Plessy v. Ferguson and the Debate over "Separate but Equal"

Introduction: In 1865, the 13th Amendment to the United States Constitution ended slavery and involuntary servitude. The 14th Amendment, ratified in 1868, defined national citizenship for the first time and extended citizenship rights and the equal protection of the laws to newly emancipated African Americans. The 15th Amendment, added in 1870, was intended to insure the right to vote of African American males. In 1890, Louisiana passed a law requiring that White and Black passengers ride in separate railway and street cars. The penalty for violating the law was either a fine of $25 or 20 days in jail. This law was one of a large number of "Jim Crow" laws promoting racial segregation that were passed in the South at the end of Reconstruction. In New Orleans in 1892, a thirty-year-old African American man named Homer Plessy challenged the law and insisted on riding in a car designated for "White" passengers. John Ferguson was the judge who initially ruled against Plessy . The case was eventually appealed to the United States Supreme Court, which by a vote of 7 to 1, upheld the constitutionality of the Louisiana law. Associate Justice Henry Brown delivered the majority opinion for the Court. The lone dissenting vote was cast by Associate Justice John Harlan. Harlan was from Kentucky and was a former slave owner. Many of his views on segregation and the law were later included in the *Brown v. Topeka, Kansas Board of Education* decision that overturned *de jure* (legal) racial segregation in the United States.

A. Section 1 of the Fourteenth Amendment to the United States Constitution (1868)

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.

B. Associate Justice Henry Brown Presents the Majority View in Plessy v. Ferguson (1896)

a. The object of the [14th] amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality. . . . Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children . . . .

b. [T]he case reduces itself to the question whether the statute of Louisiana is a reasonable regulation. . . . In determining the question of reasonableness it is at liberty to act with reference to the established usages, customs and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order. Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable, or more obnoxious to the Fourteenth Amendment than the acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures.

c. We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it. . . . .The argument also assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the negro except by an enforced commingling of the two races. We cannot accept this proposition. . . .

d. Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane. . . .

C. Associate Justice John Harlan Dissents in Plessy v. Ferguson.

a. [S]uch legislation, as that here in question, is inconsistent not only with that equality of rights which pertains to citizenship, National and State, but with the personal liberty enjoyed by every one within the United States. . . . [I]n view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of

citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. It is, therefore, to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a State to regulate the enjoyment by citizens of their civil rights solely upon the basis of race. . . .

b. The present decision . . . will not only stimulate aggressions, more or less brutal and irritating, upon the admitted rights of colored citizens, but will encourage the belief that it is possible, by means of state enactments, to defeat the beneficent purposes which the people of the United States had in view when they adopted the recent amendments of the Constitution, by one of which the blacks of this country were made citizens of the United States and of the States in which they respectively reside, and whose privileges and immunities, as citizens, the States are forbidden to abridge. Sixty millions of whites are in no danger from the presence here of eight millions of blacks. The destinies of the two races, in this country, are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law. . . .

c. If evils will result from the commingling of the two races upon public highways established for the benefit of all, they will be infinitely less than those that will surely come from state legislation regulating the enjoyment of civil rights upon the basis of race. We boast of the freedom enjoyed by our people above all other peoples. But it is difficult to reconcile that boast with a state of the law which, practically, puts the brand of servitude and degradation upon a large class of our fellow-citizens, our equals before the law. . . .

d. (T)he statute of Louisiana is inconsistent with the personal liberty of citizens, white and black, in that State, and hostile to both the spirit and letter of the Constitution of the United States. If laws of like character should be enacted in the several States of the Union, the effect would be in the highest degree mischievous. Slavery, as an institution tolerated by law would . . . have disappeared from our country, but there would remain a power in the States, by sinister legislation, to interfere with the full enjoyment of the blessings of freedom. . . .

D. Louisiana's Separate Car Law. **Source**: *The New York Times*, May 19, 1896

The Supreme Court to-day, in an opinion read by Justice Brown, sustained the constitutionality of the law of Louisiana requiring the railroads of the State to provide separate cars for white and colored passengers. There was no inter State commerce feature in the case, for the railroad upon which the incident occurred giving rise to the case - Plessy vs. Ferguson - the East Louisiana Railroad - was and is operated wholly within the State. The opinion states that by analogy to the laws of Congress and of many of the States, requiring the establishment of separate schools for children of the two races, and other similar laws, the statute in question was within the competency of the Louisiana Legislature, exercising the police power of the State. The judgment of the Supreme Court of the State, upholding the law, was therefore affirmed. Mr. Justice Harlan announced a very vigorous dissent, saying that he saw nothing but mischief in all such laws. In his view of the case, no power in the land had the right to regulate the enjoyment civil rights upon the basis of race. It would be just as reasonable and proper, he said, for states to pass laws requiring separate cars to be furbished for Catholics and Protestants, or for descendants of those of the Teutonic race and those of the Latin race.

Questions

1. According to the Fourteenth Amendment, who is a citizen of the United States?
2. What limitations does the Fourteenth Amendment place on the power of the States?
3. The majority opinion of the court accepts that the Fourteenth Amendment established the "absolute equality of the two races before the law," yet still rules that segregated railway cars are legal. How does Justice Brown explain this position?
4. Why does Justice Harlan disagree with the majority opinion of the court?
5. Why are public schools mentioned by Justice Brown and in *The New York Times* article as justification for the majority decision?
6. According to Justice Harlan, based on this court decision, "Slavery, as an institution tolerated by law would . . . have disappeared from our country, but there would remain a power in the States, by sinister legislation, to interfere with the full enjoyment of the blessings of freedom." Do you agree or disagree? Why?

2. The Niagara Declaration of Principles (1905)

Introduction: In 1905, W.E.B. DuBois and a group of African American supporters met on the Canadian side of Niagara Falls to launch a campaign to challenge *Plessy v. Ferguson* and racial inequality in the United States. In 1909, the principles of the Niagara Movement were adopted by a newly formed civil rights organization, the National Association for the Advancement of Colored People.

