Court Cases for Juan Crow vs. Jim Crow Lesson Plan

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Brown v. Board of Education of Topeka – case summary

Black children were denied admission to public schools attended by white children under laws requiring or permitting segregation according to the races. The white and black schools approached equality in terms of buildings, curricula, qualifications, and teacher salaries. This case was decided together with Briggs v. Elliott and Davis v. County School Board of Prince Edward County. The legal question was: Does the segregation of children in public schools solely on the basis of race deprive the minority children of the equal protection of the laws guaranteed by the 14th Amendment? The court ruled that despite the equalization of the schools by "objective" factors, intangible issues foster and maintain inequality. Racial segregation in public education has a detrimental effect on minority children because it is interpreted as a sign of inferiority. The long-held doctrine that separate facilities were permissible provided they were equal was rejected. Separate but equal is inherently unequal in the context of public education. The unanimous opinion sounded the death-knell for all forms of state-maintained racial separation.

Decision: 9 votes for Brown, 0 vote(s) against

After its decision in Brown I which declared racial discrimination in public education unconstitutional, the Court convened to issue the directives which would help to implement its newly announced Constitutional principle. Given the embedded nature of racial discrimination in public schools and the diverse circumstances under which it had been practiced, the Court requested further argument on the issue of relief.

The Court held that the problems identified in Brown I required varied local solutions. Chief Justice Warren conferred much responsibility on local school authorities and the courts which originally heard school segregation cases. They were to implement the principles which the Supreme Court embraced in its first Brown decision. Warren urged localities to act on the new principles promptly and to move toward full compliance with them "with all deliberate speed."

U.S. Supreme Court

Brown v. Board of Education of Topeka - 347 U.S. 483 (1954)

Argued December 9, 1952

Reargued December 8, 1953

Decided May 17, 1954*

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

Syllabus

Segregation of white and Negro children in the public schools of a State solely on the basis of race, pursuant to state laws permitting or requiring such segregation, denies to Negro children the equal protection of the laws guaranteed by the

Fourteenth Amendment -- even though the physical facilities and other "tangible" factors of white and Negro schools may be equal. Pp. 347 U. S. 486-496.

(a) The history of the Fourteenth Amendment is inconclusive as to its intended effect on public education. Pp. 347 U. S. 489-490.

(b) The question presented in these cases must be determined not on the basis of conditions existing when the Fourteenth Amendment was adopted, but in the light of the full development of public education and its present place in American life throughout the Nation. Pp. 347 U. S. 492-493.

(c) Where a State has undertaken to provide an opportunity for an education in its public schools, such an opportunity is a right which must be made available to all on equal terms. P. 347 U. S. 493.

(d) Segregation of children in public schools solely on the basis of race deprives children of the minority group of equal educational opportunities, even though the physical facilities and other "tangible" factors may be equal. Pp. 347 U. S. 493-494.

(e) The "separate but equal" doctrine adopted in *Plessy v. Ferguson,* 163 U. S. 537, has no place in the field of public education. P. 347 U. S. 495.

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(f) The cases are restored to the docket for further argument on specified questions relating to the forms of the decrees. Pp. 347 U. S. 495-496.

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MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware. They are premised on different facts and different local conditions, but a common legal question justifies their consideration together in this consolidated opinion. [Footnote 1]

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In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis. In each instance,

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they had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. In each of the cases other than the Delaware case, a three-judge federal district court denied relief to the plaintiffs on the so-called "separate but equal" doctrine announced by this Court in *Plessy v. Fergson,* 163 U. S. 537. Under that doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate. In the Delaware case, the Supreme Court of Delaware adhered to that doctrine, but ordered that the plaintiffs be admitted to the white schools because of their superiority to the Negro schools.

The plaintiffs contend that segregated public schools are not "equal" and cannot be made "equal," and that hence they are deprived of the equal protection of the laws. Because of the obvious importance of the question presented, the Court took jurisdiction. [Footnote 2] Argument was heard in the 1952 Term, and reargument was heard this Term on certain questions propounded by the Court. [Footnote 3]

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Reargument was largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then-existing practices in racial segregation, and the views of proponents and opponents of the Amendment. This discussion and our own investigation convince us that, although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best, they are inconclusive. The most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among "all persons born or naturalized in the United States." Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty.

An additional reason for the inconclusive nature of the Amendment's history with respect to segregated schools is the status of public education at that time. [Footnote 4] In the South, the movement toward free common schools, supported

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by general taxation, had not yet taken hold. Education of white children was largely in the hands of private groups. Education of Negroes was almost nonexistent, and practically all of the race were illiterate. In fact, any education of Negroes was forbidden by law in some states. Today, in contrast, many Negroes have achieved outstanding success in the arts and sciences, as well as in the business and professional world. It is true that public school education at the time of the Amendment had advanced further in the North, but the effect of the Amendment on Northern States was generally ignored in the congressional debates. Even in the North, the conditions of public education did not approximate those existing today. The curriculum was usually rudimentary; ungraded schools were common in rural areas; the school term was but three months a year in many states, and compulsory school attendance was virtually unknown. As a consequence, it is not surprising that there should be so little in the history of the Fourteenth Amendment relating to its intended effect on public education.

In the first cases in this Court construing the Fourteenth Amendment, decided shortly after its adoption, the Court interpreted it as proscribing all state-imposed discriminations against the Negro race. [Footnote 5] The doctrine of

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"separate but equal" did not make its appearance in this Court until 1896 in the case of *Plessy v. Ferguson, supra,* involving not education but transportation. [Footnote 6] American courts have since labored with the doctrine for over half a century. In this Court, there have been six cases involving the "separate but equal" doctrine in the field of public education. [Footnote 7] In *Cumming v. County Board of Education,* 175 U. S. 528, and *Gong Lum v. Rice,* 275 U. S. 78, the validity of the doctrine itself was not challenged. [Footnote 8] In more recent cases, all on the graduate school

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level, inequality was found in that specific benefits enjoyed by white students were denied to Negro students of the same educational qualifications. *Missouri ex rel. Gaines v. Canada,* 305 U. S. 337; *Sipuel v. Oklahoma,* 332 U. S. 631; *Sweatt v. Painter,* 339 U. S. 629; *McLaurin v. Oklahoma State Regents,* 339 U. S. 637. In none of these cases was it necessary to reexamine the doctrine to grant relief to the Negro plaintiff. And in *Sweatt v. Painter, supra,* the Court expressly reserved decision on the question whether *Plessy v. Ferguson* should be held inapplicable to public education.

In the instant cases, that question is directly presented. Here, unlike *Sweatt v. Painter,* there are findings below that the Negro and white schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other "tangible" factors. [Footnote 9] Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

In approaching this problem, we cannot turn the clock back to 1868, when the Amendment was adopted, or even to 1896, when *Plessy v. Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout

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the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

In *Sweatt v. Painter, supra,* in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on "those qualities which are incapable of objective measurement but which make for greatness in a law school." In *McLaurin v. Oklahoma State Regents, supra,* the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: ". . . his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession."

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Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

"Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law, for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system. [Footnote 10]"

Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson,* this finding is amply supported by modern authority. [Footnote 11] Any language

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in *Plessy v. Ferguson* contrary to this finding is rejected.

We conclude that, in the field of public education, the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by

the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment. [Footnote 12]

Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity. On reargument, the consideration of appropriate relief was necessarily subordinated to the primary question -- the constitutionality of segregation in public education. We have now announced that such segregation is a denial of the equal protection of the laws. In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument on Questions 4 and 5 previously propounded by the Court for the reargument this Term. [Footnote 13] The Attorney General

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of the United States is again invited to participate. The Attorneys General of the states requiring or permitting segregation in public education will also be permitted to appear as *amici curiae* upon request to do so by September 15, 1954, and submission of briefs by October 1, 1954. [Footnote 14]

It is so ordered.

* Together with No. 2, *Briggs et al. v. Elliott et al.,* on appeal from the United States District Court for the Eastern District of South Carolina, argued December 9-10, 1952, reargued December 7-8, 1953; No. 4, *Davis et al. v. County School Board of Prince Edward County, Virginia, et al.,* on appeal from the United States District Court for the Eastern District of Virginia, argued December 10, 1952, reargued December 7-8, 1953, and No. 10, *Gebhart et al. v. Belton et al.,* on certiorari to the Supreme Court of Delaware, argued December 11, 1952, reargued December 9, 1953.

[Footnote 1]

In the Kansas case, *Brown v. Board of Education,* the plaintiffs are Negro children of elementary school age residing in Topeka. They brought this action in the United States District Court for the District of Kansas to enjoin enforcement of a Kansas statute which permits, but does not require, cities of more than 15,000 population to maintain separate school facilities for Negro and white students. Kan.Gen.Stat. § 72-1724 (1949). Pursuant to that authority, the Topeka Board of Education elected to establish segregated elementary schools. Other public schools in the community, however, are operated on a nonsegregated basis. The three-judge District Court, convened under 28 U.S.C. §§ 2281 and 2284, found that segregation in public education has a detrimental effect upon Negro children, but denied relief on the ground that the Negro and white schools were substantially equal with respect to buildings, transportation, curricula, and educational qualifications of teachers. 98 F.Supp. 797. The case is here on direct appeal under 28 U.S.C. § 1253.

In the South Carolina case, *Briggs v. Elliott,* the plaintiffs are Negro children of both elementary and high school age residing in Clarendon County. They brought this action in the United States District Court for the Eastern District of South Carolina to enjoin enforcement of provisions in the state constitution and statutory code which require the segregation of Negroes and whites in public schools. S.C.Const., Art. XI, § 7; S.C.Code § 5377 (1942). The three-judge District Court, convened under 28 U.S.C. §§ 2281 and 2284, denied the requested relief. The court found that the Negro schools were inferior to the white schools, and ordered the defendants to begin immediately to equalize the facilities. But the court sustained the validity of the contested provisions and denied the plaintiffs admission to the white schools during the equalization program. 98 F.Supp. 529. This Court vacated the District Court's judgment and remanded the case for the purpose of obtaining the court's views on a report filed by the defendants concerning the progress made in the equalization program. 342 U. S. 350. On remand, the District Court found that substantial equality had been achieved except for buildings and that the defendants were proceeding to rectify this inequality as well. 103 F.Supp. 920. The case is again here on direct appeal under 28 U.S.C. § 1253.

In the Virginia case, *Davis v. County School Board,* the plaintiffs are Negro children of high school age residing in Prince Edward County. They brought this action in the United States District Court for the Eastern District of Virginia to enjoin enforcement of provisions in the state constitution and statutory code which require the segregation of Negroes and whites in public schools. Va.Const., § 140; Va.Code § 22-221 (1950). The three-judge District Court, convened under 28 U.S.C. §§ 2281 and 2284, denied the requested relief. The court found the Negro school inferior in physical plant, curricula, and transportation, and ordered the defendants forthwith to provide substantially equal curricula and transportation and to "proceed with all reasonable diligence and dispatch to remove" the inequality in physical plant. But, as in the South Carolina case, the court sustained the validity of the contested provisions and denied the plaintiffs admission to the white schools during the equalization program. 103 F.Supp. 337. The case is here on direct appeal under 28 U.S.C. § 1253.

In the Delaware case, *Gebhart v. Belton,* the plaintiffs are Negro children of both elementary and high school age residing in New Castle County. They brought this action in the Delaware Court of Chancery to enjoin enforcement of provisions in the state constitution and statutory code which require the segregation of Negroes and whites in public schools. Del.Const., Art. X, § 2; Del.Rev.Code § 2631 (1935). The Chancellor gave judgment for the plaintiffs and ordered their immediate admission to schools previously attended only by white children, on the ground that the Negro schools were inferior with respect to teacher training, pupil-teacher ratio, extracurricular activities, physical plant, and time and distance involved in travel. 87 A.2d 862. The Chancellor also found that segregation itself results in an inferior education for Negro children (*see*note 10 *infra*), but did not rest his decision on that ground. *Id.* at 865. The Chancellor's decree was affirmed by the Supreme Court of Delaware, which intimated, however, that the defendants might be able to obtain a modification of the decree after equalization of the Negro and white schools had been accomplished. 91 A.2d 137, 152. The defendants, contending only that the Delaware courts had erred in ordering the immediate admission of the Negro plaintiffs to the white schools, applied to this Court for certiorari. The writ was granted, 344 U.S. 891. The plaintiffs, who were successful below, did not submit a cross-petition.

[Footnote 2]

344 U. S. 1, 141, 891.

[Footnote 3]

345 U.S. 972. The Attorney General of the United States participated both Terms as *amicus curiae.*

[Footnote 4]

For a general study of the development of public education prior to the Amendment, *see* Butts and Cremin, A History of Education in American Culture (1953), Pts. I, II; Cubberley, Public Education in the United States (1934 ed.), cc. II-XII. School practices current at the time of the adoption of the Fourteenth Amendment are described in Butts and Cremin, *supra,* at 269-275; Cubberley, *supra,* at 288-339, 408-431; Knight, Public Education in the South (1922), cc. VIII, IX. *See also* H. Ex.Doc. No. 315, 41st Cong., 2d Sess. (1871). Although the demand for free public schools followed substantially the same pattern in both the North and the South, the development in the South did not begin to gain momentum until about 1850, some twenty years after that in the North. The reasons for the somewhat slower development in the South (*e.g.,* the rural character of the South and the different regional attitudes toward state assistance) are well explained in Cubberley, *supra,* at 408-423. In the country as a whole, but particularly in the South, the War virtually stopped all progress in public education. *Id.* at 427-428. The low status of Negro education in all sections of the country, both before and immediately after the War, is described in Beale, A History of Freedom of Teaching in American Schools (1941), 112-132, 175-195. Compulsory school attendance laws were not generally adopted until after the ratification of the Fourteenth Amendment, and it was not until 1918 that such laws were in force in all the states. Cubberley, *supra,* at 563-565.

[Footnote 5]

Slaughter-House Cases, 16 Wall. 36, 83 U. S. 67-72 (1873); *Strauder v. West Virginia,* 100 U. S. 303, 100 U. S. 307-308 (1880):

"It ordains that no State shall deprive any person of life, liberty, or property, without due process of law, or deny to any person within its jurisdiction the equal protection of the laws. What is this but declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color? The words of the amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity, or right, most valuable to the colored race -- the right to exemption from unfriendly legislation against them distinctively as colored -- exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race."

See also Virginia v. Rives, 100 U. S. 313, 100 U. S. 318 (1880); *Ex parte Virginia,* 100 U. S. 339, 100 U. S. 344-345 (1880).

[Footnote 6]

The doctrine apparently originated in *Roberts v. City of Boston,* 59 Mass.198, 206 (1850), upholding school segregation against attack as being violative of a state constitutional guarantee of equality. Segregation in Boston public schools was eliminated in 1855. Mass.Acts 1855, c. 256. But elsewhere in the North, segregation in public education has persisted in some communities until recent years. It is apparent that such segregation has long been a nationwide problem, not merely one of sectional concern.

[Footnote 7]

See also Berea College v. Kentucky, 211 U. S. 45 (1908).

[Footnote 8]

In the *Cummin* case, Negro taxpayers sought an injunction requiring the defendant school board to discontinue the operation of a high school for white children until the board resumed operation of a high school for Negro children. Similarly, in the *Gong Lum* case, the plaintiff, a child of Chinese descent, contended only that state authorities had misapplied the doctrine by classifying him with Negro children and requiring him to attend a Negro school.

[Footnote 9]

In the Kansas case, the court below found substantial equality as to all such factors. 98 F.Supp. 797, 798. In the South Carolina case, the court below found that the defendants were proceeding "promptly and in good faith to comply with the court's decree." 103 F.Supp. 920, 921. In the Virginia case, the court below noted that the equalization program was already "afoot and progressing" (103 F.Supp. 337, 341); since then, we have been advised, in the Virginia Attorney General's brief on reargument, that the program has now been completed. In the Delaware case, the court below similarly noted that the state's equalization program was well under way. 91 A.2d 137, 149.

