Catholic University Law Review

Volume 5
Issue 2 *May 1955*

Article 3

1955

Racial Segregation in the Public Schools

George J. Bertain Jr.

Racial Segregation in the Public Schools

On May 17, 1954, the Supreme Court of the United States, with Mr. Chief Justice Warren speaking for a unanimous Court, rendered the most controversial and far-reaching decision of the Twentieth Century in *Brown v. Board of Education.*[1] The decision was hailed as a monumental constructive stride in constitutional law and fundamental justice.[2] It was simultaneously severely condemned as a blow to fundamental American institutions.[3]

Petitioners, in four separate cases considered by the Court prior to its decision, were Negro children who were denied admission to their neighborhood schools because of their race. Although the facts and local conditions varied, the same fundamental question was: "Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other *tangible* factors may be equal, deprive the children of the minority group of equal educational opportunities?"[4] The arguments in the state courts, and later in the Supreme Court itself, concentrated on the validity of the "separate but equal" doctrine as applied to public education. On the basis of the common legal question, the Court delivered a consolidated opinion on the four cases presented—from Kansas,[5] South Carolina,[6] Virginia,[7] and from Delaware.[8] The Kansas, South

[1] 347 U.S. 483 (1954).
[2] N.Y. Times, May 18, 1954, pp. 1, 18.
[3] Wash. Even. Star, May 17, 1954, p. 1.
[4] Note 1, *supra* at 493.
[5] The Brown case was an action by Oliver Brown, et al., against the Board of Education of Topeka, Kansas, for a judgement declaring unconstitutional a state statute authorizing on a permissive basis, but not requiring, segregated education in cities of 15,000 or more population. Kan. Gen. Stat. § 72-1724 (1949). The Federal District Court, although recognizing the detrimental effects of segregation in public schools on the Negro children, held that such a segregated school system for the first six elementary grades did not violate the constitutional guarantees of the Fourteenth Amendment. The school systems were substantially equal in all respects. *Brown v. Board of Education,* 98 F. Supp. 797 (5th Cir. 1951).
[6] Injunctive relief was asked by Negro children of both grade and high school age to enjoin enforcement of South Carolina statutes requiring separate school systems for the white and colored races. S.C. Const., Art. XI. § 5377 (1942). The three judge Federal District Court refused to enjoin the Board of Trustees of Clarendon County, admitted the inequality of the schools, recognized the relationship of state legislation to education, but granted the school authorities "reasonable time" to improve the Negro schools. The Board was directed to report back to the court in six months on the equalization program. 98 F. Supp. 529 (E.D.S.C. 1951). On remand from the United States Supreme Court it was found that substantial equality in the schools had been achieved. *Briggs v. Elliott,* 103 F. Supp. 920 (E.D.S.C. 1952).
[7] The plaintiffs were Negro children of high school age residing in Prince Edward County, Virginia. Recourse was taken to the U.S. District Court for the Eastern District of Virginia to enjoin enforcement of the state constitution and code which required segregation in the public school system. Va. Const. §140; Va. Code, § 22-221 (1950). The three judge District Court denied relief, and, as in the South Carolina case, found unequal facilities in the Negro schools, but directed the school authorities to equalize the schools with "reasonable diligence." *Davis v. County School Board,* 103 F. Supp. 337 (E.D. Va. 1952).
[8] This was an action by Ethel Belton, and other children, against authorities in New

Carolina, and Virginia cases were before the Court on direct appeal.[9] The Delaware case came to the Supreme Court on a Writ of Certiorari.[10]

The Court held that in the field of public education the doctrine of "separate but equal" has no place.[11] Thus, the formidable doctrine established in *Plessy v. Ferguson,*[12] was finally abolished in education. On the same day, with analogous facts and conditions, a subsequent decision was given with regard to the constitutionality of racial segregation in the District of Columbia public schools.[13] The issue in the *Bolling* case was whether racial segregation in the public schools of the nation's capital deprived the petitioners of "due process of law" under the Fifth Amendment to the Federal Constitution.[14] The Court held that although the Fifth Amendment does not possess an equal protection clause as does the Fourteenth, nevertheless, the two Amendments are not mutually exclusive.[15] In its consideration of discrimination, the Court stated that it may be so "unjustifiable as to be violative of due process."[16] Since segregation in public education did not serve any proper governmental objective, it imposed "on Negro children an arbitrary deprivation of their liberty in violation of the Due Process Clause" of the Fifth Amendment.[17]

The immediate effect of the *Brown* decision was to declare unconstitutional, statutory provisions requiring segregated public schools in seventeen states.[18] It

---

Castle County, Delaware, to enjoin the state constitutional and code provisions requiring segregation in the public schools. Del. Const. Art. X, § 2; Del. Rev. Code § 2631 (1935). On the basis of obvious inequality the Chancery Court gave judgement requiring admission of the Negro children to schools previously attended only by white children. The Supreme Court of Delaware affirmed the Chancellor's decree. 91 A.2d 137 (Del. Sup. Ct. 1952). The defendants applied to the Supreme Court of the United States on the basis of error by the Delaware courts in admitting the Negro children to previously white schools. The Supreme Court granted certiorari. *Gebhart v. Belton,* 344 U.S. 891 (1952).

[9] 28 U.S.C. § 1253. Each case was a class action under Fed. R. Civ. P. 23.

[10] 344 U.S. 891 (1952). No. 448.

[11] Note 1, *supra* at 495.

[12] 163 U.S. 537 (1896). Mr. Justice Harlan, dissenting, considered the law "color-blind" and that the Court should not recognize the "separate but equal" legal basis. The Supreme Court in the Segregation Cases restricted itself to education alone and did not discuss transportation or public recreational facilities. See notes 123, 124, 125, 126, *infra.*

[13] *Bolling v. Sharpe,* 347 U.S. 497 (1954).

[14] The Fifth Amendment to the Federal Constitution reads in part: "No person shall be . . . deprived of life, liberty, or property, without due process of law. . . ."

[15] Note 13, *supra* at 499.

[16] Id. at 499.

[17] Id. at 500.

