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# Three Views of the Segregation Decisions

William Faulkner, Benjamin Mays, Cecil Sims

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*Three  
Views  
of the*

# Segregation Decisions

WILLIAM FAULKNER

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BENJAMIN E. MAYS

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CECIL SIMS

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*Foreword by  
Bell I. Wiley*



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# The Segregation Decisions

PAPERS READ AT A SESSION OF THE  
TWENTY-FIRST ANNUAL MEETING OF THE  
SOUTHERN HISTORICAL ASSOCIATION,  
MEMPHIS, TENNESSEE, NOVEMBER 10, 1955

WILLIAM FAULKNER

BENJAMIN E. MAYS

CECIL SIMS

*With a Foreword by*

BELL I. WILEY

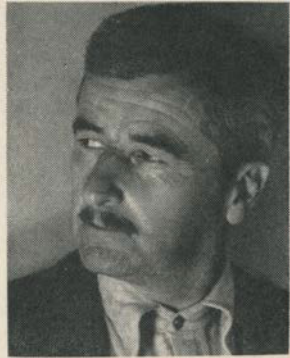
SOUTHERN REGIONAL COUNCIL, ATLANTA, GEORGIA, 1956



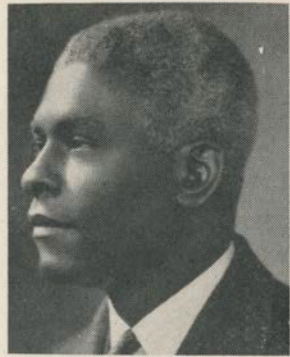
# *The Authors*

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WILLIAM FAULKNER



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CECIL SIMS





# Foreword

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EARLY NOVEMBER, 1955, was a critical time in Dixie. The eyes of the South, and of the nation, were focused on a Mississippi Delta community, where Emmett Till, a visiting colored boy from Chicago, had allegedly been killed, and where two white men accused of kidnapping and murdering him had been exonerated by local juries.

On November 10, while emphatic advocates of white supremacy were still exchanging congratulations on the outcome of the Till case, the Southern Historical Association assembled in Memphis for its twenty-first annual meeting. Headquarters of the meeting was the Peabody Hotel which David Cohn once referred to as the Northern outpost of the Mississippi Delta. Over 500 persons, representing a total membership of about 2,000, most of them teachers of history in Southern colleges and universities, registered for the meeting.

The first general session, a dinner gathering arranged by the program committee and sponsored by Phi Alpha Theta, honorary historical fraternity, was an occasion that will be long remembered by those who were present. This session was an overwhelmingly Southern affair; yet it was unsegregated; the papers read were moderate in tone; and while all of the 500 persons who attended were not in accord with the liberal views expressed, the applause, according to observation of old-timers, exceeded that of any prior session in the history of the association.

The topic of the session was "The Segregation Decisions." The presiding officer was Professor Thomas D. Clark, native of Louisville, Mississippi, graduate of three Southern universities, and long-time head of the history department of the University of Kentucky. The toastmaster was Philip G. Davidson, President of the University of Louisville, who was born in Nebraska but who grew up in Mississippi, graduated from the University of Mississippi and whose career in teaching and administration has been exclusively Southern. The discussion leader was Weldon James of the Louisville *Courier-Journal*, a native and long-time resident of South Carolina.

Cecil Sims, who presented the first paper, is a native of Atlanta, a graduate of the Vanderbilt Law School and a distinguished lawyer of Nashville, Tennessee. Benjamin Mays, who followed Sims, was born in South Carolina and educated at Bates College and the Uni-



versity of Chicago; after outstanding service in various ministerial and educational positions he became president of Morehouse College in Atlanta in 1940, the position that he holds at the present time. In 1952 the Yale Divinity School chose Dr. Mays to inaugurate its Wright lecture series. The concluding paper was by William Faulkner, winner of the Nobel Prize in 1949, a Mississippian known throughout the world for his affectionate and creative identification with the American South.

The program committee had hoped to have various shades of opinion represented, including opposition to the segregation decisions. But known segregationists who were asked to participate declined the invitation.

Even so, the session was marked by considerable variety of approach and treatment. Sims' paper was a calm and judicious analysis of the segregation decisions by one steeped in legal methods and traditions. Mays' presentation was an impassioned commentary on the moral implications of segregation by one who had experienced its inequities; the eloquence and the force with which the speaker stated his views was evidenced by the fact that he was twice interrupted by vigorous applause—a phenomenon without precedent in the Association's history—and by the tremendous ovation that he received at the conclusion of his remarks. Faulkner's paper, which combined some of the qualities of the two that preceded, was the laconically phrased admonition of an artist thoroughly devoted to the South, profoundly disturbed that his native region was out of harmony with enlightened sentiment of the world in its racial attitudes and alarmed by the possible effect of those attitudes as the conflict between democratic and communist nations moves into the critical stage.

Faulkner's concern and the conditions which gave rise to it were of particular interest to students of Southern history who listened to his paper at Memphis. For they knew that a similar situation had existed a hundred years before when the South found itself in opposition to the majority sentiment of the Christian world in clinging to the institution of slavery. Southerners persisted in their views then, even to sacrificing their wealth and blood on the altar of war. Recent utterances and activities of the more vocal element of Dixie's population have tended to create the impression that Southerners of today are as deeply committed to segregation as were their forbears to slavery. But the Southern Historical Association's session on segrega-

tion last November suggests one important difference. In the 1850s, educators, ministers and writers were in the vanguard of slavery's champions. They drew up and helped to disseminate the philosophic justification of the "peculiar institution." They declared slavery a divinely approved system, beneficial both to the bondsmen and their masters. They urged fellow Southerners to resist to the limit any and all efforts to interfere with the South's chosen ways. And when war came they actively supported the Southern cause.

