IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1952.

No. 8

OLIVER BROWN, MRS. RICHARD LAWTON,
MRS. SADIE EMMANUEL, et al.,
Appellants,

vs.

BOARD OF EDUCATION OF TOPEKA,
SHAWNEE COUNTY, KANSAS, et al,

Appeal from the United States District Court
for the District of Kansas.

BRIEF OF THE AMERICAN FEDERATION OF TEACHERS AS AMICUS CURIAE.

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American Federation of Teachers.

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Of Counsel.

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE.

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

The undersigned as counsel for and on behalf of American Federation of Teachers, respectfully moves this Honorable Court for leave to file the accompanying brief as *Amicus Curiae.* Consent has been given by counsel for appellants and appellees. The letters giving such consent accompany this brief.

The American Federation of Teachers is an organization of more than 350 locals of 60,000 teachers throughout the country, committed to a policy of "Democracy in Education—Education for Democracy". Its membership consists chiefly of classroom teachers who do the actual work of teaching the children in the nation's schools.

In its own affairs it is committed to a practice of complete equality and non-segregation between teachers of every race. Its Constitution provides:

> "Section 11 (of Article III). No discrimination shall ever be shown toward individual members, or applicants for membership because of race * * *."

It has worked unceasingly throughout its history, and with greater intensity in recent years, for the abolition of all forms of discrimination and segregation in education based on racial differences.

Its members, as shown by the proceedings of its national conventions, have repeatedly asserted a fixed opinion that segregated school systems are a basic violation of the Equal Protection Clause of the Fourteenth Amendment.

JOHN LIGTENBERG,
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SELMA M. BORCHARDT,
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The American Federation of Teachers submits this brief as *amicus curiae* in view of the great importance to democracy and the cause of education of the constitutional issue involved in these cases.

Opinions Below.

Statutes Involved.

The opinions below and the statutes involved are set out in the brief of the appellants.

Question Presented.

The general question presented by this appeal is whether the State of Kansas is violating the mandates of the Fourteenth Amendment by its practice of maintaining separate schools for the education of white and colored children.

Statement.

This is a class action in which plaintiffs seek a decree declaring Section 72-1724 of the General Statutes of Kansas, 1949 to be unconstitutional insofar as it empowers the Board of Education of the City of Topeka "to organize and maintain separate schools for the education of white and colored children."

Pursuant to this statute, the City of Topeka, Kansas, has established and maintains a segregated system of schools for the first six grades. The City of Topeka is one school district. The district maintains eighteen schools for white children and four for colored children.

The case was heard by a three judge statutory court. The court found as a fact that the facilities in the schools for colored children were substantially equal. Hence the issue here is whether segregation of children in the grade schools is *per se* a denial of equal protection of the laws.

Summary of Argument.

In this brief *amicus curiae* the American Federation of Teachers will argue that segregation in the schools violates basic principles of the educational process; that Negroes forced by state law to attend segregated schools are, by virtue of such segregation denied the equal protection of the laws, in violation of the Fourteenth Amendment.

ARGUMENT.

I.

The Statute of Kansas, providing for segregation of students in the Public Schools, violates the requirements of the equal protection clause of the Fourteenth Amendment. The doctrine of "Separate but Equal" facilities is fallacious.

The Fourteenth Amendment to the Constitution, in Section 1, provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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."

The Fourteenth Amendment made Negroes citizens of the United States and was intended further to protect them fully in the exercise of their rights and privileges. To make sure that this intent was fully known, Congress refused to readmit Southern States or seat their representatives until the states accepted the Fourteenth Amendment.

Its adoption, however, did not stop the practice of segregation in the Southern States, and when that issue was presented to this Court in 1896, in *Plessy* v. *Ferguson,* 163 U. S. 537, 550 (1896), involving a Louisiana statute which required separation of Negro and white passengers, this Court said:

> ". . . We cannot say that a law which authorizes or even requires the separation of the two races in public

> conveyances is unreasonable, or more obnoxious to the Fourteenth Amendment than the acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been qustioned, or the corresponding acts of state legislatures."

In *Missouri ex rel. Gaines* v. *Canada, registrar,* 305 U. S. 337, 349, this Court said:

> "The admissibility of laws separating the races in the enjoyment of privileges afforded by the State rests wholly upon the equality of the privileges which the laws give to the separated groups within the State."