[18] Ala. Const., Art. XIV, § 256 (1901); Code, Title § 93 (1940); Ark. Stats. Ann. § 80-509 (1947); Del. Const. Art. X § 2; Rev. Code, Ch. 71, § 9; Fla. Const., Art. XII, § 12; Stats. § 228.09 (1951); Ga. Const., Art. VIII, § 1 (1945); Code Ann. § 32-909 (Cum. Supp. 1951); Ky. Const., § 187; Rev. Stats. Ann. § 158.020 (1943); La. Const., Art. XII § 1 (1921); Md. Ann. Code, Art. 77 § 111,192; Miss. Const., Art. 8, § 207, Code Ann., § 6276 (Cum. Supp. 1950); Mo. Const. Art. IX, § 1(a) (1945); Rev. Stats. § 163.130 (1949); N.C. Const., Art. IX, § 2 (1868); Gen. Stats., § 115 (1952); Okla. Const., Art. XIII, § 3 (1907); Sess. Laws, Tit. 70, Art. 5, § 1 (1949); S.C. Const., Art. XI, § 7 (1895); Code, § 5377 (1942); Tenn. Const. Art. XI, § 7 (1870); Code Ann. § 2377 (Williams 1934); Texas Const., Art. VII, § 7; Civ. Stats. Ann., Art. 2719 (Vernon 1951); Va. Const., Art. IX, § 140 (1902); Code, § 22-221 (1950); W. Va. Const., Art. XII, § 8; Code Ann. § 1775 (1949).

also invalidated statutes in four states permitting the maintenance of segregated schools on an optional basis.[19]

The legal history behind the evolution of the "separate but equal" doctrine into its acceptance, use, and final overthrow in education, is a history of inter-racial relations, public school education, and constitutional law in the United States for almost one hundred years. The gravity of the situation is epitomized by Judge Prettyman in *Carr v. Corning*:[20]

> Since the beginning of human history, no circumstances has given rise to more difficult and delicate problems than has the coexistence of different races in the same area.

Pre-Civil War

Prior to the Civil War the education of the Negro in the South was almost nil. In fact, during this period most Southern States enacted legislation prohibiting the education of free and slave Negroes on the basis that such education was conducive to rebelliousness.[21] Approximately ninety-five per cent of the colored population of the South was illiterate at the time of the Civil War.[22] But, the educational status of the Negroes throughout the rest of the nation was not particularly high either.[23]

In the Northern states, nevertheless, the Abolitionists were active in the educational and civil rights field. They were interested in full civil equality for the Negroes. Under Abolitionist pressure, the Massachusetts Legislature enacted a statute assuring the Negro people a right to public education by providing an action for damages to any such person "unlawfully excluded" from the public schools.[24] The foundation for their concept was substantially that laid down in the Declaration of Independence[25] and in the Massachusetts Constitution.[26]

In Boston, the City sought to establish separate schools for Negroes. The Abolitionists considered this an evasive act to avoid the spirit and letter of the Bill of Rights of the Massachusetts Constitution. A suit was brought by them on behalf of a Negro girl required to attend a separate school. Thus, the now famous *Roberts v. City of Boston*[27] case was in litigation.

---

[19] Ariz. Code Ann., § 54-416 (Cum. Supp. 1951); Kan. Gen. Stats. Ann., § 72-1724 (1949); N. Mex. Stats. Ann., § 55-1201 (1941); Wyo. Comp. Stats. Ann., § 67-624 (1945).

[20] 182 F. 2d 14, 16 (D.C. Cir. 1950).

[21] NYE, FETTERED FREEDOM, 70-71 (1949). For a review of these laws see the speech of Senator Wilson of Massachusetts on April 12, 1860. Cong. Globe, 36th Cong. 1st Sess. 1685 (1860).

[22] BOND, THE EDUCATION OF THE NEGRO IN THE AMERICAN SOCIAL ORDER 21 (1934).

[23] BEALE, A HISTORY OF FREEDOM OF TEACHING IN AMERICAN SCHOOLS, 112-132, 175-195 (1941).

[24] Mass. Acts., c. 214 (1845).

[25] "We hold these truths to be self-evident, that all men are created equal. . . ."

[26] Mass. Const. (1780).

[27] 5 Cush. (59 Mass.) 198 (1849). See Frank and Munro, *The Original Understanding of Equal Protection of the Laws*, 50 Col. L. Rev. 131 (1950); Levy and Phillips, 56 American Historical Review, 510-518 (April, 1951).

The essence of the Abolitionists argument, as developed by Charles Sumner, later to become a foremost advocate of equal rights in the United States Senate, was that the Massachusetts constitutional provision that men are "born equal" necessarily means they are equal in their rights before the law. Further, it is beyond the power of the law to make distinctions among equal men.[28] The Supreme Judicial Court of Massachusetts found that since the school committee had reached its decision reasonably and without obvious prejudice, there was no necessary incompatibility between a system of separate schools and full "civil and social" equality for Negroes. Mr. Chief Justice Shaw, while recognizing that ". . . colored persons . . . are entitled by law . . . to equal rights" stated:

> . . . The committee, apparently with good deliberation, has come to the conclusion, that the good of both classes of schools will be best promoted, by maintaining the *separate* primary schools for colored and white children, and we can perceive no ground to doubt that this is the honest result of their experience and judgement.[29] (Italics added.)

In regard to the effect of such distribution and classification, he further enunciated:

> It is urged that this maintenance of separate schools tends to deepen and perpetuate the odious distinction of caste, founded in a deep-rooted prejudice in public opinion. This prejudice, if it exists, is not created by law, and probably cannot be changed by law.[30]

The precedent of "separate but equal" was now firmly imbedded in law by the decision of one of the North's most reputable courts. Moreover, it served as a premise for its universal acceptance forty-seven years later, in the *Plessy* case. The Massachusetts Court determined, in essence, that although Negroes were equal, they were not deprived of equal rights when attending segregated public schools. It was just this separateness which was struck down in the *Brown* case, when Chief Justice Warren added emphasis to the decision by stating, "Separate educational facilities are inherently unequal."[31]

The attitudes of the ante-bellum times are further reflected in the opinion of Chief Justice Taney in the *Dred Scott Decision*.[32] The Court held that a Negro slave was not entitled to the rights of a white person even if he were free in the state of his residence. Commenting upon the relationship of the Negro population and the Declaration of Independence, he stated:

> . . . They had for more than a century before been regarded as beings of an inferior order; and altogether unfit to associate with the white race, either

---

[28] It is interesting to note the similarity between this argument and the later race "classification" cases which arose under the Fourteenth Amendment. See *Sweatt v. Painter*, Brief of Amici Curiae in Support of Petitioner, In the Supreme Court of the United States, Oct. Term, 1949, at 6.