[Footnote 10]

A similar finding was made in the Delaware case:

"I conclude from the testimony that, in our Delaware society, State-imposed segregation in education itself results in the Negro children, as a class, receiving educational opportunities which are substantially inferior to those available to white children otherwise similarly situated."

87 A.2d 862, 865.

[Footnote 11]

K.B. Clark, Effect of Prejudice and Discrimination on Personality Development (Mid-century White House Conference on Children and Youth, 1950); Witmer and Kotinsky, Personality in the Making (1952), c. VI; Deutscher and Chein, The Psychological Effects of Enforced Segregation A Survey of Social Science Opinion, 26 J.Psychol. 259 (1948); Chein, What are the Psychological Effects of Segregation Under Conditions of Equal Facilities?, 3 Int.J.Opinion and Attitude Res. 229 (1949); Brameld, Educational Costs, in Discrimination and National Welfare (MacIver, ed., 1949), 44-48; Frazier, The Negro in the United States (1949), 674-681. *And see generally* Myrdal, An American Dilemma (1944).

[Footnote 12]

See Bolling v. Sharpe, post, p. 347 U. S. 497, concerning the Due Process Clause of the Fifth Amendment.

[Footnote 13]

"4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment"

"(*a*) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or"

"(*b*) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?"

"5. On the assumption on which questions 4(*a*) and (*b*) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4(*b*),"

"(*a*) should this Court formulate detailed decrees in these cases;"

"(*b*) if so, what specific issues should the decrees reach;"

"(*c*) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;"

"(*d*) should this Court remand to the courts of first instance with directions to frame decrees in these cases and, if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

[Footnote 14]

See Rule 42, Revised Rules of this Court (effective July 1, 1954).

Delgado v Bastrop ISD – case summary (this was an unpublished opinion, so the full case is not available)

In 1930 in *Salvatierra v. Del Rio Independent School District*, the League of United Latin American Citizens (LULAC) filed suit in a Texas district court on behalf of the parents of Mexican American children attending public school in Del Rio, Texas. The school district sold a municipal bond to allow the district to add some rooms and an auditorium to an elementary school attended only by Mexican American children in grades one through three. The Mexican American parents believed that the district's action made it clear that their children in those grades would be permanently segregated. Representing the parents, LULAC's attorneys did not argue about the differences in the facilities for Anglo and Mexican American students. Instead, they argued that the segregation itself was illegal. At the time, Texas law required "separate but equal" schools for Anglos and African Americans but not for Mexican Americans. The superintendent of the Del Rio Independent School District testified that the separate school for these Mexican American children was for their benefit because of their poor attendance records and poor English language skills. The superintendent thus asserted that the motive was not "segregation by reason of race or color." District Court Judge Joseph Jones ruled that the Mexican American children were entitled to go to school with the Anglo children. The case was then appealed to the Texas Court of Civil Appeals which overturned Judge Jones' ruling. The Court of Civil Appeals held that public schools could not segregate Mexican American children because of their ethnicity but that it was the duty of school personnel to "classify and group the pupils so as to bring to each one the greatest benefits according to his or her individual needs and aptitudes." In other words, the Del Rio ISD was allowed to continue segregating these Mexican American children so long as it was not being done for reasons of race or color. Salvatierra asked the U.S. Supreme Court to review the Court of Civil Appeals' judgment, but the Court declined to do so. In 1946, a case similar to the *Salvatierra* case was heard and decided in the federal courts of California. In *Mendez v. Westminster*, a U.S. District Court judge ruled that segregating Mexican American children in the public schools violated not only California law but also the equal protection of the law clause of the Fourteenth Amendment to the U. S. Constitution. On appeal, the U.S. Court of Appeals for the Ninth Circuit in 1947 in *Westminster v. Mendez* upheld the judgment of the lower court but only on the basis that the segregation violated California law.
According to some sources, in Texas in the 1940s, separate public schools for some Mexican American students were maintained in 122 school districts in 59 Texas counties.

District Judge Ben Rice agreed that segregation of Mexican American students was not authorized by Texas law and violated the equal protection of the law clause of the Fourteenth Amendment. Judge Rice issued an injunction against the state and the school districts forbidding further segregation of students of "Mexican or Latin descent." The decision, of course, left in place the legal segregation of African American students, which was specifically allowed under Texas law. Furthermore, the judge's decision did allow school districts to provide separate first-grade classes for "language-deficient students who were identified by scientifically standardized tests." As Professor Neil Foley in his *Quest for Equality: The Failed Promise of Black-Brown Solidarity* notes, "The *Delgado* case did little to end segregation because it was still legal to separate Mexicans from Anglos for language deficiency …"

Delgado, et. al. v. Bastrop Independent School District, et. al.

Civil No. 388 (W.D. Tex. 1948)

Hernandez v Driscoll Consolidated ISD – case summary

Hernandez v. Driscoll Consol. Ind. School District, S.D.Tex.1957, 2 Race Rel.L.R. 329 (unpublished)

1948 a federal suit brought by Mexican-American civil-rights organizations against the Bastrop schools resulted in a decision that prohibited segregation of Mexican-American children on separate campuses on the basis of race. The *Delgado* decree permitted separate classes on the same campus and in the first grade, but only to correct deficiencies determined by tests given to all students. For the next ten years the American G.I. Forum and the League of United Latin American Citizens[qqv] sought compliance with this ruling.

The Texas legislature established the office of Commissioner of Education in 1949 to supervise public instruction. The position took responsibilities from the control of the state superintendent of public instruction, who had been cooperating with the court and Mexican Americans. The commissioner issued a new policy by which local school boards were designated the primary source of initiative within their school districts; the commissioner's judgment was to be used for final appeal. The struggles of Mexican-American organizations that followed indicated that most school districts had ignored the *Delgado* decree. After a series of challenges and rejections by the commissioner, Mexican-American strategists turned to the federal courts; some districts ended segregation rather than risk a court finding.

In 1957 the American G.I. Forum filed suit against the Driscoll Consolidated Independent School District for segregation. The case charged that the Driscoll CISD had developed and utilized a system of "beginners' classes" for the first scholastic year, then for the next three years-"low first," "high first," and a segregated second grade-without testing all students. Proof of the intent of this structure was the placement of Linda Pérez in the "Mexican" first grade to learn English; in fact, she spoke no other language besides English. The court found the Driscoll grouping of separate classes arbitrary and unreasonable, as it was directed against all children of Mexican origin as a class, and ordered the practice halted. Although the decision prohibited segregation of Mexican-American students in public schools, however, the system did not change radically, and in fact subsequent challenges became necessary. By the late 1960s LULAC and the G.I. Forum, supported by the changing political and economic climate, filed more lawsuits challenging the lack of equal educational opportunity for Mexican Americans.

Hernandez v Texas – case summary

Pete Hernandez, an agricultural worker, was indicted for the murder of Joe Espinoza by an all-Anglo (white) grand jury in Jackson County, Texas. Claiming that Mexican-Americans were barred from the jury commission that selected juries, and from petit juries, Hernandez' attorneys tried to quash the indictment. Moreover, Hernandez tried to quash the petit jury panel called for service, because persons of Mexican descent were excluded from jury service in this case. A Mexican-American had not served on a jury in Jackson County in over 25 years and thus, Hernandez claimed that Mexican ancestry citizens were discriminated against as a special class in Jackson County. The trial court denied the motions. Hernandez was found guilty of murder and sentenced by the all-Anglo jury to life in prison. In affirming, the Texas Court of Criminal Appeals found that "Mexicans are...members of and within the classification of the white race as distinguished from members of the Negro Race" and rejected the petitioners' argument that they were a "special class" under the meaning of the Fourteenth Amendment. Further, the court pointed out that "so far as we are advised, no member of the Mexican nationality" challenged this classification as white or Caucasian.

The legal question was: Is it a denial of the Fourteenth Amendment equal protection clause to try a defendant of a particular race or ethnicity before a jury where all persons of his race or ancestry have, because of that race or ethnicity, been excluded by the state?

Conclusion

Decision: 9 votes for Hernandez, 0 vote(s) against
Legal provision: Equal Protection

Yes. In a unanimous opinion delivered by Chief Justice Earl Warren, the Court held that the Fourteenth Amendment protects those beyond the two classes of white or Negro, and extends to other racial groups in communities depending upon whether it can be factually established that such a group exists within a community. In reversing, the Court concluded that the Fourteenth Amendment "is not directed solely against discrimination due to a 'two-class theory'" but in this case covers those of Mexican ancestry. This was established by the fact that the distinction between whites and Mexican ancestry individuals was made clear at the Jackson County Courthouse itself where "there were two men's toilets, one unmarked, and the other marked 'Colored Men and 'Hombres Aqui' ('Men Here')," and by the fact that no Mexican ancestry person had served on a jury in 25 years. Mexican Americans were a "special class" entitled to equal protection under the Fourteenth Amendment.

U.S. Supreme Court

Hernandez v. Texas, 347 U.S. 475 (1954)

Hernandez v. Texas

No. 406

Argued January 11, 1954

Decided May 3, 1954

347 U.S. 475

CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

Syllabus

The systematic exclusion of persons of Mexican descent from service as jury commissioners, grand jurors, and petit jurors in the Texas county in which petitioner was indicted and tried for murder, although there were a substantial number of such persons in the county fully qualified to serve, deprived petitioner, a person of Mexican descent, of the equal protection of the laws guaranteed by the Fourteenth Amendment, and his conviction in a state court is reversed. Pp. 347 U. S. 476-482.

(a) The constitutional guarantee of equal protection of the laws is not directed solely against discrimination between whites and Negroes. Pp. 347 U. S. 477-478.

(b) When the existence of a distinct class is demonstrated, and it is shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated. P. 347 U. S. 478.

(c) The exclusion of otherwise eligible persons from jury service solely because of their ancestry or national origin is discrimination prohibited by the Fourteenth Amendment. Pp. 347 U. S. 478-479.

(d) The evidence in this case was sufficient to prove that, in the county in question, persons of Mexican descent constitute a separate class, distinct from "whites." Pp. 347 U. S. 479-480.

(e) A *prima facie* case of denial of the equal protection of the laws was established in this case by evidence that there were in the county a substantial number of persons of Mexican descent with the qualifications required for jury service, but that none of them had served on a jury commission, grand jury or petit jury for 25 years. Pp. 347 U. S. 480-481.

(f) The testimony of five jury commissioners that they had not discriminated against persons of Mexican descent in selecting jurors, and that their only objective had been to select those whom they thought best qualified, was not enough to overcome petitioner's *prima facie* case of denial of the equal protection of the laws. Pp. 347 U. S. 481-482.

(g) Petitioner had the constitutional right to be indicted and tried by juries from which all members of his class were not systematically excluded. P. 347 U. S. 482.

___ Tex.Cr.R. ___, 251 S.W.2d 531, reversed.

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MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

The petitioner, Pete Hernandez, was indicted for the murder of one Joe Espinosa by a grand jury in Jackson County, Texas. He was convicted and sentenced to life imprisonment. The Texas Court of Criminal Appeals affirmed the judgment of the trial court. 251 S.W.2d 531. Prior

to the trial, the petitioner, by his counsel, offered timely motions to quash the indictment and the jury panel. He alleged that persons of Mexican descent were systematically excluded from service as jury commissioners, [Footnote 1] grand jurors, and petit jurors, although there were such persons fully

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qualified to serve residing in Jackson County. The petitioner asserted that exclusion of this class deprived him, as a member of the class, of the equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution. After a hearing, the trial court denied the motions. At the trial, the motions were renewed, further evidence taken, and the motions again denied. An allegation that the trial court erred in denying the motions was the sole basis of petitioner's appeal. In affirming the judgment of the trial court, the Texas Court of Criminal Appeals considered and passed upon the substantial federal question raised by the petitioner. We granted a writ of certiorari to review that decision. 346 U.S. 811.

In numerous decisions, this Court has held that it is a denial of the equal protection of the laws to try a defendant of a particular race or color under an indictment issued by a grand jury, or before a petit jury, from which all persons of his race or color have, solely because of that race or color, been excluded by the State, whether acting through its legislature, its courts, or its executive or administrative officers. [Footnote 2] Although the Court has had little occasion to rule on the question directly, it has been recognized since *Strauder v. West Virginia,* 100 U. S. 303, that the exclusion of a class of persons from jury service on grounds other than race or color may also deprive a defendant who is a member of that class of the constitutional guarantee of equal protection of the laws. [Footnote 3] The State of Texas would have us hold that there are only two classes -- white and Negro -- within the contemplation of the Fourteenth Amendment. The decisions of this Court

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do not support that view. [Footnote 4] And, except where the question presented involves the exclusion of persons of Mexican descent from juries, [Footnote 5] Texas courts have taken a broader view of the scope of the equal protection clause. [Footnote 6]

Throughout our history, differences in race and color have defined easily identifiable groups which have at times required the aid of the courts in securing equal treatment under the laws. But community prejudices are not static, and, from time to time, other differences from the community norm may define other groups which need the same protection. Whether such a group exists within a community is a question of fact. When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated. The Fourteenth Amendment is not directed solely against discrimination due to a "two-class theory" -- that is, based upon differences between "white" and Negro.

As the petitioner acknowledges, the Texas system of selecting grand and petit jurors by the use of jury commissions is fair on its face and capable of being utilized

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without discrimination. [Footnote 7] But, as this Court has held, the system is susceptible to abuse, and can be employed in a discriminatory manner. [Footnote 8] The exclusion of otherwise eligible persons from jury service solely because of their ancestry or national origin is discrimination prohibited by the Fourteenth Amendment. The Texas statute makes no such discrimination, but the petitioner alleges that those administering the law do.

The petitioner's initial burden in substantiating his charge of group discrimination was to prove that persons of Mexican descent constitute a separate class in Jackson County, distinct from "whites." [Footnote 9] One method by which this may be demonstrated is by showing the attitude of the community. Here, the testimony of responsible officials and citizens contained the admission that residents of the community distinguished between "white" and "Mexican." The participation of persons of Mexican descent in business and community groups was shown to be slight. Until very recent times, children of Mexican descent were required to attend a segregated school for the first four grades. [Footnote 10] At least one restaurant in town prominently displayed a sign announcing "No Mexicans Served." On the courthouse grounds at the time of the

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hearing, there were two men's toilets, one unmarked, and the other marked "Colored Men" and "Hombres Aqui" ("Men Here"). No substantial evidence was offered to rebut the logical inference to be drawn from these facts, and it must be concluded that petitioner succeeded in his proof.

Having established the existence of a class, petitioner was then charged with the burden of proving discrimination. To do so, he relied on the pattern of proof established by *Norris v. Alabama,* 294 U. S. 587. In that case, proof that Negroes constituted a substantial segment of the population of the jurisdiction, that some Negroes were qualified to serve as jurors, and that none had been called for jury service over an extended period of time, was held to constitute *prima facie* proof of the systematic exclusion of Negroes from jury service. This holding, sometimes called the "rule of exclusion," has been applied in other cases, [Footnote 11] and it is available in supplying proof of discrimination against any delineated class.

