

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1953

No. 1

OLIVER BROWN, ET AL.,

Appellants,

vs.

BOARD OF EDUCATION OF
TOPEKA, KANSAS, etc., ET AL.

Appellees.

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

**ADDITIONAL BRIEF OF THE AMERICAN FEDERATION
OF TEACHERS AS AMICUS CURIAE.**

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**MOTION FOR LEAVE TO FILE BRIEF AS
AMICUS CURIAE.**

*To the Honorable the Chief Justice and Associate Justices
of the Supreme Court of the United States:*

The undersigned as counsel for and on behalf of the American Federation of Teachers, respectfully moves this Honorable Court for leave to file the accompanying brief as Amicus Curiae. In October, 1952, we filed upon leave of Court our *Brief Amicus Curiae* in the case of Brown et al vs. Board of Education of Topeka, etc. (No. 8) and in December, 1952, in the case of Bolling et al v. Sharpe, et al (No. 413). Consent of Counsel for filing those briefs was given by counsel for appellants and appellees.

The American Federation of Teachers, whose 60,000 classroom teacher members represent the group which

does the actual work of teaching the children of the nation, is committed to a practice of complete equality between teachers and children of every race. This principle is written indelibly in its constitution and by-laws.

It desires to lay before the court the results of its study of the legal and historical questions raised by this Honorable Court in asking for a reargument of the "school segregation cases". The accompanying brief, largely the work of its Committee on Democratic Human Relations, is submitted as a contribution to the solution of the important issues involved.

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of Teachers.*

SELMA M. BORCHARDT,
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**BRIEF OF AMERICAN FEDERATION OF
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As a contribution to the solution of the important issues involved in the "segregated school cases" the American Federation of Teachers submits this brief upon some of the historical and legal questions raised by this Honorable Court in proposing a re-argument.

The Opinions Below, Questions Presented, Statutes and Constitutions Involved, and Statements of Facts have been stated in previous briefs filed in these causes.

Summary of Argument.

The arguments presented in our previous briefs *Amicus Curiae* and those presented herewith are summarized in the Introduction to the Argument.

A R G U M E N T.

Introduction:

Need to consider cases in broad aspects.

The American Federation of Teachers which is dedicated to “education for democracy and democracy in education” is deeply interested in the cases before the Supreme Court challenging the constitutionality of segregation in public elementary and secondary schools. The arguments the Federation submitted in October 1952 against segregated public education are equally valid in 1953 and we urge their favorable re-consideration.

We have studied carefully the historical and legal questions raised by the court in asking for a re-argument of the cases this year. While it is essential to have accurate and clear cut answers to these questions, the American Federation of Teachers believes that the interests of the United States, both national and international, demand the consideration of other factors as well as those raised by the Court.

In addition to the arguments presented in our brief October, 1952, namely:

1. The Constitutions and Statutes of states providing for segregation of students in the public schools, violate the requirements of the equal protection clause of the Fourteenth Amendment. The doctrine of “separate but equal” facilities is fallacious...
2. Segregation in public schools inevitably results in inferior educational opportunities for Negroes...
3. Segregation in public schools deprives the Negro student of an important element of the education process and he is thereby denied the equal educational opportunities mandated by the Fourteenth Amendment. . .

The Federation urges the abolition of segregated schooling on the elementary and secondary levels for the following reasons:

I. The strengthening and preservation of a democratic society demands an educated citizenry.

II. The intent of the 14th amendment was to make the Negro a citizen and protect his voting rights.

III. To exercise his right of choice effectively a voter must not only be educated but educated among all those who make up the total community.

IV. An integrated school system will aid tremendously in developing harmonious relations among the people of the South and thereby throughout the country.

Conclusion.

A decision in favor of integrated schooling on every level is necessary, not only to give substance to our declared principles but to win over the people of Asia and Africa to a believe in the sincerity of the United States.

I.