1. Progress: The members of the conference, known as the Niagara Movement, . . . congratulate the Negro-Americans on certain undoubted evidences of progress in the last decade, particularly the increase of intelligence, the buying of property, the checking of crime, the uplift in home life, the advance in literature and art, and the demonstration of constructive and executive ability in the conduct of great religious, economic and educational institutions.
2. Suffrage: At the same time, we believe that this class of American citizens should protest emphatically and continually against the curtailment of their political rights. We believe in manhood suffrage; we believe that no man is so good, intelligent or wealthy as to be entrusted wholly with the welfare of his neighbor.
3. Civil Liberty: We believe also in protest against the curtailment of our civil rights. All American citizens have the right to equal treatment in places of public entertainment according to their behavior and deserts. . . .
4. Education: Common school education should be free to all American children and compulsory. High school training should be adequately provided for all, and college training should be the monopoly of no class or race in any section of our common country. We believe that, in defense of our own institutions, the United States should aid common school education, particularly in the South, and we especially recommend concerted agitation to this end. . . . .
5. Courts: We demand upright judges in courts, juries selected without discrimination on account of color and the same measure of punishment and the same efforts at reformation for black as for white offenders. . . .
6. Public Opinion: We note with alarm the evident retrogression in this land of sound public opinion on the subject of manhood rights, republican government and human brotherhood, arid we pray God that this nation will not degenerate into a mob of boasters and oppressors, but rather will return to the faith of the fathers, that all men were created free and equal, with certain unalienable rights.
7. Protest: We refuse to allow the impression to remain that the Negro-American assents to inferiority, is submissive under oppression and apologetic before insults. Through helplessness we may submit, but the voice of protest of ten million Americans must never cease to assail the ears of their fellows, so long as America is unjust.
8. Color-Line: Any discrimination based simply on race or color is barbarous, we care not how hallowed it be by custom, expediency or prejudice. . . .
9. Oppression: We repudiate the monstrous doctrine that the oppressor should be the sole authority as to the rights of the oppressed. The Negro race in America stolen, ravished and degraded, struggling up through difficulties and oppression, needs sympathy and receives criticism; needs help and is given hindrance, needs protection and is given mob-violence, needs justice and is given charity, needs leadership and is given cowardice and apology, needs bread and is given a stone. This nation will never stand justified before God until these things are changed.
10. Agitation: Of the above grievances we do not hesitate to complain, and to complain loudly and insistently. To ignore, overlook, or apologize for these wrongs is to prove ourselves unworthy of freedom. Persistent manly agitation is the way to liberty, and toward this goal the Niagara Movement has started and asks the cooperation of all men of all races.

Questions

1. What were the major goals of the Niagara Movement?
2. How did the Niagara Movement want to change education in the United States?
3. How did the founders of the Niagara Movement plan to achieve its goals?
4. In your opinion, have the goals of the Niagara Movement been achieved in the United States? Explain your view.

3. Charles Houston, "Educational Inequalities Must Go!" ***Crisis*** **(October 1935).**
Source: Peter Levy, ed. (1992). *Let Freedom Ring, A Documentary History of the Modern Civil Rights Movement*. NY: Praeger. p. 30-31.

Introduction: The NAACP legal campaign to overturn the majority decision in Plessy v. Ferguson was organized by Professor Charles Houston, Dean of the School of Law at Howard University. Houston was a Special Counsel to the NAACP. He used his law classes at Howard University as a laboratory for preparing a generation of lawyers, including Thurgood Marshall, to challenge segregation in the courts. This passage is from an article by Houston in the NAACP magazine *Crisis*.

a. The National Association for the Advancement of Colored People is launching an active campaign against race discrimination in public education. The campaign will reach all levels of public education from the nursery school through the university. The ultimate objective of the association is the abolition of all forms of segregation in public education, whether in the admission of activities of students, the appointment or advancement of teachers, or administrative control. The association will resist any attempt to extend segregated schools. Where possible it will attack segregation in schools. Where segregation is so firmly entrenched by law that a frontal attack cannot be made, the association will throw its immediate force toward bringing Negro schools up to an absolute equality with white schools. If the white South insists upon its separate schools, it must not squeeze the Negro schools to pay for them. . . .

b. The N.A.A.C.P. proposes to use every legitimate means at its disposal to accomplish actual equality of educational opportunity for Negroes. A legislative program is being formulated. Court action has already begun in Maryland to compel the University of Maryland to admit a qualified Negro boy to the law school of the university. Court action is imminent in Virginia to compel the University of Virginia to admit a qualified Negro girl in the graduate department of that university. Activity in politics will be fostered due to the political set-up of and control over public school systems. The press and the public forum will be enlisted to explain to the public the issues involved and to make both whites and Negroes realize the blight which inferior education throws over them, their children and their communities.

c. The campaign for equality of educational opportunity is indissolubly linked with all the other major activities of the association. . . . The N.A.A.C.P. recognizes the fact that the discrimination which the Negro suffers in education are merely part of the general pattern of race prejudice in American life, and it knows that no attack on discrimination in education can have any far reaching effect unless it is bound to a general attack on discrimination and segregation in all phases of American life. . . .

Questions
1. Who was Charles Houston?
2. What is the goal of the NAACP?
3. What strategies will the NAACP use to achieve its goals?
4. According to Houston, "no attack on discrimination in education can have any far reaching effect unless it is bound to a general attack on discrimination and segregation in all phases of American life." Do you agree or disagree with his position? Explain your view.

4. Preliminary Actions in the Campaign to Overturn Plessy v. Ferguson

Introduction: In order to establish new legal precedents in their campaign to overturn the Supreme Court's Plessy v. Ferguson decision, Thurgood Marshall and the NAACP challenged segregation in schools on a number of fronts. In 1946, Heman Sweatt, an African American letter carrier was denied admission to the University of Texas Law school because of his race. State and university officials offered to allow Sweatt to attend a separate law program. In 1948, George McLaurin, an African American student at the University of Oklahoma was permitted to use the same classrooms, library and cafeteria as White students, but was assigned to sit in separate sections designated for African American or Negro students. In both cases the court's decision was delivered by Chief Justice Vinson and the Supreme Court ruled that these were examples of illegal racial segregation. In 1951, Marshall and the NAACP challenged racial segregation in South Carolina public schools in the case of Briggs v. Elliot. The major decision of the District Court called for reform of the "Jim Crow" system and a gradual elimination of the disparity between Black and White schools in the state. A minority position declared school segregation inherently unequal. This case was later combined with Brown v. Topeka, Kansas Board of Education and covered under the Supreme Court's Brown decision.

A. Sweatt v. Painter (1950)

[A]lthough 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.

B. McLaurin v. Oklahoma State Regents (1950)

It is said that the separations imposed by the State in this case are in form merely nominal. . . . But they signify that the State, in administering the facilities it affords for professional and graduate study, sets McLaurin apart from the other students. The result is that appellant is handicapped in his pursuit of effective graduate instruction. Such restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession. Our society grows increasingly complex, and our need for trained leaders increases correspondingly. Appellant's case represents, perhaps, the epitome of that need, for he is attempting to obtain an advanced degree in education, to become, by definition, a leader and trainer of others. Those who will come under his guidance and influence must be directly affected by the education he receives. Their own education and development will necessarily suffer to the extent that his training is unequal to that of his classmates. State-imposed restrictions which produce such inequalities cannot be sustained.

