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SUPREME COURT OF THE UNITED STATES

Nos. 1, 2, 4 AND 10.—OCTOBER TERM, 1953.

1	Oliver Brown, et al., Appellants, *v.* Board of Education of Topeka, Shawnee County, Kansas, et al.	On Appeal From the United States District Court for the District of Kansas.
2	Harry Briggs, Jr., et al., Appellants, *v.* R. W. Elliott, et al.	On Appeal From the United States District Court for the Eastern District of South Carolina.
4	Dorothy E. Davis, et al., Appellants, *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.
10	Francis B. Gebhart, et al., Petitioners, *v.* Ethel Louise Belton, et al.	On Writ of Certiorari to the Supreme Court of Delaware.
	Spotswood Bolling, et al, *v* C. Melvin Sharpe	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Columbia

but a common legal question justifies their consideration together in this consolidated opinion.[1]

In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in

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[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

obtaining admission to the public schools of their community on a nonsegregated basis. In each instance, they had been denied admission to schools attended by white children under laws requiring or permitting segre-

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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, extra-curricular 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

gation 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. *Ferguson,* 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.[2] Argument was heard in the 1952 Term, and reargument was heard this Term on certain questions propounded by the Court.[3]

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

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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.

[2] 344 U. S. 1, 141, 891.

[3] 345 U. S. 972. The Attorney General of the United States participated both Terms as *amicus curiae.*

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.[4] In the

[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 Crimen, *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.

South, the movement toward free common schools, supported 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 education had already 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.[5] The doctrine of

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[5] *Slaughter-House Cases,* 16 Wall. 36, 67–72 (1873); *Strauder* v. *West Virginia,* 100 U. S. 303, 307–308 (1879):

"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

"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.[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.[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.[8] In more recent cases, all on the graduate school 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.

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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, 318 (1879); *Ex parte Virginia,* 100 U. S. 339, 344–345 (1879).

[6] The doctrine apparently originated in *Roberts* v. *City of Boston,* 59 Mass. 198, 206 (1849), 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 until recent years. It is apparent that such segregation has long been a nationwide problem, not merely one of sectional concern.

[7] See also *Berea College* v. *Kentucky,* 211 U. S. 45 (1908).

[8] In the *Cumming* 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.

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.[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 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

[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.

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." 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 racially integrated school system." [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.[11] Any lan-

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[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.

[11] K. B. Clark, Effect of Prejudice and Discrimination on Personality Development (Midcentury 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).

guage 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.[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.[13] The Attorney General

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[12] See *Bolling* v. *Sharpe, infra,* concerning the Due Process Clause of the Fifth Amendment.

[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

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.[14]

It is so ordered.

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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?"

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

SUPREME COURT OF THE UNITED STATES

Bolling v. Sharpe (347 U.S. 497) (USSC+)

Argued December 10-11, 1952

Reargued December 9, 1953

Decided May 17, 1954 347 U.S. 497

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Opinion

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.
This case challenges the validity of segregation in the public schools of the District of Columbia. The petitioners, minors of the Negro race, allege that such segregation deprives them of due process of law under the Fifth Amendment. They were refused admission to a public school attended by white children solely because of their race. They sought the aid of the District Court for the District of Columbia in obtaining admission. That court dismissed their complaint. The Court granted a writ of certiorari before judgment in the Court of Appeals because of the importance of the constitutional question presented. 344 U.S. 873. We have this day held that the Equal Protection Clause of the Fourteenth Amendment prohibits the states from maintaining racially segregated public schools.

The legal problem in the District of Columbia is somewhat
different, however. The Fifth Amendment, which is applicable in the District of Columbia, does not contain an equal protection clause, as does the Fourteenth Amendment, which applies only to the states. But the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive. The "equal protection of the laws" is a more explicit safeguard of prohibited unfairness than "due process of law," and therefore we do not imply that the two are always interchangeable phrases. But, as this Court has recognized, discrimination may be so unjustifiable as to be violative of due process.

Classifications based solely upon race must be scrutinized with particular care, since they are contrary to our traditions, and hence constitutionally suspect. As long ago as 1896, this Court declared the principle
"that the constitution of the United States, in its present form, forbids, so far as civil and political rights are concerned, discrimination by the general government, or by the states, against any citizen because of his race." And in *Buchanan v. Warley,* 245 U. S. 60, the Court

held that a statute which limited the right of a property owner to convey his property to a person of another race was, as an unreasonable discrimination, a denial of due process of law.

Although the Court has not assumed to define "liberty" with any great precision, that term is not confined to mere freedom from bodily restraint. Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective. Segregation in public education is not reasonably related to any proper governmental objective, and thus it imposes on Negro children of the District of Columbia a burden that constitutes an arbitrary deprivation of their liberty in violation of the Due Process Clause.