In the present controversy college and church leaders are, to say the least, not in the first ranks of the segregationists. Many of them are openly in opposition to those who advocate resistance to the Supreme Court's decision on the subject. This opposition may be in a measure silenced as segregationists become more determined and better organized. But it can hardly be eliminated. Deprived of the leadership of this influential group, and thwarted by the nationalizing tendencies deriving from the influence of rapid communication, corporate business, and the South's industrialization, segregationists are at a greater disadvantage than were their proslavery antecedents of a century ago; and some of them do not hesitate to admit in private conversation that all they can hope for is a postponement of the inevitable.

It is not meant to suggest that the papers comprising this pamphlet represent the views of the Southern Historical Association in any official way. For some members of the organization, as indicated above, hold opinions contrary to those herein expressed. The essays are published for the purpose of bringing to the attention of interested persons within and without the association a remarkable incident of the Memphis meeting and the views whose public expression on that occasion made it memorable. The vocal South—the South known to outsiders—is overwhelmingly segregationist. The session at Memphis revealed the existence of another and a liberal South—soft-spoken and restrained, but articulate and powerful—that is earnestly pledged to moderation and reason.

BELL I. WILEY, *President*  
SOUTHERN HISTORICAL ASSOCIATION  
1955

EMORY UNIVERSITY, GEORGIA  
26 APRIL 1956



# American Segregation and the World Crisis

*By* WILLIAM FAULKNER

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FOR THE MOMENT and for the sake of the argument, let's say that, a white Southerner and maybe even any white American, I too curse the day when the first Negro was brought against his will to this country and sold into slavery. Because that doesn't matter now. To live anywhere in the world of A.D. 1955 and be against equality because of race or color, is like living in Alaska and being against snow.

Inside the last two years I have seen (a little of some, a good deal of others) Japan, the Philippines, Siam, India, Egypt, Italy, West Germany, England and Iceland. Of these countries, the only one I would say definitely will not be communist ten years from now, is England. And if these other countries do not remain free, then England will no longer endure as a free nation. And if all the rest of the world becomes communist, it will be the end of America too as we know it; we will be strangled into extinction by simple economic blockade since there will be no one anywhere anymore to sell our products to; we are already seeing that now in the problem of our cotton.

And the only reason all these countries are not communist already, is America, not just because of our material power, but because of the idea of individual human freedom and liberty and equality on which our nation was founded, and which our founding fathers postulated the name of America to mean. These countries are still free of communism simply because of that—that belief in individual liberty and equality and freedom—that one belief powerful enough to stalemate the idea of communism. We have no other weapon to fight communism with but this, since in diplomacy we are children to communist diplomats, and in production we will always lag behind them since under monolithic government all production can go to the aggrandizement of the State. But then, we don't need anything else, since that idea—that simple belief of man that he can be free—is the strongest force on earth; all we need to do is, use it.

Because it is glib and simple, we like to think of the world situation today as a precarious and explosive balance of two irreconcilable ideologies confronting each other; which precarious balance, once it totters, will drag the whole world into the abyss along with it. That's not so. Only one of the forces is an ideology, an idea. Because the second force is the simple fact of Man: the simple belief of individual man that he can and should and will be free. And if we who so far are still free, want to continue to be free, all of us who are still free had better confederate, and confederate fast, with all others who still have a choice to be free—confederate not as black people nor white people nor pink nor blue nor green people, but as people who still are free with all other people who still are free; confederate together and stick together too, if we want a world or even a part of a world in which individual man can be free, to continue to endure.

And we had better take in with us as many as we can get of the nonwhite peoples of the earth who are not completely free yet but who want to be and intend to be, before that other force which is opposed to individual freedom, befools and gets them. Time was when the nonwhite was content to—anyway, did—accept his instinct for freedom as an unrealizable dream. But not any more; the white man himself taught him different with that phase of his—the white man's—own culture which took the form of colonial expansion and exploitation based and morally condoned on the premise of inequality not because of individual incompetence, but of mass race or color. As a result of which, in only ten years, we have watched the nonwhite peoples expel, by bloody violence when necessary, the white man from all of the middle east and Asia which he once dominated. And into that vacuum has already begun to move that other and inimical power which people who believe in freedom are at war with—that power which says to the nonwhite man: “We don't offer you freedom because there is no such thing as freedom; your white overlords whom you just threw out have already proved that to you. But we offer you equality: at least equality in slavedom; if you are to be slaves, at least you can be slaves to your own color and race and religion.”

We, the western white man who does believe that there exists an individual freedom above and beyond this mere equality of slavedom, must teach the nonwhite peoples this while there is yet a little time left. We, America, who are the strongest force opposing communism and monolithicism, must teach all other peoples, white and nonwhite,



slave or (for a little while yet) still free. We, America, have the best chance to do this because we can do it here, at home, without needing to send costly freedom expeditions into alien and inimical places already convinced that there is no such thing as freedom and liberty and equality and peace for all people, or we would practice it at home.

The best chance and the easiest job, because our nonwhite minority is already on our side; we don't need to sell them on America and freedom because they are already sold; even when ignorant from inferior or no education, even despite the record and history of inequality, they still believe in our concepts of freedom and democracy.

