

THE CASE

as a state employee, in various competitions for better jobs. She was granted absolute preference over other veterans who had an equal preference as she had. In addition to the veterans in the state, the statute overwhelmed the detriment of females. The federal district court ruled against women's preference under the Fourteenth Amendment. The court held, in part, that no one within its jurisdiction could be denied laws." The federal court because of its severe impact on women. The personnel records appealed to the

DOCUMENTS

Massachusetts legislators and probable consequences. It was argued that when they argued for the absolute preference, the enormous statistical advantage was in their favor. Thus, she intentionally discriminated against the Fourteenth Amendment.

It was argued that the purpose of the statute was to benefit veterans and not women. Also, it was argued that the state argued that the preference was to the sort of special laws.

The 7-2 majority opinion held that the statute was not unconstitutional. The court reasoned that the preference for men were also affected by the statute. The court intentionally preferred men and stressed that the statute was a law "because

of" and not "in spite of" its adverse effects upon women could there be said to have been purposeful discrimination. The majority concluded that there was no proof that the Massachusetts legislature sought to disadvantage women by the policy; the fact that 50 times as many veterans were men was just one of the incidental consequences of the statute. Therefore, the statute did not violate the equal protection clause.

The dissenters believed that the state did not meet its burden of proving that sex-based considerations played no part in the adoption of the scheme. They saw no difference in previous Court decisions that invalidated laws reflecting "archaic assumptions about women's roles."

AFTERMATH

The *Feeney* requirement that the plaintiff must prove an actual discriminatory purpose has been a roadblock for pregnancy-based discrimination. The Court also has upheld seniority systems even though employers had for years excluded minorities from certain jobs: even though the seniority system had a foreseeable, discriminatory effect upon a minority's ability to obtain future promotions, it was upheld because no purposeful discrimination was proven. After losing her Supreme Court battle, Feeney later obtained a degree in gerontology.

SIGNIFICANCE

The Fourteenth Amendment's guarantee that no person shall be denied the equal protection of the laws must coexist with the practical necessity that most legislation classifies for one purpose or another. Such classifications inevitably result in disadvantages to various groups or persons. The Court has come to grips with this reality by stating that, if a law neither burdens a fundamental right nor targets a class based on race, sex, national origin, alienage, or other similar trait, it will uphold the legislative classification so long as it bears a rational relation to some legitimate end. In *Feeney*, because the Court believed that women were not being targeted by the veterans preference scheme, the legislation was upheld.

RELATED CASES

Bray v. Alexandria's Women's Health Clinic, 506 U.S. 263 (1993)

International Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977)

Washington v. Davis, 426 U.S. 229 (1976)

RECOMMENDED READING

Gayle Binion, "Intent" and Equal Protection: A Reconsideration, *Supreme Court Review* 397-457 (1983).

Leo Kanowitz, "Benign" Sex Discrimination: Its Troubles and Their Cure, 31 *Hastings Law Review* 1379-1431 (July 1980).

Bruce E. Rosenblum, *Discriminatory Purpose and Disproportionate Impact: An Assessment after Feeney*, 79 *Columbia Law Review* 1376-1413 (1979).

Case Title: *Plessy v. Ferguson*

Alternate Case Title: The Separate but Equal Case

Legal Citations: 163 U.S. 537; 16 S.Ct. 1138; 41 L.Ed. 256

Year of Decision: 1896

KEY ISSUES

Do the states have the right to require separate accommodations in interstate commerce based on race?

HISTORY OF THE CASE

In the late 19th century, the legislatures of many southern states passed laws imposing racial segregation. These laws, called "Jim Crow" laws, created two separate societies, one for whites and one for blacks.

Homer Plessy, a light-skinned black man, bought a first-class ticket to travel from New Orleans to Covington, Louisiana, on the East Louisiana Railroad. At this time, trains segregated their passengers, having cars specifically for whites and cars specifically designated for blacks. On June 7, 1892, he entered a car for white passengers, where he took a vacant seat. A police

officer was summoned, and Mr. Plessy was forced to leave the coach. He was imprisoned in the jail of New Orleans for having violated the "Jim Crow" law of Louisiana, which separated blacks from whites on trains. Plessy was tried before the criminal district court of Orleans Parish, but before he could be fined or sentenced, he filed a petition for a writ of prohibition against Judge John H. Ferguson, the judge of the criminal district court. The Louisiana Supreme Court reviewed the petition of Mr. Plessy and found that the statute was constitutional and that Mr. Plessy, being one-eighth black, was "a member of the colored race." Plessy petitioned to the U.S. Supreme Court and the Court accepted jurisdiction.