In view of our decision that the Constitution prohibits the states from maintaining racially segregated public schools, it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government. We hold that racial segregation in the public schools of the District of Columbia is a denial of the due process of law guaranteed by the Fifth Amendment to the Constitution

SUPREME COURT OF THE UNITED STATES

Brown v. Board of Education, 347 U.S. 483 (1954) (USSC+)

Argued December 9, 1952

Reargued December 8, 1953

Decided May 17, 1954

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS*

Opinion

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.

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, 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. Ferguson, 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. Argument was heard in the 1952 Term, and reargument was heard this Term on certain questions propounded by the Court.

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. In the South, the movement toward free common schools, supported 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. The doctrine of "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. 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. 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. In more recent cases, all on the graduate school 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. 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 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." 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.

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

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 The Attorney General 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.

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.

TRIAL TESTIMONY IN *BROWN et al. v BOARD OF EDUCATION OF TOPEKA*: LOUISA HOLT

United States District Court District of Kansas

Direct examination by NAACP Attorney Robert Carter:

Q. Mrs. Holt, what is you occupation?

A. I am a social psychologist.

Q. Would you indicate to the Court what your educational background is.

A. I received the Bachelor's Degree, Master's Degree and Ph.D. all from Radcliff' College which is the feminine adjunct of Harvard University. This was in the field of sociology in the Department of Social Relations there, which includes cultural anthropology, clinical psychology, social psychology, as well as sociology.

Q. Ms. Holt, would you also describe your various job experiences?

A. Well, I started under an arrangement which gave me a kind of internship in public administration where I worked in the Federal Bureau of Prisons.

Q. Where was this?

A. For six months in Alderson, West Virginia; for about nine months in Washington. Following that, I had a year of graduate study concurrent with work .in a settlement house in Boston, South End House, and then was appointed an instructor in sociology at Skidmore College and also director of a college community center in Saratoga Springs. I was then returned to Radcliffe College where I was appointed n teaching fellow and tutor in sociology. Concurrently with that, I held a Sigmund Freud Memorial Fellowship at the Boston Psychoanalytic Institute in 1944 and 1945. Following these other jobs, I participated in some research work for the Family Society of Boston Psychoanalytic Institute with their vocational counseling service. I was then an educational counselor for the National Institute of Public Affairs in Washington. From 1947 to 1949 I held a part-time appointment in the Menninger Foundation School of Psychiatry and for part of that time in their school of clinical psychology affiliated with the University of Kansas.

Q. That is located in this city.

A. ·What's that?

A. Is that in Topeka?

A. Yes. In the interim, there was a post-doctorate fellowship of the National Institute of Mental Health. This past year I have been on the faculty of the University of Kansas in the Psychology Department, teaching courses in social psychology and personality and some of their inter-relations. At the same time, I also prepared a long paper for a United States Public Health Service Project in connection with the Mid-Century Whitehouse Conference on Children and Youth dealing with the problems, the methodology of evaluation mental health problems.

Q. What is your major field of interest, Mrs. Holt?

A. It's probably clear that I am interested in the relations between social process and social conditions and personality forming behavior.

Q. Are you a member of any professional societies?

A. The American Sociological Society, the Society for Applied Anthropology, Society for the Psychological Study of Social Issues, the American Society for Group Psychotherapy and Psychodrama, and I am an associate member of the Topeka Psychoanalytic Society.

Q. Mrs. Holt, are you at all familiar with the school system in Topeka?

A. Yes; I have one child who entered that system this last year and another who enters in September.

Q. You are then aware of the fact that the schools are operated on a segregated basis?

A. I am.

Q. Based upon your experience and knowledge, taking the segregated factor alone in the school system in Topeka

A. The fact that it is enforced, that it is legal, I think, has more importance than the mere fact of segregation by itself does because this gives logical and official sanction to a policy which inevitably is interpreted both by white people and by negroes as denoting the inferiority of the negro group. Were it not for the sense that one group is inferior to the other, there would be no basis, and I am not granting that this is a rational basis, for such segregation.

Q. Well, does this interference have any effect, in your opinion, on the learning process?

A. A sense of inferiority must always affect one's motivation for learning since it affects the feeling one has of oneself as a person, as a personality or a self or an ego

identity, as Eric Erickson has recently expressed it. That sense of ego identity is built up on the basis of attitudes that are expressed toward a person by others who are important. First the parents and then teachers, other people in the community, whether they are older or one's own peers. It is other people's reactions to one's self which most basically affects the conception of one's self that one has. If these attitudes that are reflected back and then internalized or projected, are unfavorable ones, then one develops a sense of one's own self as an inferior being, that may not be deleterious necessarily from the standpoint of educational motivation. I believe in some cases it can lead to stronger motivation to achieve well in academic pursuits, to strive to disprove the world that one is inferior since the world feels that one is inferior. In other cases, of course, the reaction may be the opposite and apathetic acceptance, fatalistic submission to the feeling others have expressed that one is inferior and therefore any efforts to prove otherwise would be doomed to failure.

Q. Now these difficulties that you have described, whether they give a feeling of inferiority which you were motivated to attempt to disprove to the world by doing more or whether they give you the feeling of inferiority and therefore cause you to do less, would you say that the difficulties which segregation causes in the public school system interfere with a well --- development of a well-rounded personality?