[29] Note 27, *supra* at 209.

[30] *Ibid.* Segregation in Boston public schools ended in 1855. Mass Acts., c. 256 (1855).

[31] Note 1, *supra* at 495. The effects of racial segregation were amply cited by the Court and elsewhere. See Notes, 39 Col. L. Rev. 986, 1003 (1939); 56 Yale L.J. 1059, 1060 (1947); and 49 Col. L. Rev. 629, 634 (1949). In the overall consideration of racial segregation and the public schools it should be borne in mind that ". . . . education comprehends the entire process of developing and training the mental, physical, and moral powers and capabilities of human beings." *Weyl v. Commissioner of Internal Revenue*, 48 F. 2d 811, 812 (2d Cir. 1931); *Jones v. Better Business Bureau*, 123 F. 2d 767, 769 (10th Cir. 1941).

[32] *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857).

in social or political relations; and so far inferior that they had no rights which the white man was bound to respect.[33]

Federal Amendments and Legislative History

As stated by Guthrie,[34] equality for the Negro slaves was unfortunately not intended. Despite the historical factor of rigid discrimination against Negroes, the Civil War acted as a catalyst for those who advocated equal status for the Negro by amelioration through acts of Congress. The Thirteenth Amendment abolished slavery.[35] The Fourteenth Amendment guaranteed citizenship, due process and equal protection of the laws.[36] The Fifteenth Amendment guaranteed the right of citizens to vote.[37] Additional acts by Congress in the form of the Civil Rights Act of 1866,[38] the Freedman's Bureau Extension Act,[39] and the Civil Rights Act of 1875[40] gave the Negroes additional political status.

Mr. Chief Justice Warren pointed out in the *Brown* case that the legislative history of the Fourteenth Amendment is "inconclusive" as to whether the framers of the Amendment intended to abolish or to maintain racial segregation in the public schools. It was not stated by the Amendment that segregation would be permitted; nor was it stated that equality in education for Negroes would be required.[41] The Fourteenth Amendment grew out of proposals considered by the Joint Committee on Reconstruction of the 39th Congress.[42] In addition, not only did the final adoption of the Fourteenth Amendment fail to indicate applicability to education,[43] but neither was there any major reference to schools in the majority or minority reports of the Joint Committee.[44] It is conceded, however, that consideration was given to education on the respective floors of the Senate and the House of Representatives.[45]

---

[33] Id. at 419.

[34] GUTHRIE, THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES 106 (1898).

[35] U. S. CONST. XIII, § 1: Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

[36] U. S. CONST. XIV, § 1: All persons born or naturalized in the United States . . . are citizens thereof . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

[37] U. S. CONST. XV, § 1: The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

[38] 14 Stat. 27 (1866).

[39] 14 Stat. 173 (1866).

[40] 18 Stat. 335 (1875).

[41] *Brown v. Board of Education.* Supplemental Brief for the United States on Reargument, Amici Curiae, by the United States Attorney General, for the October Term, p. 99, 1953.

[42] *Journal of the Joint Committee on Reconstruction,* S. Doc. 711, 39th Cong. 3rd Sess. (1865). But see, Frank and Munro, note 27, *supra.*

[43] KENDRICK, THE JOURNAL OF THE JOINT COMMITTEE OF FIFTEEN ON RECONSTRUCTION, 37-129 (1914).

[44] H.R. Rep., 39th Cong., 1st Sess., VI-XXI, 1-13. (1865).

[45] See Cong. Globe, 39th Cong., 1st Sess. 2433-3149 (1865).

In statutory interpretation, and more particularly in the interpretation of Amendments, the Supreme Court has consistently reflected a candid attitude. This approach of the Court was emphatically summarized in *Maxwell v. Dow*,[46] which involved a claim that the Fourteenth Amendment was intended to make applicable to the states, the jury requirements of the Sixth Amendment:

> . . . It is clear that what is said in Congress upon such an occasion may or may not express the views of the majority of those who favor adoption of the measure which may be before that body, and the question whether the proposed amendment itself expresses the meaning which those who spoke in its favor may have assumed that it did, is one to be determined by the language actually therein used and not by the speeches made regarding it.[47]

The Court will review the background and environment of the times in order to illuminate the broad purposes which an Amendment was designed to achieve.[48] But a proper balance must be developed. Mr. Justice Frankfurter, concurring in *Adamson v. California*,[49] stated:

> . . . Remarks of a particular proponent of the (Fourteenth) Amendment, no matter how influential, are not to be deemed part of this amendment. What was submitted for ratification was his proposal, not his speech.

Judicial Development

The Fourteenth Amendment entered the litigation arena when the Supreme Court of Ohio was challenged to determine the constitutionality of segregated schools on the basis of both the State and Federal Constitutions in *State ex rel. Garnes v. McCann*.[50] Although the court gave due consideration to the privileges and immunities clause and the equal protection clause of the Fourteenth Amendment, it upheld segregation on the basis of equal school facilities. The court did not cite the *Roberts* case as authority, but, on its own merits, became the basis for future courts to dispose of the question of segregated schools.[51]

In 1875 the Civil Rights Act was enacted by Congress.[52] Eight years later, *The Civil Rights Cases*[53] came before the Supreme Court, which held that the Fourteenth Amendment did not prohibit racial segregation upon private intrastate carriers, since the Fourteenth Amendment was applicable only to state action and

---

[46] *Maxwell v. Dow*, 176 U. S. 581 (1900). See *United States v. Wong Kim Ark*, 169 U. S. 649, 699 (1898).

[47] Id. at 601.

[48] *Everson v. Board of Education*, 330 U.S. 1, 8 (1946); *McPherson v. Blacker*, 146 U.S. 1, 27 (1892).

