

AFTER THE CIVIL WAR

At the end of the Civil War, President Abraham Lincoln issued the Emancipation Proclamation, which freed all slaves and ended slavery. Shortly afterward, Congress added three amendments to the United States Constitution for the purpose of outlawing states from discriminating against certain classes of people, primarily blacks. The Thirteenth Amendment said that slavery could no longer exist in America. Probably the most important Amendment, the Fourteenth, said that no state could make a law that would limit any of the privileges that citizens of the United States have, or that would deprive any person of “life, liberty, or property, without due process of law,” or deny any person equal protection under any law. Finally, the Fifteenth Amendment provided that no one may be denied the right to vote because of his race or color.

These amendments to the Constitution gave African Americans great hope about their future. Recently freed slaves came to understand that slavery had deprived them of many of the tools they needed to survive as American citizens, primarily, the ability to read and write. Unfortunately, it would be nearly half a century until these constitutional amendments would be used to combat the inequality that existed between the races.

Before the Civil War, a very small percentage of African Americans were literate. In fact, it was considered a crime to educate African Americans in most states in the South. Because the Fourteenth Amendment made it illegal for states to deprive African Americans of this right, southern states had to repeal these laws. However, according to the book Civil Rights Litigation: Cases and Perspectives, the repealed laws were then replaced with laws that required segregated education, which meant that blacks and whites had to be educated separately in different schools, use different textbooks, and

have different teachers. These segregation laws extended past the educational realm into almost every aspect of life. Blacks and whites had separate businesses, churches, and even cars on the train.

In 1892, a man named Homer Plessy from Louisiana was put in jail for sitting in the “white” railroad car. Plessy was not actually an African American. He was Creole, a mix of French and Spanish ancestry, with light skin. However, he was considered to be “colored” enough to be unable to sit in the white section. Plessy sued the state of Louisiana, arguing that the law requiring blacks and whites to sit in separate cars was now against the law because of the Thirteenth and Fourteenth Amendments that Congress had recently passed which made it illegal to discriminate based on a person’s color.

Plessy v. Ferguson went all the way to the Supreme Court of the United States where the Court decided that separate facilities for blacks and whites were acceptable as long as the facilities were equal. This became known as the “separate but equal” doctrine, and once it was approved by the Constitution, segregation only grew worse. The problem was that over the next fifty years, “separate but equal” would become increasingly unequal. This period of time became known as the Jim Crow Era.

Segregation resulted in great differences in the quality between things designated for blacks and whites. In education, the differences were extreme. Many southern states treated black and white teachers differently. Black teachers taught classes nearly twice the size of those taught by white teachers, yet were often paid only half as much as white teachers. Also, black schools often received the white students’ “leftovers”--their old books, desks, and other equipment. On average, southern states spent twice as much money on white students than blacks. To make it even worse, black schools were out of

session over a month more than white schools. These problems resulted in a steady worsening in the education of African Americans throughout the South.

Civil rights leaders realized that this inequality of education was perhaps the worst type of discrimination, because education affected not only things like where African Americans sat on a train, but also affected how much they learned, what type of job they would have, and how much money they would make. It was then that these leaders realized that African Americans could not accept such inequalities, or they would be forever behind.

THE NAACP'S FIGHT FOR EQUALITY

In order to bring about the end of segregation, the legal department of the National Association for the Advancement of Colored People (NAACP) came up with a very detailed strategy. According to the book Civil Rights Litigation: Cases and Perspectives, the NAACP created and followed a very thoughtful plan that had several key components. Starting in the early 1930s, the NAACP gathered a large team of experts to figure out how to make the Supreme Court realize they had made a mistake when deciding that separate was equal in *Plessy v. Ferguson*. Thurgood Marshall, who would later become the first African American Supreme Court justice, and Charles Hamilton Houston were lawyers who led the NAACP into a legal battle that lasted several decades. Their goal was to reverse segregation and the “separate but equal doctrine.”

The lawyers knew that many parts of the country were not ready to admit that segregation or the idea of “separate but equal” was wrong. They decided that although it may take a long time, they should try to win the battle with baby steps, instead of trying

to get the courts to immediately declare that segregation was wrong. They reasoned that if they could first get the courts to determine that many of the schools, buses, and other facilities that were separated into black and white were not equal, the Supreme Court could then understand that this unequal treatment amounted to discrimination against African Americans. These leaders hoped that this would eventually lead to the conclusion that discrimination violated the Fourteenth Amendment (which says that no one may be treated differently because of his race), and that “separate but equal” was therefore unconstitutional.

The lawyers therefore devised a two-pronged attack on the segregation laws. The first thing they decided to attack were the laws that separated the races, but did not provide equal facilities to them. The next thing they tried to attack was segregation in those states where the segregation was so widespread that it amounted to discrimination.