A. I think the maximum or maximal development of any personality can only be based on the potentialities which that individual himself possesses. Of course, they are affected for good or ill by the attitudes, opinions, feelings, which are expressed by others and which may be fossilized into laws. On the other hand, these can be overcome in exceptional cases. The instances I cited of those whose motivation to succeed in academic competition is heightened may very well not be fulfilling their own most basic, most appropriate potentialities bur seeking, rather to tilt against windmills, to disprove something which there was no valid reason, in my opinion, to think was so anyhow, namely, the feeling of their inferiority. So even when educational success is achieved that still may not denote the most self-realization of the person. I feel, if I may add another word, I feel that when segregation exists, it's not something -- although it may seem to be such -- that is directed against people for what they are. It is directed against them on the basis of who their parents are, since that is the definition which, according to sociologists and social psychologists' analysis of this matter, that is used in determining who shall go to a segregated school, a negro school or a white school; it is not simply skin color. In the case of Walter White, for example, and sociologist Allison Davis, his brother John Davis, who are negroes, their skin color is lighter than mime; of course, I have been out in the sun -- the definition does depend on who a person's parents were. That appears also if a dark-skinned person had parents who were high potentates in India he is not defined as a negro; therefore, he is not required to use segregated facilities. It is not skin color; it is who the parents were, and my understanding and various sociologists and psychologists' analysis of the American tradition, religious tradition

as well as a set of values and significant behavior, hinges upon a belief in treating people upon their own merits and we are inclined to oppose a view which states that we should respect or reject them based on who their parents were,

Q. Now, Mrs. Holt, you are aware of the fact that segregation is practiced in Topeka only for the first six grades. Thereafter the child goes to high school and junior high school apparently without regard to race or color. You have described difficulties and interferences with the personality development which occurs by virtue of segregation at the first six grades. Is the integration of the child at the junior high school level, does that correct these difficulties which you have just spoken of, in your opinion?

A. I think it's a theory that would be accepted by virtually all students of personality development that the earlier a significant event occurs in the life of an individual the more lasting, the more far-reaching and deeper the effects of that incident, that trauma, will be; the more -- the earlier an event occurs, the more difficult it is later on to eradicate those effects.

Q. Your opinion would be that it would be more difficult to eradicate those effects at the junior high school level, is that it; merely because you integrate them at the junior high school level ---

A. Well, once trauma has occurred, and I do believe that attending a segregated school, perhaps after the preschool years of free pay with others of different skin color, is a trauma to the negro child; that it occurs early. There is also emerging evidence from a study now going on at Harvard University that the later achievement of individual in their adult occupational careers can be predicted in first grade, if that is true, it means that the important effects of schooling in relation to later achievement are set down at that early age, and I therefore don't think that simply removing segregation at a somewhat later grade could possibly undue those effects.

Cross examination by Attorney for the School Board Mr. Goodell:

Q. You mean, Mrs. Holt, there is a serious study being made now to project into the future whether a child in the first grade is going to be a flop or a success?

A. I do.

Q. You have confidence in that, do you?

A. The study is being directed by Professor Tawkett Parsons, the head of the Department of Social Relations.

Q. You have a good deal of confidence in that?

A. I certainly do.

Q. You made a comment in your testimony I would like to call to your attention again; this segregation in some cases would spur, act as a whiplash, on the child to spur him on and make him achieve, and that would be a bad thing?

A. Yes.

Q. You mean it's a bad thing, for example, for a poor boy, because he is poor, the whiplash of poverty makes him work harder to rise higher; that is a bad thing?

A. I mean that that can be at the expense of healthy personality development, self-actualization, self-realization of the most basic fundamental and appropriate kind for that person, we have plenty of evidence of people who burn themselves out with various emotional or perhaps psychosomatic diseases in whose cases that can be attributed to this overwhelming striving for competitive success to overcome feelings of inferiority.

Q. Mrs. Holt, more or less educational process has in it competitive features, that is, the children are given tests and examinations and grade cards and the ones that don't get good grades, they get poor grades; at least the teacher gives them their merit grade. You don't believe in that, do you?

A. I believe in the children being appraised on the basis of their own objective achievement.

Q. You don't believe then, in any sort of competition in the public school system, do you?

A. I believe that competition had its values.

Q. Do you believe in the way it's carried on and have competitive examinations and grade carding and things of that kind?

A. I don't know how else one can operate in society in which individuals are judged primarily on their own merits rather than on connections of who their parents were or who they know which are the alternatives to that system.

Q. Progressive education, that is one of the elements that they believe which has been set up in California and other areas, to abolish all grading, abolish all examinations, let every child go to school and never have to worry about what his grades are; never know what they are, isn't that right?

A. I think a child needs some definiteness in the expectations which the authorities over him, the teachers, have in order to stimulate him to his own maximum productiveness. I think also competition with his peers, if not carried to excessive limits, if not *if not* undue emphasis is places on it, can also have very beneficial effects.

