. 637, 70 S. Ct. Rep. 851, the court held that the requirements of state law that the instruction of a Negro graduate student in the University of Oklahoma be "upon a segregated basis" deprived the appellant in that case of his personal and present right to the equal protection of the laws.

There is no reason in experience for applying a different logic to children in grade and high schools. As the court

there said, our society grows increasingly complex and our need for trained leaders increases correspondingly.

We cannot give separate training to two segments of society and then expect that some magic will merge the individual from these segments into equal citizens having equal opportunities.

It is a mockery to say that those who aspire to teach and lead must have equal opportunity regardless of race, and still condemn to inequality those they are to teach and lead.

Ninety years of segregated schools demand the historical judgment that separate facilities are inevitably unequal and are not the way to equal opportunity.

In the segregated school system the growing citizen never has the chance to show his equal ability; he never has the

> "opportunity to secure acceptance by his fellow students on his own merits." *McLaurin* v. *Oklahoma State Regents*, 339 U. S. 637, 641.

He must wait until he has finished what schooling he gets before he enters the competition. For him "the personal and present right to the equal protection of the laws" is of as great practical importance as for the graduate student.

The Fourteenth Amendment is not for law students and postgraduates alone. It is meaningless if it does not apply to all children from the first day they enter the public schools.

To paraphrase the decision in the *Shelley* case, it seems to us that the segregation of students in public education as required by the Kansas Statute, violates the primary object of the Fourteenth Amendment: ". . . the establishment of equality in the enjoyment of basic civil and political

rights and the preservation of those rights from discriminatory action on the part of the States based on considerations of race or color."

II.

Segregation in public schools inevitably results in inferior educational opportunities for the Negro.

Commenting on the study of Dr. John Norton and Dr. Eugene Lawler—Public School Expenditures (1944) W. Harden Hughes states:

> "The contrasts in support of white and Negro schools are appalling . . . the median expenditure per standard classroom unit in schools for white children is $1,160 as compared with $476 for Negro children. Only 2.56% of class rooms in the white schools fall below the $500 cost level while 52.59% of the class rooms for Negro children are below this level."[1]
>
> "The state supported institutions of higher learning for Negroes are far inferior" states Charles S. Mangum, Jr., "to their sister institutions for whites. Most of the inequalities which have been noted herein with respect to the public schools for whites and Negroes are also present in the Negro normal and technical schools. . . . There is hardly one among them that could compare with any good white college in the same area."[2]

Statistics on vocational education in the land grant schools and colleges among Negroes show:

> "that of the federal funds allotted for vocational training in 1934-35 white schools received 88.2% and Negro schools 11.8%."[3]

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[1] Negro Year Book, Tuskegee Institute 1947. "The Negro and Education." W. Harden Hughes, p. 56.

[2] The Legal Status of the Negro (p. 134), Charles S. Mangum, Jr., Chapel Hill University of N. C. Press, 1940.

[3] Vocational Education and Guidance of Negroes, Bulletin No. 38, 1937, U. S. Dept. of Interior, Office of Education, p. 13.

A recommendation of this report (1934-35) was:

> "that individuals and groups interested in the improvement of educational facilities continue and increase their efforts to promote equitability of educational opportunity and equitability in the distribution of funds without regard to race or color."[4]

In Texas, the expenditure for public schools was $1400 for whites per classroom unit and $700 for Negroes.[4] There is a corresponding discrimination in school transportation, salaries of teachers, library service and provision for training beyond the secondary school.

Several recent studies,[5] as well as many previous ones, all indicate the great disparity between the educational opportunities afforded white youth and those offered to Negro youth in the states where a segregated and discriminatory system of education prevails.

So obvious are the inequalities that in Vol. 1 of the National Survey of the Higher Education of Negroes we find this statement: "No one with a knowledge of the facts believes that Negroes enjoy all the privileges which American democracy expressly provides for the citizens of the U. S. and even for those aliens of the white race who reside among us. The question goes much deeper than the Negro citizens' *legal right to equal educational opportunity.* The question is whether American democracy and what we like to call the American way of life, can stand the strain of perpetuating an undemocratic situation; and whether the nation can bear the *social cost of utilizing only a fraction*

[4] Public School Expenditures, Dr. John Norton and Dr. Eugene S. Lawler, American Council on Education, 1944.

[5] The Black & White of Rejections for Military Service, American Teachers Assn. Studies, ATA Montgomery, Ala., 1944; Public School Expenditures in the U. S., Dr. John K. Norton and Dr. Eugene S. Lawler; American Council on Education, Wash., D. C., 1944; Journal of Negro Education, Summer 1947.

of the potential contribution of so large a portion of the American population." [6]

The Constitution is a living instrument, and a "separate but equal" doctrine based upon antiquated considerations, should not, at this time, and in this advanced era, be permitted to perpetuate a situation which denies full equality to Negroes in the pursuit of education.

III.

Segregation in public schools deprives the Negro student of an important element of the education process and he is thereby denied the equal educational opportunities mandated by the Fourteenth Amendment.

The practice of segregation in the field of education is a denial of education itself. Education means more than the physical school room and the books it contains, and the teacher who instructs. It includes the learning that comes from free and full association with other students in the school. To restrict that association is to deny full and equal opportunities in the learning process. To restrict that association is to deny the constitutional guarantee.

Psychologists show us that learning is an emotional as well as an intellectual process: that it is social as well as individual, and is best secured in an environment which encourages and stimulates the best effort of the individual and holds out the hope that this best effort will be accepted and used by society.

