No. ~~436~~ 1 ~~1951~~ 1953-1954 Term

BROWN ET AL. V. BOARD OF EDUCATION OF TOPEKA ET AL.

Appeal from USDC-Kan. (Huxman, Mellott, Hill).

This is another case challenging the constitutionality of segregation in public schools. This case differs from its predecessors, however, in that the record is somewhat more fully developed and in that it presents in clearer-cut fashion the constitutionality of segregation as such.

A Kansas statute provides that in cities of the first class:

> "The board of education shall have power * * * to organize and maintain separate schools for the education of white and colored children, including the high schools in Kansas City, Kan.; no discrimination on account of color shall be made in high schools except as provided herein; * * * "

Pursuant to this authority the Bd. of Edu. of Topeka, a city of the first class, has established and maintains a segregated system of schools for the first six grades. It maintains in the Topeka school district 18 grade schools for white students and 4 grade schools for negro children. [There is no segregation in the junior high and high schools of Topeka.] The negro grade schools are located in predominantly negro neighborhoods.

This suit is a class action instituted by certain negro children of grade school age and

their parents, alleging that the educational facilities which Topeka provides for such children are inferior to those provided for white children of grade school age, and further alleging that segregation as such is unconstitutional under the 14th Amendment. The complaint asked that the Kansas statute be declared unconstitutional and that an injunction issue to restrain the enforcement, operation, and execution of the statute and of the segregation instituted thereunder by the Topeka Bd. of Edu.

A 3-judge DC was convened under 28 USC §2281, which provides:

> "An interlocutory or permanent injunction restraining the enforcement, operation or execution of any state statute by restraining the action of any officer of such state in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under state statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title."

After a trial on the merits, the 3-judge ct. concluded that there was no denial of equal facilities. It stated: "We conclude that no discrimination is practiced against plaintiffs in the colored schools set apart for them because of the

nature of the physical characteristics of the buildings, the equipment, the curricula, quality of instructors and instruction or school services furnished and that they are denied no constitutional rights or privileges by reason of any of these matters."

On the issue of segregation as such, however, the 3-judge ct., after hearing the testimony of seven expert witnesses who testified on behalf of plaintiffs, made the following findings of fact:

> "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to retain the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial integrated school system."

Despite these findings, the ct. went on to hold that segregation without more does not constitute a denial of due process. The ct. reached this conclusion because it felt that "Plessy v. Ferguson, 163 US 537, and Gong Lum v. Rice, 275 US 78, uphold the constitutionality of a legally segregated school system in the lower grades", and these decisions "have not been overruled by the later cases of McLaurin v. Oklahoma, 339 US 637, and

Sweatt v. Painter, 339 US 629." The ct. remarked, nevertheless: "If segregation within a school as in the McLaurin case is a denial of due process, it is difficult to see why segregation in separate schools would not result in the same denial. Or if the denial of the right to commingle with the majority group in higher institutions of learning as in the Sweatt case and gain the educational advantages resulting therefrom, is lack of due process, it is difficult to see why such denial would not result in the same lack of due process if practiced in the lower grades."

One of the Chief's law clerks informs me that the record in this case will be circulated to all justices in the near future.

NPJ SWT