**THE STRENGTHENING AND PRESERVATION OF A
DEMOCRATIC SOCIETY DEMANDS AN EDUCATED
CITIZENRY.**

A democratic society is founded on the belief that all men are equal and capable of governing themselves. It holds further that men create the institutions of government for the purpose of safeguarding their rights of "life, liberty and the pursuit of happiness." To govern wisely, as well as to use effective checks upon governmental authority to prevent abuses, requires an alert, well-educated citizenry.

The early founders of this country were well aware of this need for the maintenance of popular government. They gave many evidences of their concern for public education in their writings and in their activities.

President George Washington in his first inaugural address stated:

"Knowledge is in every country the surest basis of public happiness. In one in which the measures of government receive their impressions so immediately from the sense of the community, as in ours, it is proportionably essential. To the security of a free constitution it contributes in various ways, by convincing thjose who are intrusted with the public administration that every valuable end of government is best answered by the enlightened confidence of the people and by teaching the people themselves to know and value their own rights, to discern and provide against invasions of them; to distinguish between oppression and the necessary exercise of lawful authority; between burdens proceeding from a disregard to their convenience and those resulting from the exigen-

cies of society; to discriminate the spirit of liberty from that of licentiousness, cherishing the first, avoiding the last and uniting a speedy but temperate ‘vigilance against encroachments with an inviolable respect to the laws’¹

Washington not only urged the establishment of a national university but, in his will, left 50 shares in the Potomac Company for such an institution to which the youth of fortune and talents from all parts thereof (of the U.S.) might be sent for the completion of their education in all branches of polite literature; in arts and sciences; and in acquiring knowledge in the principles of policies and good governments.²

In his Farewell Address, Washington left this final admonition; “Promote then, as an object of primary importance, institutions for the general diffusion of knowledge. In proportion as the structure of government gives force to public opinion, it is essential that public opinion should be enlightened.”³

John Adams in his DISSERTATION ON THE CANON FUEDAL LAW: “But the fact is certain; and whenever a general knowledge and sensibility have prevailed among the people, arbitrary government and every kind of oppression have lessened and disappeared in proportion.”⁴ He stated later in another essay: “*Thoughts on Government*” — “. . . Laws for the liberal education of youth, especially of the lower classes of people, are so extremely wise and useful,

¹ Maxims of Washington, pp. 184-185, John Frederick Shroeder Mt. Vernon Ladies Association—Mt. Vernon, Va. 1942.

² Writings of Washington—Vol. 37, p. 280, U.S. Government Printing Office, 1940.

³ Farewell Address, p. 179, Maxims of Washington, John Frederick Schroeder, Mt. Vernon Ladies Association, Mt. Vernon, Va. 1942.

⁴ Selected Writings of John Adams and John Quincy Adams, Adrienne Koch and William Peden, Alfred A. Knopf, 1940.

that to be humane and generous mind, no expense for this purpose would be thought extravagant.”⁵

Thomas Jefferson’s career was filled with activities in behalf of public education because he was convinced an informed public opinion was essential to maintaining freedom. As a member of the Virginia legislature he introduced bills for providing the state with a system of free public schools. He wanted especially written on his grave marker that he established the University of Virginia. His authorship of the Land Act of 1784, established the precedent followed in the Northwestern Ordinance of 1787 of granting land by the national government for the support of education.

Like Washington, he called attention, in his first inaugural address to the importance of education and the need for the national government to be concerned about it. “. . . The diffusion of information I deem (one) of the essential principles of our government and consequently (one) which ought to shape its administration”⁶

In a letter to James Madison he stated:

“Above all things I hope the education of the common people will be attended to; convinced that on their good sense we may rely with the utmost security for the preservation of a due degree of liberty.”⁷

The working man too realized the importance of education and a generation later, became quite vocal in his unions and political groups in demanding free public schools. He urged this not only for the self-improvement of the worker but also for his more effective functioning as a citizen.

At a New York State convention of the Workingman’s party in 1830 one address stated in print:

“The right of suffrage which we enjoy cannot be understandingly exercised by those whose want of edu-

⁵ Ibid., p. 56.