That is what America has done for them in only three hundred years. Not *to* them: *for* them, because to our shame we have made little effort so far to teach them to be Americans, let alone to use their capacities to make of ourselves a stronger and more unified America: —the people who only three hundred years ago were eating rotten elephant and hippo meat in African rain-forests, who lived beside one of the biggest bodies of inland water on earth and never thought of a sail, who yearly had to move by whole villages and tribes from famine and pestilence and human enemies without once thinking of a wheel, yet in only three hundred years in America produced Ralph Bunche and George Washington Carver and Booker T. Washington, who have yet to produce a Fuchs or Rosenberg or Gold or Greenglass or Burgess or McLean or Hiss, and for every prominent communist or fellow-traveler like Robeson, there are a thousand white ones.

I am not convinced that the Negro wants integration in the sense that some of us claim to fear he does. I believe he is American enough to repudiate and deny by simple American instinct any stricture or regulation forbidding us to do something which in our opinion would be harmless if we did it, and which we probably would not want to do anyway. I think that what he wants is equality, and I believe that he too knows there is no such thing as equality *per se*, but only equality *to*: equal right and opportunity to make the best one can of one's life within one's capacity and capability, without fear of injustice or oppression or threat of violence. If we had given him this equal right to opportunity ninety or fifty or even ten years ago, there would have been no Supreme Court decision about how we run our schools.

It is our white man's shame that in our present southern economy, the Negro must not have economic equality; our double shame that we fear that giving him more social equality will jeopardize his pres-

ent economic status; our triple shame that even then, to justify ourselves, we must becloud the issue with the purity of white blood; what a commentary that the one remaining place on earth where the white man can flee and have his blood protected and defended by law, is Africa—Africa: the source and origin of the people whose presence in America will have driven the white man to flee from defilement.

Soon now all of us—not just Southerners nor even just Americans, but all people who are still free and want to remain so—are going to have to make a choice. We will have to choose not between color nor race nor religion nor between East and West either, but simply between being slaves and being free. And we will have to choose completely and for good; the time is already past now when we can choose a little of each, a little of both. We can choose a state of slavery, and if we are powerful enough to be among the top two or three or ten, we can have a certain amount of license—until someone more powerful rises and has us machine-gunned against a cellar wall. But we cannot choose freedom established on a hierarchy of degrees of freedom, on a caste system of equality like military rank. We must be free not because we claim freedom, but because we practice it; our freedom must be buttressed by a homogeneity equally and unchallengeably free, no matter what color they are, so that all the other inimical forces everywhere—systems political or religious or racial or national—will not just respect us because we practice freedom, they will fear us because we do.

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[*Editor's note*—On December 1, Mr. Faulkner extended views expressed in his Memphis paper with the following statement]:

The question is no longer of white against black. It is no longer whether or not white blood shall remain pure, it is whether or not white people shall remain free.

We accept insult and contumely and the risk of violence because we will not sit quietly by and see our native land, the South, not just Mississippi but all the South, wreck and ruin itself twice in less than a hundred years, over the Negro question.

We speak now against the day when our Southern people who will resist to the last these inevitable changes in social relations, will, when they have been forced to accept what they at one time might have accepted with dignity and goodwill, will say, "Why didn't someone tell us this before? Tell us this in time?"

# The Moral Aspects of Segregation

*By* BENJAMIN E. MAYS

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WHENEVER a strong dominant group possesses all the power, political, educational, economic, and wields all the power; makes all the laws, municipal, state and federal, and administers all the laws; writes all constitutions, municipal, state and federal, and interprets these constitutions; collects and holds all the money, municipal, state, and federal and distributes all the money; determines all policies—governmental, business, political and educational; when that group plans and places heavy burdens, grievous to be borne, upon the backs of the weak, that act is immoral. If the strong group is a Christian group or a follower of Judaism both of which contend that God is creator, judge, impartial, just, universal, love and that man was created in God's image, the act is against God and man—thus immoral. If the strong group is atheistic, the act is against humanity—still immoral.

No group is wise enough, good enough, strong enough, to assume an omnipotent and omniscient role; no group is good enough, wise enough to restrict the mind, circumscribe the soul, and to limit the physical movements of another group. To do that is blasphemy. It is a usurpation of the role of God.

If the strong handicaps the weak on the grounds of race or color, it is all the more immoral because we penalize the group for conditions over which it has no control, for being what nature or nature's God made it. And that is tantamount to saying to God, "You made a mistake, God, when you didn't make all races white." If there were a law which said that an illiterate group had to be segregated, the segregated group could go to school and become literate. If there were a law which said that all peoples with incomes below \$5,000 a year had to be segregated, the people under \$5,000 a year could strive to rise above the \$5,000 bracket. If there were a law which said that men and women who did not bathe had to be segregated, they could develop the habit of daily baths and remove the stigma.



If there were a law which said that all groups had to be Catholics, the Jews and Protestants could do something about it by joining the Catholic Church. But to segregate a man because his skin is brown or black, red or yellow, is to segregate a man for circumstances over which he has no control. And of all immoral acts, this is the most immoral.

So the May 17, 1954, Decision of the Supreme Court and all the decisions against segregation are attempts on the part of the judges involved to abolish a great wrong which the strong has deliberately placed upon the backs of the weak. It is an attempt on the part of federal and state judges to remove this stigma, this wrong through constitutional means, which is the democratic, American way.

I said a moment ago that if the strong deliberately picks out a weak racial group and places upon it heavy burdens that act is immoral. Let me try to analyze this burden, segregation, which has been imposed upon millions of Americans of color. There are at least three main reasons for legal segregation in the United States.