SUMMARY OF ARGUMENTS

Mr. Plessy's case was argued by Albion Tourgee, who affirmed that the concept of separate but equal was in theory equal and impartial, but that its object was to debase and to distinguish one race as inferior to the other. Regardless of the intent of the law, black citizens were constantly reminded of white superiority and supremacy. Tourgee uttered the famous words, "Justice is pictured blind and her daughter, the law, ought at least to be colorblind."

Alexander Morse represented Judge Ferguson. Morse argued that the Louisiana legislature was at liberty to act with reference to the usage, custom, and traditions of their people, with a view to promoting their comfort and preserving the public peace in good order.

DECISION

Justice Henry Brown wrote the majority opinion. By a vote of 8-1, the Court ruled that laws permitting, and even requiring, the separation of persons by race do not imply the inferiority of either race to the other. Justice Brown further found that the distinction based on skin color has no tendency to destroy the legal equality of the races. Justice Brown also stated that laws requiring the separation of races commonly have been upheld, especially with regard to separate schools for white and for black children. Brown ruled that there was a distinction between laws that interfere with political equality for "the negro" and those that require the separation of races in schools, theaters, and railroad cars:

We consider the underlying fallacy of the plaintiff's [Plessy's] argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it.

Justice John M. Harlan of Kentucky wrote a thundering dissent. Harlan, a former slaveowner, argued that the Thirteenth and Fourteenth Amendments to the Constitution added to the dignity and glory of American citizenship by securing personal liberty to all persons born or naturalized in the United States. To that end, they "removed the race line" from our government. Justice Harlan had no trouble recognizing that the intent of this law was to interfere with the personal liberties of black citizens of Louisiana. Justice Harlan continued:

The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth, and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage, and holds fast to the principles of constitutional liberty. But in view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is colorblind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or his color when his civil rights as guaranteed by the supreme law of the land are involved. It is therefore to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for the state to regulate the enjoyment by citizens of their civil rights solely upon the basis of color.

In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the Dred Scott Case.

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RELAT

Muir v. Louisville Park 971 (1954)

Watson v. Memphis, 3

RECOMME

Carmichael, Peter A. *The*ington, D.C.: Public Fischer, Roger A. *The Louisiana, 1862-18*nois Press, 1974.

Woodward, C. Vann. *The*3d ed. New York: C

Case Title: *Reed v.*

Legal Citations: 40 L.Ed. 2d 225

Year of Decision:

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Is a statute preferring istrators of estates cc

HISTOR

Richard Reed died, parents, then separated seeking to administer statute established a administrator of such

AFTERMATH

For more than 60 years, the Supreme Court regarded "separate but equal" as an appropriate interpretation of the law with regard to the civil rights of black citizens.

SIGNIFICANCE

Plessy v. Ferguson encouraged legislators in the South to pass "Jim Crow" laws, which intensified the segregation of blacks and whites, the disenfranchisement of black voters, and other violations of the civil rights of blacks.

RELATED CASES

Muir v. Louisville Park Theatrical Assn., 347 U.S. 971 (1954)

Watson v. Memphis, 373 U.S. 526 (1963)

RECOMMENDED READING

Carmichael, Peter A. *The South and Segregation*. Washington, D.C.: Public Affairs Press, 1965.

Fischer, Roger A. *The Segregation Struggle in Louisiana, 1862-1877*. Urbana: University of Illinois Press, 1974.

Woodward, C. Vann. *The Strange Career of Jim Crow*. 3d ed. New York: Oxford University Press, 1974.



Case Title: *Reed v. Reed*

Legal Citations: 404 U.S. 71; 92 S.Ct. 251; 30 L.Ed. 2d 225

Year of Decision: 1971



KEY ISSUES

Is a statute preferring men over women as administrators of estates constitutional?