[49] 332 U.S. 46, 64 (1947).

[50] 21 Ohio St. 198 (1872).

[51] *Cory v. Carter*, 48 Ind. 327 (1874). Litigation arose concerning the segregated schools, but in each case the opposition was beaten back on the basis of the *Roberts* or the *McCann* decisions. *Ward v. Flood*, 48 Cal. 36 (1874). In 1880 California abolished its segregated schools, but precluded Chinese or Mongolian children from a "white school". *Tape v. Hurley*, 66 Cal. 473, 6 P. 129 (1885). In *People ex rel. King v. Gallagher*, 93 N.Y. 438 (1883), the court utilized the *Roberts* case as great weight for upholding segregation in New York schools. For a comprehensive discussion of the subject see, Ransmeir, *The Separate But Equal Doctrine*, 50 Mich. L. Rev. 203 (1951).

[52] 18 Stat. 335 (1875).

[53] 109 U.S. 3 (1883).

the carriers acted as private parties. The Court declared: "Positive rights and privileges are undoubtedly secured by the Fourteenth Amendment; but they are secured by way of prohibition against state laws and state proceedings. . . ."[54] The Amendment does not extend to ". . . wrongful acts of individuals, unsupported by State authority in the shape of laws, customs, or judicial or executive proceedings."[55] The Court expressly reserved decision as to the power of Congress to prohibit segregation in interstate transportation.[56]

It was with this background that *Plessy v. Ferguson,*[57] came to the Supreme Court. The question presented to the Court was the validity of a Louisiana statute providing for "separate but equal" accommodations for the white and colored races on railway trains. The relevancy of this case to education, and perhaps the reason for the application of the doctrine, is the utilization by Mr. Justice Brown of the *Roberts* case to substantiate his position of legal segregation.

> The most common instance of this is connected with the establishment of *separate schools* for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of States where the political rights of the colored race have been longest and most earnestly enforced. One of the earliest of these cases is that of *Roberts v. City of Boston.*[58] (Italics added.)

After the *Plessy* case, the constitutional doctrine of "separate but equal" became firmly established as an integral part of our national and state law. Subsequently, in *Cumming v. Board of Education,*[59] while the doctrine itself was not attacked, the Court held that Negro taxpayers could not enjoin the Georgia Richmond County School Board from collecting and disbursing tax funds for a high school for white children before it resumed a high school for Negroes. The Court stated that there was no denial of equal protection as long as facilities were provided for colored children in nearby private schools.

Despite the bed-rock firmness of the "separate but equal" doctrine, the Court has been extremely discreet in its consideration of issues in which race or color were determinants. In the *Slaughter House Cases,*[60] Mr. Justice Miller stated that the due process and equal protection clauses would be used primarily to prevent racial oppression and discrimination; but he made no reference to education.

A San Francisco city ordinance was struck down which allowed arbitrary differentiation between whites and Chinese.[61] Similarly, in more recent cases the

---

[54] *Id.* at 11.
[55] *Id.* at 17.
[56] *Id.* at 19.
[57] 163 U.S. 537 (1896). See Ransmeir, note 51, *supra.*
[58] *Id.* at 544.
[59] 175 U.S. 528 (1899).
[60] 83 U.S. (16 Wall.) 36 (1873); *cf. Strauder v. West Virginia,* 100 U.S. 303 (1880), where the Court declared invalid a state statute restricting jury service to white persons on the basis of a denial of equal protection to a colored defendant; *Virginia v. Rives,* 100 U.S. 313 (1880); *Ex parte Virginia,* 100 U.S. 339 (1880).
[61] *Yick Wo v. Hopkins,* 118 U.S. 356 (1886).

policy of the Court was emphasized. In *Hirabayashi v. United States,*[62] Mr. Chief Justice Stone, in a majority opinion, characterized racial distinctions as "odious to a free people." In *Korematzu v. United States,*[63] the Court considered racial restrictions as "immediately suspect." Mr. Justice Jackson, concurring in *Edwards v. California,*[64] referred to race and color as "constitutionally an irrelevance." Mr. Justice Douglas, dissenting in *South v. Peters,*[65] viewed discrimination based upon race, color, or creed "beyond the pale." Mr. Justice Burton in *Henderson v. United States,*[66] described signs, partitions and curtains segregating Negroes in railroad dining cars as emphasizing the "artificiality of a difference in treatment which serves only to call attention to a racial classification of passengers holding identical tickets and using the same public dining facility." In all but the Japanese National cases, rigid discriminatory statutes have been struck down.

Where state action was involved, sweeping decisions have secured the right of Negroes to make effective use of the electoral process consistent with the requirements of the Fifteenth Amendment.[67] State restrictions on the right of a Negro to vote have been held contrary to the Fourteenth Amendment.[68] The Court has not sanctioned systematic exclusion of Negroes from petit or grand juries;[69] nor their representation on juries on a token or proportional basis;[70] nor in any method in the selection of juries found susceptible of racial discrimination.[71] Legislation depriving persons of particular races of an opportunity to pursue a gainful occupation has been held a denial of equal protection.[72] In addition, a state may not make racial distinctions among its employees the basis for salary differentiations.[73] State laws requiring racial segregation in interstate commerce have been declared invalid invasions of the congressional commerce power.[74] Where a state sought to enforce its local non-segregation policy against a foreign

---

[62] 320 U.S. 81, 100 (1943). See Tussman and tenBroek, *Equal Protection of the Laws,* 37 Calif. L. Rev. 341 (1949).

[63] 323 U.S. 214, 216 (1944). See *Presumptions of Constitutionality,* 2 Catholic U. L. Rev. 101 (1952).

[64] 314 U.S. 180, 185 (1941).

[65] 339 U.S. 276, 278 (1950).

[66] 339 U.S. 816, 824 (1950). Segregation in a dining car operated by an interstate railroad was held to violate a federal statute. 54 Stat. 902, 49 U.S.C. § 3(1).

[67] *Guinn v. United States,* 238 U.S. 347 (1915), "grandfather" clause was held unconstitutional; *Lane v. Wilson,* 307 U.S. 649 (1939); *Smith v. Allwright,* 321 U.S. 649 (1944); *Terry v. Adams,* 345 U.S. 1003 (1953).