1. The first objective of segregation is to place a legal badge of inferiority upon the segregated, to brand him as unfit to move freely among other human beings. This badge says the segregated is mentally, morally, and socially unfit to move around as a free man.
2. The second objective of segregation is to set the segregated apart so that he can be treated as an inferior: in the courts, in recreation, in transportation, in politics, in government, in employment, in religion, in education, in hotels, in motels, restaurants and in every other area of American life. And all of this has been done without the consent of the segregated.
3. The third objective of legalized segregation follows from the first two. It is designed to make the segregated believe that he is inferior, that he is nobody and to make him accept willingly his inferior status in society. It is these conditions which the May 17, 1954, Decision of the Supreme Court and other federal decisions against segregation are designed to correct—to remove this immoral stigma that has been placed upon 16 million Negro Americans, and these are the reasons every thinking Negro wants the legal badge of segregation removed so that he might be able to walk the earth with dignity, as a man, and not cringe and kow-tow as a slave. He believes that this is his God-given right on the earth.

Segregation is immoral because it has inflicted a wound upon the soul of the segregated and so restricted his mind that millions of Negroes now alive will never be cured of the disease of inferiority. Many of them have come to feel and believe that they are inferior or that the cards are so stacked against them that it is useless for them to strive for the highest and the best. Segregate a race for ninety years, tell that race in books, in law, in courts, in education, in church and school, in employment, in transportation, in hotels and motels, in the government that it is inferior—it is bound to leave its damaging mark upon the souls and minds of the segregated. It is these conditions that the federal courts seek to change.

Any country that restricts the full development of any segment of society retards its own growth and development. The segregated produces less, and even the minds of the strong group are circumscribed because they are often afraid to pursue the whole truth and they spend too much time seeking ways and means of how to keep the segregated group in "its place." Segregation is immoral because it leads to injustice, brutality, and lynching on the part of the group that segregates. The segregated is somebody that can be pushed around as desired by the segregator. As a rule equal justice in the courts is almost impossible for a member of the segregated group if it involves a member of the group imposing segregation. The segregated has no rights that the segregator is bound to respect.

The chief sin of segregation is the distortion of human personality. It damages the soul of both the segregator and the segregated. It gives the segregated a feeling of inherent inferiority which is not based on facts, and it gives the segregator a feeling of superiority which is not based on facts. It is difficult to know who is damaged more—the segregated or the segregator.

It is false accusation to say that Negroes hail the May 17, 1954, Decision of the Supreme Court because they want to mingle socially with white people. Negroes want segregation abolished because they want the legal stigma of inferiority removed and because they do not believe that equality of educational opportunities can be completely achieved in a society where the law brands a group inferior. When a Negro rides in a Pullman unsegregated he does it not because he wants to ride with white people. He may or may not engage in conversations with a white person. He wants good accommodations. When he eats in an unsegregated diner on the train, he goes in because he is hungry and not because he wants to eat with white people. He

goes to the diner not even to mingle with Negroes but to get something to eat. But as he eats and rides he wants no badge of inferiority pinned on his back. He wants to eat and ride with dignity. No Negro clothed in his right mind believes that his social status will be enhanced just because he associates with white people.

It is also a false accusation to say that Negroes are insisting that segregated schools must be abolished today or tomorrow, simultaneously all over the place. As far as I know, no Negro leader has ever advocated that, and they have not even said when desegregation is to be a finished job. They do say that the Supreme Court is the highest law of the land and we should respect that law. Negro leaders do say that each local community should bring together the racial groups in that community, calmly sit down and plan ways and means not how they can circumvent the decision but how they can implement it and plan together when and where they will start. They will be able to start sooner in some places than in others and move faster in some places than in others but begin the process in good faith and with good intent. To deliberately scheme, to deliberately plan through nefarious methods, through violence, boycott and threats to nullify the Decision of the highest law in the land is not only immoral but it encourages a disregard for all laws which we do not like.

We meet the moral issue again. To write into our constitutions things that we do not intend to carry out is an immoral act. I think I am right when I say that most of our states, certainly some of them, say in their constitutions "separate but equal." But you know as well as I do that on the whole the gulf of inequality in education widened with the years. There was no serious attempt nor desire in this country to provide Negroes with educational opportunities equal to those for whites. The great surge to equalize educational opportunities for Negroes did not begin until after 1935 when Murray won his suit to enter the law school of the University of Maryland. It is also clear that the millions poured into Negro education in the last 20 years were appropriated not so much because it was right but in an endeavor to maintain segregation.

We brought this situation upon ourselves. We here in the South have said all along that we believe in segregation but equal segregation. In 1896 in the Louisiana case, Plessy versus Ferguson, the United States Supreme Court confirmed the doctrine "separate but equal." But from 1896 to 1935 there was practically nothing done to make the separate equal. When Murray won his case in 1935, we

knew we had to move toward equalization. Since 1935 many suits have been won.

It would have been a mighty fine thing if we had obeyed the Supreme Court in 1896 and equalized educational opportunities for Negroes. If we had done that the problem would have been solved because gradually the separate school system would have been abolished and we would have been saved from the agony and fear of this hour. We didn't obey the Supreme Court in 1896 and we do not want to obey it now.

Let me say again that the May 17, 1954, Decision of the Supreme Court is an effort to abolish a great evil through orderly processes. And we are morally obligated to implement the Decision or modify the federal constitution and say plainly that this constitution was meant for white people and not for Negroes and that the Declaration of Independence created mostly by the mind of the great southerner, Thomas Jefferson, was meant for white people and not Negroes. Tell the world honestly that we do not believe that part of the Declaration of Independence which says in essence that all men are created equal, that they are endowed by their creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness.