⁶ The Jeffersonian Encyclopedia, John P. Foley, Editor, Funk and Wagnalls, 1900.

⁷ Ibid., p. 277.

cation deprives them of the means of acquiring such information as is necessary for a proper and correct discharge of this duty.”⁸

In a circular to the workingmen of Philadelphia (1830) by the Workingmen’s Republican Association of the Northern Liberties, the organization made this appeal: “Let the productive classes then unite for the preservation of their free institutions and, by providing for all the children in the Commonwealth republican education preserve our liberties from the dangers of foreign invasion or domestic infringement.”⁹

A trade union of Newark demanded education for their children as “a matter of right and duty.” Its members argued: “Education alone, and that generally diffused is the only prop that will support the fabric of Democracy from being crushed beneath the weight of monopolized and moneyed aristocracy.”¹⁰

And the workers of the First Congressional District of Pennsylvania (1880) supported the candidacy of Stephen Simpson because “he is a friend and indefatigable defender of a system of general education which will place citizens of this extensive republic on an equality: a system that will fit the poor as well as the rich to become our future legislators; a system that will bring the children of the poor and the rich to mix together as a band of republican brethren; united in youth in acquisition of knowledge they will grow up together jealous of naught but the republican

⁸ History of Labor in the United States, Vol. 1, p. 283, J.R. Commons, MacMillan, 1918.

⁹ Ibid., p. 227.

¹⁰ Pioneers of Labor, p. 11, Pamphlet of Amalgamated Meat Cutters and Butcher Workmen of North America, Mayer, and Muller Co., Chicago, 1949.

character of their country and present to the world the sublime spectacle of a truly republican government in practice as well as in theory.”¹¹

As a result of the concern of the founders of this country and the persistent demands of labor unions, the free public school has become an integral part of American life. No other institution gives as tangible an evidence of American faith in the democratic way of life as the free public school and none is so generally supported by the great mass of people. It is ironic that this American institution is permitted by Southern State laws to violate and desecrate this faith so flagrantly and constantly.

II.

THE INTENT OF THE 14TH AMENDMENT WAS TO MAKE THE NEGRO A CITIZEN AND PROTECT HIS VOTING RIGHTS.

The 14th amendment, by stating specifically that “all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside”¹² intended to make the Negro a citizen. It also intended to make the Negro a voter and protect his voting rights by placing a penalty upon the states that disfranchised him—namely, cutting down the state’s representation in Congress. Section 2 of the amendment states; “. . . But when the right to vote at any election for the choice of electors for president and vice president of the United States, representatives to Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state. . . the basis

¹¹ History of Labor in the U.S., J.R. Commons, Vol. 1, p. 228, Mac-Millan, 1918.

¹² 14th Amendment, U.S. Constitution, Section 1.

of representation therein shall be reduced in the proportion which the number of such male citizens twenty-one years of age in such state.”¹³

The debates in the 39th and 41st Congresses and the state conventions and in the state legislatures which ratified the 14th amendment clearly indicate that both the proponents and opponents of the amendment realized that it protected the citizenship and voting rights of the Negro. Moreover, they show that the debaters were conscious of the issue of segregation in education. The Congressional Globe reports on February 19, 1866 that Senator Yates of Illinois while making a speech in the Senate for the proposed 14th Amendment said:

“ . . . the senate at this session have passed the bill (S. 61) to protect all persons. . . in their civil rights . . . here, sir, I contend, we have fully established the principle. . . protecting the inhabitants, of every race and color, without regard to any previous condition of slavery in all their civil and political rights. . . ”^{1414a}

A week later in the House Representative Rogers of New Jersey while arguing against the 14th Amendment state that:

“In the State of Pennsylvania there are laws which make a distinction with regard to the schooling of white children and the schooling of black children. It is provided that certain schools shall be designated and set apart for white children, and certain other schools designated and set apart for black children. Under this amendment, Congress would have power to compel the state to provide for white children and black children to attend the same school, upon the principle that all the people. . . shall have equal pro-

¹³ 14th Amendment, Section 2.