Recently, the doctrine of "separate by equal" facilities expressed in the *Plessy* and *Gaines* cases was held to be a menace to American democracy and indefensible by the President's Committee on Civil Rights which unequivocally advocated that it be eliminated. In its report, the Committee said:

> "The separate but equal doctrine has failed in three important respects. First, it is inconsistent with the fundamental equalitarianism of the American way of life in that it marks groups with the brand of inferior status. Secondly, where it has been followed, the results have been separate and unequal facilities for minority peoples. Finally it has kept people apart despite incontrovertible evidence that an environment favorable to civil rights is fostered whenever groups are permitted to live and work together. There is no adequate defense of segregation." *

Furthermore, recent decisions of this Court enunciate principles in conflict with the rationale of the *Plessy* and *Gaines* cases. These include: *Takahashi* v. *Fish & Game Commission,* 332 U. S. 410; *Oyama* v. *California,* 332 U. S. 633, 640, 646 (1948); *Sipuel* v. *Board of Regents of the University of Oklahoma,* 332 U. S. 631 (1948); *Shelley* v. *Kraemer,* 334 U. S. 1 (1948).

In the *Shelley* case, this court, in considering private agreements to exclude persons of designated race or color from the use or occupancy of real estate for residential purposes and holding that it was violative of the equal protection clause of the Fourteenth Amendment for state courts to enforce them said (at p. 23):

> "The historical context in which the Fourteenth Amendment became a part of the Constitution should not be forgotten. Whatever else the framers sought to achieve, it is clear that the matter of primary concern was the establishment of equality in the enjoyment of basic civil and political rights and the preservation of those rights from discriminatory action on the part of the States based on considerations of race or color."

These principles cast doubt on the soundness of the rule laid down in the *Plessy* and *Gaines* cases. We submit that it should no longer be followed.

Nowhere has the fallacy of the doctrine of "separate but equal" facilities been more apparent than in the grade and high schools of the country. Elsewhere, in this brief we shall point out the sociological effects of this practice.

In *Sweatt* v. *Painter,* 339 U. S. 629, 70 S. Ct. Rep. 848, the court held that a separate law school established by Texas for Negro students could not be the equal of the University of Texas Law School.

In *McLaurin* v. *Oklahoma State Regents,* 339 U. S. 637, 70 S. Ct. Rep. 851, the court held that the requirements of state law that the instruction of a Negro graduate student in the University of Oklahoma be "upon a segregated basis" deprived the appellant in that case of his personal and present right to the equal protection of the laws.

There is no reason in experience for applying a different logic to children in grade and high schools. As the court

there said, our society grows increasingly complex and our need for trained leaders increases correspondingly.

We cannot give separate training to two segments of society and then expect that some magic will merge the individual from these segments into equal citizens having equal opportunities.

It is a mockery to say that those who aspire to teach and lead must have equal opportunity regardless of race, and still condemn to inequality those they are to teach and lead.

Ninety years of segregated schools demand the historical judgment that separate facilities are inevitably unequal and are not the way to equal opportunity.

In the segregated school system the growing citizen never has the chance to show his equal ability; he never has the

> "opportunity to secure acceptance by his fellow students on his own merits." *McLaurin* v. *Oklahoma State Regents*, 339 U. S. 637, 641.

He must wait until he has finished what schooling he gets before he enters the competition. For him "the personal and present right to the equal protection of the laws" is of as great practical importance as for the graduate student.

The Fourteenth Amendment is not for law students and postgraduates alone. It is meaningless if it does not apply to all children from the first day they enter the public schools.

To paraphrase the decision in the *Shelley* case, it seems to us that the segregation of students in public education as required by the Kansas Statute, violates the primary object of the Fourteenth Amendment: ". . . the establishment of equality in the enjoyment of basic civil and political

rights and the preservation of those rights from discriminatory action on the part of the States based on considerations of race or color."

II.

Segregation in public schools inevitably results in inferior educational opportunities for the Negro.

Commenting on the study of Dr. John Norton and Dr. Eugene Lawler—Public School Expenditures (1944) W. Harden Hughes states:

> "The contrasts in support of white and Negro schools are appalling . . . the median expenditure per standard classroom unit in schools for white children is $1,160 as compared with $476 for Negro children. Only 2.56% of class rooms in the white schools fall below the $500 cost level while 52.59% of the class rooms for Negro children are below this level."[1]
>
> "The state supported institutions of higher learning for Negroes are far inferior" states Charles S. Mangum, Jr., "to their sister institutions for whites. Most of the inequalities which have been noted herein with respect to the public schools for whites and Negroes are also present in the Negro normal and technical schools. . . . There is hardly one among them that could compare with any good white college in the same area."[2]

Statistics on vocational education in the land grant schools and colleges among Negroes show:

> "that of the federal funds allotted for vocational training in 1934-35 white schools received 88.2% and Negro schools 11.8%."[3]

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[1] Negro Year Book, Tuskegee Institute 1947. "The Negro and Education." W. Harden Hughes, p. 56.

