

# ~~413~~ #413 - 8 - et al

C.J.

Harlan's dissent does not refer to schools -  
He later wrote Cummings -

Hard to get away from long continued interpretation  
of Congress ever since the Amendments - and at  
that time - As to having mixed classes I  
think Congress would have power for D.C. or  
the States - they may try it for D.C. but not  
states -

In regard to P.C. you have equal facili-  
ties - took some time to make them equal -

In Signal + McLaurin we said right was  
personal - more serious when you have large  
numbers - We can't close our eyes to problems  
in various parts of country altho "hotter" in some -  
It is said we should not consider this but  
I can't throw it all off - When you face the  
complete abolition of public schools in some  
areas then it is most serious - Business  
is essential but wisdom indispensable.

Delaware :- Not equal - same on the -

But history of P.C. case shows what time  
we do - Hard to say where you have large %  
colored then cannot be equal -

Question in SC + Kansas finding it

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is detrimental to have segregation - but  
varies contrary - commonly would bring  
on humiliation etc.

Blacks :-

Not sure Congress is barred by some  
limitations as states -

1. Segregation per se violation?

to so hold would bring drastic things -  
S.C., etc. One of worse features is courts  
are put on battle front - don't believe  
in injunctions -

at first blush I would have said it  
was up to Congress - but if we can  
declare confiscation or other laws  
unconstitutional then we can segregation -

I'm compelled for myself to believe  
the idea of segregation is because negro  
is inferior - nor can I escape  
that the Amendments had as their  
basic purpose the abolition of such  
castes - that is what is behind opposi-  
tion now -

Reed #413 -

If legislature is to pass on questions there  
that is place for it to be done -

I agree Constitution not fixed -

Should allow time for equalizing the  
opportunity - the facilities - may be take  
10 years to accomplish in Va -

I would uphold separate + equal -

F.F. D.C. case raises different questions -

I would set down for re-argument -  
The DC is nation's Capital - I am  
prepared today to vote that segregation  
in D.C. does violate due process -

Intolerable that DC would permit segregation -

I deprecate any activities by force  
of law that might be used -

Should hold all cases - The  
social gains of having them  
accomplished with executive sanction  
would be enormous x Set down  
very specific questions :-

1. manner in which it would be carried

#413  
F.F.

but - etc

As to States - can't take questions  
as sociological = How do we know  
what the framers of Amendments meant?  
You can't fairly say, "yes, these fellows  
meant to abolish segregation" or visa versa -  
Highly desirable to set down cases for  
reargument, say 1<sup>st</sup> March.

Dryfus: - Cases very simple for me -  
I can't avoid conclusion (Hugobos reached  
in State cases - same in D.C. Would  
not mind setting down DC cases - but  
not others - not such pronouncements.

Jackson: - Don't take any vote now -  
start as a lawyer - nothing in text that  
tells me this is unconstitutional - (Marshall's  
brief starts + ends with sociology -) and  
nothing in legislative acts.

Not conscious of the problem until I came here -  
we had segregation in Lancaster.

## Block

If I have to meet it, the purpose of the law is to discriminate on account of color - that the amendments were designed to stop it - unless the long line of decisions based this course - I don't think Congress went as far as they thought amendments went -

I have to vote that way -

On equal & separate if that is going to be rule then wide latitude should be given findings in State Courts -

## Reed :-

I approach from different view - Negroes have not been assimilated - there has been some amalgamation of the races as shown by the counsel who appeared here. There is a reasonable body of opinion that segregation is beneficial to both. Think of advancement :- transportation, voting - FERC etc -

We don't have same problems as South (in Ky.) Facilities not equal in Ky but better than they are in South -

Jackson #413 :-

If can work it out so we can say segregation "bad" - under approval of Court + support of Congress - and must be done in certain periods -

Burton - We have constitution and must be guided by those. We must not depart. But we can use time -

Minton :- We have chiseled away "separate but equal" doctrine - Can't classify as to race bad - invidious - This is a race that grew up in trouble -