[68] *Nixon v. Condon,* 286 U.S. 73 (1932).

[69] *Pierre v. Louisiana,* 306 U.S. 354 (1939); *Hill v. Texas,* 316 U.S. 400 (1942).

[70] *Cassell v. Texas,* 339 U.S. 282 (1950); *Shepherd v. Florida,* 341 U.S. 50 (1951).

[71] *Avery v. United States,* 345 U.S. 559 (1953); *Hernandez v. United States,* 347 U.S. 475 (1954). See Class Discrimination in Selection of Jurors, 5 Catholic U. L. Rev. 157 (1955).

[72] *Truax v. Raich,* 239 U.S. 33 (1915); *Takahashi v. Fish and Game Commissioner,* 334 U.S. 410 (1948). In the *Takahashi* case a California statute which prohibited a resident Japanese alien from earning his living as a fisherman was declared unconstitutional.

[73] *Alston v. School Board,* 112 F. 2d 992 (4th Cir. 1940), *cert. denied,* 311 U.S. 693 (1940).

[74] *Morgan v. Virginia,* 328 U.S. 373 (1946). The state statute was held to be an unlawful restraint on interstate commerce. See *Hall v. DeCuir,* 95 U.S. 485 (1878).

commerce carrier, the state law was upheld.[75] In relation to realty, the Court held it a denial of due process for an ordinance to prohibit Negroes from moving into predominately white areas and whites into Negro areas.[76]

State Enforced School Segregation

The major cases concerning statutory public school segregation began in 1927. In *Gong Lum v. Rice,*[77] the question was whether a Chinese girl was deprived of equal protection of the laws when she was classified with Negroes. Mr. Chief Justice Taft stated she was not so injured under the Constitution of Mississippi, which provides: "Separate schools shall be maintained for children of the white and colored races."[78]

In matters relating to graduate schools for colored persons, the Court held in *Missouri ex rel. Gaines v. Canada*[79] that the state itself must provide at least separate but equal legal education within its borders. Mr. Justice Hughes declared:

> . . . petitioner's right was a personal one. It was as an individual that he was entitled to the equal protection of the laws, and the State was bound to furnish him within its borders for legal education substantially equal to those afforded for persons of the white race, whether or not other Negroes sought the same opportunity.[80]

The cause of proper graduate school education was further advanced in *Sipuel v. Oklahoma.*[81] The Supreme Court issued a writ of mandate that a professional education must be made available by the state for Negro applicants as soon as it is for white applicants to a state graduate school. In meeting this challenge, the Oklahoma Court gave the Board of Regents three alternatives: First, they could admit Miss Sipuel to the first year law class at the University when it commenced the next semester; second, they could exclude her and all other applicants, both white and colored; or third, they could set up equal facilities for her to be ready when school began again.[82] In a subsequent suit in the Supreme Court, Miss Sipuel having become Mrs. Fisher, sought to compel the Regents to admit her on the basis that equal facilities could not be set up overnight and that compliance with the original Supreme Court mandate could only be effected by her admission to the University immediately.[83] The Supreme Court held that the Oklahoma Court alternatives satisfied the original order and the demands of equality under the Fourteenth Amendment.

---

[75] *Bo-Lo Excursion Co. v. Michigan,* 333 U.S. 28 (1948). The Michigan statute forbidding discrimination was held valid as applied to an excursion boat operating on the Detroit River.

[76] *Buchanan v. Warley,* 245 U.S. 60 (1917).

[77] 275 U.S. 78 (1927). The fundamental question pertained to classification.

[78] Miss. Const. § 270 (1890).

[79] 305 U.S. 337 (1938). Missouri was sending its Negro students out of state for their legal education and paid the tuition expenses therefor. For an early discussion concerning abolition of white graduate schools rather than permit integration, see Note, 17 N.C. L. Rev. 280 (1939). *Cf. University of Maryland v. Murray,* 169 Md. 478 (1935).

[80] *Id.* at 351.

[81] 332 U.S. 631 (1948).

[82] 199 Okla. 36, 180 P. 2 135 (1948).

[83] *Fisher v. Hurst,* 333 U.S. 147 (1948). Mr. Justice Rutledge dissented and agreed with the petitioner.

Another facet of infringements corelative to the fundamental guarantees of the Fourteenth Amendment was brought to the fore in *Shelley v. Kraemer.*[84] Mr. Chief Justice Vinson declared that private racial restrictive covenants were not violative of the Fourteenth Amendment but could not be enforced by state courts even though "equality of application" pertained to both whites and Negroes. As stated by the Chief Justice, "Equal protection of the laws is not achieved through the indiscriminate imposition of inequalities."[85]

In *Sweatt v. Painter,*[86] Sweatt was denied admission to the University of Texas Law School solely on the basis of his race in accordance with Texas statutes.[87] At the time Sweatt applied, there was no Negro law school in the state. The State subsequently did provide a Negro law school. The Supreme Court held it a denial of equal protection of the laws to exclude a qualified student from the University of Texas Law School solely on a racial basis. Certain obvious inequalities of the two schools were mentioned which would provide the "intangible" assets gained from attending the Texas Law School. In relation to contemporary education, the Chief Justice enunciated:

> . . . The law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts. Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned.[88]

The Court demanded the admission of Sweatt to the University of Texas Law School in view of overall inequalities between the schools.

McLaurin v. Oklahoma Board of Regents[89] was decided on the same day as

---

[84] 334 U.S. 1 (1948). *Cf. Hurd v. Hodges,* 334 U.S. 24 (1948), where the Court held that a restrictive covenant was unenforceable in the Federal Court of the District of Columbia for reasons of public policy. *Barrows v. Jackson,* 345 U.S. 632 (1953).

[85] *Id.* at 22.

[86] 339 U.S. 629 (1950).

[87] Tex. Const., Art. VII, § 714; Tex. Rev. Civ. Stat. (Vernon 1925), Arts. 2463b (Supp. 1949), 2719, 2900.