C. Briggs v. Elliot, Majority Opinion delivered by Circuit Judge John Parker (1951)

There can be no question but that where separate schools are maintained for Negroes and whites, the educational facilities and opportunities afforded by them must be equal.. . . . How this shall be done is a matter for the school authorities and not for the court, so long as it is done in good faith and equality of facilities is afforded. . . . [S]egregation of the races in the public schools, so long as equality of rights is preserved, is a matter of legislative policy for the several states, with which the federal courts are powerless to interfere. . . . . In a country with a great expanse of territory with peoples of widely differing customs and ideas, local self government in local matters is essential to the peace and happiness of the people in the several communities as well as to the strength and unity of the country as a whole. . . . We conclude, therefore, that if equal facilities are offered, segregation of the races in the public schools as prescribed by the Constitution and laws of South Carolina is not of itself violative of the Amendment. We think that this conclusion is supported by overwhelming authority which we are not at liberty to disregard on the basis of theories advanced by a few educators and sociologists.

D. District Judge J. Waties Waring's Dissent in Briggs v. Elliot (1951)

Segregation is per se inequality. . . . The courts of this land have stricken down discrimination in higher education and have declared unequivocally that segregation is not equality. But these decisions have pruned away only the noxious fruits. Here in this case, we are asked to strike its very root. . . . To me the situation is clear and important, particularly at this time when our national leaders are called upon to show to the world that our democracy means what it says and that it is a true democracy and there is no under-cover suppression of the rights of any of our citizens because of the pigmentation of their skins. And I had hoped that this Court would take this view of the situation and make a clear cut declaration that the State of South Carolina should follow the intendment and meaning of the Constitution of the United States and that it shall not abridge the privileges accorded to or deny equal protection of its laws to any of its citizens.

Questions

1. In *Sweatt v. Painter* the court rules that the separate law school creates an "academic vacuum" that hinders the ability of students to learn. Why does the court take this position? Do you agree or disagree? Explain your view.
2. In *McLaurin v. Oklahoma State Regents*, the court argues that students under McLaurin's guidance would also be adversely affectedby this plan. Why? Do you agree or disagree? Explain your view.
3. In your opinion, are the *Sweatt v. Painter* and *McLaurin v. Oklahoma State Regents* sufficient to overturn the courts ruling in *Plessy v. Ferguson*? Explain your view.
4. What is the opinion of the majority of the court in *Briggs v. Elliot*?
5. Why does Judge Waring disagree with the majority opinion?
6. In *Briggs v. Elliot*, Judge Parker, writing for the majority, argued: "In a country with a great expanse of territory with peoples of widely differing customs and ideas, local self government in local matters is essential to the peace and happiness of the people in the several communities as well as to the strength and unity of the country as a whole." This statement was used to justify segregated schools. Write a statement expressing your own views that replys to Judge Parker.

5. "Appendix to Appellants' Brief," *Brown v. Board of Education, Topeka, Kansas*, September 1952.
Source: Peter Levy, ed. (1992). *Let Freedom Ring, A Documentary History of the Modern Civil Rights Movement*. NY: Praeger. p. 34-36.

Introduction: This statement was developed by a team of social scientists including Dr. Kenneth Clark, a psychologist at the City College of New York. It presents social science research documenting the painful effects of racial segregation on African American children. It includes conclusions based on Dr. Clark's research that used dolls of different colors to study the attitudes of young Black children toward their own identity. In 1951, Clark tested sixteen Black children in Claredon County, South Carolina. The children were all between the ages of six and nine years old. Eleven of the children characterized an African American doll as the "bad" doll. Nine selected a White doll as the "nice" doll. Seven of the African American children selected the White doll as the one that looked most like them.

a. The problem of segregation of racial and ethnic groups constitutes one of the major problems facing the American people today. It seems desirable, therefore, to summarize the contributions which contemporary social science can make toward its resolution. . . .

b. At the recent Mid-century White House Conference on Children and Youth, a fact-finding report on the effect of prejudice, discrimination and segregation on the personality of children was prepared as a basis for some of the deliberations. . . . . It highlighted the fact that segregation, prejudices and discriminations, and their social concomitants potentially damage the personality of all children – the children of the majority group in a somewhat different way than the more obviously damaged children of the minority group.

c. The report indicates that as minority group children learn the inferior status to which they are assigned – as they observe the fact that they are almost always segregated and kept apart from others who are treated with more respect by the society as a whole – they often react with feelings of inferiority and a sense of personal humiliation. Many of them become confused about their own personal worth. On the one hand, like all other human beings they require a sense of personal dignity; on the other hand, almost nowhere in the larger society do they find their own dignity as human beings respected by others. . . .

d. The report indicates that minority group children of all social and economic classes often react with a generally defeatist attitude and a lowering of personal ambitions. This, for example, is reflected in lower pupil morale and a depression of the educational aspiration level among minority group children in segregated schools. In producing such effects, segregated schools impair the ability of the child to profit from the educational opportunities provided him. . . .

Questions
1. In your opinion, how can the attitude of children toward dolls of different colors be used to study the attitudes of young Black children toward their own identity?
2. Why would school segregation by race lead to a "defeatist attitude and a lowering of personal ambitions" among African American children?
3. According to this report, "segregation, prejudices and discriminations, . . . potentially damage the personality of all children – the children of the majority group in a somewhat different way than the more obviously damaged children of the minority group." Do you agree or diagree with this position? Explain your view.
4. Many children in the United States still attend racially segregated schools. In your view, does school segregation continue to negatively affect the education of minority children? Explain.

6. The Challenge to Racial Segregation Moves Through the Courts

Introduction: The NAACP launched a series of court cases in four states and Washington DC to challenge racial segregation in public schools and overturn the Plessy v. Ferguson decision of 1896. Thurgood Marshall, the chief counsel for the NAACP argued that segregation perpetuated slavery and violated the 14th Amendment to the United States Constitution. In a brief to the Supreme Court, the United States Department of Justice advised that the Supreme Court had the constitutional authority to outlaw racial segregation in the public schools.

