

McCarthy Hearing Off a Week as Eisenhower Bars Report

High Court Bans School Segregation; 9-to-0 Decision Grants Time to Comply

1896 Ruling Upset

'Separate but Equal' Doctrine Held Out of Place in Education

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Washington, May 17 -- The Supreme Court unanimously outlawed today racial segregation in public schools. Chief Justice Earl Warren read two opinions that put the stamp of unconstitutionality on school systems in twenty-one states and the District of Columbia where segregation is permissive or mandatory. The court, taking cognizance of the problems involved in the integration of the school systems concerned, put over until the next term, beginning October, the formulation of decrees to effectuate its 9-to-0 decision.

The opinions set aside the 'separate but equal' doctrine laid down by the Supreme Court in 1896. "In the field of public education," Chief Justice Warren said, "the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." He stated the question and supplied the answer as follows: "We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though 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."

States Stressed Rights

The court's opinion does not apply to private schools. It is directed entirely at public schools. It does not affect the "separate but equal doctrine" as applied on railroads and other public carriers entirely within states that have such restrictions. The principal ruling of the court was in four cases involving state laws. The states' right to operate separated schools had been argued before the court on two occasions by representatives of South Carolina, Virginia, Kansas and Delaware. In these cases, consolidated in one opinion, the high court held that school segregation deprived Negroes of "the equal protection of the laws guaranteed by the Fourteenth Amendment." The other opinion involved the District of Columbia. Here schools have been segregated since Civil War days under laws passed by Congress.

"In view of our decision that the Constitution prohibits the states from maintaining racially segregated public schools," the Chief Justice said, "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 guaranteeing by the Fifth Amendment to the Constitution." The Fourteenth Amendment provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." The

Fifth Amendment says that no person shall be "deprived of life, liberty or property without due process of law."

The seventeen states having mandatory segregation are Alabama, Arkansas, Delaware, Florida, Mississippi, Missouri, North Carolina, Oklahoma, Georgia, Kentucky, Louisiana, Maryland, South Carolina, Tennessee, Texas, Virginia and West Virginia. Kansas, New Mexico, Arizona and Wyoming have permissive statutes, although Wyoming never has exercised it. South Carolina and Georgia have announced plans to abolish public schools if segregation were banned.

Although the decision with regard to the constitutionality of school segregation was unequivocal, the court set the cases down for reargument in the fall on questions that previously were argued last December. These deal with the power of the court to permit an effective gradual readjustment to school systems not based on color distinctions. Other questions include whether the court itself should formulate detailed decrees and what issues should be dealt with. Also whether the cases should be remanded to the lower courts to frame decrees, and what general directions the Supreme Court should give the lesser tribunals if this were done.

Cases Argued Twice

The cases first came to the high court in 1952 on appeal from rulings of lower Federal courts, handed down in 1951 and 1952. Arguments were heard on Dec. 9-10, 1952. Unable to reach a decision, the Supreme Court ordered rearguments in the present term and heard the cases for the second time on Dec. 7-8 last year. Since then, each decision day has seen the courtroom packed with spectators awaiting the ruling. That was true today, though none except the justices themselves knew it was coming down. Reporters were told before the court convened that it "looked like a quiet day."

Three minor opinions had been announced, and those in the press room had begun to believe the prophesy when Banning E. Whittington, the court's press information officer, started putting on his coat. "Reading of the segregation decisions is about to begin in the court room," he said. "You will get the opinions up there." The courtroom is one floor up, reached by a long flight of marble steps. Mr. Whittington led a fast moving exodus. In the court room, Chief Justice Warren had just begun reading.

Each of the Associate Justices listened intently. They obviously were aware that no court since the Dred Scott decision of March 6, 1857, had ruled on so vital an issue in the field of racial relations. Dred Scott was a slave who sued for his freedom on the ground that he had lived in a territory where slavery was forbidden. The territory was the northern part of the Louisiana Purchase, from which slavery was excluded under the terms of the Missouri Compromise. The Supreme Court ruled that Dred Scott was not a citizen who had a right to sue in the Federal courts, and that Congress had no constitutional power to pass the Missouri Compromise.

Thurgood Marshall, the lawyer who led the fight for racial equality in the public schools, predicted that there would be no disorder and no organized resistance to the Supreme Court's dictum. He said

that the people of the South, the region most heavily affected, were law-abiding and would not "resist the Supreme Court."

Association Calls Meetings

Mr. Marshall said that the state presidents of the National Association for the Advancement of Colored People, would meet next week-end in Atlanta to discuss further procedures. The Supreme Court adopted two of the major premises advanced by the Negroes in briefs and arguments presented in support of their cases. Their main thesis was that segregation, of itself, was unconstitutional. The Fourteenth Amendment, which was adopted July 28, 1868, was intended to wipe out the last vestige of inequality between the races, the Negro side argued. Against this, lawyers representing the states argued that since there was no specific constitutional prohibition against segregation in the schools, it was a matter for the states, under their police powers, to decide. The Supreme Court rejected the "states rights" doctrine, however, and found all laws ordering or permitting segregation in the schools to be in conflict with the Federal Constitution.

The Negroes also asserted that segregation had a psychological effect on pupils of the Negro race and was detrimental to the educational system as a whole. The court agreed. "Today, education is perhaps the most important function of state and local governments," Chief Justice Warren wrote. "Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education in our democratic society. It is the very foundation of good citizenship. "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, must be made available to all on equal terms."

As to the psychological factor, the high court adopted the language of a Kansas court in which the lower bench held: "Segregation with the sanction of the 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."

1896 Doctrine Demolished

The "separate but equal" doctrine, demolished by the Supreme Court today, involved transportation, not education. It was the case of Plessy vs. Ferguson, decided in 1896. The court then held that segregation was not unconstitutional if equal facilities were provided for each race. Since that ruling six cases have been before the Supreme Court, applying the doctrine to public education. In several cases, the court has ordered the admission to colleges and universities of Negro students on the ground that equal facilities were not available in segregated institutions. Today, however, the court held the doctrine inapplicable under any circumstances to public education. This means that the court may extend its ruling from primary and secondary schools to include state-supported colleges and universities. Two cases involving Negroes who wish to enter white colleges in Texas and Florida are pending before the court.

The question of "due process," also a clause in the Fourteenth Amendment, had been raised in connection with the state cases as well as the District of Columbia. The High Court held, however,

that since it had ruled in the state cases that segregation was unconstitutional under the "equal protection" clause, it was unnecessary to discuss "whether such segregation also violates the due process clause of the Fourteenth Amendment." However, the "due process" clause of the Fifth Amendment was the core of the ruling in the District of Columbia case. "Equal protection" and "due process," the court noted, were not always interchangeable phrases.

Liberty Held Deprived

"Liberty under law extends to the full range of conduct which an individual is free to pursue, and it cannot be restricted except for a proper governmental objective," Chief Justice Warren asserted. "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."

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Two principal surprises attended the announcement of the decision. One was its unanimity. There had been reports that the court was sharply divided and might not be able to get an agreement this term. Very few major rulings of the court have been unanimous. The second was the appearance

with his colleagues of Justice Robert H. Jackson. He suffered a mild heart attack on March 30. He left the hospital last weekend and had not been expected to return to the bench this term, which will end on June 7. Perhaps to emphasize the unanimity of the court, perhaps from a desire to be present when the history-making verdict was announced, Justice Jackson was in his accustomed seat when the court convened.