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Significant U.S. Supreme Court Cases Impacting Segregation and Desegregation of Public Schools

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Abstract

Four Supreme Court decisions impacting public school segregation and desegregation in the U.S. are reviewed: (1) *Plessy v. Ferguson* (1896), (2) *Brown v. The Board of Education* (1954 and 1955), (3) *Green v. New Kent County* (1968), and (4) *Swann v. Charlotte-Mecklenburg* (1971). Each case is discussed in the context of background information about the people and places involved. The background information focuses on the context in which the Supreme Court's decision was reached and specific information relative to understanding the conditions that prompted the litigation. The significance of each case's decision is reviewed by identifying the major points that impacted future segregation or desegregation.

Keywords: public school segregation and desegregation

Introduction

> Once it is understood that segregation functions as a systemic labeling device, it should be clear that *any* state action that results in the maintenance of the segregated system is a direct and proximate cause of the injuries suffered by black children in segregated schools and is in violation of the equal protection clause of the fourteenth amendment. (Lawrence, as cited in Bell, 1980, p. 53)

Four extremely influential Supreme Court cases impacting public school segregation and desegregation are reviewed: (1) *Plessy v. Ferguson* (1896), (2) *Brown v. The Board of Education* (1954 and 1955), (3) *Green v. New Kent County* (1968), and (4) *Swann v. Charlotte-Mecklenburg* (1971). For each case reviewed, background information is presented as well as the significance of a case's impact on segregation and desegregation.

Plessy v. Ferguson (1896)

Background

Homer Plessy was a married 29-year-old shoemaker from New Orleans when, on June 7, 1892, he purchased a first-class ticket on the East Louisiana Railway at the Press Street Depot in New Orleans. Mr. Plessy boarded the 4:15 p.m. train Number 8 for Covington, Louisiana, and proceeded to the "Whites-only car." Mr. Plessy, an octoroon (meaning 1/8th Black,) indicated he was a "colored man" when asked by the conductor. He refused to vacate the Whites-only car, which resulted in him being arrested and immediately removed from the train in New Orleans. Mr. Plessy's $500 bond was posted by the Citizens' Committee, a group assembled to legally test the constitutionality of the Louisiana Separate Car Act that had planned the staged arrest (Urofsky, 2019). Since his bond was immediately paid, Mr. Plessy did not spend even one night in jail (Luxenberg, 2019.

The *Plessy v. Ferguson* case was filed in Federal District Court on January 5, 1893, was heard by the U.S. Supreme Court on April 18, 1896, and that Court's decision was released on May 18, 1896 (Luxenberg, 2019). The case became known as *Plessy v. Ferguson* with Homer Plessy, the plaintiff, and John H. Ferguson—the Judge who oversaw the case in Louisiana's judicial system—the defendant. Mr. Plessy did not pay his $25.00 fine, based on a guilty plea for violating the Louisiana Separate Car Act, until January 11, 1897—over four and one-half years after his arrest (Urofsky, 2019; Luxenberg, 2019, p. 480).

Significance

- Separate but equal public facilities are permissible under the U.S. Constitution, including schools. (Separate but equal public facilities did not violate the equal protection clause of the 14th Amendment.)
- By law (i.e., de jure) states can require separate facilities for Blacks and Whites, including public schools.
- A public school system could operate as a dual system—one set of schools for Blacks only and another set of schools for Whites only. (In essence, public school segregation was legal; *Plessy v. Ferguson*, 1896).

Brown v. The Board of Education (*Brown I*: 1954; *Brown II*: 1955)

Background

Linda Carol Brown, eight years of age, was a black student in an all-black public school in Topeka, Kansas. Each school day morning Linda got up, walked across a railroad yard, and caught a bus that carried her 21 blocks to school. The bus arrived 30 minutes before the school's opening; and often Linda was left standing outside in the cold. Oliver Brown, Linda's father, concluded that something was wrong with a system that bused his child past another elementary school just five blocks from their home. (Thomas, 1979, p. 110)

Oliver Brown was the lead (first listed) plaintiff in the *Brown* case, along with 12 other plaintiffs that included his wife, Darlene (Kansas Historical Society, 2019). The official name of the *Brown* case is *Oliver Brown et al. v. Board of Education of Topeka et al*. Mr. Brown was a welder by profession for the Santa Fe Railroad. He also was a part-time assistant pastor at the St. John African Methodist Episcopal Church (Smithsonian National Museum of American History, 2019).