¹⁴ Toward a Non-Segregated South, Edwin R. Brook, Christian Century, September 1953.

^{14a} Congressional Globe, 39th Congress, First Session, February 19, 1866.

tection in the rights of life, liberty, and property, and all the privileges and immunities of citizens in the several States.”¹⁵

For a short period after the adoption of the Fourteenth Amendment there was no segregation at the University of South Carolina. Indeed it was not until the Tillman Constitutional Convention of 1895 that separate schools were provided for Negro and white children. Yet in 1868, Governor Orr voiced the opinion that the new amendment would bring immediate dire results. He addressed the Assembly as follows:

“. . . The Constitution provides that there shall be kept open, at least six months in each year, one or more schools in each school district. . . . Another Section, however, declares that all public schools, colleges and universities of the State, supported in whole or in part by public funds, shall be free and open to all children, and youths of the State, without regard to race or color.

If it shall be attempted to establish schools where both races are to be taught, no provision being made for their separation, the whole system will result in a disastrous failure. The prejudices of race, whether just or unjust, exists in full force not more in South Carolina than in New England and the West. In the last named localities, separate schools are provided for white and colored children, and in a community where these prejudices prevail in so strong a degree, how unreasonable is it to attempt the organization of mixed schools. It cannot but result in constant feuds and collisions between the children, in which the parents respectively, will necessarily take up the quarrels

¹⁵ Congressional Globe, 39th Congress, First Session, March 1, 1866.

and the entire community thus be involved in continual tumult; the consequence of misguided efforts of unwise persons.”¹⁶

In 1868 under the spirit of the Fourteenth Amendment, the people of Louisiana ratified a constitution by a vote of 66,152 to 48,739. The constitution provided:

“The general assembly shall establish at least one free public school in every parish throughout the State, and shall provide for its support by taxation or otherwise. All children of this State between the years of six and twenty-one shall be admitted to the public schools or other institutions of learning sustained or established by the State in common, without distinction of race, color, or previous condition. There shall be no separate schools or institutions of learning established exclusively for any race by the State of Louisiana.”¹⁷

By 1898 the political climate had so changed that the new constitutions decreed separate schools based on race in this fashion:

“There shall be free public schools for the white and colored races separately established by the General Assembly, throughout the State, for the education of all the children of the State between the ages of six and eighteen years; provided, that where kindergarten schools exist, children between the ages of four and six may be admitted into said schools.”¹⁸

Virginia’s Constitutional Convention of 1867-68 brought into prominence one James W. Hunnicutt who summarized

¹⁶ Journal of the Assembly of South Carolina, Special Session, 1868, p. 44.

¹⁷ Constitution of Louisiana, 1868, Title VII, Article 135.

¹⁸ Constitution of Louisiana, 1898, Article 248.

the position of his caucus of the Republican Party in a speech on January 9, 1869 this way:

“. . . Our banner is thrown to the breeze, and upon it is written ‘the unconditional preservation of the Union.’ That is the first plank. The second is, ‘a republican form of government.’ The third is, ‘the equal rights of all men, civil and political, before the law, without regard to race, caste or color.’ The last is, ‘the establishment of systems of general education for all the children in the land without regard to race, cast or color.’ These are the objects of the members on this side of the House.”¹⁹

Even clearer language is that used by the Fredericksburg’s convention which besides electing delegates to the constitutional convention adopted this resolution:

“that our candidates must pledge themselves to sustain the principles of the Republican Party, especially the equal political rights of all men in all respects; a system of common schools in which no distinctions shall be made on account of color and race, a general provision for the poor and a just and equitable system of taxation.”²⁰

It is apparent in our opinion, that the delegates to the convention of 1868 were conscious of the problem of segregated public schools. Many of them thought that the Fourteenth Amendment covered this point adequately and consequently specific reference to it in the State Constitution was not necessary. During the debates, a resolution by Dr. Thomas Bayne, a delegate from Norfolk, which spelled out non-segregation in public schools, met defeat as did

¹⁹ Debates and Proceedings of Constitutional Convention of Virginia, 1867-1868, p. 337.