From infancy to adulthood the most satisfactory personality development occurs when the individual:

a. feels he is accepted and wanted by his community

[6] Socio-Economic Approach to Educational Problems, Misc. No. 6, Vol. 1, p. 1, Federal Security Agency, U. S. Office of Education, Wash., 1942.

b. secures aid and encouragement in his activities

c. has the satisfaction of contributing to the group without too many frustrating experiences

d. receives the approval of the group or some evidence of recognition.

"Another obvious fact about human development is that it is greatly facilitated by social contacts. . . . Social contacts make possible the enlargement of personal experience by fusing into it the accumulated experiences of the race."[7] (Here human race is intended.)

"More recently psychologists and other students of education have gained a livelier appreciation of the fact that learning does not take place merely because there exists an intelligence or mind. The physical condition of boys and girls, their emotional responses both in school and out, *all the environmental factors* which impinge upon them have influence upon their growth and development."[8]

"The security needs of children (and adults too) are more numerous and complicated than the elimination of gross fears suggests. They seem to be related to a larger but more subtle need which may be here labeled as the need for orientation. A person finds it desirable to know where he is in the world and how he stands with his fellows. To be 'lost' in either respect is to be in an uncomfortable frame of mind. Not to be spatially, temporally and socially oriented is to be deprived of the *prime conditions for effective learning and growth.*"[9]

In every situation there is the inter-relation of the individual to his group—which is one that increases with his maturity. First it is the family, then the local community, then the state, the nation, and finally the entire world. At

[7] Judd, Charles H., Educational Psychology, p. 3, Houghton Mifflin, 1939.

[8] Hartmann, George W., Educational Psychology, Foreword, p. VI, American Book Co., 1940.

[9] Hartmann, George W., Educational Psychology, p. 240, American Book Co., 1940.

no stage of development should any barriers be erected to prevent the individual from moving from a narrower group to a larger one, particularly barriers on race. As Lewin states:

> "The group to which an individual belongs is the ground on which he stands, which gives or denies him social status, gives or denies him security and help. The firmness or weakness of this ground might not be consciously perceived, just as the firmness of the physical ground on which we tread is not always thought of. Dynamically, however, the firmness and clearness of this ground determine what the *individual wishes to do, what he can do, and how he will do it.* This is equally true of the social ground as of the physical."[10]

Again he states:

> "It should be clear to the social scientist that it is hopeless to cope with this problem (discrimination) by providing *sufficient self esteem for members of minority groups* as individuals. The discrimination which these individuals experience is not directed against them as individuals, but as group members and only by raising their self *esteem as group members* to the normal level can a remedy be produced."[11]

An interesting survey of the opinion of social scientists on the effects of enforced segregation was made by Drs. Max Deutscher and Isidor Chein through a questionnaire[12] to 849 social scientists in all parts of the country. The questionnaire was answered by 571.

> "Ninety per cent of the total sample express the opinion that enforced segregation has detrimental effects on the segregated groups."[13]

[10] Kurt Lewin, "Resolving Social Conflicts," p. 174, Harper & Bros., 1948.

[11] *Ibid*, p. 214.

[12] Max Deutscher and Isidor Chein, The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion, Journal of Psychology, 1948-26, pp. 259-287.

[13] Page 265—above survey.

"Eighty-three per cent of the respondents believe that enforced segregation has detrimental psychological effects on the group which enforces segregation."[14]

A few quotations from the social scientists make clear their views: "Feelings of not being wanted, of being classified as inferiors, of being assigned to low places are destructive to personality and development and injurious alike to slave and master."[15]

"Clinical experience and experimental evidence point unmistakably to the conclusion that segregation implies a value judgment which in turn arouses hostility in the segregated and guilt feelings in the segregator. The effect is to set up a vicious circle making for group conflict."[16]

"I don't see how anyone could question the statement that power over others—to segregate or any other power—has a psychological effect on both parties or that this effect is bad in any sense for the less powerful groups. The more powerful group may like the effect it has on itself in short term values, but hatred, rebellion, or dispair are attitudes they have aroused toward themselves and they will always have to cope with these results sooner or later unless they can practically eradicate the whole minority as Europeans did with the American Indian."[17]

If education can be made available to all so that each may develop to the fullest and give his contribution to society, we will find a peaceful way—rather than one of human destruction and tragedy—to bring freedom and justice to peoples.

The American Federation of Teachers believes that segregated and discriminatory education is undemocratic and contrary both to sound educational development as well as

[14] (See Footnote 12), p. 265.
[15] (See Footnote 12), p. 274.
[16] (See Footnote 12), p. 275.
[17] (See Footnote 12), p. 279.

to the basic law of the land—the United States Constitution. We subscribe to the principle that democratic education provides a total environment which will enable the individual to develop to his capacity, physically, emotionally, intellectually and spiritually.

For such training to be fully effective, it is essential that each individual participate, without barriers of race, creed, or national origin, as a full fledged member in the home, the community, the state and the nation.

Accordingly, any restriction, particularly in the form of segregated and discriminatory schooling, which prevents the interplay of ideas, personalities, information and attitudes, impedes a democratic education and ultimately prevents a working democracy.

Conclusion.

Segregation of Negroes in public schools in any of our States inevitably results in depriving Negroes of educational opportunities provided by those States for white citizens. Negroes in such States are thereby denied the equal protection of the laws mandated by the Fourteenth Amendment. This Court should end these violations of the constitutional mandate by reversing the judgment in this case and granting the appellants the relief they pray for.

Respectfully submitted,

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