Q. These are your personal views you have been giving here largely?

A. They are based on a fair amount of acquaintance with scientific work in this field.

Mr. Goodell: That is all.

TRIAL TESTIMONY IN *BROWN et al. v BOARD OF EDUCATION OF TOPEKA*: HUGH W. SPEER

United States District Court District of Kansas

Hugh W. Speer, having been first duly sworn, assumed the stand and testified as follows:

Direct examination by NAACP Attorney Mr. Greenberg:

Q. Will you please tell the Court your name?

A. Hugh W. Speer.

Q. And what is your occupation?

A. I am chairman of the Department of Education at the University of Kansas City.

Q. Have you ever been in public school work, Mr. Speer?

A. Yes, I was in public school work for Kansas for about twelve years.

Q. You mentioned the Department of Education, University of Kansas City, what is the function of the Department of Education?

A. Our chief function at this time is training elementary school teachers.

Q. Do you train teachers eligible to teach in the state of Kansas?

A. Yes, a number of them do.

Q. How many members are on the teaching staff of your Education Department under your supervision?

A. At the present about twenty.

Q. Do you have any other responsibilities at your university?

A. Well, I am a member of the President's Advisory Committee; I am chairman of the Curriculum Committee of the university.

Q. Do you regularly come into contact with elementary schools?

A. Yes, we conduct an elementary school of our own. We call it the demonstration school in the summer. We do practice teaching in the public schools in our locality, which means we are in and out of schools constantly.

Q. Would you tell us something of your educational background, Dr. Speer; where did you attend public school?

A. Attended public schools in Olathe, Kansas.

Q. And what universities dis you attend and what degrees do you hold?

A. I hold a Bachelor's Degree from American University in Washington, D.C., a Master's Degree from George Washington University, and a PhD Degree from the University of Chicago.

Q. What was your major field in your doctorate?

A. Evaluation […]

Q. Dr. Speer, have you made any examination of the elementary schools in Topeka?

A. Yes.

Q. When?

A. During the last month.

Q. Why did you make this examination, Dr. Speer?

A. At request of counsel for plaintiffs.

Q. What aspects of the schools did you examine during the examination?

A. We examined the more important aspects that we thought had bearing on the major issues in this case. We have examined the building, the curriculum, the equipment, the library, the preparation and experience of the teaching staff and the salaries, the class loads, the size of classes and a few other minor points.

Q. Now, I am going to ask you some questions about your findings. What did you find concerning the comparison of teachers in the colored schools with those of the white schools?

A. I found minor differences between the two groups, and those differences tend to balance each other. For example, in preparation, all of the colored teachers have Bachelor's Degree and all but 15% of the white teachers have Bachelor's Degrees.

On the other hand, in terms of Master's Degrees, 12% of the colored teachers have Master's Degrees and 15% of the white teachers hold Master's Degrees. The colored teachers average twenty years of experience, and the white teachers nineteen years.

Q. Dr. Speer, what did you find concerning class size and teaching load; would you explain to the Court what teaching load is?

A. Teaching load is the number of pupils which the teacher has each day and, again, here I found not much difference. There is some difference at the kindergarten level where the colored kindergartens are somewhat smaller. I think the white average is 42; the colored average about 25. But in grades 1 to 6, the average is very close together; 34 in the white schools and 32 in the colored schools. Again, I would say, I found no significant difference in teacher load or teacher preparation.

Q. In examining two sets of schools, negro and white, did you find any provisions for special rooms in any of these?

A. I found provision for two special rooms for white children; I found no provisions for special rooms for any colored children.

Q. Now, did you study all of the school buildings in Topeka, Dr. Speer?

A. Yes, we examined data in the Board of Education files on all school buildings, and we personally visited, Dr. Buchannan and I and some of my other assistants, we visited about two-thirds of the schools in the city.

Judge Hill: If counsel will let me interrupt, what do you mean by special rooms?

Mr. Greenberg: Well, if I may explain, in the white schools there are rooms for specially retarded or handicapped children, whereas in negro schools there are none.

Judge Hill: Very well. […]

By Mr. Greenberg:

Q. Dr. Speer, in making your evaluation, did you take into account the fact that some buildings might have some unused classrooms?

A. Yes.

Q. What significance did you ascribe to that fact?

A. Well, an unused classroom is very limited value to the school. We assume that most schools operate one class with one teacher, can profitably use one classroom.

Q. Now, did you conduct a visual inspection of any buildings in Topeka as well as inspecting the records you have indicated?

A. Yes, we did.

Q. How many schools did you inspect visually?

A. We inspected I think it was fourteen directly […]

Q. In order to save the time of the Court, Dr. Speer, did you make any general observations that seemed to apply to all of the buildings you visited?

A. Yes, I think I can. First of all, in regard to gymnasiums and auditoriums, the facilities, all in all, seemed to be about equal between the colored schools and the white schools. Three-fourths of the colored schools have a combined gymnasium-auditorium, and we would say approximately that proportion of the white schools have similar facilities. However, I should add that none of the colored schools have anything like the luxurious facilities we would find in the Oakland building or the State Street building or the Gage Building, for example.