²⁰ Political History of the Reconstruction in Virginia, H.J. Eckenrode.

likewise a provision to establish separate schools by Eustace Gibson.

The first State Legislature which was dominated by conservatives made segregated public schools legitimate. The importance of this move in creating a segregated society is obvious in the letter of W.H. Ruffner, the first superintendent of public instruction, who in answering the assumption of Reverend R.L. Dabney that education will lead inevitably to “amalgamation” observes:

“. . . But if under the ordinary associations of life there would be any tendencies in the direction of amalgamation, the school system would oppose a powerful barrier to such tendency. In fact, of all the public arrangements of Southern society, the school system alone renders a bold, emphatic testimony to the immiscibility of the races. We find Negroes in our churches, our theatres, our courthouses, our rail-cars, our halls of legislation; but there is one place where no Negro enters, and that is a WHITE PUBLIC SCHOOL HOUSE. The law separates the races in education, and in nothing else. The effect of this separation enters into the educational thought and training of the young, and establishes the habits and etiquette of society with a firmness that nothing else is doing, or could do. . .”²¹

Thirty years passed before the “plans” of the superintendent bore fruit as a fait accompli. The general Assembly of Virginia extended the segregated principle to other fields according to this time schedule:

1900, Chapter 226, Segregation in Railroads.

1900, Chapter 312, Segregation in Steamboats.

²¹ Collected Papers of William H. Ruffner, (letter in answer to R.L. Dabney) 6-11.

- 1901, Chapter 198, Segregation in Street-cars.
 1912, Chapter 157, Segregation in Residential
 areas.
 1918, Chapter 301, Segregation in Penitentiaries.
 1926, Chapter 569, Segregation in places of public
 amusement.²²

A consideration of ALL of the historical evidence on the question of segregation in public education in the southern states will confirm our findings in Virginia, South Carolina and Louisiana. These affirm that the political leaders during the late eighteenth century possessed an understanding of the effect of segregation on our public institutions and that Negroes enjoyed a fair measure of freedom. They also demonstrate that the Negro gradually lost full citizenship privileges by the turn of the century, if provisions on segregation in state constitutions and statutes or actual practices are our criteria. In a sense, then, this brief constitutes an argument to restore the rights of the Negro guaranteed him originally in the Fourteenth Amendment.

I I I.

TO EXERCISE HIS RIGHT OF CHOICE EFFECTIVELY A VOTER MUST NOT ONLY BE EDUCATED AMONG ALL THOSE WHO MAKE UP THE TOTAL COM- MUNITY.

So necessary is education to a wise use of the ballot that most states have laws that voters must be able to read and write as a minimum requirement for voting. The reading requirement, whether on the elementary or the more advanced level has a content suited for adults who are to help

²² Statutes of the General Assembly of Virginia.

vote the kind of laws and the type of leadership their communities will have.

In South Carolina it is the state constitution that is considered appropriate:

“Any person who shall apply for registration after January 1, 1898, if otherwise qualified, shall be registered: Provided, that he or she can both read and write any section of this constitution submitted to him or her by the registration officer. . . .”

In New York on the other hand, it is a literacy test that is required:

“ ‘new voter,’ within the meaning of this article, is a person who, if he is entitled to vote in this state, should have become so entitled on or after January first, nineteen hundred twenty-two, and has not already voted in a general election in the State of New York, after making proof of ability to read and write English, in the manner provided in section one hundred sixty-eight.”

The New York Board of Regents provides each applicant with one of the possible twelve examinations on subjects such as: The Hoover Dam, Thomas Edison, The Ausable Chasm, Samuel Adams, polio, Charles Lindbergh, Washington at Newburgh. He is required to answer correctly six out of eight questions on the topic in writing. Thus not only must the new voter read and write, he must also comprehend.