HISTORY OF THE CASE

Richard Reed died without a will. His adoptive parents, then separated, filed competing petitions seeking to administer their son's estate. An Idaho statute established a scheme for the selection of the administrator of such an estate, where eligible per-

sons were grouped into 11 categories by their relationship to the decedent. The statute further provided that when more than one person in the same category are claiming and are "equally entitled" to administer, males must be preferred to females.

Based on this portion of the statute, the probate court held in favor of the father. Sally Reed, the mother of the deceased, appealed to the U.S. District Court of the Fourth Judicial District of Idaho. The district court held that the challenged section violated the equal protection clause under the Fourteenth Amendment and was, therefore, void. However, Cecil Reed, the father of the deceased, took a further appeal to the Idaho Supreme Court, which reversed the district court's holding.

SUMMARY OF ARGUMENTS

The state, on behalf of Cecil Reed, argued that the statute's preference of males over females simply reduced the work load of probate courts by eliminating hearings on the merits. Therefore, the state contended that the statute was intended as "benign" legislation.

Sally Reed argued that the section of the Idaho Code violated the equal protection clause of the Fourteenth Amendment because the selection of males over equally qualified females was arbitrary. She also challenged the section as a violation of the Idaho Constitution.

DECISION

The Supreme Court reversed the judgment of the Idaho Supreme Court. Chief Justice Burger delivered the unanimous decision of the Court, holding that the arbitrary preference of males could not withstand constitutional attack. He reasoned that the equal protection clause forbids the states from legislating that different persons be placed into separate classes on the basis of criteria wholly unrelated to the objective of that legislation. He stated that such gender-based classifications must be reasonable, not arbitrary. Most important, Burger decided that the scheme's mandatory preference of males was not reasonably related to the state's objective of reducing the workload by eliminating one class of contests.

AFTERMATH

Before *Reed*, the Court had easily found that a sex-based statute was rationally related to some

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DECISION

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AFTERMATH

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SIGNIFICANCE

In *Covert*, the Supreme Court struck down court-
 martial jurisdiction over civilians in capital crime
 trials. *Kinsella* continued that trend by disallow-
 ing military trials of civilians for noncapital
 offenses. The result was to eliminate U.S. extra-
 territorial jurisdiction over civilians accompany-
 ing its forces overseas.

RELATED CASES

Reid v. Covert (Kinsella v. Krueger), 354 U.S. 1,
 77 S.Ct. 1222, 1 L.Ed. 2d 1148 (1957)

United States ex rel. Toth v. Quarles, 350 U.S. 11,
 76 S.Ct. 1, 100 L.Ed. 8 (1955)

RECOMMENDED READING

Bigel, Alan I. *The Supreme Court on Emergency Pow-
 ers, Foreign Affairs and Protection of Civil Liber-
 ties, 1935–1975*. Lanham, Md.: University Press of
 America, 1986.

Gregory A. McClelland, *The Problem of Jurisdiction
 over Civilians Accompanying the Forces Over-
 seas—Still with Us*, 117 *Military Law Review* 153
 (1987).

Case Title: *Marbury v. Madison*

Legal Citations: 5 U.S. 137; 2 L.Ed. 60

Year of Decision: 1803

KEY ISSUES

Does the Constitution give the Supreme Court the
 authority to review acts of Congress and declare
 them, if repugnant to the Constitution, to be
 void?

HISTORY OF THE CASE

This landmark constitutional case arose from a
 political dispute in the aftermath of the bitter
 presidential election of 1800. Republican Thomas
 Jefferson defeated incumbent Federalist John
 Adams for the presidency. Adams, in his final days
 in office, attempted to entrench Federalists in the

judiciary by appointing 16 new circuit judges and
 42 new justices of the peace for the District of
 Columbia. Commissions for four of the new jus-
 tices of the peace, including William Marbury,
 were not delivered before Adams’s last day in
 office.