[2] The Legal Status of the Negro (p. 134), Charles S. Mangum, Jr., Chapel Hill University of N. C. Press, 1940.

[3] Vocational Education and Guidance of Negroes, Bulletin No. 38, 1937, U. S. Dept. of Interior, Office of Education, p. 13.

A recommendation of this report (1934-35) was:

> "that individuals and groups interested in the improvement of educational facilities continue and increase their efforts to promote equitability of educational opportunity and equitability in the distribution of funds without regard to race or color."[4]

In Texas, the expenditure for public schools was $1400 for whites per classroom unit and $700 for Negroes.[4] There is a corresponding discrimination in school transportation, salaries of teachers, library service and provision for training beyond the secondary school.

Several recent studies,[5] as well as many previous ones, all indicate the great disparity between the educational opportunities afforded white youth and those offered to Negro youth in the states where a segregated and discriminatory system of education prevails.

So obvious are the inequalities that in Vol. 1 of the National Survey of the Higher Education of Negroes we find this statement: "No one with a knowledge of the facts believes that Negroes enjoy all the privileges which American democracy expressly provides for the citizens of the U. S. and even for those aliens of the white race who reside among us. The question goes much deeper than the Negro citizens' *legal right to equal educational opportunity.* The question is whether American democracy and what we like to call the American way of life, can stand the strain of perpetuating an undemocratic situation; and whether the nation can bear the *social cost of utilizing only a fraction*

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[4] Public School Expenditures, Dr. John Norton and Dr. Eugene S. Lawler, American Council on Education, 1944.

[5] The Black & White of Rejections for Military Service, American Teachers Assn. Studies, ATA Montgomery, Ala., 1944; Public School Expenditures in the U. S., Dr. John K. Norton and Dr. Eugene S. Lawler; American Council on Education, Wash., D. C., 1944; Journal of Negro Education, Summer 1947.

of the potential contribution of so large a portion of the American population." [6]

The Constitution is a living instrument, and a "separate but equal" doctrine based upon antiquated considerations, should not, at this time, and in this advanced era, be permitted to perpetuate a situation which denies full equality to Negroes in the pursuit of education.

III.

Segregation in public schools deprives the Negro student of an important element of the education process and he is thereby denied the equal educational opportunities mandated by the Fourteenth Amendment.

The practice of segregation in the field of education is a denial of education itself. Education means more than the physical school room and the books it contains, and the teacher who instructs. It includes the learning that comes from free and full association with other students in the school. To restrict that association is to deny full and equal opportunities in the learning process. To restrict that association is to deny the constitutional guarantee.

Psychologists show us that learning is an emotional as well as an intellectual process: that it is social as well as individual, and is best secured in an environment which encourages and stimulates the best effort of the individual and holds out the hope that this best effort will be accepted and used by society.

From infancy to adulthood the most satisfactory personality development occurs when the individual:

a. feels he is accepted and wanted by his community

[6] Socio-Economic Approach to Educational Problems, Misc. No. 6, Vol. 1, p. 1, Federal Security Agency, U. S. Office of Education, Wash., 1942.

b. secures aid and encouragement in his activities

c. has the satisfaction of contributing to the group without too many frustrating experiences

d. receives the approval of the group or some evidence of recognition.

"Another obvious fact about human development is that it is greatly facilitated by social contacts. . . . Social contacts make possible the enlargement of personal experience by fusing into it the accumulated experiences of the race."[7] (Here human race is intended.)

"More recently psychologists and other students of education have gained a livelier appreciation of the fact that learning does not take place merely because there exists an intelligence or mind. The physical condition of boys and girls, their emotional responses both in school and out, *all the environmental factors* which impinge upon them have influence upon their growth and development."[8]

"The security needs of children (and adults too) are more numerous and complicated than the elimination of gross fears suggests. They seem to be related to a larger but more subtle need which may be here labeled as the need for orientation. A person finds it desirable to know where he is in the world and how he stands with his fellows. To be 'lost' in either respect is to be in an uncomfortable frame of mind. Not to be spatially, temporally and socially oriented is to be deprived of the *prime conditions for effective learning and growth.*"[9]

In every situation there is the inter-relation of the individual to his group—which is one that increases with his maturity. First it is the family, then the local community, then the state, the nation, and finally the entire world. At

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[7] Judd, Charles H., Educational Psychology, p. 3, Houghton Mifflin, 1939.