The petitioner established that 14% of the population of Jackson County were persons with Mexican or Latin American surnames, and that 11% of the males over 21 bore such names. [Footnote 12] The County Tax Assessor testified

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that 6 or 7 percent of the freeholders on the tax rolls of the County were persons of Mexican descent. The State of Texas stipulated that,

"for the last twenty-five years, there is no record of any person with a Mexican or Latin American name having served on a jury commission, grand jury or petit jury in Jackson County. [Footnote 13]"

The parties also stipulated that

"there are some male persons of Mexican or Latin American descent in Jackson County who, by virtue of being citizens, freeholders, and having all other legal prerequisites to jury service, are eligible to serve as members of a jury commission, grand jury and/or petit jury. [Footnote 14]"

The petitioner met the burden of proof imposed in *Norris v. Alabama, supra.* To rebut the strong *prima facie* case of the denial of the equal protection of the laws guaranteed by the Constitution thus established, the State offered the testimony of five jury commissioners that they had no discriminated against persons of Mexican or Latin American descent in selecting jurors. They stated that their only objective had been to select those whom they thought were best qualified. This testimony is not enough to overcome the petitioner's case. As the Court said in *Norris v. Alabama:*

"That showing as to the long-continued exclusion of negroes from jury service, and as to the many negroes qualified for that service, could not be met by mere generalities. If, in the presence of such testimony as defendant adduced, the mere general assertions by officials of their performance of duty were to be accepted as an adequate justification for

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the complete exclusion of negroes from jury service, the constitutional provision . . . would be but a vain and illusory requirement. [Footnote 15]"

The same reasoning is applicable to these facts.

Circumstances or chance may well dictate that no persons in a certain class will serve on a particular jury or during some particular period. But it taxes our credulity to say that mere chance resulted in their being no members of this class among the over six thousand jurors called in the past 25 years. The result bespeaks discrimination, whether or not it was a conscious decision on the part of any individual jury commissioner. The judgment of conviction must be reversed.

To say that this decision revives the rejected contention that the Fourteenth Amendment requires proportional representation of all the component ethnic groups of the community on every jury [Footnote 16] ignores the facts. The petitioner did not seek proportional representation, nor did he claim a right to have persons of Mexican descent sit on the particular juries which he faced. [Footnote 17] His only claim is the right to be indicted and tried by juries from which all members of his class are not systematically excluded -- juries selected from among all qualified persons regardless of national origin or descent. To this much he is entitled by the Constitution.

Reversed.

[Footnote 1]

Texas law provides that, at each term of court, the judge shall appoint three to five jury commissioners. The judge instructs these commissioners as to their duties. After taking an oath that they will not knowingly select a grand juror they believe unfit or unqualified, the commissioners retire to a room in the courthouse where they select from the county assessment roll the names of 16 grand jurors from different parts of the county. These names are placed in a sealed envelope and delivered to the clerk. Thirty days before court meets, the clerk delivers a

copy of the list to the sheriff who summons the jurors. Vernon's Tex.Code Crim.Proc. arts. 333-350.

The general jury panel is also selected by the jury commission. Vernon's Tex.Civ.Stat. art. 2107. In capital cases, a special venire may be selected from the list furnished by the commissioners. Vernon's Tex.Code Crim.Proc. art. 592.

[Footnote 2]

See Carter v. State of Texas, 177 U. S. 442, 177 U. S. 447.

[Footnote 3]

"Nor, if a law should be passed excluding all naturalized Celtic Irishmen [from jury service], would there be any doubt of its inconsistency with the spirit of the amendment."

100 U.S. at 100 U. S. 308. *Cf. American Sugar Refining Co. v. Louisiana,* 179 U. S. 89, 179 U. S. 92.

[Footnote 4]

See Truax v. Raich, 239 U. S. 33; *Takahaski v. Fish & Game Commission,* 334 U. S. 410; *cf. Hirabayashi v. United States,* 320 U. S. 81, 320 U. S. 100:

"Distinctions between citizens solely because of their ancestry are, by their very nature, odious to a free people whose institutions are founded upon the doctrine of equality."

[Footnote 5]

Sanchez v. State, 147 Tex.Cr.R. 436, 181 S.W.2d 87; *Salazar v. State,* 149 Tex.Cr.R. 260, 193 S.W.2d 211; *Sanchez v. State,* Tex.Cr.App., 243 S.W.2d 700.

[Footnote 6]

In *Juarez v. State,* 102 Tex.Cr.R. 297, 277 S.W. 1091, the Texas court held that the systematic exclusion of Roman Catholics from juries was barred by the Fourteenth Amendment. In *Clifton v. Puente,* Tex.Civ.App., 218 S.W.2d 272, the Texas court ruled that restrictive covenants prohibiting the sale of land to persons of Mexican descent were unenforceable.

[Footnote 7]

Smith v. Texas, 311 U. S. 128, 311 U. S. 130.

[Footnote 8]

[Footnote 9]

We do not have before us the question whether or not the Court might take judicial notice that persons of Mexican descent are there considered as a separate class. *See* Marden, Minorities in American Society; McDonagh & Richards, Ethnic Relations in the United States.

[Footnote 10]

The reason given by the school superintendent for this segregation was that these children needed special help in learning English. In this special school, however, each teacher taught two grades, while, in the regular school, each taught only one in most instances. Most of the children of Mexican descent left school by the fifth or sixth grade.

[Footnote 11]

*See*note 8 *supra.*

[Footnote 12]

The 1950 census report shows that, of the 12,916 residents of Jackson County, 1,865, or about 14% had Mexican or Latin American surnames. U.S. Census of Population, 1950, Vol. II, pt. 43, p. 180; id., Vol. IV, pt. 3, c. C, p. 45. Of these 1,865, 1,738 were native born American citizens and 65 were naturalized citizens. *Id.,* Vol. IV, pt. 3, c. C, p. 45. Of the 3,754 males over 21 years of age in the County, 408, or about 11%, had Spanish surnames. *Id.,* Vol. II, pt. 43, p. 180; id., Vol. IV, pt. 3, c. C, p. 67. The State challenges any reliance on names as showing the descent of persons in the County. However, just as persons of a different race are distinguished by color, these Spanish names provide ready identification of the members of this class. In selecting jurors, the jury commissioners work from a list of names.

[Footnote 13]

R. 34.

[Footnote 14]

R. 55. The parties also stipulated that there were no persons of Mexican or Latin American descent on the list of talesmen. R. 83. Each item of each stipulation was amply supported by the testimony adduced at the hearing.

[Footnote 15]

294 U.S. at 294 U. S. 598.

[Footnote 16]

See Akins v. Texas, 325 U. S. 398, 325 U. S. 403; *Cassell v. Texas,* 339 U. S. 282, 339 U. S. 286-287.

[Footnote 17]

See Akins v. Texas, supra, note 16, at 325 U. S. 403.

Jackson v Rawdon – case summary

Brought October 7, 1955, against the defendants, Board of Trustees of the Mansfield Independent School District, the president and members of the board, and the superintendent of the district, by Negro children of school age, to redress the deprivation, under color of state law, of their rights secured by the Constitution of the United States, the suit sought a declaratory judgment and an injunction. The claim was that, though plaintiffs, minors between the ages of six and twenty-one years, have met all lawful requirements for admission to the Mansfield High School, maintained by the Mansfield Independent School District, the defendants denied them admission thereto because, and only because, they were colored, and there being no Negro high school in the district, they were, pending recognition of their right to attend Mansfield High School, obliged to accept bus service to Fort Worth to attend the Negro high school there.

JACKSON v. RAWDON ***CIV. A. NO. 3152.***

135 F.Supp. 936 (1955)

Nathaniel JACKSON, a Minor, et al., Plaintiffs,
v.
O. C. RAWDON et al., Defendants.

United States District Court N. D. Texas, Fort Worth Division.

November 21, 1955.

L. Clifford Davis, Fort Worth, Tex., U. Simpson Tate, Dallas, Tex., Robert L. Carter, Thurgood Marshall, New York City, for plaintiffs.

Cantey, Hanger, Johnson, Scarborough & Gooch, Fort Worth, Tex., for defendants.

ESTES, District Judge.

Plaintiffs seek both a temporary and permanent injunction against defendants who are the Board of Trustees and the Superintendent of the Mansfield Independent School District and the Mansfield Independent School District, a body corporate, to enjoin and restrain defendants from denying and refusing to plaintiffs the right and privilege of attending the public high school maintained by defendants within the boundaries of the Mansfield Independent School District.

This case, filed October 7, 1955, came on for hearing on the 7th day of November 1955, on plaintiffs' application for temporary injunction pursuant to setting made by the Court October 13, 1955. Plaintiffs in open court withdrew their plea that a statutory three-judge court be convened pursuant to Sections 2281 and 2284, Title 28, United States Code, to hear the cause, and expressly requested that the case be heard and determined now not only on the plea for temporary injunction, but on the permanent injunction demanded in the action on the merits as well, stating that the same evidence would be offered on both hearings. Plaintiffs' request was granted by the Court.

The contentions of the parties were well pleaded, and the evidence was heard fully.

This is a suit in equity, on a mimeographed complaint, brought as a class action by three negro minors and others alleged as "so numerous as to make it impracticable to bring all of them" into court, who reside in the Mansfield Independent School District, a rural district at the edge of Fort Worth, Texas. The

employment of the device of a class suit here is indiscriminate if not improper where only 12 colored high school students are involved, which indicates that the other nine negro students did not wish this action at this time. Likewise the failure of one of the three plaintiffs to appear in court and testify raises a question as to whether he wanted to change schools now.

In finding the equities between the parties, I see on the one hand, the situation of this rural school board composed primarily of farmers, agents of the State of Texas (whose segregation laws were not voided by the State Supreme Court until the opinion of October 12 and mandate issued October 28, 1955, after the opening of school on September 2, 1955) struggling with breaking the tradition of generations; opening their meetings with prayer for solution; studying articles in magazines and papers; holding numerous meetings; passing resolutions and appointing a committee to work on a plan for integration — making the start toward "obeying the law" which their abilities dictated. Further, the trustees now assure the Court that they are continuing their efforts and will work out desegregation. Their committee conferred with these plaintiffs in the presence of plaintiffs' parents, and accepted and fulfilled the request made by plaintiffs with their attorney in August 1955 for certain administrative steps as a solution for this period of transition, the school year 1955-56. These administrative steps consisted of making arrangements for these students to attend the I. M. Terrell School in the city of Fort Worth; the application for and consumation of transfer of state allocated funds to the Fort Worth Independent School District; and the procuring of a special bus for transporting these students to the Fort Worth School. After the accomplishment of these administrative steps taken at the request of plaintiffs, and after school had been in session more than a month, this action was filed.

On the other hand, I find three plaintiffs, only two of whom testify, high school students well into their year's work at I. M. Terrell School in Fort Worth, by their own testimony happy and well-adjusted, taking vocational courses not available at Mansfield High School, testifying that their reason for wanting to transfer to Mansfield High School is the inconvenience of early rising and late return home due to the round trip of 36 to 40 miles daily. (Testimony showed that other students of this rural area also arise early and travel considerable distances to and from school.) One of the plaintiffs testified that if he participated in athletics after school, he would have to use public transportation or otherwise furnish his own means of travel home after school. (Testimony revealed that the same situation exists for Mansfield High School students.) One plaintiff testified that he formerly resided within the boundaries of the Fort Worth Independent School District, attending school there until he moved into the Mansfield Independent School District in August 1955.

After the accomplishment of the above mentioned administrative processes at plaintiffs' request, and after school had begun, it appears to the Court that the issuance of an injunction to effect entrance into Mansfield High School at this time would be unjust to the school trustees and the students alike. It is a matter of common knowledge that the transfer of a child in the middle of a school year, as this action seeks, may bring about scholastic and emotional difficulties. This Court cannot in good conscience force this result by the harsh remedy of injunction, nor does it believe that the Supreme Court of the United States has made such course adamantine. In Brown v. Board of Education Chief Justice Warren admonishes that "the courts will be guided by equitable principles * * * characterized by a practical flexibility * * * and by a facility for adjusting and reconciling public and private needs."[1]

The United States Supreme Court decision in the Brown case that "racial discrimination in public education is unconstitutional"[2] was interpreted by the Supreme Court of Texas in McKinney v. Blankenship, decided October 12, 1955, as nullifying provisions of the Texas Constitution and statutes requiring segregation in the public schools of Texas.[3] It is impossible, however, simply to shut our eyes to the instant need for care and justice in effectuating integration. The directions of the United States Supreme Court allow time for achieving this end. While this does not mean that a long or unreasonable time shall expire before a plan is developed and put into use, it does not necessitate the heedless and hasty use of injunction which once issued must be enforced by the officers of this Court, regardless of consequences to the students, the school authorities and the public. This school board has shown that it is making a good faith effort toward integration, and should have a reasonable length of time to solve its

problems and end segregation in the Mansfield Independent School District. At this time this suit is precipitate and without equitable justification.

"Improvident granting of such injunctions by a single judge, and the possible unnecessary conflict between federal and state authority" are "always to be deprecated."[4]

Accordingly, I find that judgment should be entered denying the relief prayed for herein, and that this action should be dismissed without prejudice.

Let the attorneys for defendants prepare and present a judgment in accordance with this memorandum decision.

FOOTNOTES

1. Brown v. Board of Education, 349 U.S. 294, 75 S.Ct. 753, 756, supplementing prior decision reported in 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873.
2. Brown v. Board of Education of Topeka, 349 U.S. 294, 75 S.Ct. 753.

3. McKinney v. Blankenship, Tex., 282 S.W.2d 691.

4. Cumberland Telephone & Tel. Co. v. Louisiana Public Service Commission, 1922, 260 U.S. 212, 216, 43 S.Ct. 75, 76, 67 L.Ed. 217.

Mendez v Westminister – case summary

Gonzalo Mendez was born in Mexico in 1913. Mendez, his mother, and her other four children moved to Westminster, California, in 1919. In 1943, at age 30, he became a naturalized citizen of the United States and was a relatively well-off vegetable farmer. By this time, Mendez and his wife had three children who grew up speaking English as well as Spanish, and in fact, the family spoke more English than they did Spanish when at home. In the neighborhood where the Mendez family lived, there was only one other Mexican-American family. The other neighbors were all Anglos, and all of their children attended Westminster Main School.

In 1945, when his children went to register for school, Gonzalo expected that they would be attending Westminster Main School, the same school that he had attended with other Mexican and Anglo children until he was forced to drop out to help support his family. Much to his surprise, when his children returned home, they informed him that they would have to attend the Hoover School, which was located in a different school district, and furthermore, all of the students there were Mexican or Mexican-American. Gonzalo spoke with the principal, the Westminster School Board, and eventually the Orange County School Board, but without success.

With the aid of his lawyer, Gonzalo discovered that other school districts in Orange County also segregated their Mexican-American students. On March 2, 1945, the attorney representing Mendez and the other plaintiffs filed a class action suit in a U.S. District Court not only on their behalf but also on behalf of some 5,000 other persons of "Mexican and Latin descent." The defendants were four school districts, their superintendents, and their school boards. The plaintiffs argued that their children had been arbitrarily assigned to attend schools "reserved for and attended solely and exclusively by children … of Mexican and Latin descent" while other schools in the same system were "reserved solely and exclusively for children known as white or Anglo-Saxon children." When there was no state law mandating their segregation, they argued that segregating children of Mexican ancestry was a violation of the equal protection of the law clause of the Fourteenth Amendment. The attorney did not argue that the school districts were segregating on the basis of race. In fact, he argued, there was no "racial" segregation because "Mexicans were members of the white race." The attorney knew that he could not argue that segregation based on race was unconstitutional because the U.S. Supreme Court in ***Plessy v. Ferguson*** in 1896 had upheld racial segregation. The case was assigned to U.S. District Court Judge Paul McCormick of the Southern District of California

Mendez, et al, *v*. *Westminster School District*, et al, 64 F.Supp. 544 (C.D. Cal. 1946), aff'd, 161 F.2d 774 (9th Cir. 1947) (en banc)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MENDEZ et al. v WESTMINSTER SCHOOL DIST. et al of Orange County

64 F.Supp. 544 (D.C.CAL. 1946)

McCORMICK, District Judge.