When President Jefferson’s secretary of state,
 James Madison, refused to give the four men their
 commissions, Marbury asked the Supreme Court
 to issue a writ of mandamus ordering him to do
 so. The case presented a dilemma for Chief Justice
 Marshall, a committed Federalist whom Adams
 had named chief justice immediately after his elec-
 toral defeat. If the Supreme Court issued the
 order, Madison might refuse, and the Court had
 no means to enforce compliance. If the Court did
 not issue the writ, it risked surrendering judicial
 power to Jefferson and the Republicans.

SUMMARY OF ARGUMENTS

Marshall noted that the question of whether a
 federal statute contrary to constitutional provi-
 sions could be the law of the land was “not of an
 intricacy proportioned to its interest.” The basis
 for this ruling was the concept that the people of
 the nation had the right to establish binding prin-
 ciples for the governing of society, which had the
 effect of enforceable law. While the people might
 have established a government of general powers,
 they chose instead to create one of defined and
 limited powers.

Marshall reasoned that there could be no
 middle ground between these types of govern-
 ment. That left, in his opinion, the choices of
 either declaring the Constitution to be the super-
 ior and binding law or allowing the legislature to
 be an entity of unlimited powers. The fact that the
 nation had sought to establish a *written* Constitu-
 tion with fundamental principles to bind it in the
 future was evidence that the Constitution should
 be the superior and binding law. If the Constitu-
 tion was the superior law, then an act repugnant
 to it must be invalid.

DECISION

Marbury’s action was discharged because the
 Court did not have original jurisdiction. The Judi-
 ciary Act was unconstitutional. The Court found
 that the construction of the Constitution, when
 given its plain meaning, specifically enumerated
 the types of cases over which the Court had

original and appellate jurisdiction. The Court also found that a mandamus action, an action seeking an order from the Court commanding a person to take a certain action, sought to invoke the original, not the appellate, jurisdiction of the Court. Since such an action was not enumerated in the Constitution as an action coming under the Court's original jurisdiction, the Judiciary Act enacted by Congress, which gave the Court the power to issue a writ of mandamus, was contrary to the Constitution and void. In arriving at this conclusion, the Court found that the review of laws to judge their conformity with the Constitution was the essence of the Court's judiciary duty. The Constitution is superior to any ordinary legislative act; therefore, it must govern a case to which both apply. The supremacy clause (Article 6, section 2) declares that the Constitution and those acts of Congress made in pursuance thereof shall be the supreme law of the land. Thus, the Court must determine when such acts are actually made in pursuance of the Constitution. The power of judicial review is implicit in the Constitution.

AFTERMATH

In more recent times, the Court has asserted a broad judicial review power, claiming the responsibility of being the ultimate interpreter of the Constitution. Once a law is declared unconstitutional, the courts simply decline to enforce it.

SIGNIFICANCE

Judicial review of legislative acts was a controversial subject even before the Constitution was ratified and adopted. Alexander Hamilton upheld the theory of judicial review in the *Federalist Papers*. He argued that the judiciary, being the most vulnerable branch of the government, was designed to be an intermediary between the people and the legislature. Since the interpretation of laws was the responsibility of the judiciary, and the Constitution the supreme law of the land, any conflict between legislative acts and the Constitution were to be resolved by the Court in favor of the Constitution. But other authorities have attacked this position. In the case of *Eakin v. Raub* (1825), Justice Gibson dissented, stating that the judiciary's function was limited to interpreting the laws and should not extend to scrutinizing the legislature's authority to enact them. Judge Learned Hand felt that judicial review was inconsistent with the separation of pow-

ers. But history has supported the authority of judicial review of legislative acts. The United States survives on a tripartite government. Theoretically, the three branches should be strong enough to check and balance one another. To limit the judiciary to the passive task of interpretation would be to limit its strength in the tripartite structure. *Marbury* served to buttress the judiciary branch, making it equal to the executive and legislative branches.