But it is not considered sufficient for a voter just to be able to read about issues and candidates. He is expected to have a more intimate knowledge of the individuals running for office and be able to weight and judge in choosing

among them. The necessity for the voter to know the merits and demerits of candidates is further attested by the “short ballot” movement. This aims to present to the voter only a few candidates so that he may know each more thoroughly.

Candidates, too, are required to live in the districts from which they are elected, not only that they may serve the people more effectively, but that the people may be represented by one whom they know well. Richard S. Childs in his article *The Short Ballot*, makes this point when he asserts:

“ . . . That the candidates should be conspicuous is vital. The people must be able to see what they are doing; they must know the candidate, otherwise they are not in control of the situation, but are only going through the motions of controlling.”²³

Childs goes on to show how important this is to the development of democratic government by this comment:

“ . . . If the government is to be brought within the sure control of the people, the ballot must be brought within the sure control of the individual voter. We must get on a basis where the real intentions of the average voter finds intelligent expression on the entire ballot so as to produce normally the kind of government the voters want whether that kind be good or bad.”²⁴

It is here that the public school plays a significant role, for it is in their learning together that prospective voters get to know and understand each other, learn the problems of their respective communities and discover those who may provide desirable leadership. More and more schools are being used not only as training ground for political aspirants, but also for forums where these aspirants meet

²³ *The Short Ballot*, Richard S. Childs, National Municipal League, 1930, p. 15.

²⁴ *Ibid.*, p. 20.

representatives of the entire community and discuss issues with them face to face.

The public schools then of the South must be integrated to serve the needs of all citizens, both white and black, in the effective exercise of their ballot—one of the main props of a democratic society.

IV.

AN INTEGRATED SCHOOL SYSTEM WILL AID TREMENDOUSLY IN DEVELOPING HARMONIOUS RELATIONS AMONG ALL GROUPS IN THE UNITED STATES.

The tensions and conflicts between races in the United States has resulted not from integrations but from the segregation and discrimination in custom and in law which have been inflicted upon the Negro. In no institution has this discrimination been so glaring as in the public school system of the South where the inequalities in facilities for white and Negro children daily incite contempt on one hand and bitterness on the other. A graphic picture of this inequality is presented by Edwin L. Brook in his article: "Toward a Non-Segregated South."¹⁴

"Consider, for example, my own community, a small town in Northern Louisiana. It has a fine brick school plant for white, with grammar and high school departments well equipped for an enrollment of about 250 pupils. It has gymnasium, lunch room, home economics building and agricultural building. On the outskirts of town there is a Negro school consisting of wood-frame buildings which are over-crowded and inadequately equipped. There is no gymnasium and the facilities on all levels cannot compare with those of the white school. Yet even as it is, the Negro school represents a tremendous advance over previous condi-

¹⁴ Toward a Non-Segregated South, Edwin R. Brook, Christian Century, September, 1953.

tions. It was not many years ago that the students were meeting in a tent in a near-by Negro churchyard. Now a number of small rural schools have been consolidated and the present building erected.”

Contrast this with areas where integration has been the practice. Here there are no humiliating distinctions. The Negro student is accepted and is recognized for what he is—one of the many varieties of an American.

After the *Sweatt-McLaurin* decision, 339 U.S. 629, 637 which made integration possible in state colleges and universities in the South, Negro students were accepted without any difficulty. Today between 1000 and 2000 of them are studying on over 80 campuses as irrefutable testimony to this fact. On the elementary and secondary level integration has followed suit in areas like Arizona New Mexico, Southern Illinois, Ohio, and New Jersey. Even the private preparatory schools of New England States have joined this democratic development. The Yale Law Journal summarizes the trend:

“. . . As a result of the recent Supreme Court cases, over a thousand Negroes have been peacefully integrated into southern graduate and professional schools. Social ostracism has not been as great as was expected. Furthermore, in Illinois, Indiana, and New Jersey, state legislatures have forced reluctant communities to eliminate segregation in the grade schools. Despite local resentment and protest, the integration of Negro and white children has generally proceeded peacefully.