Gonzalo Mendez, William Guzman, Frank Palomino, Thomas Estrada and Lorenzo Ramirez, as citizens of the United States, and on behalf of their minor children, and as they allege in the petition, on behalf of 'some 5000' persons similarly affected, all of Mexican or Latin descent, have filed a class suit pursuant to *Rule 23 of Federal Rules of Civil Procedure*, 28 U.S.C.A. following section 723c, against the Westminister, Garden Grov and El Modeno School Districts, and the Santa Ana City Schools, all of Orange County, California, and the respective trustees and superintendents of said school districts.

The complaint, grounded upon the Fourteenth Amendment to the Constitution of the United States[1] and Subdivision 14 of Section 24 of the Judicial Code, *Title 28, Section 41*, subdivision 14, U.S.C.A.,[2] alleges a concerted policy and design of class discrimination against 'persons of Mexican or Latin descent or extraction' of elementary school age by the defendant school agencies in the conduct and operation of public schools of said districts, resulting in the denial of the equal protection of the laws to such class of persons among which are the petitioning school children.
Specifically, plaintiffs allege:

'That for several years last past respondents have and do now in furtherance and in execution of their common plan, design and purpose within their respective Systems and Districts, have by their regulation, custom and usage and in execution thereof adopted and declared: That all children or persons of Mexican or Latin descent or extraction, though Citizens of the United States of America, shall be, have been and are now excluded from attending, using, enjoying and receiving the benefits of the education, health and recreation facilities of certain schools within their respective Districts and Systems but that said children are now and have been segregated and required to and must attend and use certain schools in said Districts and Systems reserved for and attended solely and exclusively by children and persons of Mexican and Latin descent, while such other schools are maintained attended and used exclusively by and for persons and children purportedly known as White or Anglo-Saxon children.

'That in execution of said rules and regulations, each, every and all the foregoing children are compelled and required to and must attend and use the schools in said respective Districts reserved for and attended solely and exclusively by children of Mexican and Latin descent and are forbidden, barred and excluded from attending any other school in said District or System solely for the reason that said children or child are of Mexican or Latin descent.'

The petitioners demand that the alleged rules, regulations, customs and usages be adjudged void and unconstitutional and that an injunction issue restraining further [546] application by defendant school authorities of such rules, regulations, customs, and usages.

It is conceded by all parties that there is no question of race discrimination in this action. It is, however, admitted that segregation per se is practiced in the above-mentioned school districts as the Spanish-speaking children enter school life and as they advance through the grades in the respective school districts. It is also admitted by the defendants that the petitioning children are qualified to attend the public schools in the respective districts of their residences.

In the Westminister, Garden Grove and El Modeno school districts the respective boards of trustees had taken official action, declaring that there be no segregation of pupils on a racial basis but that nonEnglish-speaking children (which group, excepting as to a small number of pupils, was made up entirely of

children of Mexican ancestry or descent), be required to attend schools designated by the boards separate and apart from English-speaking pupils; that such group should attend such schools until they had acquired some proficiency in the English language.

The petitioners contend that such official action evinces a covert attempt by the school authorities in such school districts to produce an arbitrary discrimination against school children of Mexican extraction or descent and that such illegal result has been established in such illegal result has been established in such school districts respectively. The school authorities of the City of Santa Ana have not memorialized any such official action, but petitioners assert that the same custom and usage exists in the schools of the City of Santa Ana under the authority of appropriate school agencies of such city.

The concrete acts complained of are those of the various school district officials in directing which schools the petitioning children and others of the same class or group must attend. The segregation exists in the elementary schools to and including the sixth grade in two of the defendant districts, and in the two other defendant districts through the eighth grade. The record before us shows without conflict that the technical facilities and physical conveniences offered in the schools housing entirely the segregated pupils, the efficiency of the teachers therein and the curricula are identical and in some respects superior to those in the other schools in the respective districts.

The ultimate question for decision may be thus stated: Does such official action of defendant district school agencies and the usages and practices pursued by the respective school authorities as shown by the evidence operate to deny or deprive the so-called non-english-speaking school children of Mexican ancestry or descent within such school districts of the equal protection of the laws?

The defendants at the outset challenge the jurisdiction of this court under the record as it exists at this time. We have already denied the defendants' motion to dismiss the action upon the 'face' of the complaint. No reason has been shown which warrants reconsideration of such decision.

While education is a State matter, it is not so absolutely or exclusively. *Cumming v. Board of Education of Richmond County*, 175 U.S. 528, 20 S.Ct. 197, 201, 44 L.Ed. 262. In the Cumming decision the Supreme Court said: 'That education of the people in schools maintained by state taxation is a matter belonging to the respective states, and any interference on the part of Federal authority with the management of such schools cannot be justified except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land.' See, also, *Gong Lum v. Rice*, 275 U.S. 78, 48 S.Ct. 91, 72 L.Ed. 172; *Wong Him v. Callahan, C.C.*, 119 F. 381; *Ward v. Flood*, 48 Cal. 36, 17 Am.Rep. 405; *Piper et al. v. Big Pine School District*, 193 Cal. 664, 226 P. 926.

Obviously, then, a violation by a State of a personal right or privilege protected by the Fourteenth Amendment in the exercise of the State's duty to provide for the education of its citizens and inhabitants would justify the Federal Court to intervene. *State of Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 59 S.Ct. 232, 83 L.Ed. 208. The complaint before us in this action, having alleged an invasion by the common school authorities of the defendant districts of the equal opportunity of pupils to acquire knowledge, confers jurisdiction on this court if the actions complained of are deemed those of the State. *Hamilton v. Regents of University of California*, 293 U.S. 245, 55 S.Ct. 197, 79 L.Ed. 343; cf. *Meyer v. Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042, 29 A.L.R. 1446.

[547]
Are the actions of public school authorities of a rural or city school in the State of California, as alleged and established in this case, to be considered actions of the State within the meaning of the Fourteenth Amendment so as to confer jurisdiction on this court to hear and decide this case under the authority of Section 24, Subdivision 14 of the Judicial Code, supra? We think they are.

In the public school system of the State of California the various local school districts enjoy a considerable degree of autonomy. Fundamentally, however, the people of the State have made the public school system a matter of State supervision. Such system is not committed to the exclusive control of

local governments. Article IX, Constitution of California, *Butterworth v. Boyd*, 12 Cal.2d 140, 82 P.2d 434, 126 A.L.R. 838. It is a matter of general concern, and not a municipal affair. *Esberg v. Badaracco*, 202 Cal. 110, 259 P. 730; *Becker v. Council of City of Albany*, 47 Cal.App.2d 702, 118 P.2d 924.

The Education Code of California provides for the requirements of teachers' qualifications, the admission and exclusion of pupils, the courses of study and the enforcement of them, the duties of superintendents of schools and of the school trustees of elementary schools in the State of California. The appropriate agencies of the State of California allocate to counties all the State school money exclusively for the payment of teachers' salaries in the public schools and such funds are apportioned to the respective school districts within the counties. While, as previously observed, local school boards and trustees are vested by State legislation with considerable latitude in the administration of their districts, nevertheless, despite the decentralization of the educational system in California, the rules of the local school district are required to follow the general pattern laid down by the legislature, and their practices must be consistent with law and with the rules prescribed by the State Board of Education. See Section 2204, Education Code of California.

When the basis and composition of the public school system is considered, there can be no doubt of the oneness of the system in the State of California, or of the restricted powers of the elementary school authorities in the political subdivisions of the State. See *Kennedy v. Miller*, 97 Cal. 429, 32 P. 558; *Bruch v. Colombet*, 104 Cal. 347, 38 P. 45; *Ward v. San Diego School District*, 203 Cal. 712, 265 P. 821.

In Hamilton v. Regents of University of California, supra, and *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 63 S.Ct. 1178, 1185, 87 L.Ed. 1628, 147 A.L.R. 674, the acts of university regents and of a board of education were held acts of the State. In the recent *Barnette* decision the court stated: 'The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures-- Boards of Education not excepted.' Although these cases dealt with State rather than local Boards, both are agencies and parts of the State educational system, as is indicated by the Supreme Court in the *Barnette* case, wherein it stated: 'Such Boards are numerous and their territorial jurisdiction often small. But small and local authority may feel less sense of responsibility to the Constitution, and agencies of publicity may be less vigilant in calling it to account.' Upon an appraisal of the factual situation before this court as illumined by the laws of the State of California relating to the public school system, it is clear that the respondents should be classified as representatives of the State to such an extent and in such a sense that the great restraints of the Constitution set limits to their action. *Screws v. United States*, 325 U.S. 91, 65 S.Ct. 1051; *Smith v. Allwright*, 321 U.S. 649, 64 S.Ct. 757, 88 L.Ed. 987, 151 A.L.R. 1110; *Hague v. Committee for Industrial Organization*, 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423; *Home Tel. & Tel. Co. v. Los Angeles*, 227 U.S. 278, 33 S.Ct. 312, 57 L.Ed. 510.

We therefore turn to consider whether under the record before us the school boards and administrative authorities in the respective defendant districts have by their segregation policies and practices transgressed applicable law and Constitutional safeguards and limitations and thus have invaded the personal right which every public school pupil has to the equal protection provision of the Fourteenth Amendment to obtain the means of education.

We think the pattern of public education promulgated in the Constitution of California and effectuated by provisions of the Education Code of the State prohibits segregation of the pupils of Mexican an[548]cestry in the elementary schools from the rest of the school children.

Section 1 of Article IX of the Constitution of California directs the legislature to 'encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement' of the people. Pursuant to this basic directive by the people of the State many laws stem authorizing special instruction in the public schools for handicapped children. See Division 8 of the Education Code. Such legislation, however, is general in its aspects. It includes all those who fall within the described classification requiring the special consideration provided by the statutes regardless of their ancestry or extraction. The common segregation attitudes and practices of the school authorities in the defendant school districts in Orange County pertain solely to children of Mexican ancestry and parentage. They are singled out as a class for segregation. Not only is such method of public school administration contrary to the general requirements

of the school laws of the State, but we think it indicates an official school policy that is antagonistic in principle to Sections 16004 and 16005 of the Education Code of the State.[3]

Obviously, the children referred to in these laws are those of Mexican ancestry. And it is noteworthy that the educational advantages of their commingling with other pupils is regarded as being so important to the school system of the State that it is provided for even regardless of the citizenship of the parents. We perceive in the laws relating to the public educational system in the State of California a clear purpose to avoid and forbid distinctions among pupils based upon race or ancestry[4] except in specific situations[5] not pertinent to this action. Distinctions of that kind have recently been declared by the highest judicial authority of the United States 'by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.' They are said to be 'utterly inconsistent with American traditions and ideals.' *Kiyoshi Hirabayashi v. United States*, 320 U.S. 81, 63 S.Ct. 1375, 1385, 87 L.Ed. 1774.

Our conclusions in this action, however,[549] do not rest solely upon what we conceive to be the utter irreconcilability of the segregation practices in the defendant school districts with the public educational system authorized and sanctioned by the laws of the State of California. We think such practices clearly and unmistakably disregard rights secured by the supreme law of the land. *Cumming v. Board of Education of Richmond County*, supra.

'The equal protection of the laws' pertaining to the public school system in California is not provided by furnishing in separate schools the same technical facilities, text books and courses of instruction to children of Mexican ancestry that are available to the other public school children regardless of their ancestry. A paramount requisite in the American system of public education is social equality. It must be open to all children by unified school association regardless of lineage.

We think that under the record before us the only tenable ground upon which segregation practices in the defendant school districts can be defended lies in the English language deficiencies of some of the children of Mexican ancestry as they enter elementary public school life as beginners. But even such situations do not justify the general and continuous segregation in separate schools of the children of Mexican ancestry from the rest of the elementary school population as has been shown to be the practice in the defendant school districts-- in all of them to the sixth grade, and in two of them through the eighth grade.

The evidence clearly shows that Spanish-speaking children are retarded in learning English by lack of exposure to its use because of segregation, and that commingling of the entire student body instills and develops a common cultural attitude among the school children which is imperative for the perpetuation of American institutions and ideals.[6] It is also established by the record that the methods of segregation prevalent in the defendant school districts foster antagonisms in the children and suggest inferiority among them where none exists. One of the flagrant examples of the discriminatory results of segregation in two of the schools involved in this case is shown by the record. In the district under consideration there are two schools, the Lincoln and the Roosevelt, located approximately 120 yards apart on the same school grounds, hours of opening and closing, as well as recess periods, are not uniform. No credible language test is given to the children of Mexican ancestry upon entering the first grade in Lincoln School. This school has an enrollment of 249 so-called Spanish-speaking pupils, and no so-called English-speaking pupils; while the Roosevelt, (the other) school, has 83 so-called English-speaking pupils and 25 so-called Spanish-speaking pupils. Standardized tests as to mental ability are given to the respective classes in the two schools and the same curricula are pursued in both schools and, of course, in the English language as required by State law. Section 8251, Education Code. In the last school year the students in the seventh grade of the Lincoln were superior scholarly to the same grade in the Roosevelt School and to any group in the seventh grade in either of the schools in the past. It further appears that not only did the class as a group have such mental superiority but that certain pupils in the group were also outstanding in the class itself. Notwithstanding this showing, the pupils of such excellence were kept in the Lincoln School. It is true that there is no evidence in the record before us that shows that any of the members of this exemplary class requested transfer to the other so-called intermingled school, but the record does show without contradiction that another class had protested against the segregation policies

and practices in the schools of this El Modeno district without avail.

While the pattern or ideal of segregating the school children of Mexican ancestry from the rest of the school attendance permeates and is practiced in all of the four defendant districts, there are procedural deviations among the school administrative agencies in effectuating the general plan.

In Garden Grove Elementary School District the segregation extends only through the fifth grade. Beyond, all pupils in such district, regardless of their ancestry or linguistic proficiency, are housed, instructed and associate in the same school facility.

This arrangement conclusively the reasonableness or advisability of any segregation of children of Mexican ances[550]try beyond the fifth grade in any of the defendant school districts in view of the standardized and uniform curricular requirements in the elementary schools of Orange County.

But the admitted practice and long established custom in this school district whereby all elementary public school children of Mexican descent are required to attend one specified school (the Hoover) until they attain the sixth grade, while all other pupils of the same grade are permitted to and do attend two other elementary schools of this district, notwithstanding that some of such pupils live within the Hoover School division of the district, clearly establishes an unfair and arbitrary class distinction in the system of public education operative in the Garden Grove Elementary School District.

The long-standing discriminatory custom prevalent in this district is aggravated by the fact shown by the record that although there are approximately 25 children of Mexican descent living in the vicinity of the Lincoln School, none of them attend that school, but all are peremptorily assigned by the school authorities to the Hoover School, although the evidence shows that there are no school zones territorially established in the district. The record before us shows a paradoxical situation concerning the segregation attitude of the school authorities in the Westminister School District. There are two elementary schools in this undivided area. Instruction is given pupils in each school from kindergarten to the eighth grade, inclusive. Westminister School has 642 pupils, of which 628 are so-called English-speaking children, and 14 so-called Spanish-speaking pupils. The Hoover School is attended solely by 152 children of Mexican descent. Segregation of these from the rest of the school population precipitated such vigorous protests by residents of the district that the school board in January, 1944, recognizing the discriminatory results of segregation, resolved to unite the two schools and thus abolish the objectionable practices which had been operative in the schools of the district for a considerable period. A bond issue was submitted to the electors to raise funds to defray the cost of contemplated expenditures in the school consolidation. The bonds were not voted and the record before us in this action reflects no execution or carrying out of the official action of the board of trustees taken on or about the 16th of January, 1944. It thus appears that there has been no abolishment of the traditional segregation practices in this district pertaining to pupils of Mexican ancestry through the gamut of elementary school life. We have adverted to the unfair consequences of such practices in the similarly situated El Modeno School District.