RELATED CASES

- Franklin v. Massachusetts*, 505 U.S. 788 (1992)
Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)
Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992)

RECOMMENDED READING

- Bickel, Alexander M. *The Least Dangerous Branch*. New Haven, Conn.: Yale University Press, 1962.
 Currie, David P. *The Constitution in the Supreme Court, 1789-1888*. Chicago: University of Chicago Press, 1985.
 Fisher, Louis. *The Constitution between Friends*. New York: St. Martin's Press, 1978.
 Thomas C. Grey, *Do We Have an Unwritten Constitution*, 27 *Stanford Law Review* 703 (February 1975).
 Keynes, Edward, with Randall K. Miller. *The Court vs. Congress*. Durham, N.C.: Duke University Press, 1989.
 McCloskey, Robert G. *The American Supreme Court*. Chicago: University of Chicago Press, 1960.



Case Title: *Martin v. Hunter's Lessee*

Legal Citations: 14 U.S. 304; 4 L.Ed. 97

Year of Decision: 1816

KEY ISSUES

Does the U.S. Supreme Court have appellate jurisdiction over the highest state courts on issues

involving the federal treaties?

HISTOR

Defendant Denny Martin, heir to the Virginia estate that died in England in 1776, had confiscated the property that Virginia had conveyed to a Virginia citizen. Hunter's ejectment, an action to remove and recover damages in the virtue of two treaties between the United States and Britain that protected property. The Virginia court denied the plaintiff's claim and the Supreme Court. The case complied with the treaties and was appealed.

SUMMARY

Martin's representative argued on the anticorruption grounds between the United States and Britain that Hunter, and the state had vested in Virginia absolute ownership of the property so that they held the title.

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The Virginia court was overruled by the Supreme Court's decision on the grounds: (1) The Judiciary Act of 1789, provided for the Supreme Court of final state claims under the federal treaties. The outcome of this case is given by the Constitution in all cases in which the federal government has jurisdiction, subject to the Constitution. All cases involving treaties of the United States, the judicial power granted to the Supreme Court; hence, the case is subject to that Court's jurisdiction. Section 25 of the Judiciary Act is necessary throughout the whole of the subjects within the purview

decision not apply retroactively. However, he still urged that this case be set for reargument.

Justice Rehnquist wrote the final dissenting opinion in which Chief Justice Burger joined. He began by questioning whether the majority did what they set out to do: merely to reexamine the portion of *Swain* concerning the evidentiary burden placed on a criminal defendant who claims he has been denied equal protection through the state's use of peremptory challenges to exclude members of his race from the petit jury. He then showed two circumstances in which a state might use its peremptories to exclude blacks from juries in criminal cases.

He quoted *Swain*, which held that when a state uses the peremptory to exclude a black person from a particular jury based on the belief that that person would be more likely to favor a black defendant, it is not a violation of equal protection. Justice Rehnquist reiterated that peremptory challenge should be used, as was done historically, upon the instincts, beliefs, and "unaccountable prejudices" of the prosecutor or defense counsel. He believed that in light of these considerations, it is not a denial of equal protection to strike black people in a particular case.

He further argued the fairness of such peremptory challenges, which state that everyone is subject to being challenged without cause. Justice Rehnquist saw nothing "unequal" about the state using its peremptories to strike blacks from the jury in cases involving black defendants—as long as the challenges were also used to strike white jurors in cases involving white defendants, and the same with Asians, Hispanics, or any other racial or ethnic group. If applied across the board, he did not see an equal protection violation.

Additionally, Justice Rehnquist did not see a violation of any other constitutional interest, nor any harm to the remainder of the community or the excluded jurors. He backed the use of group affiliations as a legitimate basis for a state's use of peremptory challenges, and he felt they were helpful in eliminating persons who may be biased. He did not agree with any substantive departure from *Swain*, and he argued that the petitioner in this case did not make an appropriate showing to overcome the presumption showing that the state's use of peremptory challenges was related to the context of the case.

AFTERMATH

The Court overruled the part of *Swain* that precluded a criminal defendant from making out an equal protection violation based on the exclusion by peremptory challenges for black jurors in the defendant's particular case. As a result, *Batson* took a significant step toward eliminating racial discrimination in the selection of criminal juries.

SIGNIFICANCE

Since *Batson*, the Court has extended its doctrine to prohibit the use of racially discriminatory peremptories by criminal defendants, civil litigants, defendants of a different race from the excluded juror, and in cases of sex-based discriminatory peremptory strikes.