“Other forms of desegregation have recently occurred in the South and despite sporadic racial violence the transition has in general been peaceful. In some instances the desegregation has occurred in activities where southern insistence on segregation has been most adamant. Thus, in St. Louis and Washington, D.C., in spite of strong public protest, segregation in municipal swimming pools has been successfully prohibited. Experience in the elimination of segregation in public

parks, sporting events, theatres and movies has been the same. Likewise, in the armed forces, where resistance to racial integration has been traditional, segregation is fast disappearing at the command of the President. In the allied fields of racial discrimination, such as white primaries, all-white juries and segregated interstate travel, court orders have partially overcome deeply rooted patterns of discrimination. All of this progress has been made in the face of continuous threats of violence and non-conformance by southern leaders.

“These instances of southern adjustment to enforced desegregation strongly suggest that the normal reaction of the South to Supreme Court decisions is not violent. Generally, the only resistance takes the form of attempted circumvention. Tighter decrees and persistent enforcement ultimately overcome even this type of resistance. Thus, there is little reason for the courts to allow threats of violence and civil strife to delay desegregation.

“In the long run it is well established that segregation intensifies rather than eases racial tension. Instead of encouraging racial cooperation, segregation fosters mutual fear and suspicion which is the basis of racial violence. Thus, every inroad in racial segregation which the courts can effect maximizes the opportunity for eventual racial reconciliation.”²⁵

THE AMERICAN FEDERATION OF TEACHERS feels that desegregation on the American scene is successsfully proceeding in various ways—by voluntary community action, by legislative acts, by judicial review, by military and religious authority and by individual initiative.

In all of these cases the question of appropriate method, timing and who should take the initiative, arises. We believe that the public scholl being one of the molders for our citizens of tomorrow should take the lead; we believe

²⁵ Yale Law Journal, Volume 61 No. 5, May 1952.

the time is now—we believe we have the ‘know-how’—we believe the most logical authority is the Supreme Court.

The experience of the United States Department of Defense can be of service to us in this connection. The armed forces, once completely segregated has in three years, almost become totally desegregated. Listen to John A. Hannah, Assistant Secretary of Defense, in an interview on ending segregation:

Q: Have you solved the problem of segregation in the Army?

A: I think remarkable progress has been made.

The Air Force and the Navy are completely integrated. The Army is about 95 per cent integrated.

Q: What does that mean?

A: That means that there are no colored men in the Navy or the Air Force who are serving in “colored” units. They are all serving in integrated units. And that is true of 95 per cent of the colored men in the Army. We still have a few colored units, but they are being done away with rapidly. In eight months there will be no non-integrated units in the Army. Universally the answer from our commanders is that it is desirable and works out very well in spite of all contrary prediction—it works very well.

Q: There has been no resistance, no violence or demonstrations about it?

A: No. The colored men are very effective members of the armed forces. Some of them are more effective than others, of course, depending upon their background and training.

Q: Are they adept for any particular types of jobs?

A: We don’t know that yet.

Q: How many colored officers are there in command positions in these integrated setups?

A: There are a goodly number. There are not as many colored officers proportionately as there are white officers.

Q: Are they commanding white troops?

A: Yes, and there are a great many more than there used to be because, as the colored officers begin to demonstrate ability, they begin to move up.

Q: Is there a quota system?

A: None.

Q: How many Negroes are there in the Army?

A: I do not recall the exact number, but about 13 per cent of the Army is colored.

Q: Are you thinking about lowering physical standards at all?