Before considering the specific factual situation in the Santa Ana City Schools it should be noted that the omnibus segregation of children of Mexican ancestry from the rest of the student body in the elementary grades in the schools involved in this case because of language handicaps is not warranted by the record before us. The tests applied to the beginners are shown to have been generally hasty, superficial and not reliable. In some instances separate classification was determined largely by the Latinized or Mexican name of the child. Such methods of evaluating language knowledge are illusory and are not conducive to the inculcation and enjoyment of civil rights which are of primary importance in the public school system of education in the United States.

It has been held that public school authorities may differentiate in the exercise of their reasonable discretion as to the pedagogical methods of instruction to be pursued with different pupils.[7] And foreign language handicaps may be to such a degree in the pupils in elementary schools as to require special treatment in separate classrooms. Such separate allocations, however, can be lawfully made only after credible examination by the appropriate school authority of each child whose capacity to learn is under consideration and the determination of such segregation must be based wholly upon indiscriminate

foreign language impediments in the individual child, regardless of his ethnic traits or ancestry

The defendant Santa Ana School District maintains fourteen elementary schools which furnish instruction from kindergarten to the sixth grade, inclusive.

About the year 1920 the Board of Education, for the purpose of allocating pupils to the several schools of the district in proportion to the facilities available at such[551] schools, divided the district into fourteen zones and assigned to the school established in each zone all pupils residing within such zone. There is no evidence that any discriminatory or other objectionable motive or purpose actuated the School Board in locating or defining such zones.
Subsequently the influx of people of Mexican ancestry in large numbers and their voluntary settlement in certain of the fourteen zones resulted in three of the zones becoming occupied almost entirely by such group of people.

Two zones, that in which the Fremont School is located, and another contiguous area in which the Franklin School is situated, present the only flagrant discriminatory situation shown by the evidence in this case in the Santa Ana City Schools. The Fremont School has 325 so-called Spanish-speaking pupils and no so-called English-speaking pupils. The Franklin School has 237 pupils of which 161 are so-called English-speaking children, and 76 so-called Spanish-speaking children.

The evidence shows that approximately 26 pupils of Mexican descent who reside within the Fremont zone are permitted by the School Board to attend the Franklin School because their families had always gone there. It also appears that there are approximately 35 other pupils not of Mexican descent who live within the Fremont zone who are not required to attend the Fremont School but who are also permitted by the Board of Education to attend the Franklin School.

Sometime in the fall of the year 1944 there arose dissatisfaction by the parents of some of the so-called Spanish-speaking pupils in the Fremont School zone who were not granted the privilege that approximately 26 children also of Mexican descent, enjoyed in attending the Franklin School. Protest was made en masse by such dissatisfied group of parents, which resulted in the Board of Education directing its secretary to send a letter to the parents of all of the so-called Spanish-speaking pupils living in the Fremont zone and attending the Franklin School that beginning September, 1945, the permit to attend Franklin School would be withdrawn and the children would be required to attend the school of the zone in which they were living, viz., the Fremont School.

There could have been no arbitrary discrimination claimed by plaintiffs by the action of the school authorities if the same official course had been applied to the 35 other so-called English-speaking pupils exactly situated as were the approximate 26 children of Mexican lineage, but the record is clear that the requirement of the Board of Education was intended for and directed exclusively to the specified pupils of Mexican ancestry and if carried out becomes operative solely against such group of children.

It should be stated in fairness to the Superintendent of the Santa Ana City Schools that he testified he would recommend to the Board of Education that the children of those who protested the action requiring transfer from the Franklin School be allowed to remain there because of long attendance and family tradition. However, there was no official recantation shown of the action of the Board of Education reflected by the letters of the Secretary and sent only to the parents of the children of Mexican ancestry.

The natural operation and effect of the Board's official action manifests a clear purpose to arbitrarily discriminate against the pupils of Mexican ancestry and to deny to them the equal protection of the laws. The court may not exercise legislative or administrative functions in this case to save such discriminatory act from inoperativeness. Cf. *Yu Cong Eng v. Trinidad*, 271 U.S. 500, 46 S.Ct. 70 L.Ed. 1059. There are other discriminatory customs, shown by the evidence, existing in the defendant school districts as to pupils of Mexican descent and extraction, but we deem it unnecessary to discuss them in this memorandum.

We conclude by holding that the allegations of the complaint (petition) have been established sufficiently

to justify injunctive relief against all defendants, restraining further discriminatory practices against the pupils of Mexican descent in the public schools of defendant school districts. See *Morris v. Williams*, 8 Cir., 149 F.2d 703.
Findings of fact, conclusions of law, and decree of injunction are accordingly ordered pursuant to *Rule 52, F.R.C.P.* Attorney for plaintiffs will within ten days from date hereof prepare and present same under local Rule 7 of this court.

1. "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. "The district courts shall have original jurisdiction as follows: * * *
Sec. 41, subd. (14) "Suits to redress deprivation of civil rights. Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

3. "Sec. 16004. Any person, otherwise eligible for admission to any class or school of a school district of this State, whose parents are or are not citizens of the United States and whose actual and legal residence is in a foreign country adjacent to this State may be admitted to the class or school of the district by the governing board of the district."
"Sec. 16005. The governing board of the district may, as a condition precedent to the admission of any person, under Section 16004, require the parent or guardian of such person to pay to the district an amount not more than sufficient to reimburse the district for the total cost, exclusive of capital outlays, of educating the person and providing him with transportation to and from school. The cost of transportation shall not exceed ten dollars ($10) per month. Tuition payments shall be made in advance for each month or semester during the period of attendance. If the amount paid is more or less than the total cost of education and transportation, adjustment shall be made for the following semester or school year. The attendance of the pupils shall not be included in computing the average daily attendance of the class or school for the purpose of obtaining apportionment of State funds."

4. Sec. 8501, Education Code. "Children between six and 21 years of age. The day elementary school of each school district shall be open for the admission of all children between six and 21 years of age residing within the boundaries of the district."
Sec. 8002. "Maintenance of elementary day schools and day high schools with equal rights and privileges. The governing board of any school district shall maintain all of the elementary day schools established by it, and all of the day high schools established by it with equal rights and privileges as far as possible."

5. Sec. 8003. "Schools for Indian children, and children of Chinese, Japanese, or Mongolian parentage: Establishment. The governing board of any school district may establish separate schools for Indian children, excepting children of Indians who are wards of the United States Government and children of all other Indians who are descendants of the original American Indians of the United States, and for children of Chinese, Japanese, or Mongolian parentage."
Sec. 8004. "Same: Admission of children into other schools. When separate schools are established for Indian children or children of Chinese, Japanese, or Mongolian parentage, the Indian children or children of Chinese, Japanese, or Mongolian parentage shall not be admitted into any other school."

6. The study of American institutions and ideals in all schools located within the State of California is required by Section 10051, Education Code.

7. See Plessy v. Ferguson, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256.

Morgan v. Virginia – case summary

In the spring of 1946, Irene Morgan, a black woman, boarded a bus in Virginia to go to Baltimore, Maryland. She was ordered to sit in the back of the bus, as Virginia state law required. She objected, saying that since the bus was an interstate bus, the Virginia law did not apply. Morgan was arrested and fined ten dollars. Thurgood Marshall and the NAACP took on the case. They argued that since an 1877 Supreme Court decision ruled that it was illegal for a state to forbid segregation, then it was likewise illegal for a state to require it. The United States Supreme Court agreed. The court did not rule that segregated transportation within the state was unconstitutional. The ruling, while another defeat for segregation in law, did not have an immediate impact. Buses still segregated its passengers until the Civil Rights Movement of the 1960s put an end to the practice once and for all.

U.S. Supreme Court

MORGAN v. COM. OF VA., 328 U.S. 373 (1946)

328 U.S. 373

MORGAN
v.
COMMONWEALTH OF VIRGINIA.
No. 704.

Argued March 27, 1946.
Decided June 3, 1946.

Appeal from the Supreme Court of Appeals of the State of virginia.

Messrs. William H. Hastie, of Washington, D.C., and Thurgood Marshall, of New York City, for appellant. [328 U.S. 373, 374] Mr. Abram P. Staples, of Richmond, Va., for appellee.

Mr. Justice REED delivered the opinion of the Court.

This appeal brings to this Court the question of the constitutionality of an act of Virginia,1 which requires all passenger motor vehicle carriers, both interstate and intrastate,2 to separate without discrimination3 the white and colored passengers in their otor buses so that contiguous seats will not be occupied by persons of different races at the same time. A violation of the requirement of separation by the carrier is a misdemeanor. 4 The driver or other person in charge is directed and required to increase or decrease the space allotted to the respective races as may be necessary or proper and may require passengers to change their seats to comply with the allocation. The operator's failure to enforce the provisions is made a misdemeanor. 5

These regulations were applied to an interstate passenger, this appellant, on a motor vehicle then making an interstate run or trip. According to the statement of fact by the Supreme Court of Appeals of Virginia, appellant, who is a Negro, was traveling on a motor common car- [328 U.S. 373, 375] rier, operating under the above-mentioned statute, from Gloucester County, Virginia, through the District of Columbia, to Baltimore, Maryland, the destination of the bus. There were other passengers, both white and colored. On her refusal to accede to a request of the driver to move to a back seat, which was partly occupied by other colored passengers, so as to permit the seat that she vacated to be used by white passengers, a warrant was obtained and appellant was arrested, tried and convicted of a violation of Section 4097dd of

the Virginia Code. 6 On a writ of error the conviction was affirmed by the Supreme Court of Appeals of Virginia. 184 Va. 24, 34 S.E.2d 491. The Court of Appeals interpreted the Virginia statute as applicable to appellant since the statute 'embraces all motor vehicles and all [328 U.S. 373, 376] passengers, both interstate and intrastate.' 7 The Court of Appeals refused to accept appellant's contention that the statute applied was invalid as a delegation of legislative power to the carrier by a concurrent holding 'that no power is delegated to the carrier to legislate. ... The statute itself condemns the defendant's conduct as a violation of law and not the rule of the carrier.' Id., 184 Va. at page 38, 34 S.E.2d at page 497. No complaint is made as to these interpretations of the Virginia statute by the Virginia court. 8

The errors of the Court of Appeals that are assigned and relied upon by appellant are in form only two. The first is that the decision is repugnant to Clause 3, Section 8, Article I of the Constitution of the United States,9 and the second the holding that powers reserved to the states by the Tenth Amendment include the power to require an interstate motor passenger to occupy a seat restricted for the use of his race. Actually, the first question alone needs consideration for if the statute unlawfully burdens interstate commerce, the reserved powers of the state will not validate it. 10

We think, as the Court of Appeals apparently did, that the appellant is a proper person to challenge the validity of this statute as a burden on commerce. 11 If it is an invalid burden, the conviction under it would fail. The statute affects appellant as well as the transportation company. Constitutional protection against burdens on com- [328 U.S. 373, 377] merce is for her benefit on a criminal trial for violation of the challenged statute. People of State of New York ex rel. Hatch v. Reardon, 204 U.S. 152, 160, 27 S.Ct. 188, 190, 9 Ann.Cas. 736; Alabama State Federation of Labor v. McAdory, 325 U.S. 450, 463, 65 S.Ct. 1384, 1390

This Court frequently must determine the validity of state statutes that are attacked as unconstitutional interferences with the national power over interstate commerce. This appeal presents that question as to a statute that compels racial segregation of interstate passengers in vehicles moving interstate. 12

The precise degree of a permissible restriction on state power cannot be fixed generally or indeed not even for one kind of state legislation, such as taxation or health or safety. 13 There is a recognized abstract principle, however, that may be taken as a postulate for testing whether particular state legislation in the absence of action by Congress is beyond state power. This is that the state legislation is invalid if it unduly burdens that commerce in matters where uniformity is necessary- necessary in the constitutional sense of useful in accomplishing a permitted purpose. 14 Where uniformity is essential for the functioning of commerce, a state may not interpose its local regulation. 15 Too true it is that the principle lacks in precision. Although the quality of such a principle is abstract, its application to the facts of a situation created by the attempted enforcement of a statute brings about a specific determination as to whether or not the statute [328 U.S. 373, 378] in question is a burden on commerce. Within the broad limits of the principle, the cases turn on their own facts.

In the field of transportation, there have been a series of decisions which hold that where Congress has not acted and although the state statute affects interstate commerce, a state may validly enact legislation which has predominantly only a local influence on the course of commerce. 16 It is equally well settled that, even where Con- [328 U.S. 373, 379] gress has not acted, state legislation or a final court order is invalid which materially affects interstate commerce. 17 [328 U.S. 373, 380] Because the Constitution puts the ultimate power to regulate commerce in Congress, rather than the states, the degree of state legislation's interference with that commerce may be weighed by federal courts to determine whether the burden makes the statute unconstitutional. 18 The courts could not invalidate federal legislation for the same reason because Congress, within the limits of the Fifth Amendment, has authority to burden commerce if that seems to it a desirable means of accomplishing a permitted end. 19

This statute is attacked on the ground that it imposes undue burdens on interstate commerce. It is said by the Court of Appeals to have been passed in the exercise of the state's police power to avoid friction between the races. But this Court pointed out years ago 'that a state cannot avoid the operation of this rule by simply invoking the convenient apologetics of the police power.' 20 Burdens upon commerce are

those actions of a state which directly 'impair the usefulness of its facilities or such traffic.' 21 That impairment, we think, may arise from other causes than costs or long delays. A burden may arise from a state statute which requires interstate passengers to order [328 U.S. 373, 381] their movements on the vehicle in accordance with local rather than national requirements.

On appellant's journey, this statute required that she sit in designated seats in Virginia. 22 Changes in seat designation might be made 'at any time' during the journey when 'necessary or proper for the comfort and convenience of passengers.' This occurred in this instance. Upon such change of designation, the statute authorizes the operator of the vehicle to require, as he did here, 'any passenger to change his or her seat as it may be necessary or proper.' 23 An interstate passenger must if necessary repeatedly shift seats while moving in Virginia to meet the seating requirements of the changing passenger group. On arrival at the District of Columbia line, the appellant would have had freedom to occupy any available seat and so to the end of her journey.

Interstate passengers traveling via motors between the north and south or the east and west may pass through Virginia on through lines in the day or in the night. The large buses approach the comfort of pullmans and have seats convenient for rest. On such interstate journeys the enforcement of the requirements for reseating would be disturbing.

Appellant's argument, properly we think, includes facts bearing on interstate motor transportation beyond those immediately involved in this journey under the Virginia statutory regulations. To appraise the weight of the burden of the Virginia statute on interstate commerce, related statutes of other states are important to show whether there are cumulative effects which may make [328 U.S. 373, 382] local regulation impracticable. Eighteen states, it appears, prohibit racial separation on public carriers. 24 Ten require separation on motor carriers. 25 Of these Alabama applies specifically to interstate passengers with an exception for interstate passengers with through tickets from states without laws on separation of passengers. 26 The language of the other acts, like this Virginia statute before the Court of Appeals' decision in this case, may be said to be susceptible to an interpretation that they do or do not apply to interstate passengers.

In states where separation of races is required in motor vehicles, a method of identification as white or colored must be employed. This may be done by definition. Any ascertainable Negro blood identifies a person as colored for purposes of separation in some states. 27 In the other states which require the separation of the races in [328 U.S. 373, 383] motor carriers, apparently no definition generally applicable or made for the purposes of the statute is given. Court definition or further legislative enactments would be required to clarify the line between the races. Obviously there may be changes by legislation in the definition. 28

The interferences to interstate commerce which arise from state regulation of racial association on interstate vehicles has long been recognized. Such regulation hampers freedom of choice in selecting accommodations. The recent changes in transportation brought about by the coming of automobiles does not seem of great significance in the problem. People of all races travel today more extensively than in 1878 when this Court first passed upon state regulation of racial segregation in commerce. The factual situation set out in preceding paragraphs emphasizes the soundness of this Court's early conclusion in Hall v. De Cuir, 95 U.S. 485.