RELATED CASES

- Edmonson v. Leesville Concrete* (1991)
- J.E.B. v. Alabama*, 114 S.Ct. 1419 (1994)
- Powers v. Ohio*, 499 U.S. 400 (1991)
- Swain v. Alabama*, 380 U.S. 202 (1965)

RECOMMENDED READING

- Albert W. Alschuler, *The Supreme Court and the Jury: Voir Dire, Peremptory Challenges, and the Review of Jury Verdicts*, 56 University of Chicago Law Review 153, 196–198 (1989).
- Leonard Mandell, *Extending Batson v. Kentucky: Do Gender-Based Peremptory Challenges Violate the Constitutional Guarantee of Equal Protection?*, 2 ABA Preview of United States Supreme Court Cases, 57, 57 (1993).

Case Title: *Brown v. Board of Education of Topeka, Kansas*

Alternate Case Titles: Brown School Admissions Case, School Desegregation Cases

Legal Citations: First Brown: 347 U.S. 483; 74 S.Ct. 686; 98 L.Ed. 873 (1954). Second Brown: 349 U.S. 294; 75 S.Ct. 753; 99 L.Ed. 1083 (1955)

Years of Decision: 1954, 1955

KEY ISSUES

Did the practice of segregating schools by race—almost universal in southern and border states prior to the decision—deprive black children of equal protection of the law, guaranteed to all Americans regardless of race under the Fourteenth Amendment to the U.S. Constitution?

HISTORY OF THE CASE

In the states where slavery was practiced prior to the passage of the Thirteenth Amendment outlawing slavery in 1865, a variety of laws had prohibited the education of slaves based on the theory that education might make them less tractable and encourage rebelliousness. In all parts of the country, public education was far from universal in the mid-19th century for children of any color, but tax-supported education was rare indeed in the agrarian South.

The federal government, during the Reconstruction period immediately following the Civil War, tried to establish a minimal system of schools for blacks in the former slave states under the auspices of the Freedmen's Bureau. When the bureau was shut down in 1870, this rudimentary system of education was largely abandoned. Reconstruction drew to a close in the South in the mid-1870s as federal troops were withdrawn and state governments fell back under the control of the local white population. Southern whites were determined to use both the law and extralegal intimidation to restore their domination over former slaves by establishing a rigid economic, political, and social caste system. By 1900, southern blacks had been effectively denied the right to vote, reduced to a condition of quasi serfdom in most rural areas, and subjected to a system of legally mandated segregation that barred social interaction between whites and blacks in almost every arena of life, including education.

In the late 19th and early 20th centuries, state and local governments gradually accepted the responsibility of offering all children at least several years of free public education, but educational standards in the South lagged far behind the rest of the nation, for whites as well as blacks. The education provided southern black children was even more inferior and totally separate. In 1910, expenditures per pupil for black schools

averaged less than a third of those spent on white pupils.

Black plaintiffs challenged legally imposed segregation in the courts, contending that state laws imposing segregation violated the rights to equal protection of the laws guaranteed them under the Fourteenth Amendment to the Constitution. In 1896, the Supreme Court by an 8-1 decision upheld a Louisiana law mandating separate but equal accommodations on passenger trains (*PLESSY V. FERGUSON*). Three years later, in *Cumming v. Richmond County Board of Education*, the Court unanimously upheld segregation in the public schools, declaring that education was a matter left to state jurisdiction and that federal interference could not be justified. In 1908, the Court gave further sanction to Jim Crow education when it upheld, in *Berea College v. Kentucky*, a state law requiring segregation in private educational institutions.

The National Association for the Advancement of Colored People (NAACP) formulated in the early and mid-1930s a strategy for legally challenging school segregation on the ground that, in practice, separate education was never equal. The organization began by challenging state universities in border states such as Missouri and Maryland that maintained law schools for whites but not for blacks. In a critical 1938 decision (*MISSOURI EX REL. GAINES V. CANADA*), the Court ruled that the state of Missouri had to admit a black applicant to the state-supported law school since it had failed to provide a law school for black residents of the state.