A. Supreme Court Asked to End School Segregation in Nation (1952)

Source: Luther A. Huston **,** The New York Times, December 10, 1952

a. Arguments began in the Supreme Court today on the question whether segregation of white and Negro students in separate schools violated the Federal Constitution. The arguments will continue through Thursday, but officials familiar with court procedure believed that it might be months before the nine justices rendered an opinion. Questions from the bench today indicated that the members of the court were gravely aware of the political, economic and social implications of the decision they were called on to make. When a participating lawyer remarked that "tough problems" were involved Justice Felix Frankfurter said, "That is why we are here." The proceedings are concerned with an attack, spearheaded by the National Association for the Advancement of Colored People, on the school segregation laws of four states, and the District of Columbia. Thirteen other states in which segregation is practiced will be affected by the high court's ruling. The basic laws before the court is the enduring one of the state's rights. The opponents of the segregation laws centered their case almost entirely on the argument that such statutes violated the section of the Fourteenth Amendment to the Constitution providing that no state "shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." The defense replied that no constitutional rights of Negro citizens were impaired by state segregation statutes. . . .

b. Thurgood Marshall, Negro counsel for the National Association for the Advancement of Colored People, who opened the argument in the South Carolina case, asserted that "slavery is perpetuated in these statutes." The original suit in South Carolina was filed on behalf of sixty-seven Negro children and their parents. They asked an injunction enjoining school officials in Clarendon County from "making a distinction on account of race and color, in maintaining public schools for Negro children which are inferior to those maintained for white children." The suit was filed in May, 1950. In June, 1951, a three-judge Federal court handed down a two-to-one decision upholding segregation but ordering the school board to furnish Negroes with "educational facilities, equipment, curricula and opportunities equal to their furnished white pupils." South Carolina had levied a 3 percent sales tax and floated a $75,000,000 bond issue to provide equal school facilities for white and Negro students, and a program designed to end admitted inequalities in facilities was under way. Mr. Marshall argued today, however, that the attack on the decision was not made on equality of facilities but on constitutional grounds. He asserted that the mandatory segregation provision of the South Carolina Constitution denied to Negroes the equal protection guaranteed under the Fourteenth Amendment.

B. High Court Urged To End School Bias (1953)

Source: Luther A. Huston, The New York Times, November 28, 1953

The Department of Justice advised the Supreme Court today that it had ample constitutional power to outlaw racial segregation in the public schools and should do so. It was a question, "not of legislative policy but of constitutional power," the department asserted in a brief filed with the clerk of the court, and "must ultimately be determined by this court on the basis of its construction of the Fourteenth Amendment." The Justice Department construed that amendment to compel "a state to grant the benefits of public education to all its people equally, without regard to differences of race or color."

Questions

1. What issue will the Supreme Court decide in the *Brown v. Topeka, Kansas Board of Education* case?
2. Why do opponents of the Brown case define the issue as a defense of States' rights?
3. What is the advise of the Department of Justice to the Supreme Court?

7. Supreme Court Decision, Brown v. Topeka, Kansas Board of Education (1954)

Introduction: The Supreme Court consolidated the NAACP legal challenges to racial segregation in public schools in Kansas, South Carolina, Virginia, and Delaware into one case known as *Brown v. Topeka, Kansas Board of Education*. On May 17, 1954, the Supreme Court issued a unanimous ruling overturning *Plessy v. Ferguson* and opposing legal, or *de jure*, racial segregation in public schools. Chief Justice Earl Warren delivered the opinion of the Court and ordered the school districts and the states that were defendants in the case to return to the Supreme Court with proposals to eliminate racial segregation in their school systems.

a. 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.

b. 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. . . .

c. To separate them [African American children] 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. . . .

d. 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. . . . We conclude that, in the field of public education, the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.

Questions

1. What legal precedent was established by the *Plessy v. Ferguson* decision?
2. The *Plessy* decision refered specifically to segregated railway cars. Why did it have a major impact on education?
3. According to the unanimous opinion of the court in *Brown v. Topeka, Kansas Board of Education,* why is racial segregation in public schools such a pressing national issue?
4. According to the unanimous opinion of the court, what is the impact of racial segregation on African American children?
5. In your opinion, why was it important that *Brown* was a a unanimous opinion of the court?

8. Public Responses to the Brown Decision
Source: The New York Times, May 18, 1954

A. Breathing Spell for Adjustment Tempers Region's Feelings by John N. Popham
a. The South's reaction to the Supreme Court's decision outlawing racial segregation in public schools appeared to be tempered considerably today. The time lag allowed for carrying out the required transitions seemed to be the major factor in that reaction. Southern leaders of both races in political, educational and community service fields expressed comment that covered a wide range. Some spoke bitter words that verged on defiance. Others ranged from sharp disagreement to predictions of peaceful and successful adjustment in accord with the ruling. But underneath the surface of much of the comment, it was evident that many Southerners recognized that the decision had laid down the legal principle rejecting segregation in public education facilities. They also noted that it had left open a challenge to the region to join in working out a program of necessary changes in the present biracial school systems. Three of the most illustrative viewpoints were those expressed by Govs. James F. Byrnes of South Carolina and Herman Talmadge of Georgia, and Harold Fleming, a spokesman for the Southern Regional Council, the most effective interracial organization in the South.

b. Governor Byrnes, who has vigorously defended the doctrine of separate but equal facilities in education, said that he was "shocked to learn that the court has reversed itself" with regard to past rulings on that doctrine. However, Governor Byrnes, a former Associate Justice of the Supreme Court, noted that the tribunal had not yet delivered its final decree setting forth the time and terms for ending segregation in the schools. Pointing out that South Carolina, a party in the litigation before the court, had until October to present arguments on how the Supreme Court should order the implementation of the decision. Governor Byrnes declared "I urge all of our people, white and colored, to exercise restraint and preserve order." Governor Talmadge repeatedly has vowed there "will never be mixed schools while I am Governor."

B. Historians Laud Court's Decision
Source: The New York Times, May 18, 1954

a. Dr. Merle Curti, Professor of History at the University of Wisconsin, said that the decision was momentous, and more so because it was unanimous. The court, he added, upheld the great principles of human dignity and equality of opportunity. "It is a great thing," he declared. "As far as what immediate effect the decision will have, it is hard to say. I think that temporarily the situation may cause some confusion. In the long run it will have a desirable effect on education. Education means living together and this is a great step toward that end. "The decision is important to the world. This shows the world that we have taken a great stride toward the principles in which we believe. It is a tremendous victory for us."