The De Cuir case arose under a statute of Louisiana interpreted by the courts of that state and this Court to require public carriers 'to give all persons travelling in that State, upon the public conveyances employed in such business, equal rights and privileges in all parts of the conveyance, without distinction or discrimination on account of race or color.' 95 U.S. at page 487. Damages were awarded against Hall, the representative of the operator of a Mississippi river steamboat that traversed that river interstate from New Orleans to Vicksburg, for excluding in Louisiana the defendant in error, a colored person, from a cabin reserved for whites. This Court reversed for reasons well [328 U.S. 373, 384] stated in the words of Mr. Chief Justice Waite. 29 As our previous discussion demonstrates, the transportation diffi- [328 U.S. 373, 385] culties arising from a statute that requires commingling of the races, as in the De Cuir case, are

increased by one that requires separation, as here. 30 Other federal courts have looked upon racial separation statutes as applied to interstate passengers as burdens upon commerce. 31

In weighing the factors that enter into our conclusion as to whether this statute so burdens interstate commerce or so infringes the requirements of national uniformity as to be invalid, we are mindful of the fact that conditions [328 U.S. 373, 386] vary between northern or western states such as Maine or Montana, with practically no colored population; industrial states such as Illinois, Ohio, New Jersey and Pennsylvania with a small, although appreciable, percentage of colored citizens; and the states of the deep south with percentages of from twenty-five to nearly fifty per cent colored, all with varying densities of the white and colored race in certain localities. Local efforts to promote amicable relations in difficult areas by legislative segregation in interstate transportation emerge from the latter racial distribution. As no state law can reach beyond its own border nor bar transportation of passengers across its boundaries, diverse seating requirements for the races in interstate journeys result. As there is no federal act dealing with the separation of races in interstate transportation, we must decide the validity of this Virginia statute on the challenge that it interferes with commerce, as a matter of balance between the exercise of the local police power and the need for national uniformity in the regulations for interstate travel. It seems clear to us that seating arrangements for the different races in interstate motor travel require a single, uniform rule to promote and protect national travel. Consequently, we hold the Virginia statute in controversy invalid.

REVERSED.

Mr. Justice RUTLEDGE concurs in the result.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

Mr. Justice BLACK concurring.

The Commerce Clause of the Constitution provides that 'Congress shall have Power ... To regulate Commerce ... among the several States.' I have believed, and still believe that this provision means that Congress [328 U.S. 373, 387] can regulate commerce and that the courts cannot. But in a series of cases decided in recent years this Court over my protest has held that the Commerce Clause justifies this Court in nullifying state legislation which this Court concludes imposes an 'undue burden' on interstate commerce. 1 I think that whether state legislation imposes an 'undue burden' on interstate commerce raises pure questions of policy, which the Constitution intended should be resolved by the Congress.

Very recently a majority of this Court reasserted its power to invalidate state laws on the ground that such legislation put an undue burden on commerce. Nippert v. Richmond, supra; Southern Pacific Co. v. Arizona, supra. I thought then, and still believe, that in these cases the Court was assuming the role of a 'super-legislature' in determining matters of governmental policy. Id., 325 U.S. at page 787, 65 S.Ct. at page 1529, Note 4.

But the Court, at least for the present, seems committed to this interpretation of the Commerce Clause. In the Southern Pacific Co. case, the Court, as I understand its opinion, found an 'undue burden' because a state's requirement for shorter trains increased the cost of railroad operations and thereby delayed interstate commerce and impaired its efficiency. In the Nippert case a small tax imposed on a sales solicitor employed by concerns located outside of Virginia was found to be an 'undue burden' even though a solicitor for Vi ginia concerns engaged in the same business would have been required to pay the same tax.

So long as the Court remains committed to the 'undue burden on commerce formula,' I must make decisions under it. The 'burden on commerce' imposed by the [328 U.S. 373, 388] Virginia law here under consideration seems to me to be of a far more serious nature than those of the Nippert or Southern Pacific Company cases. The Southern Pacific Company opinion, moreover, relied in part on the rule

announced in Hall v. De Cuir, 95 U.S. 485, which case held that the Commerce Clause prohibits a state from passing laws which require that 'on one side of a State line ... passengers, both white and colored, must be permitted to occupy the same cabin, and on the other be kept separate.' The Court further said that 'uniformity in the regulations by which (a carrier) is to be governed from one end to the other of his route is a necessity in his business' and that it was the responsibility of Congress, not the states, to determine 'what such regulations shall be.' The 'undue burden on commerce formula' consequently requires the majority's decision. In view of the Court's present disposition to apply that formula, I acquiesce.

Mr. Justice FRANKFURTER concurring.

My brother Burton has stated with great force reasons for not invalidating the Virginia statute. But for me Hall v. DeCuir, 95 U.S. 485, is controlling. Since it was decided nearly seventy years ago, that case on several occasions has been approvingly cited and has never been questioned. Chiefly for this reason I concur in the opinion of the Court.

The imposition upon national systems of transportation of a crazy- quilt of State laws would operate to burden commerce unreasonably, whether such contradictory and confusing State laws concern racial commingling or racial segregation. This does not imply the necessity for a nationally uniform regulation of arrangements for passengers on interstate carriers. Unlike other powers of Congress (see Art. I, 8, cl. 1, concerning 'Duties, Imposts [328 U.S. 373, 389] and Excises'; Art. I, 8, cl. 4, concerning 'Naturalization'; Art. I, 8, cl. 4, concerning 'Bankruptcies'), the power to regulate commerce does not require geographic uniformity. Congress may devise a national policy with due regard to varying interests of different regions. E.g., 37 Stat. 699, 27 U.S.C. 122, 27 U.S.C.A. 122; Clark Distilling Co. v. Western Maryland R. Co., 242 U.S. 311, 37 S.Ct. 180, L.R.A.1917B, 1218, Ann.Cas.1917B, 845; 45 Stat. 1084, 49 U.S.C. 60, 49 U.S.C.A. 60; Whitfield v. Ohio, 297 U.S. 431, 56 S.Ct. 532. The States cannot impose diversity of treatment when such diverse treatment would result in unreasonable burdens on commerce. But Congress may effectively exercise its power under the Commerce Clause without the necessity of a blanket rule for the country.

Mr. Justice BURTON dissenting.

On the application of the interstate commerce clause of the Federal Constitution to this case, I find myself obliged to differ from the majority of the Court. I would sustain the Virginia statute against that clause. The issue is neither the disirability of the statute nor the constitutionality of racial segregation as such. The opinion of the Court does not claim that the Virginia statute, regulating seating arrangements for interstate passengers in motor vehicles, violates the Fourteenth Amendment or is in conflict with a federal statute. The Court holds this statute unconstitutional for but one reason. It holds that the burden imposed by the statute upon the nation's interest in interstate commerce so greatly outweighs the contribution made by the statute to the state's interest in its public welfare as to make it unconstitutional.

The undue burden upon interstate commerce thus relied upon by the Court is not complained of by the Federal Government, by any state, or by any carrier. This statute has been in effect since 1930. The carrier concerned is operating u der regulations of its own which conform [328 U.S. 373, 390] to the statute. The statute conforms to the policy adopted by Virginia as to steamboats (1900), electric or street cars and railroads (1902-1904).1 Its validity has been unanimously upheld by the Supreme Court of Appeals of Virginia. The argument relied upon by the majority of this Court to establish the undue burden of this statute on interstate commerce is the lack of uniformity between its provisions and those of the laws of other states on the subject of the racial separation of interstate passengers on motor vehicles.

If the mere diversity between the Virginia statute and comparable statutes of other states is so serious as to render the Virginia statute invalid, it probably means that the comparable statutes of those other states, being diverse from it and from each other, are equally invalid. This is especially true under that assumption of the majority which disregards sectional interstate travel between neighboring states having

similar laws, to hold 'that seating arrangements for the different races in interstate motor travel require a single, uniform rule to promote and protect national travel.' (Italics supplied.) More specifically, the opinion of the Court indicates that the laws of the 10 contiguous states of Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, Arkansas, Texas and Oklahoma require racial separation of passengers on motor carriers, while those of 18 other states prohibit racial separation of passengers on public carriers. On the precedent of this case, the laws of the 10 states requiring racial separation apparently can be invalidated because of their sharp diversity from the laws in the rest of the Union, or, in a lesser degree, because of their diversity from one another. Such invalidation, on the ground [328 U.S. 373, 391] of lack of nation-wide uniformity, may lead to questioning the validity of the laws of the 18 states now prohibiting racial separation of passengers, for those laws likewise differ sharply from laws on the same subject in other parts of the Union and, in a lesser degree, from one another. In the absence of federal law, this may eliminate state regulation of racial separation in the seating of interstate passengers on motor vehicles and leave the regulation of the subject to the respective carriers.

The present decision will lead to the questioning of the validity of statutory regulation of the seating of intrastate passengers in the same motor vehicles with interstate passengers. The decision may also result in increased lack of uniformity between regulations as to seating arrangements on motor vehicles limited to intrastate passengers in a given state and those on motor vehicles engaged in interstate business in the same state or on connecting routes.

The basic weakness in the appellant's case is the lack of facts and findings essential to demonstrate the existence of such a serious and major burden upon the national interest in interstate commerce as to outweigh whatever state or local benefits are attributable to the statute and which would be lost by its invalidation. The Court recognizes that it serves as 'the final arbiter of the competing demands of state and national interests'2 and that it must fairly determine, in the absence of Congressional action, whether the state statute actually imposes such an undue burden upon interstate commerce as to invalidate that statute. In weighing these competing demands, if this Court is to justify the invalidation of this statute, it must, first of all, be satisfied that the many years of experience of the state and the carrier that are reflected in this [328 U.S. 373, 392] state law should be set aside. It represents the tested public policy of Virginia regularly enacted, long maintained and curren ly observed. The officially declared state interests, even when affecting interstate commerce, should not be laid aside summarily by this Court in the absence of Congressional action. It is only Congress that can supply affirmative national uniformity of action.

In Southern Pacific Co. v. Arizona, 325 U.S. 761, 768, 769 S., 770, 65 S. Ct. 1515, 1520, 1521, this Court speaking through the late Chief Justice said:

> 'In the application of these principles some enactments may be found to be plainly within and others plainly without state power. But between these extremes lies the infinite variety of cases in which regulation of local matters may also operate as a regulation of commerce, in which reconciliation of the conflicting claims of state and national power is to be attained only by some appraisal and accommodation of the competing demands of the state and national interests involved.3
> 'But in general Congress has left it to the courts to formulate the rules thus interpreting the commerce clause in its application, doubtless because it has appreciated the destructive consequences to the commerce of the nation if their (i.e. the courts') protection were withdrawn, ... and has been aware that in their application state laws will not be invalidated without the support of relevant factual material which will 'afford a sure basis' for an informed judgment. 4 ... Meanwhile, Congress has accommodated its legislation, as have the states, to these rules as an established feature of our constitutional system. There has thus been left to the states wide scope for [328 U.S. 373, 393] the regulation of matters of local state concern, even though it in some measure affects the commerce, provided it does not materially restrict the free flow of commerce across state lines, or interfere with it in matters with respect to which uniformity of regulation is of predominant national concern.' (Italics supplied.)

The above quoted requirement of a factual establishment of 'a sure basis' for an informed judgment by this Court calls for a firm and demonstrable basis of action on the part of this Court. In the record of this case there are no findings of fact that demonstrate adequately the excessiveness of the burden, if any, which the Virginia statute has imposed upon interstate commerce, during the many years since its enactment, in comparison with the resulting effect in Virginia of the invalidation of this statute. 5 The Court relies largely upon the recital of a nationwide diversity among state statutes on this subject without a demonstration of the factual situation in those states, and especially in Virginia. The Court therefore is not able in this case to make that necessary 'appraisal and accommodation of the competing demands of the state and national interests involved' which should be the foundation for passing upon the validity of a state statute of long standing and of important local significance in the exercise of the state police power. [328 U.S. 373, 394] he Court makes its own further assumption that the question of racial separation of interstate passengers in motor vehicle carriers requires national uniformity of treatment rather than diversity of treatment at this time. The inaction of Congress is an important indication that, in the opinion of Congress, this issue is better met without nationally uniform affirmative regulation than with it. Legislation raising the issue long has been, and is now, pending before Congress but has not reached the floor of either House. 6 The fact that 18 states have prohibited in some degree racial separation in public carriers is important progress in the direction of uniformity. The fact, however, that 10 contiguous states in some degree require, by state law, some racial separation of passengers on motor carriers indicates a different appraisal by them of the needs and conditions in those areas than in others. The remaining 20 states have not gone equally far in either direction. This recital of existing legislative diversity is evidence against the validity of the assumption by this Court that there exists today a requirement of a single uniform national rule on the subject.

It is a fundamental concept of our Constitution that where conditions are diverse the solution of problems arising out of them may well come through the application of diversified treatment matching the diversified needs as determined by our local governments. Uniformity of treatment is appropriate where a substantial uniformity of conditions exists.

Footnotes

[Footnote 1] Virginia Code of 1942, 4097z to 4097dd inclusive. The sections are derived from an act of General Assembly of Virginia of 1930. Acts of Assembly, Va. 1930, p. 343.

[Footnote 2] Id., 4097z, 4097m, 4097s; Morgan v. Commonwealth, 184 Va. 24, 39, 34 S.E.2d 491.

[Footnote 3] Id., 4097aa.

[Footnote 4] Id., 4097z; 4097bb.

[Footnote 5] Id., 4097bb.

[Footnote 6] '4097dd. Violation by passengers; misdemeanor; ejection.-All persons who fail while on any motor vehicle carrier, to take and occupy the seat or seats or other space assigned to them by the driver, operator or other person in charge of such vehicle, or by the person whose duty it is to take up tickets or collect fares from passengers therein, or who fail to obey the directions of any such driver, operator or other person in charge, as aforesaid, to change their seats from time to time as occasions require, pursuant to any lawful rule, regulation or custom in force by such lines as to assigning separate seats or other space to white and colored persons, respectively, having been first advised of the fact of such regulation and requested to conform thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars nor more than twenty-five dollars for each offense. Furthermore, such persons may be ejected from such vehicle by any driver, operator or person in charge of said vehicle, or by any police officer or other conservator of the peace; and in case such persons ejected shall have paid their fares upon said vehicle, they shall not be entitled to the return of any part of same. For the refusal of any such passenger to abide by the request of the person in charge of said vehicle as aforesaid, and his consequent ejection from said vehicle, neither the driver, operator,

person in charge, owner, manager nor bus company operating said vehicle shall be liable for damages in ny court.'

[Footnote 7] Morgan v. Commonwealth, supra, 184 Va. 37, 34 S.E.2d 496. Cf. Smith v. State, 100 Tenn. 494, 46 S.W. 566, 41 L.R.A. 432; Alabama & Vicksburg R. Co. v. Morris, 103 Miss. 511, 60 So. 11, Ann.Cas.1915B, 613; Southern Ry. Co. v. Norton, 112 Miss. 302, 73 So. 1.

[Footnote 8] Compare Hebert v. Louisiana, 272 U.S. 312, 317, 47 S.Ct. 103, 104, 48 A.L.R. 1102; General Trading Co. v. State Tax Comm., 322 U.S. 335, 337, 349 S., 64 S.Ct. 1028, 1029, 1030, 1319.

[Footnote 9] 'Section 8. The Congress shall have Power ... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.'