[8] Hartmann, George W., Educational Psychology, Foreword, p. VI, American Book Co., 1940.

[9] Hartmann, George W., Educational Psychology, p. 240, American Book Co., 1940.

no stage of development should any barriers be erected to prevent the individual from moving from a narrower group to a larger one, particularly barriers on race. As Lewin states:

> "The group to which an individual belongs is the ground on which he stands, which gives or denies him social status, gives or denies him security and help. The firmness or weakness of this ground might not be consciously perceived, just as the firmness of the physical ground on which we tread is not always thought of. Dynamically, however, the firmness and clearness of this ground determine what the *individual wishes to do, what he can do, and how he will do it.* This is equally true of the social ground as of the physical."[10]

Again he states:

> "It should be clear to the social scientist that it is hopeless to cope with this problem (discrimination) by providing *sufficient self esteem for members of minority groups* as individuals. The discrimination which these individuals experience is not directed against them as individuals, but as group members and only by raising their self *esteem as group members* to the normal level can a remedy be produced."[11]

An interesting survey of the opinion of social scientists on the effects of enforced segregation was made by Drs. Max Deutscher and Isidor Chein through a questionnaire[12] to 849 social scientists in all parts of the country. The questionnaire was answered by 571.

> "Ninety per cent of the total sample express the opinion that enforced segregation has detrimental effects on the segregated groups."[13]

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[10] Kurt Lewin, "Resolving Social Conflicts," p. 174, Harper & Bros., 1948.

[11] *Ibid,* p. 214.

[12] Max Deutscher and Isidor Chein, The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion, Journal of Psychology, 1948-26, pp. 259-287.

[13] Page 265—above survey.

> "Eighty-three per cent of the respondents believe that enforced segregation has detrimental psychological effects on the group which enforces segregation."[14]

A few quotations from the social scientists make clear their views: "Feelings of not being wanted, of being classified as inferiors, of being assigned to low places are destructive to personality and development and injurious alike to slave and master."[15]

> "Clinical experience and experimental evidence point unmistakably to the conclusion that segregation implies a value judgment which in turn arouses hostility in the segregated and guilt feelings in the segregator. The effect is to set up a vicious circle making for group conflict."[16]

> "I don't see how anyone could question the statement that power over others—to segregate or any other power—has a psychological effect on both parties or that this effect is bad in any sense for the less powerful groups. The more powerful group may like the effect it has on itself in short term values, but hatred, rebellion, or dispair are attitudes they have aroused toward themselves and they will always have to cope with these results sooner or later unless they can practically eradicate the whole minority as Europeans did with the American Indian."[17]

If education can be made available to all so that each may develop to the fullest and give his contribution to society, we will find a peaceful way—rather than one of human destruction and tragedy—to bring freedom and justice to peoples.

The American Federation of Teachers believes that segregated and discriminatory education is undemocratic and contrary both to sound educational development as well as

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[14] (See Footnote 12), p. 265.
[15] (See Footnote 12), p. 274.
[16] (See Footnote 12), p. 275.
[17] (See Footnote 12), p. 279.

to the basic law of the land—the United States Constitution. We subscribe to the principle that democratic education provides a total environment which will enable the individual to develop to his capacity, physically, emotionally, intellectually and spiritually.

For such training to be fully effective, it is essential that each individual participate, without barriers of race, creed, or national origin, as a full fledged member in the home, the community, the state and the nation.

Accordingly, any restriction, particularly in the form of segregated and discriminatory schooling, which prevents the interplay of ideas, personalities, information and attitudes, impedes a democratic education and ultimately prevents a working democracy.

Conclusion.

Segregation of Negroes in public schools in any of our States inevitably results in depriving Negroes of educational opportunities provided by those States for white citizens. Negroes in such States are thereby denied the equal protection of the laws mandated by the Fourteenth Amendment. This Court should end these violations of the constitutional mandate by reversing the judgment in this case and granting the appellants the relief they pray for.

Respectfully submitted,

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