Not too long before the Supreme Court's ruling regarding *Brown I* on May 17, 1954, Chief Justice Earl Warren took an automobile trip south of Washington, D.C. into Virginia to visit Civil War sites. His Black chauffeur was unable to secure lodging on the trip's first night because of segregation. The next morning Judge Warren discovered that his chauffer had to sleep in the car. Chief Justice Warren was embarrassed and ashamed—he cut his trip short and returned to Washington, DC (Patterson, 2001). Patterson (2001) summarizes the Chief Justice's experience: "Warren recalled this experience as evidence of the formidable edifice of racial discrimination in the United States in 1954. He identified *Brown*, in a unanimous ruling, as a huge stride in the direction of knocking it down" (p. xiii).

The *Brown* case, based on Topeka, Kansas, was heard by the Supreme Court which collectively reviewed four other pending school desegregation cases from South Carolina, District of Columbia, Virginia, and Delaware. Regarding these four cases, Van Delinder (2004) observes:

> These cases all document inadequate funding for segregated schools—meaning that many black children lacked playgrounds, ball fields, cafeterias, libraries, auditoriums, and other amenities provided for white children in newer schools. In Summerton, South Carolina, and Hockessin, Delaware, school buses were only provided for whites, while black children had to walk. In Claymont, Delaware, and Farmville, Virginia, there was no senior high school for black pupils. (p. 3)

Van Delinder also indicates that many public school systems did not even live up to the *equal* part of *separate, but equal* as delineated in *Plessy* (1896).

In Topeka, the school board maintained half-empty buildings in segregated elementary schools to keep Black children and White children separated (Van Delinder, 2004). In 1951 there were 18 elementary schools for White children and 4 for Black children. The junior high schools were desegregated, and the high school—to a degree. At the Topeka high school, classes were desegregated, but extra-curricular activities (e.g., sports teams, cheerleaders, and pep clubs) were segregated (Linder, 1995).

Thurgood Marshall, who later became a Supreme Court Justice, was a lead attorney in the *Brown* litigation. Before the *Brown* case, he had successfully argued two Supreme Court cases regarding segregation of law schools in Texas and Oklahoma. Mr. Marshall, an African American from Baltimore, was excluded from attending, Maryland's Law School because of racial discrimination after attaining his bachelor's degree (Library of Congress, n.d.). Before becoming a Supreme Court Justice, Mr. Marshall appeared before the Supreme Court an astounding 32 times (Library of Congress, n.d., p. 16).

Kenneth Clark, a renowned social scientist, was a key witness in the Federal District Court level of *Brown* through his famous *Doll Study*. Thomas (1979) summarizes the essence of Clark's testimony:

> A key witness for the plaintiff in three of the cases was Dr. Kenneth B. Clark, a black psychologist from the City College in New York. Dr. Clark described the now-famous experiment where a group of black children were given a set of dolls—one black and one white. The children were asked to pick the most attractive doll, the one with which they would most like to play, and the prettiest doll. Then, they were asked to pick the one they thought looked 'bad.' Finally, to ensure the children recognized racial differences, they were asked to pick out the white from the black doll. The experiment confirmed an empathic preference of the black children for the white doll. Although other types of evidence were introduced, including some to show the negative impact of racial segregation for white children, the doll experiment was probably the best illustration of the effect of segregation on black children. (as cited in Bartz & Maehr, 1984, p. 145)

All five cases were sponsored by the National Association for the Advancement of Colored People (NAACP). Regarding the NAACP, the Library of Congress (n.d.) notes:

> Beginning in 1909, a small group of activists organized and founded the National Association for the Advancement of Colored People (NAACP). They waged a long struggle to eliminate racial discrimination and segregation from American life. By the middle of the twentieth century their focus was on legal challenges to public-school segregation. (p. 1)

The Library of Congress (n.d.) continues by observing that:

> In 1939 the Treasury Department refused to grant tax-exempt status to the NAACP because of a perceived conflict between the Association's litigation and lobbying activities. In response, the NAACP created its Legal Defense and Educational Fund, Inc., as a non-profit separate arm to litigate cases and raise money exclusively for the legal program. It shared board members and office space with the NAACP. Arthur Spingarn was president of both organizations. (p. 10)

Significance

- The Supreme Court struck down the *separate but equal* principle established in *Plessy v. Ferguson* (1896) by prohibiting segregation of public schools imposed by state law.
- The Court indicated that separate but equal educational facilities are *inherently unequal*. (Not only were educational facilities inferior for African American students, but textbooks, school supplies, and general school funding were substandard in many situations.)
- States no longer could require the assignment of children to schools according to race for the intentional purpose of separating Blacks and Whites.
- The Supreme Court directed the federal district courts to enforce its decree regarding dismantling segregated schools caused by state actions with *all deliberate speed* (*Brown II*).
- The Supreme Court did not furnish any guidance regarding a timeline for *deliberate speed* (*Brown v. Board of Education*, 1954; 1955).