Q. How do the various -

A. Might I, if I may -

Q. Go ahead.

A. - add one or two other general observations to save time. The buildings are all well-kept, well preserved, and I think well maintained. Dr. Buchannan and I felt that was equal throughout the system.

Q. How do the buildings compare as to their ages, Dr. Speer?

A. The ages of the white buildings average twenty-seven years, according to the figures furnished by the board, and the ages of the colored buildings thirty-three years. In other words, the white buildings average six years newer. However, I think we should add another feature here. Inasmuch as newer building tends to be larger, we found this to be the case, that according to last year's enrollment figures, 45% of the white children attend schools that were newer than the newest colored buildings, whereas 14% of the white children attend schools that were older than the oldest colored building. To state another kind of comparison, 66% or two-thirds, of all white children attend schools that are newer than the average age of the colored buildings.

Q. Dr. Speer, how do the colored schools compare to the white schools in regard to the insured value per available classroom?

A. The average of the white schools is $10,517, and the average for the colored schools is $6,317. Or, stated another way, the insured value per available classroom is 66% higher in the white schools.

Q. Dr. Speer, did you examine the curriculum in the schools in the City of Topeka?

A. Yes.

Q. Tell the Court what you mean by "curriculum", also.

A. By "Curriculum" we mean something more than the course of study. As commonly defined and accepted now, "curriculum" means the total school experience of the child. Now, when it comes to the mere prescription of the course of study, we found no significant difference. But, when it comes to the total school experience of the child, there are some differences. In other words, we consider that education is more than just remembering something. It is concerned with the child's total development, his personality, his personal and social adjustment. Therefore, it becomes the obligation of the school to provide the kind of an environment in which the child can learn knowledge and skills such as the three "Rs" and also social skills and social attitudes and appreciations and interests, and these considerations are all now part of the curriculum.

Q. I see, Dr. Speer. Do you have anything further to say?

A. Yes. And we might add the more heterogeneous the group in which the children participate, the better than can function in our multi-cultural and multi-group society. For example, if the colored children are denied the experience in school of associating with white children, who represent 90% of our national society in which these colored children must live, then the colored child's curriculum cannot be equal under segregation. […]

By Mr. Greenberg:

Q. Would you tell us what you found concerning Monroe school?

A. Monroe. Colored building is twenty-four years old; it's valued at $9,760. This is, in our judgment, the best of the colored buildings. It's well constructed, has tile floors. Again, however, many of the books are too old for good school use. The site is rather small, and the building and the site are not very attractive […]

Q. Would you tell the Court what you found concerning Sumner School.

A. Sumner School is white, aged fifteen years, value $15,936 per room. It's another excellent building; beautiful auditorium, a large good gymnasium, has its public

address system; the books are good; very attractive kindergarten. Again, the facilities are available for an excellent educational opportunity […]

Q. Now, Dr. Speer, you have gone through all the schools in the City of Topeka, and I would like to ask you some hypothetical questions which I would like you to answer on the basis of your study of the schools in the City of Topeka and on the basis of you r knowledge and experience as an educator.

I want you to assume the following set of facts, Dr. Speer; That a negro child who lives in Topeka, where there are racially segregated schools, attends the Buchannan School, although if they were not racially segregation in the City of Topeka, because of where he lives, he would otherwise attend the Randolph School, would you say that on the basis of the evidence you have given above and the other factors I have mentioned, that he obtains the same educational opportunities at Buchannan that he would obtain if he attended Randolph?

Mr. Goodell: To which we object as the hypothetical question assumes a fact not proven, and the fact assumes another fact that is contrary to some evidence. The fact assumes that if a child lived at Randolph and there wasn't racial segregation he would attend Randolph. It assumes that fact. It isn't necessarily so. The child, even if you didn't have segregation, might not prefer to go to some school where he is outnumbered fifty to one. Object to the question in the present form because it assumes a hypothetical fact unsupported by any evidence.

Judge Huxman: You may answer, Doctor.

The witness: The question, as I understand it -

Mr. Greenberg (to reporter): Would you read it back, please?

(The last preceding question was read by the reporter.)

By Mr. Greenberg:

Q. What is your answer to that question, Dr. Speer?

A. No, I would say he would not get the same educational opportunity for some of the following reasons: First of all, the Buchannan building is an older building; it's thirty years old; Randolph is twenty-for years old. The insured value per classroom for Buchannan is $5,623; for Randolph it's $6,947. To look at some of the details of the buildings, Buchannan has no combined gymnasium-auditorium; Randolph has one that is not completely adequate but it will hold several grades at one time. The furniture -

Mr. Goodell: Pardon me, I want to impose another objection, that this has no probative force to show denial of equal protection of the law on this sort of comparison because he is now demonstrating that because - that an inequity exists because some physical plants are newer and bigger and better than other physical plants. He is comparing, it's true, with a colored plant, but he is also in other parts of his testimony - he has shown that the same disparity exists between many white schools as to the newer school where we have very old schools, very low cost per capita per room, classroom, and also the testimony very obviously shows no school system in the world could have buildings equal because newer buildings necessarily incorporate modern facilities not known when they were built twenty or thirty years ago.