We are morally obligated to abolish legalized segregation in America or reinterpret the Christian Gospel, the Old and New Testaments, and make the Gospel say that the noble principles of Judaism and Christianity are not applicable to colored peoples and Negroes. Tell the world honestly and plainly that the Fatherhood of God and the Brotherhood of Man cannot work where the colored races are involved. We are morally obligated to move toward implementing the Decision in the deep south or lose our moral leadership in the world. If we do not do it, we must play the role of hypocrisy, preaching one thing and doing another. This is the dilemma which faces our democracy.

The eyes of the world are upon us. One billion or more colored people in Asia and Africa are judging our democracy solely on the basis of how we treat Negroes. White Europe is watching us too. I shall never forget the day in Lucknow, India, when nine reporters from all over India questioned me for 90 minutes about how Negroes are treated in the United States. I shall remember to my dying day the event in 1937 when the principal of an untouchable school introduced me to his boys as an untouchable from the United States. At first it angered me. But on second thought I knew that he was right.



Though great progress has been made, for which I am grateful, I and my kind are still untouchables in many sections of the country. There are places where wealth, decency, culture, education, religion, and position will do no good if a Negro. None of these things can take away the mark of untouchability. And the world knows this.

Recently a group of colored students from Asia, Africa, the Middle East and South America were visiting an outstanding Southern town. All the colored people except those from Africa and Haiti could live in the downtown hotels. The Africans and the Haitians had to seek refuge on the campus of a Negro College. That incident was known to all the other colored students and it will be told many times in Europe, Asia, Africa—and it will not help us in our efforts to democratize the world.

Not long ago a Jew from South Africa and a man from India were guests of a Negro professor. He drove them for several days through the urban and rural sections of his state. The Negro, the host, a citizen of the United States, could not get food from the hotels and restaurants. His guests, one a Jew and the other an Indian, had to go in and buy food for him. The man who introduced me in India as an untouchable was right. The Negro is America's untouchable.

Two or three years ago a friend of mine was traveling in Germany. He met a German who had traveled widely in the United States. He told my friend that he hangs his head in shame every time he thinks of what his country did to the Jews—killing six millions of them. But he told my friend that after seeing what segregation has done to the soul of the Negro in the South, he has come to the conclusion that it is worse than what Hitler and his colleagues did to the Jews in Germany. He may be wrong but this is what he is telling the people in Germany.

Make no mistake—as this country could not exist half slave and half free, it cannot exist half segregated and half desegregated. The Supreme Court has given America an opportunity to achieve greatness in the area of moral and spiritual things just as it has already achieved greatness in military and industrial might and in material possessions. It is my belief that the South will accept the challenge of the Supreme Court and thus make America and the South safe for democracy.

If we lose this battle for freedom for 15 million Negroes we will lose it for 145 million whites and eventually we will lose it for the world. This is indeed a time for greatness.

# The Segregation Decisions: A Lawyer's View

By CECIL SIMS

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THE STORM of denunciation in the South which followed the recent decisions of the United States Supreme Court in the Segregation Cases had an earlier historical counterpart in the abuse of the same tribunal by Northern newspapers in 1857, following the decision in the celebrated Dred Scott Case. In the earlier decision the New York *Tribune* reflected the sentiment of a substantial segment of Northern and Eastern public opinion when, only a few days after the Dred Scott decision, it said editorially:

"The long trumpeted decision . . . having been held over from last year in order not too flagrantly to alarm and exasperate the Free States on the eve of an important Presidential election . . . is entitled to just so much moral weight as would be the judgment of the majority of those congregated in any Washington barroom. It is a dictum prescribed by the stump to the Bench."<sup>1</sup>

Sixty-five years later Charles Warren, the eminent biographer of the United States Supreme Court, made the following observation with reference to the public reaction in the North at the time of the Dred Scott decision:

"The whirlwind of abuse which swept upon the Court, the loss of confidence theretofore entertained in it, and the ensuing damage to its reputation, were, however, in reality, due more largely to misunderstandings of the decision, and the falsehoods spread relative to Taney's opinion, than to the actual decision itself."

Today we have in the South a situation similar to that which existed in the North immediately after the Dred Scott decision. Denied the right of citizenship in the Dred Scott case, the Negro has now, by decree of the same Court, been granted equal protection of the law under the Fourteenth Amendment in attending public schools. The fury and the predictions of dire consequences heard in the North in 1857 are now echoed in the South, and once again the attack being

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<sup>1</sup> Charles Warren, *The Supreme Court in United States History*, Vol. 3, page 27

made upon the Court arises from a gross misunderstanding of the actual holding of the Court as applied to the continuation of the traditional Southern dual system of public schools with separate facilities for white and Negro students.

The prevailing conception of school officials, public officers, and perhaps lawyers, generally, is that the Supreme Court in the Segregation Cases has ordered schools for Negroes abolished, and that Negro children and white children will be required to attend integrated schools in the same buildings. Leading newspapers and periodicals speak of the impending "integration" of our two school systems as if the opinion of the Court leaves no alternative other than consolidation. Yet nowhere in the opinion of the Court does the word "integration" appear except in one quotation taken by the Court from the opinion of the Supreme Court of Kansas in the *Oliver Brown* Case.