The NAACP wisely began its battles against states that had separate professional schools for blacks and whites. Professional schools are schools like law schools, medical schools, and other schools that provide “graduate” degrees after one has finished college. Many of these states did not even provide professional schools for African American students, and the ones that did provided schools that were smaller and had fewer teachers, classes, and study materials. Therefore, the opportunities for African Americans who desired to go to professional schools were so unequal in many cases that the “separate but equal” doctrine just could not hold up. Also, many states simply could not afford to offer two separate and equal professional schools, and therefore integration was the only way to achieve equality between the races.

There was another reason that the NAACP began by challenging professional schools. Thurgood Marshall knew that the judges who would decide their challenges to segregation all once attended a professional school--law school--and would therefore be more likely to recognize all the things that go into making a professional school great: reputation, connections with local lawyers, and well-recognized professors. This understanding would come into play in the 1950 case of *Sweatt v. Painter*, where the Supreme Court ruled that a separate Texas law school for African Americans did not meet the “separate but equal” requirements not only because of the differences in the size of the school, teachers, and quality of books, but also because of harder-to-define reasons, like a law school’s “reputation.”

The first major educational-equality victory for the NAACP came in the 1938 case of *Missouri ex rel. Gaines v. Canada*. This case revolved around one young African American’s attempts to be admitted into a Missouri law school. When the Supreme Court decided the case, it did not require that the law school be integrated, but it made it very clear that separate education really had to be equal to be constitutional. After achieving some success with respect to professional schools, the NAACP increased its efforts to have the “separate but equal” doctrine eliminated in American education. After 1950, two major categories of education cases emerged: (1) lawsuits about the inequality of segregated education and (2) lawsuits brought because no segregated education was offered to African Americans at all.

The many cases that came down between 1950 and 1954 had mixed results for the fight to end segregation. Many cases were a move in the right direction, but there were also cases that seemed to be a step back for the NAACP. In 1954, however, the most

important case about equality of education for African Americans was decided, and the American educational system was forever changed.

Brown v. Board of Education of Topeka (Brown I) was about a little girl named Linda Brown who had to walk a mile to her segregated African American school even though there was a school for white children only a few blocks from her house. Linda's parents sued, arguing that separate education was inherently unequal education. The lower courts decided in favor of the Board of Education because "separate but equal" fulfilled the requirements of the Fourteenth Amendment. The case went all the way to the Supreme Court, where Thurgood Marshall argued on behalf of the Browns.

The Supreme Court gave a unanimous decision that finally declared what the NAACP had been waiting to hear: "separate educational facilities are inherently unequal." The decision of the Court focused on the importance of education in American society and the fact that education "is the very foundation of good citizenship." Also, the Court recognized the fact that schools that separated races and were not equal made African American children feel inferior to white children. The Court called this a "badge of inferiority" and said that this was the reason that "separate but equal" was not truly equal. While the decision in *Brown I* was limited to the educational setting, it was nevertheless a crucial victory for the entire civil rights movement, not just with respect to equal education for the races.

While the Supreme Court seemed to be pretty clear, the words of the Supreme Court were interpreted in different ways. One understanding of the language in *Brown I* that got a lot of approval was that *Brown I* simply meant that states could not keep minority students from attending any public school just because of race. In other words,

if white children and black children voluntarily decided to attend different schools, the Fourteenth Amendment was not violated. Do you think the Supreme Court meant *Brown I* to be interpreted in this way? (For instance, think of it like this: lower courts could have decided that *Brown I* meant that the state must actively work to get African American children to attend mostly white schools. What would have been the effects of that interpretation on schools in America?) Think of the effects of this interpretation as you read about the results of desegregation efforts throughout the last century and even until today.

WITH ALL DELIBERATE SPEED

Although African Americans were excited about the huge step for educational equality in *Brown*, it would be decades before many schools actually desegregated. When the Supreme Court decided *Brown*, it did not give any strict requirements on the exact way in which school districts were to desegregate. Therefore, many southern states changed nothing about their school systems. Instead, they essentially ignored the Court's decision. Then, one year later, the Court decided *Brown v. Board of Education (Brown II)*, and declared that states must desegregate their public schools "with all deliberate speed." Rather than prompting the states to quickly begin desegregating, the "deliberate speed" order gave states the ability to procrastinate. By failing to require immediate desegregation, the Supreme Court opened the door for resistance, especially in southern states. Although *Brown*'s conclusion, striking down *Plessy v. Ferguson*'s "separate but equal" doctrine, was not effective immediately, *Brown II* is nevertheless seen as the beginning of desegregation actions.