Green v. New Kent County, Virginia (1968)

Background

In 1965 the New Kent County school district, located about 30 miles east of Richmond, Virginia, was rural and had just two school buildings: Watkins only for Black children, and New Kent only for White children. Residentially, the county had minimal segregation. The *Green* case involved just 1,290 students; 740 Black and 550 White (Graglia, cited in Stephan & Feagin, 1980, p. 76). The New Kent County district was typical of many school districts in the South in the early 1960s because it was a *dual system*, meaning two completely racially-separated systems operating as one district under one board of education to maintain segregation.

In 1965 Calvin Green and his spouse had three school-age sons, with the youngest, Charles C., being the named plaintiff in *Charles C. Green v. County School Board of New Kent County, Virginia*. Mr. Green and his spouse were teachers. Mr. Green became President of the local NAACP in 1960 and often attended the NAACP state conferences in nearby Richmond. The NAACP "lawyers needed determined and courageous individuals [Blacks] to sponsor lawsuits against their local school boards. Calvin Green volunteered" (Allen, Daugherity, & Trembanis 2004, p. 271).These courageous Black individuals would legally attack the state-imposed segregation that *Brown I* (1954) and *Brown II* (1955) were to dismantle with all deliberate speed. Because Title VI of the 1964 Civil Rights Act allowed for discontinuing federal funds to school districts refusing to desegregate, federal officials were more aggressively monitoring segregated districts. This meant that some segregated school districts might be motivated to consider desegregation if pushed to do so.

The New Kent County's Board of Education answer to *Brown I* (1954) and *Brown II* (1955) to dismantle state-imposed segregation with "all deliberate speed" *was to do nothing for 10 years*. This was followed by a Freedom of Choice voluntary desegregation plan hastily developed in August of 1965 and implemented that school year.

Freedom of Choice plans allowed students to voluntarily transfer to another school building in which their race was in a minority percentage of the enrollment if, at their present school, their race was in the majority percentage of enrollment. In practicality, this meant that, in the New Kent County School District, children from the all-Black Watkins School could voluntarily transfer to the all-White New Kent School, and White students from the New Kent School could voluntarily transfer to the all-Black Watkins School. For the initial three years of this voluntary Freedom of Choice plan, the student movement was: 1965 = 35 Black students, 1966 = 111 Black students, 1967 = 115 Black students (Wilkinson, 1979, p. 115). Typical of the outcomes for southern school districts employing a Freedom of Choice plan at this time was that no White students transferred to Watkins, the all-Black school.

Significance

- All deliberate speed for dismantling state-imposed segregation and racial discrimination of Blacks (i.e., *Brown II* – 1955) meant *NOW*. A Freedom of Choice voluntary desegregation plan was not sufficient to dismantle segregation in the New Kent County School District. New Kent County officials must convert to a school system without a Black school and a White school, and have *just schools*.
- Established criteria for evaluating the effectiveness of desegregation which later became known as the *Green Factors* for determining a Federal Court-ordered district's progress

toward unitary status (one system, not a dual system indicative of separate segregated schools for Blacks and Whites). The Green Factors are: (1) student assignments, (2) teachers' (professional staff) assignments, (3) support and other staff/personnel assignments, (4) extra-curricular activities, (5) transportation, and (6) facilities.

- Indicated school boards had an *affirmative duty* to take whatever steps necessary to convert from a dual-segregated district to a unitary system in which racial discrimination was eliminated, *root and branch*. The *root and branch* criterion for eliminating the vestiges of racial discrimination, based on good faith by the school board, became the future threshold for a court-ordered school district to be removed from Federal Court supervision by being declared unitary. (Once a school district is legally declared unitary, its complete control is returned to the local school board.)
- School desegregation plans' effectiveness should be judged by performance—measured numerically, and not by "on paper or promise" (Wilkinson, 1979, p. 116).
- School districts must develop a desegregation plan that realistically promised to work *now* to *eliminate the vestiges of segregation*. (This was the beginning of the end of the voluntary Freedom of Choice plans as the answer to *Brown* in the segregated South—and some districts in the North.)
- Provided the basis for considering the use of the pairing of schools (i.e., a Black school with a White school) for a desegregation plan and establishing racially-balanced attendance zones to desegregate (*Green v. New Kent County, Virginia*, 1968).