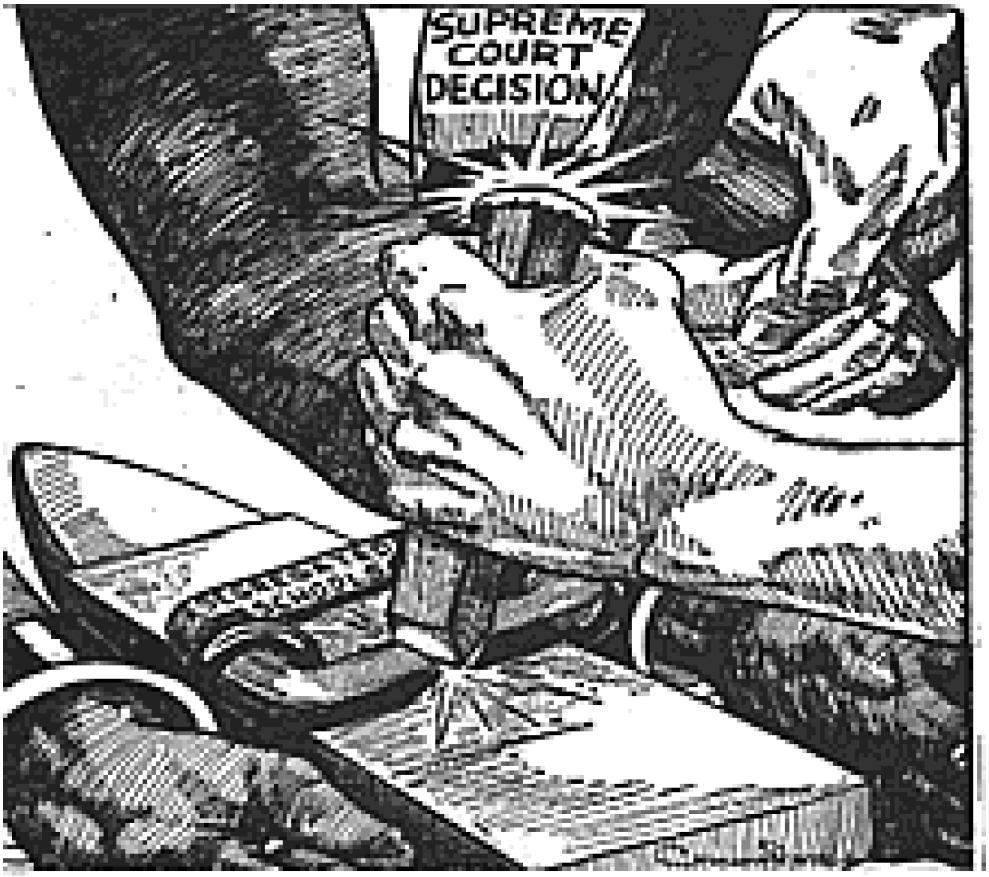
b. Dr. Arthur M. Schlesinger, Sr., History Professor at Harvard University, declared that "this is wonderful." The Supreme Court has finally reconciled the Constitution with the preamble of the Declaration of Independence," Dr. Schlesinger declared. "There will be a good many outcries against the decision and efforts to evade it by legislation. The decision will be a very great aid in clarifying to the world our conception of democracy."

c. Prof. Thomas Clark of the University of Kentucky said that segregation in this country was on its way out. Moreover, he added, if we are to present ourselves correctly to the rest of the world it must be on its way out. "It is the only decision the Supreme Court Could make," said Professor Clark. "The decision will have a wholesome effect on the rest of the world where we are always hammered on the race question. The decision comes at a good time."

Questions
1. Why was the "time lag" for implementing the Brown decision viewed as important?
2. How did Governors Byrnes of South Carolina and Herman Talmadge of Georgia respond to the decision?
3. In your view, why were these historians so positive in their reaction to the court's decision?

C. The African American Press Responds

Chicago Defender (Source: www.landmarkcases.org/brown/defender.html)



1. What is happening in this cartoon (especially describe the arms and what they are doing)?
2. In your opinion, what is the main idea of this political cartoon from the Chicago Defender?
3. Do you agree or disagree with the cartoonist? Explain your views.

Daily World (Atlanta) "The Decision of a Century," May 18, 1954
This case has attracted world attention; its import will be of great significance in these trying times when democracy itself is struggling to envision a free world. It will strengthen the position of our nation in carrying out the imposed duties of world leadership. Coming at this particular time, the decision serves as a boost to the spirit of Democracy, it accelerates the faith of intense devoutness in minorities, who have long believed in and trusted the courts. However, it has added significance to the citizens of Georgia who are now confronted with a proposed state constitutional amendment to turn the schools from public to private hands in the event the court did just what it has done. We predict now the defeat of this amendment.

Courier (Pittsburgh) "Will Stun Communists," May 18, 1954
The conscience of America has spoken through its constitutional voice. This clarion announcement will also stun and silence America's Communist traducers behind the Iron Curtain. It will effectively impress upon millions of colored people in Asia and Africa the fact that idealism and social morality can and do prevail in the United States, regardless of race, creed or color.

1. Why would this case attract world-wide attention and enhance the U.S. position in the world?
2. How does this decision boost the "spirit of democracy"?

9. The Southern Manifesto (1956)
Source: Congressional Record, 84th Congress Second Session. Vol. 102, part 4, March 12, 1956 (www.people.fas.harvard.edu/~bnjohns/SouthernManifesto.htm).

Introduction: In response to the Supreme Court's decision in *Brown v. Topeka, Kansas Board of Education*, nineteen United States Senators representing eleven southern states and seventy-seven members of the House of Representatives issued a "Declaration Of Constitutional Principles." In the declaration, they accused the Supreme Court of issuing an "unwarrented decision" and of exceeding its constitutional authority. They pledged "to use all lawful means to bring about a reversal of this decision."

a. The Founding Fathers gave us a Constitution of checks and balances because they realized the inescapable lesson of history that no man or group of men can be safely entrusted with unlimited power. . . . We regard the decisions of the Supreme Court in the school cases as a clear abuse of judicial power. It climaxes a trend in the Federal Judiciary undertaking to . . . . encroach upon the reserved rights of the States and the people.

b. The original Constitution does not mention education. Neither does the 14th Amendment nor any other amendment. The debates preceding the submission of the 14th Amendment clearly show that there was no intent that it should affect the system of education maintained by the States. The very Congress which proposed the amendment subsequently provided for segregated schools in the District of Columbia.

c. In the case of Plessy v. Ferguson in 1896 the Supreme Court expressly declared that under the 14th Amendment no person was denied any of his rights if the States provided separate but equal facilities. . . . This interpretation, restated time and again, became a part of the life of the people of many of the States and confirmed their habits, traditions, and way of life. It is founded on elemental humanity and commonsense, for parents should not be deprived by Government of the right to direct the lives and education of their own children. . . .