In the years shortly after *Brown*, school districts, especially in the South, used various measures to avoid desegregation. Some school boards attempted to provide funding for private schools, reasoning that white children could simply attend private schools and thus avoid having to go to school with black children. One extreme example of this was in Prince Edward County in Virginia. There, the school board closed the public schools and used state and county funding to operate private schools. The Supreme Court, recognizing that the school board did this to avoid desegregation, declared the school board's conduct unconstitutional: "public schools were closed and private schools operated in their place . . . for one reason, and one reason only: to ensure . . . that white and colored children in Prince Edward County would not, under any circumstances, go to the same school."

While the courts had made it clear that states could not encourage schools to remain segregated, or discourage schools from desegregating, one dispute that arose was whether integration was *required*. In other words, although there could no longer be segregated schools, did cities that had both a black school and a white school have to integrate the two schools together? One of the first cases to answer this question in the affirmative came thirteen years after *Brown II* in *Green v. County School Board of New Kent County*. There, the school board of New Kent County adopted a "freedom of choice" plan which allowed white and black students to choose which schools they wanted to attend. The problem, however, was that New Kent had only two types of schools: an elementary and a secondary school for white students and a separate elementary and secondary school for the black students. Although the school board was technically giving students the opportunity to attend integrated schools, the evidence

showed that the schools were still, in fact, segregated. During the three years the school board operated the “freedom of choice” plan, no white student chose to attend the primarily black schools, and although some black students did choose to attend the primarily white schools, the black population in the black schools remained around 85%. The Supreme Court declared that the *Brown* decisions put the duty on the school board to desegregate, and the school board was therefore not allowed to pass that duty onto parents and children. The state and the school board, not the parents or the students, had to ensure that schools would be integrated.

Green helped *Brown* hammer away at school segregation, but it would take much more action to achieve success. After *Green*, the courts began to require schools to use a wide variety of different programs to ensure desegregation. Lots of different things were tried in order to fulfill the requirements. For instance, in some places, African American children were bused into primarily white schools. Also, in some areas, magnet schools where both African American and white children were included in the student body were created. Progress under the “deliberate speed” standard, however, was still slow. Therefore, in 1969, the Supreme Court replaced that standard with an “immediate” standard, which meant that schools were ordered to desegregate immediately. Still, it was not until the early 1970s that widespread integration began.

This increase in integration came after the case of *Swann v. Charlotte-Mecklenburg Board of Education*. The important thing to know about *Swann* is that the Supreme Court officially recognized busing as an effective way to achieve desegregation. It is also important to note that in *Swann*, the Supreme Court recognized that

desegregation is made very difficult because children frequently live in segregated areas. In other words, many African American children live in primarily African American neighborhoods, while many white children live in predominantly white neighborhoods. Busing children to schools outside of their own residential neighborhoods and towns became an effective way to blend students and achieve racial diversity. Busing still remains highly controversial, but it definitely has played an important role in the desegregation of American schools.

The steps toward integration, however, were not always in the right direction. School systems were often able to avoid desegregation if the existing segregation was not their fault, but rather due to private choices. The Supreme Court eventually decided that segregated schools were not illegal if the existing segregation was the result of citizens' voluntary and private choices. The Supreme Court made an important distinction between two kinds of segregation: state-ordered segregation (*de jure* segregation) and segregation that was the result of a private choice (*de facto* segregation). The Supreme Court decided that what really mattered when deciding if segregation was illegal was whether or not the school boards were trying to make their schools segregated by race. If the schools were purposefully trying to maintain segregated schools, that would be illegal. If the segregation was accidental or due to *de facto* segregation, that would be legal.

Throughout the remainder of the 1970s, the Supreme Court made different rules that sometimes had discouraging effects on desegregation. For example, in one case the Supreme Court created a rule that basically allowed states to divide educational funds unevenly throughout the state. This may not seem very important, but it means that states

can spend more money in the wealthy areas of a state. Poorer areas, or areas with more minorities, may not receive the same amount of money from the state. As a result, children from poorer areas may be forced to attend inferior schools.

While the early desegregation efforts were focused on elementary and secondary schools, higher education was soon a target. Indeed, most colleges and universities were still segregated at this point in time. One important step towards ending segregation in this arena came in 1991 in the case of *United States v. Fordice*. There, the state of Mississippi had two university systems: one for white students and one for black students. The Supreme Court forced Mississippi to dismantle its dual system and implement a single university system for both black and white students. Therefore, *Brown's* integration requirement was extended beyond elementary and secondary education to include higher education.

THE ROAD AHEAD

In 2004, *Brown* celebrated its fiftieth anniversary. It marked a turning point in American society, although desegregation was certainly not easy, nor was it always a success. *Brown* helped set the stage for the feminist movement, minority rights, gay rights, along with disability rights. Even though *Brown* was technically only applicable to public schools, its conclusion has aided in the fight for other types of desegregation, from public golf courses, to public buses, to private clubs. Even if *Brown* was successful in making early progress towards integration, some wonder whether its legacy continues. In other words, are schools now truly integrated or is segregation beginning to take root again?