[Footnote 10] Case v. Bowles, 327 U.S. 92, 102, 66 S.Ct. 438, at page 443.

[Footnote 11] Cf. Edwards v. California, 314 U.S. 160, 172, 62 S.Ct. 164, 166, note 1.

[Footnote 12] When passing upon a rule of a carrier that required segregation of an interstate passenger, this Court said, 'And we must keep in mind that we are not dealing with the law of a state attempting a regulation of interstate commerce beyond its power to make.' Chiles v. Chesapeake & Ohio Railway Co., 218 U.S. 71, 75, 30 S.Ct. 667, 668, 20 Ann.Cas. 980.

[Footnote 13] Cf. Gwin, etc., Inc., v. Henneford, 305 U.S. 434, 439, 59 S.Ct. 325, 328; Mintz v. Baldwin, 289 U.S. 346, 352, 53 S.Ct. 611, 614; We ch Co. v. New Hampshire, 306 U.S. 79, 84, 59 S.Ct. 438, 441.

[Footnote 14] Southern Pacific Co. v. Arizona, 325 U.S. 761, 766-771, 65 S.Ct. 1515, 1518-1521.

[Footnote 15] Cooley v. Board of Wardens, 12 How. 299, 319; The Minesota Rate Cases (Simpson v. Shepard), 230 U.S. 352, 402, 33 S.Ct. 729, 741, 48 L.R.A.,N.S., 1151, Ann.Cas.1916A, 18; Kelly v. Washington, 302 U.S. 1, 10, 58 S.Ct. 87, 92.

[Footnote 16] Statutes or orders dealing with safety of operations: Smith v. Alabama, 124 U.S. 465, 8 S.Ct. 564 (Alabama statute requiring an examination and license of train engineers before operating in the state); Nashville, etc., Railway Co. v. Alabama, 128 U.S. 96, 9 S. Ct. 28 (Statute requiring examination of railroad employees as to vision and color blindness); New York, N.H. & H. Railroad Co. v. New York, 165 U.S. 628, 17 S.Ct. 418 (N.Y. statute forbidding the use of furnaces or stoves in passenger cars and requiring guard-posts on railroad bridges); Erb v. Morasch, 177 U.S. 584, 20 S.Ct. 819 (Municipal ordinance limiting speed of trains in city to 6 miles an hour); Atlantic Coast Line R. Co. v. Georgia, 234 U.S. 280, 34 S.Ct. 829 (Georgia statute requiring electric headlights on locomotives); Morris v. Duby, 274 U.S. 135, 47 S.Ct. 548 (Weight restrictions on motor carriers imposed by order of Oregon highway commission); Sproles v. Binford, 286 U.S. 374, 52 S.Ct. 581 (Size and weight restrictions on trucks imposed by Texas statute); South Carolina State Hwy. Dept. v. Barnwell Bros., 303 U.S. 177, 625, 58 S.Ct. 510 (Statute restricting weight and size of motor carriers); Maurer v. Hamilton, 309 U.S. 598, 60 S.Ct. 726, 135 A.L.R. 1347 (Penna. statute forbidding the use of its highways to any vehicle carrying any other vehicle over the head of the operator of the vehicle); Terminal R. Ass'n v. Brotherhood of Railroad Trainmen, 318 U.S. 1, 63 S.Ct. 420 (Illinois statute requiring cabooses on freight trains).

Statutes or orders requiring local train service: Gladson v. Minnesota, 166 U.S. 427, 17 S.Ct. 627 (State statute requiring intrastate train to stop at county seat to take on and discharge passengers); Lake Shore & M.S. Railway Co. v. Ohio, 173 U.S. 285, 19 S.Ct. 465 (Statute requiring three trains daily, if so many are run, to stop at each city containing over 3,000 inhabitants as applied to interstate trains); Atlantic Coast Line R. Co. v. North Carolina Corp. Comm., 206 U.S. 1, 27 S.Ct. 585, 11 Ann.Cas. 398 (Order regulating train service, particularly requiring train to permit connection with through trains at junction

point); Missouri Pac. R. Co. v. Kansas, 216 U.S. 262, 30 S.Ct. 330 (Order directing the operation of intrastate passenger train service over specified route).

Statutes dealing with employment of labor-full crew laws Chicago, R. I. & P.R. Co. v. Arkansas, 219 U.S. 453, 31 S.Ct. 275 (Arkansas full crew law applied to interstate trains); St. Louis I.M. & S.R. Co. v. Arkansas, 240 U.S. 518, 36 S.Ct. 443 (Arkansas full crew laws applied to switching crews); Missouri Pacific R. Co. v. Norwood, 283 U.S. 249, 51 S.Ct. 458 (Arkansas full crew laws applied to freight and switching crews.)

[Footnote 17] Statutes or orders dealing with safety of operations: Kansas City Southern R. Co. v. Kaw Valley Drainage Dist., 233 U.S. 75, 34 S.Ct. 564 (Order requiring railroad to remove its bridges over river for flood control purposes); South Covington & C. St. Ry. Co. v. Covington, 235 U.S. 537, 35 S.Ct. 158, L.R.A.1915F, 792 (Ordinances regulating the number of passengers to be carried in, the number of cars to be run and the temperature of an interstate street railway car invalid; those requiring rails on front and rear platform, ventilation and cleaning valid); Seaboard Air Line R. Co. v. Blackwell, 244 U.S. 310, 37 S.Ct. 640, L.R.A.1917F, 1184 (Georgia Blow Post Law requiring train to blow whistle and slow down almost to a stop at each grade crossing where numerous grade crossings were involved. Cf. Southern Railway Co. v. King, 217 U.S. 524, 30 S.Ct. 594 where answer held insufficient to permit proof of burden of the statute on interstate commerce); Southern Pacific Co. v. Arizona, 325 U.S. 761, 65 S.Ct. 1515 (Statute limiting number of cars in freight train to 70 and passenger cars to 14.)

Statutes or orders requiring local train service: Illinois Central Railroad Co. v. Illinois, 163 U.S. 142, 16 S.Ct. 1096 (Statute applied to require fast mail train to detour from main line in order to stop at station for the taking on and discharge of passengers); Cleveland, etc., R. Co. v. Illinois, 177 U.S. 514, 20 S.Ct. 722 (Ill. statute requiring interstate train to stop at each station); Mississippi R. Comm. v. Illinois Cent. R. Co., 203 U.S. 335, 27 S.Ct. 90 (Order of commission requiring interstate train to stop at small town); Atlantic Coast Line Co. v. Wharton, 207 U.S. 328, 28 S.Ct. 121 (S.C. statute and railroad commission order requiring interstate train to stop at small town); St. Louis S.W.R. Co. v. Arkansas, 217 U.S. 136, 30 S.Ct. 476, 29 L.R.A., N.S., 802 (Statute and order requiring delivery of freight cars to local shippers); Herndon v. Chicago, Rock Island & P.R. Co., 218 U.S. 135, 30 S.Ct. 633 (Statute requiring interstate train to stop at junction point); Chicago, B . & Q.R. Co. v. Railroad Comm. of Wisconsin, 237 U.S. 220, 35 S.Ct. 560 (Wisconsin statute requiring interstate train to stop at villages containing 200 or more inhabitants); Missouri, K. & T.R. Co. v. Texas, 245 U.S. 484, 38 S.Ct. 178, L.R.A.1918C, 535 (Order requiring trains to start on time and fixing time allowed for stops at junctions en route); St. Louis & S.F.R. Co. v. Public Serv. Comm., 254 U.S. 535, 41 S.Ct. 192 (Order requiring through trains to detour through a small town); St. Louis-San Francisco R. Co. v. Public Serv. Comm ., 261 U.S. 369, 43 S.Ct. 380 (Order requiring that interstate trains be stopped at small town).

[Footnote 18] See Southern Pacific Co. v. Arizona, 325 U.S. at page 770, 65 S.Ct. at page 1521.

[Footnote 19] Compare United States v. Carolene Products Co., 304 U.S. 144, 146, 58 S.Ct. 778, 780.

[Footnote 20] Kansas City Southern R. Co. v. Kaw Valley Drainage Dist., 233 U.S. 75, 79, 34 S.Ct. 564, 565.

[Footnote 21] Illinois Central Railroad Co. v. Illinois, 163 U.S. 142, 154, 16 S. Ct. 1096, 1101.

[Footnote 22] The Virginia Code of 1942, section 67, defines a colored person, for the purpose of the Code, as follows: 'Every person in whom there is ascertainable any negro blood shall be deemed and taken to be a colored person ....' Provisions for vital statistics make a record of the racial lines of Virginia inhabitants. Sections 1574 and 5099a.

[Footnote 23] 4097bb.

[Footnote 24] Cal.Civ.Code (Deering), 1941, Secs. 51-54; Colo.Stat.Ann., 1935, Ch. 35, Sec. 1-10; Conn.Gen.Stat. (Supp.1933), Sec. 1160b; Ill.Rev.Stat. 1945, Ch. 38, Secs. 125-128g; Ind.Stat. (Burns), 1933, Secs. 10-901, 10- 902; Iowa Code, 1939, Secs. 13251, 13252; Kan.Gen.Stat.1935, Sec. 21-2424; Mass.Laws (Michie), 1933, Chap. 272, Sec. 98, as amended 1934; Mich.Stat. Ann.1938, Secs. 28.343, 28.344; Minn.Stat. (Mason), 1927, Sec. 7321; Neb. Comp.Stat.1929, Sec. 23-101; N.J.Rev.Stat.1937, Secs. 10:1-2 to 10:1-7, N. J.S.A.; N.Y. Civil Rights Law (McKinney Consol.Laws, c. 6), Secs. 40, 41; Ohio Code (Throckmorton), 1940, Secs. 12940-12942; Pa.Stat. (Purdon), Tit. 18, Secs. 4654 to 4655; R.I.Gen.Laws 1938, Ch. 606, Secs. 28, 29; Wash.Rev. Stat. (Remington), 1932, Sec. 2686 (semble); Wis.Stat.1943, Sec. 340.75.

[Footnote 25] Ala.Code 1940, Tit. 48, Sec. 268; Ark.Stat.1937 (Pope), Secs. 6921- 6927, Acts 1943, p. 379; Ga.Code, 1933, Sec. 68-616; La.Gen.Stat. (Dart), 1939, Sec. 5307-5309, Act No. 209 of 1928; Miss.Code 1942, Sec. 7785; N.C. Gen.Stat. 1943, Sec. 62-109; Okla.Stat.Ann.1941, Tit 47, 201-210; S.C. Code 1942, Sec. 8530-1; Tex.Pen.Code (Vernon), 1936, Art. 1659; Va.Code 1942, Secs. 4097z-4097dd.

[Footnote 26] Ala.Code 1940, Tit. 48, Sec. 268.

[Footnote 27] Ala.Code, 1940, Tit. 1, Sec. 2; Ark.Stat. (Pope), 1937, Sec. 1200 (separate Coach law); Ga.Code (Michie Supp.), 1928, Sec. 2177; Okla.Const., Art. XXIII, Sec. 11; Va.Code (Michie), 1942, Sec. 67.

[Footnote 28] Compare Va.Code, 1887, Sec. 49, providing that those who had one- fourth or more Negro blood were to be considered colored. This was changed in 1910 (Acts, 1910, p. 581) to read one-sixteenth or more. It was again changed in 1930 by Acts, 1930, p. 97, to its present form, i.e., any ascertainable Negro blood. See note 22, supra.

[Footnote 29] 95 U.S. at page 489:

> 'It was to meet just such a case that the commercial clause in the Constitution was adopted. The river Mississippi passes through or along the borders of ten different States, and its tributaries reach many more. The commerce upon these waters is immense, and its regulation clearly a matter of national concern. If each State was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship. Each State could provide for its own passengers and regulate the transportation of its own freight, regardless of the interests of others. Nay more, it could prescribe rules by which the carrier must be governed within the State in respect to passengers and property brought from without. On one side of he river or its tributaries he might be required to observe one set of rules, and on the other another. Commerce cannot flourish in the midst of such embarrassments. No carrier of passengers can conduct his business with satisfaction to himself, or comfort to those employing him, if on one side of a State line his passengers, both white and colored, must be permitted to occupy the same cabin, and on the other be kept separate. Uniformity in the regulations by which he is to be governed from one end to the other of his route is a necessity in his business, and to secure it Congress, which is untrammelled by State lines, has been invested with the exclusive legislative power of determining what such regulations shall be. If this statute can be enforced against those engaged in inter-state commerce, it may be as well against those engaged in foreign; and the master of a ship clearing from New Orleans for Liverpool, having passengers on board, would be compelled to carry all, white and colored, in the same cabin during his passage down the river, or be subject to an action for damages, 'exemplary as well as actual,' by any one who felt himself aggrieved because he had been excluded on account of his color.'

See Louisville, etc., Railway Co. v. Mississippi, 133 U.S. 587, 590, 591 S., 10 S.Ct. 348, 349.

A regulation of the number of passengers on interstate street cars was held invalid in South Covington & C. St. R. Co. v. Covington, 235 U.S. 537, 547, 35 S.Ct. 158, 161, L.R.A.1915F, 792. This Court said at pages 547, 548, at page 161 of 35 S.Ct.:

> 'If Covington can regulate these matters, certainly Cincinnati can, and interstate business might be impeded by conflicting and varying regulations in this respect, with which it might be impossible to comply. On one side of the river one set of regulations might be enforced, and on the other side quite a different set, and both seeking to control a practically continuous movement of cars. As was said in Hall v. De Cuir, 95 U.S. 485, 489, 548 S., 'commerce cannot flourish in the midst of such embarrassments."

[Footnote 30] South Covington, etc., R. Co. v. Kentucky, 252 U.S. 399, 40 S.Ct. 378, relied upon by appellee, does not decide to the contrary of the holding in Hall v. De Cuir. In that case a carrier corporation was convicted in the Kentucky courts of violation of a state statute that required it to furnish cars with separate compartments for white and colored. It operated street cars interstate over the lines of another corporation that owned tracks that were wholly intrastate. The Court of Appeals of Kentucky held the conviction good on the ground that the offending act was the operation of the intrastate railroad in violation of the state statute. It was said that the statute did not apply to an interstate passenger. South Covington & C. Street R. Co. v. Commonwealth, 181 Ky. 449, 454, 205 S.W. 603. The Court of Appeals referred, with continual approval, at that point to Chiles v. Chesapeake & Ohio R. Co., 125 Ky. 299, 304, 101 S.W. 386, 387, 11 L.R.A.,N.S., 268: 'It is admitted that section 795-801 of the Kentucky Statutes, requiring all railroad companies to furnish separate coaches for transportation of white and colored passengers, and imposing upon the company and conductors a penalty for refusing or failing to carry out the provisions of the law, does not apply to appellant, who was an interstate passenger; it being conceded that the statute is only operative within the territorial limits of this state, and effective as to passengers who travel from one point within the state to another place within its border.' This Court accepted this application of the state statute and said it 'is not a regulation of interstate commerce.' 252 U.S. at page 403, 40 S.Ct. at page 379. Probably what was meant by the opinions was that under the Kentucky act the company with wholly intrastate mileage must operate cars with separate compartments for intrastate passengers.

[Footnote 31] Anderson v. Louisville & N.R. Co., C.C., 62 F 46, 48; Washington, B. & A. Electric R. Co. v. Waller, 53 App.D.C. 200, 289 F. 598, 30 A.L.R. 50. See also Hart v. State, 100 Md. 595, 60 A. 457; Carrey v. Spencer, Sup ., 36 N.Y.S. 886.