d. This unwarranted exercise of power by the Court, contrary to the Constitution, is creating chaos and confusion in the States principally affected. It isdestroying the amicable relations between the white and Negro races that have been created through 90 years of patient effort by the good people of both races. It has planted hatred and suspicion where there has been heretofore friendship and understanding. Without regard to the consent of the governed, outside mediators are threatening immediate and revolutionary changes in our public schools systems. If done, this is certain to destroy the system of public education in some of the States.

e. We reaffirm our reliance on the Constitution as the fundamental law of the land. We decry the Supreme Court's encroachment on the rights reserved to the States and to the people, contrary to established law, and to the Constitution. We commend the motives of those States which have declared the intention to resist forced integration by any lawful means. We pledge ourselves to use all lawful means to bring about a reversal of this decision which is contrary to the Constitution and to prevent the use of force in its implementation.

Questions
1. According to the members of the Senate and House of Representatives who signed this manifesto, why was the Brown decision incorrect?
2. In your opinion, what would have been the impact of this manifesto on efforts to implement the court ruling? Explain.
3. Imagine one of the signers of this manifesto was your elected representative. Write him a letter expressing your views on the Supreme Court decision and the manifesto.

10. Enforcing the Decision: President Eisenhower's "Address on Little Rock," September 25, 1957.
Source: Peter Levy, ed. (1992). *Let Freedom Ring, A Documentary History of the Modern Civil Rights Movement*. NY: Praeger. p. 46-48.

Introduction: The unanimous Supreme Court decision in *Brown v. the Topeka Kansas Board of Education* allowed segregated school systems to propose their own plans to reorganize. Many districts, especially in the South, actively resisted implementing the decision. In Little Rock, Arkansas, Governor Faubus and mobs of local Whites actively tried to block school desegregation. President Eisenhower, who had not spoken publicly about the integration of public schools or the Brown decision, finally acted to defend the federal courts and enforce "the law of the land." The photo on the right shows a hostile crowd harassing an African American student (Source: www.spartacus.schoolnet.co.uk/USALittleRock.htm).

a. My fellow citizens. . . . I must speak to you about the serious situation that has arisen in Little Rock. . . . In that city, under the leadership of demagogic extremists, disorderly mobs have deliberately prevented the carrying out of proper orders from a federal court. Local authorities have not eliminated that violent opposition and, under the law, I yesterday issued a proclamation calling upon the mob to disperse. This morning the mob again gathered in front of the Central High School of Little Rock, obviously for the purpose of again preventing the carrying out of the court's order relating to the admission of Negro children to that school. Whenever normal agencies prove inadequate to the task and it becomes necessary for the executive branch of the federal government to use its powers and authority to uphold federal courts, the President's responsibility is inescapable. In accordance with that responsibility, I have today issued an Executive Order directing the use of troops under federal authority to aid in the execution of federal law at Little Rock, Arkansas.

b. During the past several years, many communities in our southern states have instituted public school plans for gradual progress in the enrollment and attendance of school children of all races in order to bring themselves into compliance with the law of the land. They thus demonstrated to the world that we are a nation in which laws, not men, are supreme. . . . A foundation of our American way of life is our national respect for law. In the South, as elsewhere, citizens are keenly aware of the tremendous disservice that has been done to the people of Arkansas in the eyes of the nation, and that has been done to the nation in the eyes of the world.

c. At a time when we face grave situations abroad because of the hatred that communism bears toward a system of government based on human rights, it would be difficult to exaggerate the harm that is being done to the prestige and influence, and indeed to the safety, of our nation and the world. Our enemies are gloating over this incident and using it everywhere to misrepresent our whole nation. We are portrayed as a violator of those standards of conduct which the people of the world united to proclaim in the Charter of the United Nations. There they affirmed "faith in fundamental human rights" and "in the dignity and worth of the human person" and they did so "without distinction as to race, sex, language or religion."

d. I call upon the citizens of the State of Arkansas to assist in bringing an immediate end to all interference with the law and its processes. If resistance to the federal court orders ceases at once, the further presence of federal troops will be unnecessary and the City of Little Rock will return to its normal habits of peace and order and a blot upon the fair name and high honor of our nation in the world will be removed. Thus will be restored the image of America and all its parts as one nation, indivisible, with liberty and justice for all.

Questions

1. Why does President Eisenhower believe a "disservice" was done to the people of Arkansas by its leaders?
2. Why does President Eisnhower believe this resistance to the desegregation of schools is damaging the image of the United States?
3. In your opinion, why did President Eisnhower decide to send federal troops into Little Rock? Do you agree or disagree with his decision? Explain your view.

11. The Legacy of the Brown Decision

Introduction: The Civil Rights Movement and the African American community's challenge to racial segregation via the courts and through non-violent civil disobedience fundamentally transformed the United States. However it has not ended all forms of racial discrimination and social inequality. In August, 1963, nine years after the Brown decision, at the historic March on Washington, Martin Luther King, Jr. demanded that the United States finally live up to the promise of its Declaration of Independence and Constitution. In 1964 and 1965, new federal Civil Rights legislation signaled a new government effort to enforce the principal of equality before the law. However, many in the African American community, including Malcolm X, were skeptical about progress in the 1960s and whether these laws would ever be effective. For example, Title IV of the 1964 Civil Rights Act authorized but did not require withdrawal of federal funds from programs that practice discrimination. Many African Americans continue to be skeptical about the possibility for equality fifty years after the Brown v. Topeka, Kansas Board of Education decision.

A. "I Have A Dream" by Martin Luther King, Jr., delivered on the steps at the Lincoln Memorial in Washington D.C. on August 28, 1963

a. Five score years ago, a great American, in whose symbolic shadow we stand signed the Emancipation Proclamation. . . . .But one hundred years later, we must face the tragic fact that the Negro is still not free. One hundred years later, the life of the Negro is still sadly crippled by the manacles of segregation and the chains of discrimination. One hundred years later, the Negro lives on a lonely island of poverty in the midst of a vast ocean of material prosperity. One hundred years later, the Negro is still languishing in the corners of American society and finds himself an exile in his own land. So we have come here today to dramatize an appalling condition. In a sense we have come to our nation's capital to cash a check. When the architects of our republic wrote the magnificent words of the Constitution and the declaration of Independence, they were signing a promissory note to which every American was to fall heir. This note was a promise that all men would be guaranteed the inalienable rights of life, liberty, and the pursuit of happiness. . . . .

b. I say to you today, my friends, that in spite of the difficulties and frustrations of the moment, I still have a dream. It is a dream deeply rooted in the American dream. I have a dream that one day this nation will rise up and live out the true meaning of its creed: "We hold these truths to be self-evident: that all men are created equal." . . . And if America is to be a great nation this must become true. So let freedom ring. When we let freedom ring, when we let it ring from every village and every hamlet, from every state and every city, we will be able to speed up that day when all of God's children, black men and white men, Jews and Gentiles, Protestants and Catholics, will be able to join hands and sing in the words of the old Negro spiritual, "Free at last! free at last! thank God Almighty, we are free at last!"