A: No. There have been requests from the services for the raising of the mental qualification at the minimum level. At the present time, we require each of the services to take a certain percentage of the four mental categories. Whether a man enlists or comes in in the draft, they are all given examinations at the examining stations and are put into one of four categories, and then we require each of the services to take the same percentage of each of the categories. The services think they are very definitely hindered by being required to take too many Category 4 people—the people in the lowest mental category.²⁶

New Jersey, like Illinois and Ohio, is contiguous with states that have a segregated pattern. New Jersey's experience in desegregation in the southern part of the state is brought out by Joseph L. Bustard, Assistant Commissioner of Education in a speech delivered at Howard University, April 16, 1952 when he reported:

“. . . A very recent survey in New Jersey shows that at the present time, forty of the forty-three school districts involved were completely integrated as of September 1951. The remaining three districts all have taken some steps toward integration, but in all three of these districts, building programs are underway, that when finished, will make integration complete.

“Sometimes the question arises should integration in the public schools follow or lead movements for integration in other areas of community life. The New Jersey experience would see to indicate that the

²⁶ U.S. News and World Reports: October 16, 1953—Interview with John A. Hannah, Assistant Secretary of Defense, pp. 99, 100.

schools can and should lead. Practically all of the segregated schools had segregated parent-teacher associations. Today, in almost all of the districts affected, there are strong integrated PTA's with Negroes serving as officers and executive committee members. In several communities, Y.M.C.A.'s that were segregated have become integrated. In a few communities, Negroes are serving as members of boards of education and in some others, policemen have been appointed and handle the same type of assignment as any other officer on the force. In fact, even a few of the North Jersey cities have restudied old school zones, that at one time or another had been jerrymandered, and as a result have announced new school district lines.

"While New Jersey cannot furnish any one formula, it can testify that complete integration in the public schools can and will work. It may even be safe to say once more, that the way to learn to do a things is to do it, and in this respect, New Jersey has proven again that the best way to integrate is to do it."²⁷

In most instances of successful integration in public school the first step seems to be the establishment of legal authority. William W. Barnes in a review of the methods used by a local board of education in solving this problem writes:

"... In conclusion, therefore, it is safe to say that the following policies and attitudes must be a part of any desegregation program undertaken in any community, whether it be large or small. First, there must be some legal authority giving initial impetus to an integration program. Second, an objective survey of all installations, faculties, pupil compositions and community attitudes should be made. Third, and perhaps most important, once the decision to desegregate is made, the carrying out of the plans made must be done in a positive manner with no deviation, apology, exception or vacillation whatsoever. If these three

²⁷ The New Jersey Story: Concerning the Development of Racially integrated Public Schools, pp. 9, 17, April 1953, New Jersey Department of Education

major suggestions are carried out, the successful experiences of over forty school districts in the State of New Jersey indicate that the integration of white and colored school systems can be accomplished to the satisfaction of all the people affected."²⁸

The majority of the people in the south will accept a Supreme Court decision outlawing segregation on the elementary and secondary level as they accepted the decision outlawing the white primary. Especially will they do so, if the law-enforcement agencies on the national, state and local levels all indicate publicly that they will not countenance anything but orderly acceptance of a Supreme Court decision in favor of an integrated school system.

Conclusion.

The United States, in the cold war with Soviet Russia and its satellites is disturbed by the "neutralism" of India and other sections of the darker world. The factor of color has as dominant a part in this neutralism as the unwillingness to be drawn into a conflict between these powers. Constantly in the U.N. and in the press of these countries there is pointed out the gap between our professions of democracy and our practice in so far as people of color are concerned. The western world is still too unaware of the upheavals taking place among the darker people of the world and too indifferent to the significance of these upheavals for the white world.

In so far as we eliminate among our citizens barriers based on race and color, to that degree we are helping to

²⁸ Eliminating Segregation in New Jersey in Public Schools, William W. Barnes, Field Supervisor, Division Against Discrimination, New Jersey Department of Education, p. 7, October 15, 1953.

create a "more perfect union here" and a reservoir of good will for us in the vast world of color.

A decision outlawing segregation in education on the elementary and secondary level will not only advance the educational opportunities of both whites and Negroes in the South, but it will also give convincing evidence to millions in Asia and Africa that the United States is willing to give more than lip service to the principles on which it is founded.

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