Swann v. Charlotte-Mecklenburg Board of Education **(1971)**

Background

"Darius Swann, a black Presbyterian missionary, and his wife Vera returned [1964] to Charlotte [North Carolina] from service in India and were told that their eldest child, aged six, must attend an all-black school" (Patterson, 2001, p. 155). Mr. and Mrs. Swann engaged the NAACP Legal Defense Fund to bring a lawsuit against the Charlotte-Mecklenburg School District in 1965 (Patterson, 2001). Mecklenburg County and the City of Charlotte, located within the county's boundaries, composed the school district. The Swann's son, James E., was the named plaintiff.

Wilkinson (1979) notes that the *Swann* case "involved the huge, 550 square mile school system, serving more than 84,000 pupils in over 100 schools" (p. 137). The Charlotte-Mecklenburg School District was approximately 29% Black, with the remaining 71% predominately White. In 1969, about 60 to 67% of the Black children attended school with Whites (Patterson, 2001; Wilkinson, 1979). "Only two urban school districts in the entire country (San Francisco and Toledo) were more desegregated than Charlotte-Mecklenburg" at this time according to Brabham (2006, p. 2).

After the Supreme Court ruling in the 1968 *Green* desegregation case, Federal District Judge McMillan, who was overseeing the *Swann* case, indicated to parties in the litigation that the "rules of the game have changed, and the methods and philosophies which in good faith the School Board has followed are no longer adequate to complete the job the courts now say must be done 'now'" (Wilkinson, 1979, p. 137). Judge McMillan based his opinion on the fact that nearly 14,000 of the 24,000 Black children attended schools that were all Black. Based on the

work of his expert, Dr. John Finger, Judge McMillan adopted a new desegregation plan that bused an additional 13,300 students, requiring 138 new buses (Wilkinson, 1979, p. 138).

At times, emotions ran high in Mecklenburg County based on the outcome in *Swann*:

> The stubborn federal judge who demanded change, James McMillan, insisted that Charlotte-Mecklenburg achieve true desegregation by the start of the 1970 school year. He called for a range of methods to do so, including much use of school busing to promote racial balance. He received death threats and was hanged in effigy. Crosses were burned on his lawn. (Patterson, 2001, p. 156)

Patterson (2001) also describes the reactions of people opposed to Judge McMillan's desegregation plan, who often were categorized as *anti-busing*, as:

> In the next two years, Charlotte-Mecklenburg experienced some difficulties in carrying out the decision of the Court. Brawls between white and black students forced all of its high schools to shut down for short spells at one time or another. Many white parents who could afford to do so pulled their children out of the public schools and paid for private education. Desegregation in Charlotte-Mecklenburg, as in most places, had a greater impact on poor and working-class whites than on wealthier families. Five years after *Swann*, some 10,000 white children in Charlotte-Mecklenburg attended private schools. (p. 158)

Significance

- The Supreme Court's decision in the *Green* case (1968), regarding the swiftness of dismantling the state-imposed (by law, called de jure) segregation in school districts which meant NOW, was operationalized in a large urban district of 84,000 pupils. The desegregation plan often paired a Black and a White school, or clustered Black and White schools together in an attendance area, to achieve racial balance. Busing allowed for non-contiguous schools miles apart to be desegregated through pairing and clustering. (Hence, the term "cross-district busing" arose by desegregation opponents.
- The Supreme Court sanctioned large scale bussing as a means to desegregation.
- The *Swann* case was the lynchpin for the use of busing to desegregate many school districts in the decades after its April 20, 1971 ruling (*Swann v. Charlotte-Mecklenburg Board of Education*, 1971).

Closing Thoughts

The history of public education for Blacks from colonial times to 1954 is tragic because of their having no schools or totally segregated schools, with often significantly inadequate resources, in comparison to White schools. While progress has been made for Black children since 1954 through the reduction of segregated schools and improved resources, many Black children today often find themselves years behind in achievement compared to their White counterparts. Further, at present, Black children are suspended from school at a much higher rate than White children (Bartz, 2016). Aggressive action must be taken at all governmental levels—local, state, and federal—to quickly and significantly improve the academic achievement of

Black children and to reduce their number of suspensions.

"A $23 billion gap remains between the amount of money spent on predominately white school districts and predominately nonwhite ones" (Burnette, 2019, p. 4). This inequity in funding needs to be corrected—now. While this article addresses the struggles of Blacks to overcome state-imposed segregation, Hispanics (e.g., Mexican-Americans) have experienced many struggles, and still do, in the U.S. to overcome discrimination and racism in the quest to receive a quality education in public schools (Donato & Hanson, 2019).

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