B. Malcolm X declares "It's The Ballot Or The Bullet" (April 3, 1964)

a. If we don't do something real soon, I think you'll have to agree that we're going to be forced either to use the ballot or the bullet. It's one or the other in 1964. It isn't that time is running out - time has run out! 1964 threatens to be the most explosive year America has ever witnessed. . . . I'm not an American. I'm one of the 22 million black people who are the victims of Americanism. One of the 22 million black people who are the victims of democracy, nothing but disguised hypocrisy. So, I'm not standing here speaking to you as an American, or a patriot, or a flag-saluter, or a flag- waver-no, not I. I'm speaking as a victim of this American system. And I see America through the eyes of the victim. I don't see any American dream; I see an American nightmare. . . .

b. So it's time in 1964 to wake up. And when you see them coming up with that kind of conspiracy, let them know your eyes are open. And let them know you got something else that's wide open too. It's got to be the ballot or the bullet. The ballot or the bullet. If you're afraid to use an expression like that, you should get on out of the country, you should get back in the cotton patch, you should get back in the alley. . . . .

c. The same government that you go abroad to fight for and die for is the government that is in a conspiracy to deprive you of your voting rights, deprive you of your economic opportunities, deprive you of decent housing, deprive you of decent education. You don't need to go to the employer alone, it is the government itself, the government of America, that is responsible for the oppression and exploitation and degradation of black people in

this country. And you should drop it in their lap. This government has failed the Negro. This so-called democracy has failed the Negro. And all these white liberals have definitely failed the Negro.

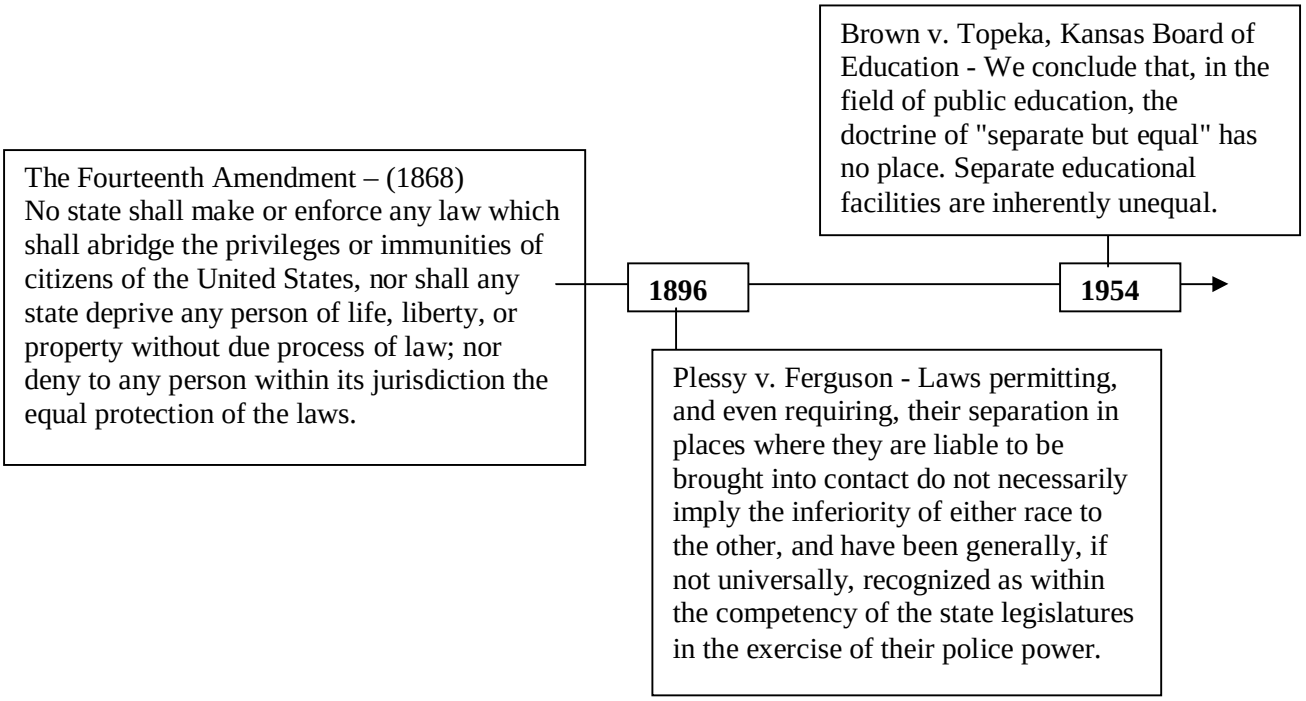
C. Excerpt from the Civil Rights Act of 1964: "An act to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunities, and for other purposes."

D. Lyndon Baines Johnson speaking on the Voting Rights Act (March 15, 1965)
Every American citizen must have an equal right to vote. Yet the harsh fact is that in many places in this country men and women are kept from voting simply because they are Negroes. Every device of which human ingenuity is capable has been used to deny this rights. The Negro citizen may go to register only to be told that the day is wrong, or the hour is late, or the official in charge is late, or the official in charge is absent. And if he persists and he manages to present himself to register, he may be disqualified because he did not spell out his middle name or because he abbreviated a word on his application. And if he manages to fill out an application he is given a test. The register is the sole judge of whether he passes his test. He may be asked to recite the entire constitution, or explain the most complex provisions of state laws. And even a college degree cannot be used to prove that he can read and write. For the fact is that the only way to pass these barriers is to show a white skin. This bill will strike down restrictions to voting in all elections - federal, State, and local - which have been used to deny Negroes the right to vote.