The violation of the Fourteenth Amendment found by the Court was the compulsory attendance of Negroes in separate schools solely because of race. The mandate of the Court went no further than to order the gradual elimination of this element of compulsion by the adoption in good faith of a plan which would permit but not require Negro children to attend the same schools as white children within proper geographical districts. These conclusions will appear from a single analysis of the language to be found in the two opinions of the Court.

The Segregation Cases involved situations arising in Kansas, South Carolina, Virginia, and Delaware, where Negro children had been denied admission to public schools under State Constitutions or laws requiring or permitting segregation according to race. In each of the cases the Court found that the Negro and white schools involved had been equalized, or were being equalized, with respect to buildings, curricula, qualifications, salaries of teachers, and other tangible factors.<sup>2</sup>

It will be recalled that the Court had previously in 1896, in the case of *Plessy v. Ferguson*,<sup>3</sup> announced the "separate but equal" doctrine, under which the Supreme Court for more than half a century had, in the face of repeated attacks, continued to validate the constitutionality of the compulsory segregation of the races in public schools.

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<sup>2</sup> *Oliver Brown, et al v. Board of Education of Topeka (Kans.)*  
*Harry Briggs, Jr. v. Elliott, et al (S. C.)*  
*Dorothy E. Davis v. County Board (Va.)*  
*Frances B. Gebhart, et al v. Belton, et al (Dela.)*

<sup>3</sup> 163 U. S. 537, 41, L. Ed. 256

The "separate but equal" doctrine approved by the Supreme Court in the Plessy case originated in the Supreme Court of Massachusetts in 1848, in its decision in the case of Sarah C. Roberts vs. The City of Boston,<sup>4</sup> in which Charles Sumner, the abolitionist, filed suit on behalf of Sarah Roberts, a five-year-old Negro girl who was refused admission to the white Boston public school, seeking damages under a Massachusetts state statute which made it actionable to exclude any child unlawfully from a public school. Chief Justice Shaw, in the course of the opinion, said:

"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. Whether this distinction and prejudice, existing in the opinions and feelings of the community, would not be effectually fostered by compelling colored and white children to associate together in the same schools, may well be doubted; at all events, it is fair and proper question for the committee to consider and decide upon, having in view the best interest of classes of children placed under their superintendence, and we cannot say that their decision upon it is not founded on just grounds of reason and experience, and in the results of a discriminating and honest judgment."

But the federal Supreme Court has now wiped out nearly sixty years of adherence to the "separate but equal" doctrine in the recent Oliver Brown and related cases, Chief Justice Warren ending this long period of judicial conformity with three cryptic sentences. The learned Chief Justice said:

"In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when Plessy v. Ferguson was written. We must consider public education in the light of its full development and its present place in American life throughout the nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws."

The real basis of the Court's opinion was the *effect* which the *required* separation of Negroes of tender age had upon such children mentally. Said the Court:

"To separate them from others of similar age and qualification solely because of their race generates a feeling of infe-

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<sup>4</sup> 59 Mass. Repts. 198



riority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.

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“Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson*, this finding is amply supported by modern authority. Any language in *Plessy v. Ferguson* contrary to this finding is rejected.

“We conclude that in the field of public education doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiff and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.”

The underlying thought implicit in the above language is that the feeling of inferiority results not from the *actual attendance* in a separate school, but from the legal requirement under which Negro children are *compelled* to attend a separate school. It would seem logical to conclude under the opinion of the Court that Negroes attending separate schools by choice, and not under compulsion, would be free of the detrimental effect of segregation sanctioned and required by law. A system of separate schools available to the races upon a basis of free choice would not fall within the constitutional prohibition.

In interpreting the meaning of the Supreme Court decision, it must always be borne in mind that the first opinion of the Court, rendered May 17, 1954, did not require integration of the two school systems, and went no further than to condemn the compulsory separation of the races solely because of color. It will be recalled that in its first opinion the Court propounded certain questions to the parties litigant, and invited responses from the Attorney Generals of the Southern States, preparatory to the drafting of the Court’s decree and, at the Court’s direction, the first question to be considered on the second argument was whether or not the Court should by its decree direct that Negro children should be admitted to “schools of their choice” within limits set by normal geographic districting.

In considering the question of whether or not the South may continue to operate its separate public school systems for the two races and, more particularly, whether or not the states and local school boards may adequately meet the Court’s requirements by giving Negro children, or their parents as their natural guardians, the right to choose to enter, *or not to enter*, schools previously maintained as segregated

schools for white students, as distinguished from the compulsory integration of both white and Negro students in the same public school facilities, the second opinion of the Supreme Court, rendered May 31, 1955, is most illuminating. In this second opinion the Court said:

“Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles.”

The Court specifically directed that in fashioning and effectuating decrees the courts should be guided by equitable principles characterized by “a practical flexibility,” the Chief Justice saying:

“At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a non-discriminatory basis.”

There is a vast difference between mandatory integration and admission on a non-discriminatory basis. After stating that courts must require “that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954 ruling,” the Court also pointed out:

“Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner.”

The ultimate goal was described by the Chief Justice in the following words:

“To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a non-racial basis.”

All of this was ordered by the Court to be accomplished “with all deliberate speed.”

The practical problem now existing in the South is to determine whether or not there is a feasible plan of achieving a system of determining admission to the public schools on a non-racial basis which may be adopted in good faith and which may be accomplished with deliberate speed. Such a plan is not required to have as its ultimate goal the complete integration of the races in a single school system, provided the Negro's right to choose is preserved to him free from coercion.

Harry Ashmore, in his recently published volume *The Negro and the Schools*,<sup>5</sup> provides an interesting example of the "right to choose" plan in the school system of Evansville, Indiana.