[88] Id. at 634. At the time of this case, there was no law school in Texas which admitted Negroes. The State Court recognized the statutes deprived the petitioner of equal protection of laws of the Fourteenth Amendment. Nevertheless, the court did not grant the relief asked, but allowed the State six months to provide equal facilities. At the end of the six months period in December, 1946, the State Court again denied Sweatt's writ when it was shown that authorized university officials had adopted an order calling for the opening of a Negro law school the following February. Subsequently, Sweatt refused to register. Additional court proceedings indicated that the petitioner had substantial equal facilities for the study of law. The trial court denied mandamus and the Court of Civil Appeals affirmed. 210 S.W. 2d 442 (1948). Sweatt's writ of error to the Texas Supreme Court was denied, but the United States Supreme Court granted certiorari on the constitutional issues.

The Court considered the principles of "indiscriminate imposition of inequalities" of *Shelley v. Kraemer,* note 84, *supra* at 22: the timing of equal facilities mentioned in the *Sipuel* case, note 81, *supra* at 633: and the "personal and present" constitutional right set down in the *Gaines* case, note 79, *supra* at 351. The "intangibles" were reputation of faculty, experience of administration, position and influence of alumni, tradition and prestige.

[89] 339 U.S. 637 (1950). In *McKissick v. Carmichael,* 187 F. 2d 949, 952 (4th Cir. 1951), Judge Soper ruled that Negroes must be admitted to the white University of North Carolina Law School in terms flatly rejecting the thesis of the separate but equal facilities. He stated: "It is a definite handicap to the colored student to confine his association in the Law School with people of his own class".

the *Sweatt* case. The petitioner was a Negro who had been admitted to the University of Oklahoma as a candidate for a doctorate degree in education. After admission he was systematically set apart from the other students. The issue was whether a state may, after admitting a student for graduate instruction in its state university, afford him different treatment from other students solely because of his race. Mr. Chief Justice Vinson, again speaking for a unanimous Court, stated:

> The result is that appellant is handicapped in his pursuit of effective graduate instruction. Such restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and in general, to learn his profession. There is a vast difference—a Constitutional difference—between restrictions imposed by the state which prohibit the intellectual commingling of students, and the refusal of individuals to commingle where the state presents no such bar.[90]

The Court held that, under the circumstances in this case, the Fourteenth Amendment's Equal Protection Clause precludes differences in treatment by the state upon race distinctions and each student must receive the same treatment from the state. The Court did not consider the unconstitutionality *per se* of statutory segregation but adhered to the principle of deciding constitutional questions only in the context of the particular pending cases. In both the *Sweatt* and *McLaurin* cases the Court refused to re-examine the *Plessy* decision. Nevertheless, it is submitted that the "death-knell" of the "separate but equal" doctrine was being sounded in that these cases served as prologue to the climax in case history.

Thus, the *Brown* case, and its counterparts, was one of first instance in presenting to the Supreme Court the question of the constitutionality of state statutory segregation *per se* in public school education under the Fourteenth Amendment. It is submitted that the preceding presentation of case law indicates the inevitability of the overthrow which the "separate but equal" doctrine faced when the constitutionality *per se* of the doctrine was finally before the Supreme Court.

Quo Vadis?

In the *Brown* case, the Court has asked for the full assistance of all interested parties in the formulation of the administrative decrees directed toward the effectuation of integration in the public schools.[91] Questions Four and Five on Reargument were propounded to ask this aid. These Questions relate to the

---

[90] *Id.* at 641. See, *The Beginning of the End of the Separate But Equal Doctrine,* I Catholic L. Rev. 70 (1950); Green, *The Fourteenth Amendment and Racial Segregation in State Supported Schools,* 24 Temple L.Q. 222 (1950); Waite, *The Negro in the Supreme Court: Five Years More,* 35 Minn. L. Rev. 625 (1951); *Segregation in Schools of Higher Learning,* 3 S.C.L.Q. 71 (1950).

[91] During the week of April 15, 1955, the ideas of litigants, interested states and those of the Federal Government were presented to the Court.

[92] "4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment

(a) would a decree necessarily follow providing that, within the limits set by normal geographical school districting, Negro children should forthwith be admitted to schools of their choice, or

(b) may this Court, in the exercise of its equity powers, permit an effective graduate adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

Court's power to grant relief and the manner in which such relief should be administered. The basic underlying problem in the instant situation is to determine the most just and expeditious manner of ending the segregated school systems. "The essential consideration is that the remedy be as effective and fair as possible in preventing continued or future violations of the [law] in the light of the facts of the particular case."[93]

Congress has explicitly granted the Court the power to enter "such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances."[94] The scope and judicial flexibility of this power has been demonstrated many times.[95] Concerning the adaptability of equity jurisdiction, the Court said in *Hecht Co. v. Bowles*:[96]

> . . . Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims.

Where public interests are involved, as in the *Brown* case, equitable powers "assume an even broader and more flexible character than when only a private controversy is at stake."[97] Equity "may mold its decree so as to accomplish practical results—such results as law and justice demand."[98]

In civil cases the Court has frequently suspended the operation of decrees on the basis of inconvenience to the public or undue hardship to the wrongdoer and has allowed sufficient time for removing the illegality. The Supreme Court determined in *Georgia v. Tennessee Copper Co.*[99] that injunctive relief should be granted, ". . . after allowing a reasonable time to the defendants to complete the structures that they are now building, and the effort that they are making to stop the fumes." Even though the decision in this case was rendered in 1907, the matter was still before the Court in 1916. In the abatement of nuisances, the

---

"5. On the assumption on which questions 4(a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4(b),

(a) should this Court formulate detailed decrees in these cases;

(b) if so, what specific issues should the decrees reach;

(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?" Note 1, *supra* at 495-496.

[93] *United States v. National Lead Co.*, 332 U.S. 319, 335 (1947).

[94] 28 U.S.C. 2106.

[95] *Eccles v. Peoples Bank*, 333 U.S. 426 (1948); *Union Pacific Railway Co. v. Chicago &c Ry. Co.*, 163 U.S. 564 (1896); see STORY, EQUITY JURISPRUDENCE § 28, 578 (14th ed.); POMEROY, EQUITY JURISPRUDENCE § 111, 170, 175a (5th ed.).