Questions
1. In your opinion, did Martin Luther King, Jr. agree or disagree with the goals established in the *Brown* decision? Explain your view.
2. Why did Malcolm X consider African Americans as victims of "Americanism"?
3. How did the Civil Rights Act of 1964 attempt to broaden the *Brown* decision?
4. Why did President Johnson strongly support the Voting Rights Act?
5. In your view, were the Civil Rights Act and the Voting Rights Act major events in the effort to make the United states a more equal society? Explain.
6. How do King and Malcom X differ in their views of the position of African Americans in the UnitedSstates? How are their opinions similar? Explain.
7. In your opinion, whose opinion, King or Malcom X, has proven to be a more accurate picture of race relations in the United States in the last forty years? Explain your view.

12. Activity: "Separate But Equal?" Time Line

Name:_____ Date:_____



1. Summarize the 14th Amendment in your own words.

2. What was the Supreme Court decision in Plessy v. Ferguson?

3. What was decided in Brown v. Topeka, Kansas Board of Education?

4. In your opinion, why was the Plessy v. Ferguson decision reversed?

13. Activity: Sweatt v. Painter &McLaurin v. Oklahoma State Regents

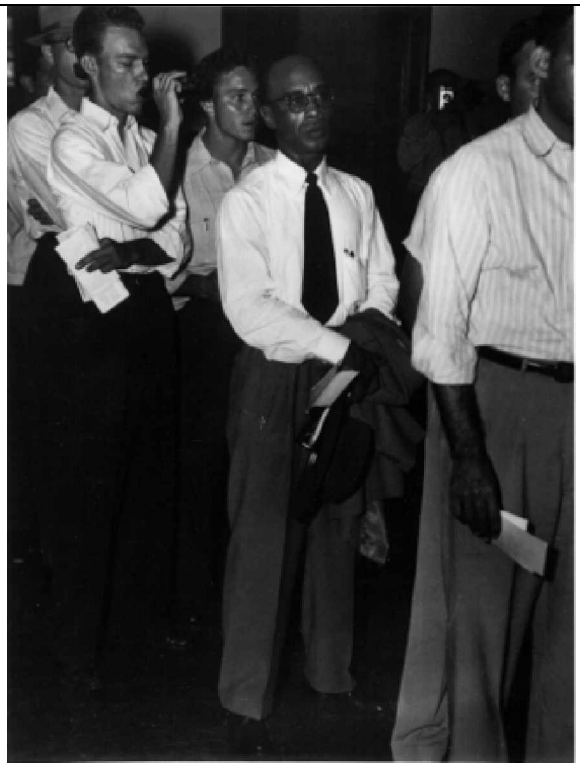
In the Case of *Plessy v. Ferguson* in 1896 the Supreme Court declared the doctrine of "Separate but Equal" constitutional. Across the nation this case was used as a precedence to continue the racist practice of segregation. The following two cases deal with later Supreme Court decisions rethinking the principle of Separate but Equal.

Sweatt v. Painter (1950)

Brief: In 1946, Heman Sweatt, a black letter carrier, sought admission to the University of Texas Law School. He was denied admission due to race he sued the university. The state of Texas response was to build an entirely separate law school for blacks in Houston. While that was happening, a makeshift law school specifically for blacks would be established in Austin.

Decision: The court ruled in favor of Heman Sweatt, and stated the following reasons: "In terms of number of faculty, variety of courses and opportunity for specialization, size of the student body, scope of the library, availability of law review and similar activity, the University of Texas Law School is superior [to the negro law school version]. What is more important, the University of Texas Law School possesses to a far greater degree those qualities which are incapable of objective measurement…to name but a few, reputation of the faculty, experience of the administration, position and influence of the alumni, standing in the community, traditions and prestige."

1. According to this excerpt from the courts decision, why did the court side with Sweatt?
2. Do you agree with the courts decision? Why?



Heman Sweatt registering for classes
Source: www.law.utexas.edu/rare/gifsexhibit/sweatt.gif

McLaurin v. Oklahoma State Regents (1950)

Brief: McLaurin, A Negro citizen of Oklahoma State with a master's degree was admitted to the University of Oklahoma in 1948.George McLaurin wanted to advance his education. He was permitted to use the same classroom, library and cafeteria as white students, however, he was assigned to a seat in the classroom in a row specified for Negro students, was assigned to a special table in the library, and, although permitted to eat in the cafeteria at the same time as other students, was assigned to a special table there.

Decision: The Court rules in favor of George McLaurin, and stated the following reasons: "These restrictions…set McLaurin apart from the other students. The result is that the appellant [McLaurin] is handicapped in his pursuit of effective graduate instruction. Such restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession…[the] appellant, having been admitted to a state supported graduate school, must receive the same treatment at the hands of the state as students of other races."

1. According to this excerpt from the courts decision, why did the court side with McLaurin?
2. Do you agree with the courts decision? Why or why not?
3. Which Amendment was most likely cited by the court in both cases?
4. Do either of these cases reverse the decision of the court in *Plessy v. Ferguson* and remove the doctrine of 'Separate but equal'? Why?

14. Activity: Separate But Equal Schools?

A. Photo images of Black and White schools in Prince Edward County, Virginia were taken by Dr. Edward H. Peeples, Jr. from 1961 through 1963. The images illustrate the differences between the resources that the county provided for its Black students and White students. According to Dr. Peeples' research, in 1951 all but one of the 15 black school buildings were wooden frame structures with no indoor toilet facilities, and had either wood, coal, or kerosene stoves for heat. All the white schools were made of brick, had indoor toilets, with steam or hot water heat. Compare the sets of pictures. In your opinion, are these racially segregated schools really "equal"? Explain your views.

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<td> 
(Source: www.library.vcu.edu/jbc/speccoll/pec02.html).</td>
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(Source: www.library.vcu.edu/jbc/speccoll/pec02.html).</td>
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<tr>
<td>This "temporary" building was built in 1949 and used for grades 2-3. It was covered with roofing paper and had a pupil capacity of 40 students The building had no windows, heat or indoor plumbing.</td>
<td>The Darlington Heights Elementary School for White students was built in 1927. An addition to the structure was added in 1937. The building had steam heat and indoor plumbing.</td>
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B. Photo images of the struggle to desgregate public schools.

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<td> 
www.ferris.edu/news/jimcrow/links/misclink/plessy/schoolroom.jpg</td>
<td> 
brownvboard.org/foundatn/vidbroc.htm</td>
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<td> 
www.spartacus.schoolnet.co.uk/USALittleRock.htm</td>
<td>Writing Activities
1. Write a paragraph description of what you see in each of the pictures.
2. Using one of the pictures and other research, write a newspaper story about the event shown in the picture.
3. Use the pictures, your descriptions and other research to write a report about the struggle to end racially segregated schools.</td>
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