Prior to 1949 segregation in the public schools in Indiana was legally permissible and it existed in practice in the city school system of Evansville. In 1949 the legislature of Indiana enacted a statute abolishing segregation in the public schools and fixed a statutory period of five years within which it was required to be accomplished. At that time Evansville had a population of 130,000 citizens, 6.6% being Negroes. Under the plan adopted by Evansville, Negro children entering the beginning grades were given the choice of attending either the white or the Negro schools within their respective districts. No pressure was exerted to force the Negroes in making their choice.

There were approximately 12,000 white children and 1,000 Negro children attending separate elementary schools, and 6,650 white and 350 Negro students in segregated high schools. During the first year, 18 Negroes elected to enter the white elementary schools. Only one Negro student enrolled in the white high school. During the first year the choice was restricted to the first grade in the elementary schools and to the beginning year in the junior and senior high schools. In each succeeding year the choice was extended an additional grade upward throughout the five-year plan.

Those Negro children who chose to enter the white schools during the first year were widely scattered throughout the classes and they were received without any noticeable animosity. During the third year there were 50 Negro children in the white schools, but this equaled only 4% of the Negro students actually in schools, the remaining 96% having voluntarily elected to attend separate Negro schools. At the end of the fifth year, which expired in 1954, 92½% of the Negro children had voluntarily continued in their own separate Negro schools. This choice system was so satisfactory to both races in Evansville that at the end of the five-year period no effort was made to change it.

Only a few weeks ago the United States District Court for the Western District of Tennessee, at Memphis, after hearing testimony in open court, entered a decree approving an over-all plan adopted by the Tennessee Board of Education applicable to Memphis State College and other like institutions which involved a graduated plan pro-

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<sup>5</sup> See, for example, full discussion of Phoenix, Arizona, Evansville, Indiana, and Cincinnati, Ohio, pages 70 *et seq*

viding for the admission of Negro students at the graduate level during the first year, and then continuing downward through the college one year at a time until all years were covered.

The experience at Evansville, Indiana, and the plan evolved with court approval at Memphis State College, would seem to suggest a sensible approach to the solution of the problem within the requirements of the Supreme Court mandate short of complete integration. Such a plan in actual practice will test out the rather widely held belief that a large majority of the Negroes in the South would prefer to remain in their separate school systems provided equal facilities are furnished with competent and adequately compensated Negro teachers. At the same time, this so-called voluntary or choice basis will permit a limited non-segregated pattern to develop within the two systems on a scale which will involve a minimum of friction and at the same time furnish clinical experience beneficial to both Negroes and whites.

In a recent article published by the *Journal of Public Law* at the Emory University Law School, in Atlanta, Georgia, W. E. Gauerke, in discussing this non-segregated pattern resulting from the choice system, said:

“Researchers have pointed out that such a school is believed by some Negroes to present a unique opportunity for the solution of racial problems and the development of a sounder psychological setting for the growth of the personality of the Negro child.”<sup>6</sup>

In 1944 a comprehensive study of the Negro problem, sponsored by the Carnegie Corporation of New York, resulted in the publication of a large volume entitled *An American Dilemma*. This was an impartial study of the American Negro in the United States, undertaken by Gunnar Myrdal (to use his own words) “in a wholly objective and dispassionate way as a social phenomenon.” Myrdal was a citizen and resident of Sweden who was selected to make the study because he was a social scientist from a foreign “non-imperialistic country, and with no background of domination of one race over another, who could approach this task with a fresh mind, uninfluenced by traditional attitudes or by earlier conclusions.”

A condensation of *An American Dilemma*, by Professor Arnold Rose of Washington University at St. Louis, in dealing with Negro

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<sup>6</sup> “The Supreme Court Decision and the Separation of Races for School Purposes”



attitudes towards education, gives the following conclusion of Gunnar Myrdal:

“Negroes are divided, too, on the issues of segregated schools. Insofar as segregation means discrimination and is a badge of Negro inferiority, they are against it, although many Southern Negroes would not take an open stand that would anger Southern Whites. Some Negroes, however, prefer the segregated school, even for the North, when the mixed school involves humiliation for Negro students and discrimination against Negro teachers. Other Negroes prefer the mixed schools at any cost, since for them it is a matter of principle or they believe it is a means of improving race relations.”<sup>7</sup>

Desegregation will not necessarily result in the integration of the white and colored races in the public schools. Recently, in a public discussion of desegregation in the public schools in Michigan, Alvin Loving a Negro high school principal at River Rouge, Michigan, was quoted in the Chicago newspapers in an Associated Press dispatch as saying:

“I taught at a high school in Detroit. When I went there it was about 70% white. Then it began to change, and this change involved integration.

“The school population became more heavily Negro. As it did so, clubs became either white or Negro. School dances were no longer held. Activities such as dramatics, which involved a sort of social contact, virtually ended.

“We were desegregated—Michigan schools have never been segregated, as a matter of fact—but we were not integrated.”

If by desegregation one means the abandonment of the existing separate schools for Negroes and consolidation of the Negro school system into the white schools with compulsory attendance of both whites and Negroes in the same school, there is ample evidence that such consolidation will not actually accomplish the integration of the races. This is particularly true if it is against the will and desire of a substantial segment of both the white and the Negro races. While undoubtedly there are some Negro families who will under all circumstances insist upon the right of their children to attend a mixed school purely as a matter of principle, it is entirely possible that even the most zealous of the crusaders, once this right is not denied but its exercise becomes a matter of choice will make their choice of schools solely on what they consider to be to the best interest and welfare of their children.