The NAACP's goal was to abolish all forms of segregation in public education, but initially its legal drive focused on obtaining support in federal courts for "absolute equality," rather than challenging the courts to reverse the separate but equal doctrine laid down in *Plessy v. Ferguson*. The organization's legal strategists believed that the South would find the support of two absolutely equal parallel educational systems too expensive to sustain. Pursuing this strategy, the NAACP won case after case: forcing school districts to pay teachers in black schools exactly what they paid teachers in white schools, state law schools to admit black students, and state universities to admit black undergraduates.

This strategy, while successful in individual cases, was painstakingly slow. In each case, the

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47 U.S. 483; 74
Second Brown:
Ed. 1083 (1955)

plaintiffs had to establish that separate educational facilities offered blacks were inferior in some way to those offered whites. Without a direct reversal of the *Plessy* doctrine ruling segregation inherently unequal, it would take generations to equalize the thousands of school districts in the South.

By 1950, the NAACP decided that it would have to develop cases that would force the Supreme Court to address the issue of whether segregated schools were inherently unequal and, therefore, a violation of the equal protection of the laws guaranteed all Americans regardless of race or color.

The decision known as *Brown v. Board of Education* dealt with not one case but five separate cases that raised similar issues and that the Court, therefore, decided to hear together and decide together.

Briggs v. Elliot was a challenge to the segregated schools of Clarendon County, South Carolina, carefully crafted by the NAACP to challenge segregation per se. In arguing the case before a special three-judge panel in federal district court in Charleston, the plaintiffs presented evidence from social scientists that segregation in the schools reduced the self-esteem of black children. Resting on the *Plessy* doctrine, two of the judges rejected this argument but ordered the defendants to "promptly" provide equal educational facilities to black pupils. Judge J. Waites Waring dissented, accepted the NAACP's argument that a child attending a segregated school was "poisoned by prejudice" and that segregation in education was "an evil that must be eradicated."

Brown v. Board of Education of Topeka, Kansas was a case challenging the very concept of segregation, since the facilities provided to black and white students were essentially comparable. The case was heard by a three-judge panel of district judges who decided unanimously against the plaintiffs on the basis that the Supreme Court had yet to overturn the separate-but-equal doctrine. In the "Findings of Fact" attached to the opinion, however, the judges declared: "Segregation with the sanction of law . . . 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." This statement, as one NAACP lawyer remarked, would clearly put the Supreme Court "on the spot."

Gebhart et al. v. Belton et al. was a Delaware case seeking to overturn a decision by the state's chancery court that segregation in the schools created inequality and, therefore, violated the constitutional rights of the plaintiffs.

Davis et al. v. County School Board of Prince Edward County, Virginia et al. framed the issue of whether segregation had to be eliminated despite rapid and substantial efforts by the school district to improve the quality of black schools. A three-judge district court decision declaring that segregation had "for generations been a part of the mores of her people" ruled in favor of the state of Virginia and simply ordered the Prince Edward School Board to continue to equalize its facilities for black students "with diligence and dispatch."

The fifth case, *Bolling v. Sharp*, challenged school segregation in the District of Columbia. The plaintiffs' arguments were based entirely on the issue of segregation per se, intentionally avoiding the question of inferior facilities. The U.S. District Court judge who heard the case ruled that no claim of inequality had been made and, given that the constitutionality of segregation had been upheld, there was no basis upon which relief could be granted.

During the spring and summer of 1952, the Supreme Court accepted jurisdiction by granting writs of certiorari (which require transference of certified records from an inferior to a superior court) in the Kansas, South Carolina, and Virginia cases. Deciding that it should settle all the pending segregation cases together, the Court directed that the Delaware and District of Columbia cases also be argued at the same time.

SUMMARY OF ARGUMENTS

On December 9, 1952, the Supreme Court convened to hear the arguments on the five cases.

Each of the cases was argued separately. Thurgood Marshall, who in 1967 would become the first black justice appointed to the court, represented the NAACP. He faced John W. Davis, the 1924 Democratic Party candidate for the presidency, who represented South Carolina in the *Briggs* case. The thrust of the arguments presented by Marshall and the other lawyers demanding an end to school desegregation was that there was overwhelming psychological and sociological evidence demonstrating that school segregation did irreparable harm to black school children by stig-