[Footnote 1] Nippert v. Richmond, 327 U.S. 416, 66 S.Ct. 586; Southern Pacific Co. v. Arizona, 325 U.S. 761, 65 S.Ct. 1515; McCarroll v. Dixie Greyhound Lines, 309 U.S. 176, 60 S.Ct. 504; Gwin, White & Prince v. Henneford, 305 U.S. 434, 59 S.Ct. 325; Adams Mfg. Co. v. Storen, 304 U.S. 307, 58 S.Ct. 913, 117 A. L.R. 429.

[Footnote 1] Steamboats: Acts of 1899-1900, p. 340; electric or street cars: Acts of 1902-1904, p. 990; railroads: Acts of 1902-1904, p. 987. Va.Code Ann. 1942, 4022-4025; 3978-3983; 3962-3969.

[Footnote 2] Southern Pacific Co. v. Arizona, 325 U.S. 761, 769, 65 S.Ct. 1515, 1520.

[Footnote 3] See Parker v. Brown, 317 U.S. 341, 362, 63 S.Ct. 307, 319; Di Santo v. Pennsylvania, 273 U.S. 34, 44, 47 S.Ct. 267, 271.

[Footnote 4] Terminal R. Ass'n v. Brotherhood of Railroad Trainmen, 318 U.S. 1, 8, 63 S.Ct. 420, 424.

[Footnote 5] Hall v. DeCuir, 95 U.S. 485, does not require the conclusion reached by the Court in this case. The Louisiana statute in the De Cuir case could have been invalidated, at that time and place, as an undue burden on interstate commerce under the rules clearly stated by Chief Justice Stone in Southern Pacific Co. v. Arizona, supra, and as applied in this dissenting opinion. If the De Cuir case is

followed without weighing the surrounding facts it would invalidate today statutes in New England states prohibiting racial separation in seating arrangements on carriers, which would not be invalidated under the doctrine stated in the Arizona case.

[Footnote 6] See H.R. 8821, 75th Cong., 3d Sess., 83 Cong.Rec. 74; H.R. 182, 76th Cong., 1st Sess., 84 Cong.Rec. 27; H.R. 112, 77th Cong., 1st Sess., 87 Cong.Rec. 13.

Sweatt v. Painter – case summary

In 1946, Herman Marion Sweatt, a black man, applied for admission to the University of Texas Law School. State law restricted access to the university to whites, and Sweatt's application was automatically rejected because of his race. When Sweatt asked the state courts to order his admission, the university attempted to provide separate but equal facilities for black law students. In a unanimous decision, the Court held that the Equal Protection Clause required that Sweatt be admitted to the university. The Court found that the "law school for Negroes," which was to have opened in 1947, would have been grossly unequal to the University of Texas Law School. The Court argued that the separate school would be inferior in a number of areas, including faculty, course variety, library facilities, legal writing opportunities, and overall prestige. The Court also found that the mere separation from the majority of law students harmed students' abilities to compete in the legal arena.

U.S. Supreme Court

Sweatt v. Painter, 339 U.S. 629 (1950) **328 U.S. 373**

Sweatt v. Painter

No. 44

Argued April 4, 1950

Decided June 5, 1950

339 U.S. 629

CERTIORARI TO THE SUPREME COURT OF TEXAS

Syllabus

Petitioner was denied admission to the state supported University of Texas Law School, solely because he is a Negro and state law forbids the admission of Negroes to that Law School. He was offered, but he refused, enrollment in a separate law school newly established by the State for Negroes. The University of Texas Law School has 16 full-time and three part-time professors, 850 students, a library of 65,000 volumes, a law review, moot court facilities, scholarship funds, an Order of the Coif affiliation, many distinguished alumni, and much tradition and prestige. The separate law school for Negroes has five full-time professors, 23 students, a library of 16,500 volumes, a practice court, a legal aid association, and one alumnus admitted to the Texas Bar, but it excludes from its student body members of racial groups which number 85% of the population of the State and which include most of the lawyers, witnesses, jurors, judges, and other officials with whom petitioner would deal as a member of the Texas Bar.

Held: The legal education offered petitioner is not substantially equal to that which he would receive if admitted to the University of Texas Law School, and the Equal Protection Clause of the Fourteenth Amendment requires that he be admitted to the University of Texas Law School. Pp. 343 U. S. 631-636.

Reversed.

A Texas trial court found that a newly established state law school for Negroes offered petitioner "privileges, advantages, and opportunities for the study of law substantially equivalent to those offered by the State to white students at the University of Texas," and denied mandamus to compel his admission to the University of Texas Law School. The Court of Civil Appeals affirmed. 210 S.W.2d 442. The Texas Supreme Court denied writ of error. This Court granted certiorari. 338 U.S. 865. *Reversed,* p. 339 U. S. 636.

Page 339 U. S. 631

MR. CHIEF JUSTICE VINSON delivered the opinion of the Court.

This case and *McLaurin v. Oklahoma State Regents, post,* p. 339 U. S. 637, present different aspects of this general question: to what extent does the Equal Protection Clause of the Fourteenth Amendment limit the power of a state to distinguish between students of different races in professional and graduate education in a state university? Broader issues have been urged for our consideration, but we adhere to the principle of deciding constitutional questions only in the context of the particular case before the Court. We have frequently reiterated that this Court will decide constitutional questions only when necessary to the disposition of the case at hand, and that such decisions will be drawn as narrowly as possible. *Rescue Army v. Municipal Court,* 331 U. S. 549 (1947), and cases cited therein. Because of this traditional reluctance to extend constitutional interpretations to situations or facts which are not before the Court, much of the excellent research and detailed argument presented in these cases is unnecessary to their disposition.

In the instant case, petitioner filed an application for admission to the University of Texas Law School for the February, 1946, term. His application was rejected solely because he is a Negro. [Footnote 1] Petitioner thereupon brought this suit for mandamus against the appropriate school officials, respondents here, to compel his admission. At that time, there was no law school in Texas which admitted Negroes.

The state trial court recognized that the action of the State in denying petitioner the opportunity to gain

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a legal education while granting it to others deprived him of the equal protection of the laws guaranteed by the Fourteenth Amendment. The court did not grant the relief requested, however, but continued the case for six months to allow the State to supply substantially equal facilities. At the expiration of the six months, in December, 1946, the court denied the writ on the showing that the authorized university officials had adopted an order calling for the opening of a law school for Negroes the following February. While petitioner's appeal was pending, such a school was made available, but petitioner refused to register therein. The Texas Court of Civil Appeals set aside the trial court's judgment and ordered the cause "remanded generally to the trial court for further proceedings without prejudice to the rights of any party to this suit."

On remand, a hearing was held on the issue of the equality of the educational facilities at the newly established school as compared with the University of Texas Law School. Finding that the new school offered petitioner

"privileges, advantages, and opportunities for the study of law substantially equivalent to those offered by the State to white students at the University of Texas,"

the trial court denied mandamus. The Court of Civil Appeals affirmed. 210 S.W.2d 442 (1948). Petitioner's application for a writ of error was denied by the Texas Supreme Court. We granted certiorari, 338 U.S. 865 (1949), because of the manifest importance of the constitutional issues involved.

The University of Texas Law School, from which petitioner was excluded, was staffed by a faculty of sixteen full-time and three part-time professors, some of whom are nationally recognized authorities in their field. Its student body numbered 850. The library contained over 65,000 volumes. Among the other facilities available to the students were a law review, moot court facilities,

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scholarship funds, and Order of the Coif affiliation. The school's alumni occupy the most distinguished positions in the private practice of the law and in the public life of the State. It may properly be considered one of the nation's ranking law schools.

The law school for Negroes which was to have opened in February, 1947, would have had no independent faculty or library. The teaching was to be carried on by four members of the University of Texas Law School faculty, who were to maintain their offices at the University of Texas while teaching at both institutions. Few of the 10,000 volumes ordered for the library had arrived, [Footnote 2] nor was there any full-time librarian. The school lacked accreditation.

Since the trial of this case, respondents report the opening of a law school at the Texas State University for Negroes. It is apparently on the road to full accreditation. It has a faculty of five full-time professors; a student body of 23; a library of some 16,500 volumes serviced by a full-time staff; a practice court and legal aid association, and one alumnus who has become a member of the Texas Bar.

Whether the University of Texas Law School is compared with the original or the new law school for Negroes, we cannot find substantial equality in the educational opportunities offered white and Negro law students by the State. In terms of number of the faculty, variety of courses and opportunity for specialization, size of the student body, scope of the library, availability of law

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review and similar activities, the University of Texas Law School is superior. What is more important, the University of Texas Law School possesses to a far greater degree those qualities which are incapable of objective measurement but which make for greatness in a law school. Such qualities, to name but a few, include reputation of the faculty, experience of the administration, position and influence of the alumni, standing in the community, traditions and prestige. It is difficult to believe that one who had a free choice between these law schools would consider the question close.

Moreover, although the law is a highly learned profession, we are well aware that it is an intensely practical one. The law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts. Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned. The law school to which Texas is willing to admit petitioner excludes from its student body members of the racial groups which number 85% of the population of the State and include most of the lawyers, witnesses, jurors, judges and other officials with whom petitioner will inevitably be dealing when he becomes a member of the Texas Bar. With such a substantial and significant segment of society excluded, we cannot conclude that the education offered

petitioner is substantially equal to that which he would receive if admitted to the University of Texas Law School.

It may be argued that excluding petitioner from that school is no different from excluding white students from the new law school. This contention overlooks realities. It is unlikely that a member of a group so decisively in the majority, attending a school with rich traditions and

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prestige which only a history of consistently maintained excellence could command, would claim that the opportunities afforded him for legal education were unequal to those held open to petitioner. That such a claim, if made, would be dishonored by the State is no answer. "Equal protection of the laws is not achieved through indiscriminate imposition of inequalities." *Shelley v. Kraemer,* 334 U. S. 1, 334 U. S. 22 (1948).

It is fundamental that these cases concern rights which are personal and present. This Court has stated unanimously that

"The State must provide [legal education] for [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."

Sipuel v. Board of Regents, 332 U. S. 631, 332 U. S. 633 (1948). That case

"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."

Fisher v. Hurst, 333 U. S. 147, 333 U. S. 150 (1948). In *Missouri ex rel. Gaines v. Canada,* 305 U. S. 337, 305 U. S. 351 (1938), the Court, speaking through Chief Justice Hughes, declared that

"petitioner's right was a personal one. It was as an individual that he was entitled to the equal protection of the laws, and the State was bound to furnish him within its borders facilities for legal education substantially equal to those which the State there afforded for persons of the white race, whether or not other negroes sought the same opportunity."

These are the only cases in this Court which present the issue of the constitutional validity of race distinctions in state supported graduate and professional education.

In accordance with these cases, petitioner may claim his full constitutional right: legal education equivalent to that offered by the State to students of other races. Such education is not available to him in a separate law school as offered by the State. We cannot, therefore,

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agree with respondents that the doctrine of *Plessy v. Ferguson,* 163 U. S. 537 (1896), requires affirmance of the judgment below. 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. *See supra,* p. 339 U. S. 631.

We hold that the Equal Protection Clause of the Fourteenth Amendment requires that petitioner be admitted to the University of Texas Law School. The judgment is reversed, and the cause is remanded for proceedings not inconsistent with this opinion.

Reversed.

[Footnote 1]

It appears that the University has been restricted to white students, in accordance with the State law. *See* Tex.Const., Art. VII, §§ 7, 14; Tex.Rev.Civ.Stat. (Vernon, 1925), Arts. 2643b (Supp. 1949), 2719, 2900.

[Footnote 2]

"Students of the interim School of Law of the Texas State University for Negroes [located in Austin, whereas the permanent School was to be located at Houston] shall have use of the State Law Library in the Capitol Building. . . ."

Tex.Laws 1947, c. 29, § 11, Tex.Rev.Civ.Stat. (Vernon, 1949 Supp.), note to Art. 2643b. It is not clear that this privilege was anything more than was extended to all citizens of the State.

Websites for Case Law

http://www.findlaw.com

http://www.law.cornell.edu/federal/opinions.html

http://oyez.org

http://www.justia.com/

http://www.texasbar.com

How to Brief a Case Using the "IRAC" Method

When briefing a case, your goal is to reduce the information from the case into a format that will provide you with a helpful reference in class and for review. Most importantly, by "briefing" a case, you will grasp the problem the court faced (the issue); the relevant law the court used to solve it (the rule); how the court applied the rule to the facts (the application or "analysis"); and the outcome (the conclusion). You will then be ready to not only discuss the case, but to compare and contrast it to other cases involving a similar issue.

Before attempting to "brief" a case, read the case at least once.

Follow the "IRAC" method in briefing cases:

Facts*

Write a brief summary of the facts as the court found them to be. Eliminate facts that are not relevant to the court's analysis. For example, a business's street address is probably not relevant to the court's decision of the issue of whether the business that sold a defective product is liable for the resulting injuries to the plaintiff. However, suppose a customer who was assaulted as she left its store is suing the business. The customer claims that her injuries were the reasonably foreseeable result of the business's failure to provide security patrols. If the business is located in an upscale neighborhood, then perhaps it could argue that its failure to provide security patrols is reasonable. If the business is located in a crime-ridden area, then perhaps the customer is right. Instead of including the street address in the case brief, you may want to simply describe the type of neighborhood in which it is located. (Note: the time of day would be another relevant factor in this case, among others).

Procedural History*

What court authored the opinion: The United States Supreme Court? The California Court of Appeal? The Ninth Circuit Court of Appeals? (Hint: Check under the title of the case: The Court and year of the decision will be given). If a trial court issued the decision, is it based on a trial, or motion for summary judgment, etc.? If an appellate court issued the decision, how did the lower courts decide the case?

* This applies to case briefs only, and not exams. Use the IRAC method in answering exams: Issue/Rule/Analysis/Conclusion.

Issue

What is the question presented to the court? Usually, only one issue will be discussed, but sometimes there will be more. What are the parties fighting about and what are they asking the court to decide? For example, in the case of the assaulted customer, the issue for a trial court to decide might be whether the business had a duty to the customer to provide security patrols. The answer to the question will help to ultimately determine whether the business is liable for negligently failing to provide security patrols: whether the defendant owed plaintiff a duty of care, and what that duty of care is, are key issues in negligence claims.

Rule(s):

Determine what the relevant rules of law are that the court uses to make its decision. These rules will be identified and discussed by the court. For example, in the case of the assaulted customer, the relevant rule of law is that a property owner's duty to prevent harm to invitees is determined by balancing the foreseeability of the harm against the burden of preventive measures. There may be more than one relevant rule of law to a case: for example, in a negligence case in which the defendant argues that the plaintiff assumed the risk of harm, the relevant rules of law could be the elements of negligence, and the definition of "assumption of risk" as a defense. Don't just simply list the cause of action, such as "negligence" as a rule of law: What rule must the court apply to the facts to determine the outcome?

Application/Analysis:

This may be the most important portion of the brief. The court will have examined the facts in light of the rule, and probably considered all "sides" and arguments presented to it. How courts apply the rule to the facts and analyze the case must be understood in order to properly predict outcomes in future cases involving the same issue. What does the court consider to be a relevant fact given the rule of law? How does the court interpret the rule: for example, does the court consider monetary costs of providing security patrols in weighing the burden of preventive measures? Does the court imply that if a business is in a dangerous area, then it should be willing to bear a higher cost for security? Resist the temptation to merely repeat what the court said in analyzing the facts: what does it mean to you? Summarize the court's rationale in your own words. If you encounter a word that you do not know, use a dictionary to find its meaning.

Conclusion

What was the final outcome of the case? In one or two sentences, state the court's ultimate finding. For example, the business did not owe the assaulted customer a duty to provide security patrols.

Note: "Case briefing" is a skill that you will develop throughout the semester. Practice will help you develop this skill. Periodically, case briefs will be collected for purposes of feedback. At any time, you may submit your case brief(s) for feedback.