Mr. Greenberg: May I answer that, your honor?

Mr. Goodell: I address that to the Court, not you.

Mr. Greenberg: I didn't ask you if I could answer it.

Judge Huxman: The witness may answer.

The witness: Proceeding, on the other hand, we might say that the Randolph building has these features, a much more attractive kindergarten room, more spacious playground, much more attractive surroundings which adds to its aesthetic educational value, and I would add, if I may consult my notes for a moment here -

Mr. Greenberg: Go ahead.

The witness: That the books in the Randolph school are better than the books in the Buchannan building, in my judgment. There are better heating and lighting in the Randolph building, and I think I would add, Your Honor, that most important of all the curriculum in the Randolph building provides a much better educational opportunity than the one in the Buchannan building, because, in the Randolph building, the colored child would have opportunity to live with, work with, to cooperate with white children who are representative of approximately 90% of the population of the society in which he is to live […]

By Mr. Greenberg:

Q. I would like to ask you the same question concerning a comparison of Sumner and Monroe schools, Dr. Speer.

A. Sumner and Monroe. Again, I would say for some of the same kinds of reasons that the Sumner building would provide a better educational opportunity.

Judge Huxman: May I ask the doctor a question?

Mr. Greenberg: Yes.

Judge Huxman: To be sure I understand his answer, is one of the reasons which is common to all three of these, your reason that they are by segregation denied in all three of these schools the opportunity to mingle and live with the white children, which they would otherwise have and that, to you, is an important factor, is that part of your answer?

The witness: Yes, Your Honor, that would enter all of them.

Judge Huxman: I was quite sure that was it, but I wanted to be clear in my own mind that that was part of your answer in all of these schools […]

Cross examination,

By Attorney for the School Board Mr. Goodell:

Q. Dr. Speer, if I understand your testimony correctly, boiled down to - as to the physical facts on the comparison of buildings and facilities feature of it, eliminating the racial feature, is it your opinion that any school, white school, that is considerably older and inferior and a wide disparity as to modern facilities, that that child going to such a white school is likewise being denied an equal opportunity of education?

A. It is unequal in another sense, I would say, if I understand your question correctly. Would you mind repeating the crux of it; I am not sure that I understand you.

Q. What I am trying to say is, eliminating the racial feature and restricting your opinion entirely to comparison of plants, facilities, and accessories, will you still say that a child, a white child, who goes to one of these other schools, such as Lafayette, Quinton Heights, Polk and some of these old schools, and Lowman, are denied equal educational opportunities as against children - as compared to children who live in a territory such as Oakland and Randolph and Potwin and get to go to those new schools.

A. A child might be - might have an inferior educational opportunity in some respects, but he would not have the stigma of segregation, nor be denied the opportunity to mix with the majority group of the population. Also -

Q. I said eliminating that feature of it. Other than that, do you consider that it's an inferior opportunity as far as the white child is concerned so that he is denied an equal opportunity of education, elimination the racial thing.

A. It might be if all other facilities are equal, but that is an accident of geography.

Q. Well, you made comparisons between some of the best white schools we have here in town to the colored schools, haven't you?

A. Yes, sir.

Q. Now, while we are on the subject, I will ask you to turn to exhibit "K", which is the Board of Education's record pertaining to the original cost of these buildings and also in the same connection -

A. I don't have a copy of that here, sir.

Q. I will step over here and let you see it. What I have marked on my copy here in red are the negro schools; and what I have marked in the blue pencil are the white schools, you understand?

A. Yes, sir.

Q. Now, I will direct your attention, if the schools that were built about the same time, the white schools, as the colored schools, if this exhibit doesn't show the same - practically - outlay of cost and, in some instances, more money spent for structural, or the school, and land acquisition than there were for white schools that were built at the same period of time.

A. I think that may be possible […]

Q. Do you know of any school system in the United States - not just Topeka - in the United States, that has buildings that are equal, that there aren't great differences based upon when they were built and the need of the community at the time they were built? That has not - doesn't have great differences as to their value and commodious quarters and characters that are recognized now in modern education and that are applied in modern buildings, that doesn't have great disparities, those types of building, in any school system in the United States with buildings built twenty, thirty, or forty years ago.

A. I believe there is very likely to be some disparity, may not be great, and may not be as great as compared this group to that group, but between individual buildings, I am sure you would find some disparity if there is more than one building.

Q. You realize that school buildings are built as a community grows up and population trends - where the town grows and which way it grows determines whether buildings are located and newer buildings are added.

A. That is one factor.

Q. Do you know of any way aren't on earth to keep those facilities adequate and at the same time equal to any school in the system?