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<sup>7</sup> *The Negro in America*, page 287

Unless the South, through wise leadership, can work out a sound and practical plan generally acceptable to a majority of both races, such as the "choice" plan, we face a crisis not only in the field of public education but in the much larger field of general race relations. The answer does not lie in mere delay or subterfuge. It is true that a state does have the unqualified right to withdraw from the field of public education and to discontinue its financial support of elementary and secondary schools, normal schools, and its colleges and universities. It is obvious, however, that no state can afford to take such a step without at the same time providing a substitute method for continuing its present school systems, and it is equally obvious that no such substitute system could function without the aid of public funds.

It is my belief that the people of the Southern States will not permit the abandonment of their public school systems without reasonable assurance that the schools will continue to operate in some manner on a semi-public basis. Any so-called private school system devised in an effort to avoid the requirements of the segregation decisions supported by public funds in the form of grants or subsidies to parents of school children will be a transparent subterfuge and as such will be held subject to the requirements of the Fourteenth Amendment. Anyone holding a contrary opinion will do well to read the recent opinion of the United States Supreme Court in *Terry v. Adams*,<sup>8</sup> in which the Court held that private Anglo-Saxon clubs in Texas, which called themselves "Jaybird Associations," and which were organized to control the selection of nominees for county offices, violated the constitutional rights of Negroes who were excluded from membership even though these associations operated exclusively with private funds.

There is nothing in the opinion of the Supreme Court in the Segregation Cases which indicates a desire to coerce or stampede the South into a hasty and perhaps unwise reconstruction of the present school systems in order to meet the requirements of the Fourteenth Amendment. Nor was there anything novel or revolutionary in the Court holding that changing conditions, including changed psychological factors, would justify the Court in changing its interpretation of the meaning and scope of the Fourteenth Amendment so as to bring about a different construction of that provision of the Constitution from that given in 1896 in *Plessy v. Ferguson*. A new and different

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<sup>8</sup> *Terry v. Adams*, 345 U. S. 61 (1953)

interpretation of a constitutional provision to meet a crisis in a democracy is nothing new in the field of constitutional law. For example, during the depression in the 1930s, Congress passed an act declaring a moratorium on the foreclosure of past due farm mortgages. Farm mortgages, including the right of foreclosure, are property protected by the Constitution of the United States. In upholding the constitutionality of the legislative moratorium which suspended the right of foreclosure on farm mortgages, the Supreme Court of the United States said:

“It is no answer to say that this public need was not apprehended a century ago, or to insist that what the provision of the Constitution meant to the vision of that day it must mean to the vision of our time. If by the statement that what the Constitution meant at the time of its adoption it means today, it is intended to say that the great clauses of the Constitution must be confined to the interpretation which their framers, with the conditions and outlook of their time, would have placed upon them, the statement carries its own refutation. It was to guard against such a narrow conception that Chief Justice Marshall uttered the memorable warning—‘We must never forget that it is a constitution we are expounding,’ (McCulloch v. Maryland, 4 Wheat. 317, 407, 4 L. Ed. 570, 601)—‘a constitution intended to endure for ages to come, and, consequently to be adapted to the various crisis of human affairs.’ (*Id.*, p. 415). When we are dealing with the words of the Constitution, said this Court in *Missouri v. Holland*, 252 U. S. 416, 433, 64 L. Ed. 641, 647, 40 S. Ct. 382, 11 A. L. R. 984, ‘we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. . . . The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago.’ ”<sup>9</sup>

The opinion of the Supreme Court in the Segregation Cases came as a distinct shock to the South, and perhaps to the entire country, but it did not come without previous warnings. For years leaders in Southern education have pointed out that our continued failure to provide equal and adequate educational opportunities for the Negro in the South, particularly at the elementary and secondary school level, was building up storm clouds of resentment that might ultimately prove disastrous to our dual system of public education.

Howard W. Odum of the University of North Carolina, writing

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<sup>9</sup> *Home Building & Loan Association v. Blaisdell*, 290 U. S. 441, 78 L. Ed. at page 431

before the first decision of the Court, said:

“For one, the cumulative neglect by the Southern States of Negro public schools, and the South’s failure to live up to its obligations to provide equal facilities for the two races, have compounded educational deficits beyond the reasonable limits of tolerance within the framework of constitutional mandates, democratic fair play, and moral obligations.”<sup>10</sup>

What is needed in the South now is a recognition of the fact that the agency set up by ourselves in our democracy to determine questions of this nature has unanimously rendered a decision which establishes with finality the illegality of compulsory segregation of the Negro in the public schools. Our problem now is to examine the scope of the decision, to accept it, and to provide a rational plan that will come within the mandate of the Court and, if possible, one that will not destroy the public school systems.

The Court has found that compulsory segregation in the public schools based solely on color violates the Fourteenth Amendment to our Constitution. The Court has not declared that separate schools for Negroes must be discontinued in order to correct the violation of constitutional rights. It has directed that the element of compulsion be removed.

It is to be assumed that if a gradual plan is devised in the South under which Negroes are given the right to attend mixed schools within proper geographical limitations if they choose to do so, but with the further right to elect to remain in existing Negro schools with competent Negro teachers and equal and adequate facilities, wisdom will in most cases control the decision and a pattern will be developed for the ultimate solution of the problem without the needless destruction of existing sound values in our public educational systems. We must remember that the forces which generate heat may, with intelligent handling, be used to provide light.

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<sup>10</sup> *An Approach to Diagnosis and Direction of the Problem of Negro Segregation in the Public Schools of the South*