[96] 321 U.S. 321, 329 (1943). See *Addison v. Holly Hill Co.*, 322 U.S. 607, 622 (1944), where the Court commented, "In short, the judicial process is not without the resources of flexibility in shaping its remedies, though courts from time to time fail to avail themselves of them".

[97] *Porter v. Warner Co.*, 328 U.S. 395, 398 (1946); *Mercoid Corp. v. Mid-Continent Co.*, 320 U.S. 661, 670 (1944); *Inland Steel Co. v. U. S.*, 153, 157 (1939).

[98] *Northern Securities Co. v. United States*, 193 U.S. 197, 360 (1907).

[99] 206 U.S. 230, 239 (1906).

effective date of injustices has often been suspended, in state courts, to allow necessary readjustment time.[100]

Due to the entanglements of industrial arrangements in the area of monopolies and illegal business combinations, the federal courts have granted lengthy periods of time for re-adjustment commensurate with the decisions.[101] In antitrust suits where violations of questionable legality have persisted over great periods of time with national economic intricacies, overnight elimination of the illegal practices would be catastrophic. In *Standard Oil Co. v. United States,*[102] the Court directed an extension of time for executing the decree from a period of thirty days to at least six months, "in view of the magnitude of the interests involved and their complexity."[103] Where a substantial injury would result by cutting off the flow of vital commodities, the Court considered the best method of accomplishing the declared result with "as little injury as possible to the interests of the general public."[104] Extensions of time have been summarily granted by the Supreme Court after a determination of the basic rights indicated by such requirement.[105] The reorganization of the Seaboard Air Line Railway was in process almost sixteen years before it was completed.[106]

The Supreme Court, in *New Jersey v. New York,*[107] held that New Jersey was entitled to relief from the dumping of New York City garbage into the ocean off the New Jersey coast. The Court allowed New York City approximately eighteen months to conform. In a subsequent action, the Court postponed the finality of the court's decision until a period of four years from the entry of the first order against New York City.

If such periods of time are allotted to businesses and states, it would appear that such "reasonable" time limits should also be prudently imposed upon the states relative to integration. The prior position of men supersedes that of business or state. The factor of harmonious "co-existence" of the races is a constant problem that cannot go undirected. It is constitutionally recognized that the equal protection of the laws confers a personal and present right. Nevertheless, the Court also recognizes the considerations of public interest, public peace and domestic tranquility directed toward the common good. It is submitted that the Supreme Court has the requisite powers to lay down matters of policy affecting public education throughout the United States by its equity jurisdiction.

---

[100] *Harding v. Stamford Water Co.,* 41 Conn. 87, *Caretti v. Broring Building Co.,* 150 Md. 198, 132 A. 619 (1926); See 46 A.L.R. 1, 35-37 for reasonable time in abatement of nuisances.

[101] Cf. Note 98, *supra.*

[102] 221 U.S. 1 (1911).

[103] *Id.* at 81.

[104] *United States v. American Tobacco Co.,* 221 U.S. 106 (1911).

[105] *United States v. Paramount Pictures, Inc.,* 334 U.S. 131 (1948), a period of four years was granted; *United States v. National Lead Co.,* note 93, *supra.*

[106] *Guaranty Trust Co. v. Seaboard Air Line Railway,* 68 F. Supp. 304 (E.D. Va. 1946).

[107] 283 U.S. 473 (1931).

As stated above, the statutes of seventeen states requiring segregated public schools were declared unconstitutional by the *Brown* decision.[108] Four states with permissive segregation statutes were also affected. The administrative and legislative problem from most of the states concerned are presumed to be immense. The decrees from the Supreme Court will determine the legislation, active and passive to the decision, which will be enacted by the states. At least one state legislature will not be in session during 1955, but hearings have been held relative to the integration problems.[109] Considerations must be given to the geographical variations, in approach and timing among different localities, to intensity of community racial feelings, to diverse academic backgrounds between Negro and white students, to health measures, to the psychological needs of the children being integrated, and to the financial and administrative problems.[110] Probably the most important factor in integration of the public schools is public opinion in the particular community.[111]

Not only is community attitude of prime importance, but also the general attitude of the whole state. Indicative of the intensity with which some states view the *Brown* decision, is the recent action taken by the Mississippi Legislature. It passed "Proposed Amendments to the Constitution of State of Mississippi."[112] As the Attorney General for Mississippi has said:[113]

> . . . I say again that the public school system with *separate education for the races* can and will be maintained in Mississippi . . . In my considered opinion this statute will, along with other pertinent factors, furnish a legally unassailable answer to this problem for many, many years to come . . . We did not ask for this school crisis. It has been forced upon us. We will not shrink from the challenge. Our public school system and separate education for the races will be preserved. (Italics added.)

In addition to the proposal of the State of Mississippi, alternative plans have been made by a number of states, but none have been enacted into statutes.[114]

Bogus private school systems are as obvious an evasion of the Constitution

---

[108] Note 18, *supra.*

[109] Virginia.

[110] Paul, *The School Segregation Decision,* Law and Government, Institute of Government, University of North Carolina, pp. 63-85 (1954).

[111] ASHMORE, THE NEGRO AND THE SCHOOLS, 81-2 (Chapel Hill 1954).

[112] Proposed Amendments to the Constitution of the State of Mississippi, House Concurrent Resolution No. 2:

"A Concurrent Resolution submitted an Amendment to Article 8 . . . authorizing the Legislature by two-thirds vote of those present and voting in each house to abolish public schools and authorize the counties and school districts to abolish public schools, sell and dispose of school buildings, lands and other property, and make appropriation of public funds, and do other such acts and things deemed necessary to aid and assist educable children of this state to secure an education. . . ."

The bill authorizing the legislature to abolish the public school system was voted on and approved in referendum December 21, 1954.

[113] An address by Attorney General Coleman of Mississippi, delivered over the facilities of TV Station WLBT, Jackson, Mississippi, June 1, 1954. Letter received from Attorney General Coleman, November 26, 1954.