A. There are ways that can be approached.

Q. Well, just tell me how you would approach it. A. By forming a good cooperative city planning with the Board of Education and the City Commissioners on a long-term scale and then following it.

Q. Would you recommend that if we had a building like, say in Topeka, that cost $112,000 and is now a sound and structurally safe colored building, that you would tear that down because we happen to have a new building built a year ago that cost half a million dollars; would you recommend that?

A. Not merely for that reason, no.

Q. What other reasons would you give for tearing it down?

A. If I found that throughout the community the colored children's buildings were decidedly inferior to the buildings of the white schools, then I would consider that to be an unequal educational opportunity between the groups […]

Q. Maybe I am so stupid I can't understand you. Did you not say, is it your opinion, that because of physical factors, and I mean physical factors differences in plant facilities, some of the white schools and the four negro schools, that alone, in and of itself, causes you to give an opinion, and it is your opinion that the child, a negro child, because of that alone, doesn't have equal educational opportunity.

A. That is a contributing factor, but I do not consider that of - that alone.

Q. Then you didn't say that alone caused him to have an unequal opportunity.

A. No, but coupled with other factors did cause him to have an unequal opportunity.

Q. What are the other factors rather than racial factors?

A. Curriculum factor; there is faculty; there is size of classrooms; there is books […]

Q. What do you mean by total curriculum?

A. I mean the total school experience of the school child, what the instructions, what the books are, what the surroundings of the buildings are, what his associations with the other children are.

Q. Well, eliminating that feature, the associations with other children, which is the racial feature, what are the other part of the curriculum which is any dissimilarity or inferior factors present in the case of the negro schools and the white schools I have used for illustration?

A. In professional circles we have a term called the great "gestalt" which means the sum is greater - the whole is greater than the sum of its parts and when we start taking into account only the parts one by one, we destroy our "gestalt", and we cannot make a wise comparison.

Judge Mellott: What was that word?

The witness: (spelling) Gestalt.

Cross-examination by Attorney for the School Board Mr. Goodell:

Q. Now, you come from Missouri, don't you?

A. I at present live in Missouri, yes, sir.

Q. You have segregated schools there, don't you?

A. We have some segregated schools. On the university campus we have a mixed school.

Q. I am talking about the public school system in the State of Missouri.

A. Yes, sir.

Q. And it is mandatory, isn't that, right?

A. I presume in some cases it is.

Q. Have you studied any of the various state statutes over the country which we have had for a half century concerning this segregation of students?

Mr. Carter: Your Honor, I can't see how this -

Mr. Goodell: This is the preliminary for another question.

Judge Huxman: I think that is an improper question. Well, as long as it is preliminary, you may answer whether or not you have studied the various statutes.

Mr. Goodell: I will withdraw the question.

By Mr. Goodell:

Q. You know in a great many cities and communities of the United States there are statutes similar to the statutes here in Kansas, which we have had for half a century or three-fourths of a century, isn't that right?

A. I presume so.

Q. You know, as a practical man, laws get passed by legislators coming from the various parts of their communities over the state, don't you?

A. Yes, sir.

Judge Huxman: Mr. Goodell, what is the purpose of that question? What value does that have to our problem how laws are passed?

Mr. Goodell: I am getting to that. I can't ask all of it at once. I am trying to get from this witness the feature as to whether he thinks the elimination of racial segregation, if it's unwanted by the community and is out of step with the thinking of the community which the mere existence of the laws has some indication -

Judge Huxman: I think Dr. Speer has made it quite clear from his evidence - he has to me at least, if I understand it - that segregation, racial segregation, is the prime and controlling factor of the equality of the whole curriculum, and these physical factors are secondary, and that his testimony, as it registers with me, is that aside from racial segregation he perhaps would not testify that there was any such inequality in the physical properties as would deny anybody and equal educational opportunity. Do I understand your testimony correctly?

The witness: If I may say, Your Honor, I think I would sum it up this way: That there is, in my opinion, some inequality in physical facilities between the groups in Topeka, but, in addition to that, there is also the difference of segregation itself which affects the school curriculum.

Judge Huxman: Let's see if I can get myself straightened out. Do you not also agree with what Mr. Goodell is trying to bring out here - you haven't gotten it together - that if you put it on that fact, that there is no inequality in physical facilities as between the white schools and the colored schools, sometimes the greater facilities are with the colored schools.

The witness: Yes, Your Honor, but there are not as many in that direction as there are in the other direction in this case.

Judge Huxman: It seems to me that we are spending a lot of time on that when that is rather, it seems to me, it would be obvious if you have an older white building than a colored building that perhaps the physical facilities in the older white building would be poorer than in the colored building.

The witness: Yes, I will agree.

Mr. Goodell: I will try to shorten this up.

By Mr. Goodell:

Q. If I understand you correctly, the basis of your opinion on saying that the mere separation - strike that. It's you r opinion, then, that you can't have separate schools in any public school system and have equality, is that right?

A. Yes.

Q. And that is predicated on the - on your philosophy or your theory that merely because the two races are kept apart in the educational process, isn't that right, mere separation causes inequality?