Here are some facts that might help put the efforts of desegregation and integration into perspective. When integration was at its peak, approximately 45% of African American students were attending schools that had a majority of white students. This was a huge increase from 2% (the percentage of black students attending mostly white schools before *Brown* was decided), and seemed to be a sign of success. However, a recent study by The Civil Rights Project at Harvard University demonstrates that schools are now returning to their former segregationist trends. In fact, at this time, integration levels have retreated, and the percentage of African American students attending primarily white schools resembles the percentages from 1968. So, even though segregation was decreasing for a time, it now appears as though the American educational system is returning to segregation.

While desegregation seemed to be a bad memory once upon a time, it is discouraging to see that American schools are once again highly segregated. One can only wonder if *Brown* will have any lasting effect on school segregation, or whether it was merely a short-lived and reversible measure toward equality.

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DISCUSSION QUESTIONS

1. What were the three post-Civil War amendments to the Constitution, and what rights did each guarantee?

The Thirteenth Amendment ensured that slavery was abolished. The Fourteenth Amendment guaranteed that no state could pass a law that denied citizens the privileges and immunities of the United States. The Fifteenth Amendment guaranteed that no citizen could be denied the right to vote on the basis of race.

2. What amendment was violated that brought about the lawsuit in *Plessy v. Ferguson*? What was Plessy's argument?

Plessy argued that his Fourteenth Amendment rights were being violated by the state because he was made to sit on a separate rail car. He argued that the Fourteenth Amendment prohibited discrimination based on color.

3. Explain the legal source of the "Separate but Equal" Doctrine and what it means.

The Supreme Court created the doctrine in *Plessy v. Ferguson* in 1896 in response to a suit by a "colored" person who was jailed for sitting on a "white" rail car. The doctrine means that states can separate people according to color on trains or in any place as long as equal accommodations were provided for each race.

4. Explain the two reasons why the NAACP's strategy was to bring cases concerning admissions into professional schools.

Many states did not have separate institutions for blacks. Therefore, blacks had no opportunity for professional level education in some states. Also, the judges had all gone through professional school, and they would understand the importance of being able to attend a good school.

5. In *Sweatt v. Painter*, the Supreme Court focused on the intangible things that were present at the white professional school, but missing from the black schools. The Court decided that these intangible things amounted to inequality between the two schools. Name some of the things you think the white professional schools may have had that the black professional schools did not.

The white schools had longstanding reputations, connections with professionals in the field, and esteemed professors. The better reputation would mean that a person with a degree from that school would likely be in a better position to get the same job than a person who went to one of the black-designated colleges.

6. What were the positive and negative effects of *Brown v. Board (I)*?

The state-funded schools could no longer segregate on the basis of race. However, the black students were probably met with hostility when they were integrated to the white public schools. While black students finally had access to better schools, teachers, and books, they still felt unwanted.

7. Why did the Supreme Court allow de facto, or voluntary, segregation? How did the Court determine whether the segregation was voluntary and not imposed by the state?

The Supreme Court cannot regulate voluntary segregation because the Fourteenth Amendment applies only to the government. The Court determined whether or not the segregation was state-imposed by looking at the intent of the school board. If the school district was segregated but there was no evidence that the school board intended that result, then the school board was not violating any law and the district could remain de facto segregated.

8. Which case marked the beginning of widespread integration? Why did it take fifteen years for desegregation to be implemented?

Widespread integration began in the early seventies due mainly to the case of *Swann v. Charlotte-Mecklenburg Board of Education*. Desegregation was a slow process because the Supreme Court ordered the states to desegregate “with all deliberate speed.” This instruction ended up giving the states the leniency they needed to avoid desegregation. It wasn't until 1969 that the Court changed desegregation to an immediate standard.

9. Explain the expansion and the impact of the *Brown v. Board of Education* opinion in Mississippi using the *United States v. Fordice* case.

United States v. Fordice expanded the *Brown* opinion because the Supreme Court applied *Brown*, a decision concerning elementary school segregation, to higher education, specifically colleges and universities. The decision in *Brown* guided the Supreme Court in *United States v. Fordice* to require Mississippi to desegregate its colleges and create equal opportunities for all qualified Mississippi students to attend any of Mississippi's universities.

10. Today segregation levels are near what they were before integration. Why is this, and is it as big of a problem today as it was forty years ago?

Voluntary segregation through private schools, families moving to different neighborhoods, etc., are not violations of the Constitution because the state is not causing the segregation. Yet, de facto, or voluntary, segregation is carrying on the effects of de jure segregation. This type of segregation may even be a bigger problem because the state can do nothing to fix it. Once the state has made efforts toward integration, the government can do nothing else because no one is violating the law.