[114] Alabama Legislature Reference Service, *The School Segregation Problem,* Jan. 1954.

as were the white primaries of a few years ago.[115] Nevertheless, of the proposed plans put forth, one provides for the state to create a system of state-supported free private schools. There is another in which the state simply pays each family with school-age children, a grant of money to secure their education in any private school which is available.[116] It need not be overemphasized that the constitutionality of such activities might be attacked with the "public purpose" and "state action" cases.[117]

In consideration of some of the actual and some of the probable facts enumerated above, it is submitted that the transition from segregation can best be effectuated by the courts of first instance.[118] The Supreme Court has precedent for such action.[119] It has, in many instances, remanded cases to the lower courts for proceedings in accordance with its mandate.[120] The ultimate disposition of the myriad problems involved in the *Brown* case requires additional facts. The Court commented in *International Salt Company v. United States*:[121]

> The framing of decrees should take place in the District rather than in Appellate Courts. They are invested with large discretion to model their judgements to fit the exigencies of the particular case.

As stated by the Attorney General of the United States relative to the complexity of the problem:

> There is no single formula or blueprint which can be uniformly applied in all areas where existing school segregation must be ended. Local conditions vary . . . Only a pragmatic approach based on a knowledge of local conditions and problems can determine what is best in a particular place. For this reason, the court of first instance in such area should be charged with the responsibility for supervision of a program for carrying out the Court's decision. This Court should not, either itself or through the appointment of a special master, undertake to formulate specific and detailed programs of implementation adapted to the special needs of particular cases.[122]

Conclusion

It would appear that the Supreme Court of the United States has met a most difficult national problem forthrightly. It has extended the privileges of the Court

---

[115] *Nixon v. Herndon*, 273 U.S. 536 (1924); *Nixon v. Condon*, 286 U.S. 73 (1932), pertained to unconstitutional party rule prohibiting Negroes from voting in the primary elections; *Smith v. Allwright*, 321 U.S. 649 (1944); *Terry v. Adams*, 345 U.S. 461 (1953), Texas Jaybird elections.

[116] Paul, note 110, *supra* 33 to 63. The prepared work by Mr. Paul is recommended as an excellent critique of the present Southern dilemma.

[117] See e.g., *Loan Association v. Topeka*, 20 Wall 655 (1874); *Green v. Frazier*, 253 U.S. 233 (1920). Cf. Paul, note 110, *supra* at 54. *Cf. Cochran v. Louisiana State Board*, 281 U.S. 370 (1936).

[118] *Brown v. Board of Education, supra.* Brief for the Petitioners on the Mandate, 24, in *Gebhart v. Belton.* H. Albert Young, Attorney General of the State of Delaware.

[119] *Universal Battery Co. v. United States*, 281 U.S. 580 (1929); *Sipuel v. Board of Regents, supra; Sweatt v. Painter, supra.*

[120] *Russell v. Southard*, 12 How. (U.S.) 139; *Ballard v. Searls*, 130 U.S. 50 (1888).

[121] 332 U.S. 392, 400 (1947).

[122] *Brown v. Board of Education, supra*, Amici Curiae Supplemental Brief on Reargument by the Attorney General of the United States, Oct. Term. 1953. In the Supreme Court of the United States, pp. 184-185.

to children and to their respective states. The decision was rendered in favor of the children. In view of the gravity of the situation, the Court granted additional time for suggestions from interested parties relative to the formulation of the administrative decrees. Thus, the maximum of "due process" has been rendered to all concerned.

It is submitted that perhaps, at last, the Fourteenth Amendment has come to its true fruition in the recognition of the fundamental rights of our citizens without distinction. The evolution of law leading to the overthrow of the "separate but equal" doctrine in education should not now become a social revolution in the integration of our public schools. Rather, the "reasonable time" standard must be adopted and applied in the discretion of the Court. Revolutionary advocacy of immediate and universal integration would create consternation in the body politic. It is in such times as these that traditional American principles must synthesize with their Judaic-Christian counterparts in the virtues of charity, justice, mercy, and prudence. It is the application of these principles to our constitutionally guaranteed rights which will provide the solution to our national racial ill-feeling. Both Charles Sumner and Justice Harlan, in the dissent in the *Plessy* case, are vindicated. The law is now "color-blind." The fictional "doctrine" of "separate but equal" has been stripped of its juridical recognition. The Supreme Court has subsequently granted certiorari, vacated judgements and remanded cases to the lower courts for consideration in the light of the *Segregation Cases*.[123] Certiorari has been denied in situations concerning public recreational facilities,[124] public housing[125] and public education.[126]

It is submitted that the decision in the *Brown* case firmly elevates the dignity of the individual and the prestige and quality of our law based on social justice. This decision will be remembered in history as epitomizing those memorable words of Chief Justice Marshall, "We must never forget it is a Constitution we are expounding."

GEORGE J. BERTAIN, JR.

---

[123] Where petitioners were denied admission to law schools because they were Negroes. *Florida ex rel Hawkins et al. v. Board of Control of Florida et al.*, 60 So.2d 162 (Fla. S.Ct. 1952); *Turead v. Louisiana State University*, 207 F. 2d 807 (5th Cir. 1953). Negroes were deprived of admission to a municipally owned amphitheater leased to private parties who discriminated against Negroes. *Muir v. Louisville Park Theatrical Association*, 202 F.2d 275 (6th Cir. 1953). *Cert. granted*, 347 U.S. 971 (1954).

[124] Golfing facilities were not municipally provided for Negroes as for white persons. *Beal v. Holcombe*, 193 F.2d 384 (5th Cir. 1951). *Cert. denied*, 347 U.S. 974 (1954). The State of Maryland has appealed to the United States Supreme Court to reverse the United States Court of Appeals for the Fourth Circuit which held the Segregation Cases applicable to three public recreational facilities cases. *Lonesome et al. v. Maxwell et al.*, 123 F.Supp. 193 (D.Md. 1954). 23 L.W. 1145 (March 29, 1955).

[125] A municipal housing authority requirement in California admitting Negroes on an equal basis in permanent public low-rent housing developments was sustained. *Housing Authority v. Banks*, 120 Cal. App.2d 1, 260 P.2d 688 (1953). *Cert. denied*, 347 U.S. 974 (1954).

[126] Sustained admission of Negro students to public junior college. *Wichita Falls Junior College District et al. v. Battle et al.* 204 F.2d 632 (5th Cir. 1953). *Cert. denied*, 347 U.S. 974 (1954).