A. That is one of the things which causes inequality, yes, sir.

Q. Yes. Now, assuming, Doctor, that we didn't have separate schools and they were altogether, and you still had a social situation in this community which didn't recognize co-mingling of the races, didn't admit them on free equality, that child would run against those - run up against those things in his practical every-day world, wouldn't he?

A. I presume so.

Q. Sir?

A. I would think so.

Q. Wouldn't that tend to cause more of a tempest and emotional strain or psychological impact if he got used to going to school with white children than when he went downtown ad couldn't eat in a white restaurant, couldn't go to a white hotel, and couldn't do this and that, wouldn't that make the impact greater and accentuate that very thing?

Mr. Greenberg: This witness is qualified as an expert in the field of education, and I don't believe has testified or is qualified to testify concerning segregation all over the State of Kansas or Elsewhere.

Mr. Goodell: Well, I restrict it to Topeka.

Judge Huxman: I think the Court will sustain the objection. That is purely argumentative. I doubt whether the doctor has qualified himself.

By Mr. Goodell:

Q. Assuming, Doctor, we will restrict this to the educational process, assuming that - that we didn't have segregation, for the purpose of this question, and assuming further we had a negro child going to Potwin or Oakland or Randolph and assuming that the population trend appears in the schoolroom as it does in our city, so that he would be outnumbered fifty to one, assuming all that, for the purpose of this question being true, wouldn't that cause some sense of inferiority feeling on the part of the colored child when he went to such a school where he was outnumbered twenty to fifty to one and caused some sort of mental disturbance and upset?

A. On which basis would you rather for me to - on theory or on personal observation or experience?

Q. I am talking about theory here.

A. And personal observation and experience?

Q. Yes.

A. Let me first mention the latter one; we have adjoined our campus a demonstration school of 210 students in the elementary grades and mixed in with them are about ten negro children, so they are outnumbered in that proportion, and my observation is, and the reports I receive from my assistants are, that those children are very happy, very well adjusted, and that they are there voluntarily. They don't have to attend.

Mr. Elisha Scott: I object to that.

Judge Huxman: Mr. Scott, are you entered here as an attorney of record?

Mr. Elisha Scott: I am supposed to be.

Judge Huxman: Go ahead.

Mr. Elisha Scott: I object to that because he is invading the rights, and he is answering a question not based upon the evidence adduced or could be adduced.

Judge Huxman: Objection overruled. You may answer.

The witness: Shall I repeat the answer?

By Mr. Goodell:

Q. Have you finished?

A. I think, also, on the basis of our knowledge of child behavior that we can say on a short-range there may be occasionally, the first time we jump in the water we may be a little frightened, but, on a long-range basis, we generally are able to work out our adjustments and make a good situation out of it.

Q. Segregation occurs, doesn't it, Doctor, in any school system among the races. I mean by that, children that come from wealthy families co-mingle with children from poor families; they go off into different cliques; that occurs, doesn't it?

A. It occurs sometimes.

Q. Occurs frequently, doesn't it?

A. Well, it all depends on your definition.

Q. And the child that is left out of the swim, so to speak, he feels inferior or second-class, doesn't he?

A. Yes, and I think we should prevent that in all cases possible.

Q. You wouldn't make a new social order to prevent that social stratum of society, would you?

Judge Huxman: Just a minute, the Court will sustain an objection to that question.

By Mr. Goodell:

Q. Have you made a survey of any students that have gone to our segregated schools, the negro students, and picked them up to see what effect to their education that you call attention to being inferior, hoe it worked out in every-day life?

A. I have talked to a few of them, but I have not made a survey of them.

Q. Have you heard of anybody getting hired or a professional man having a plant or a businessman having a customer based upon what elementary school he went to in the first grade or the second grade or the sixth grade for that matter?

A. Oh, probably not, but probably there are cases where a person is hired or not hired on the basis of the kind of education he received in the first six grades.

Q. You don't know a thing about our community and how the negro child, when he goes through our school system, how he is received by the business world at all, do you?

A. Oh, I have known Topeks for some years. I may have a little knowledge.

Q. Do you know anything about that?

A. A little, not much.

Q. What?

A. I don't know much about it.

Q. Do you know that in the case of the junior high grades and the senior high grades that they are not segregated?

A. Yes, sir.

Q. Do you think, getting back to the school system and the illustration of where the negro child would go to a school where he would be outnumbered twenty to fifty to one, and he wasn't recognized because of pure majority rule and wasn't elected head of his class or class officers, or recognized in various school activities, that that would have any impact on such a child?

A. Not as much impact as having been denied even to get into the running.

Q. Do you think that if you got in the school and left out entirely, he would feel happy about it, would he?

A. What's that again?

Q. You think if the negro child was simply be edict law forced into the white school, whether the white school was ready to receive him or not, and however much he was in the minority and however much he would be left out of things, he would still be happy merely because he had found his way into the white school, isn't that, right?

A. I think on a long-range plan he would be happier than on the other way.