

**Additional Discussion Questions/Topics
for use with “Dialogue on *Brown v. Board of Education*”**

Prepared by David A. Collins, National Chair, Law Day 2004

1. The Harm of Segregation Under a “Separate But Equal” System (This discussion assumes no inequality in the physical facilities, class size, teacher pay, etc. of racially segregated schools.)

An issue in the *Brown* cases was whether forced segregation harmed the segregated race (African-Americans) by branding it with a “badge of inferiority.” Here is how the *Plessy* Court had answered that question in 1896 in the context of forced segregation on railroad cars:

We consider the underlying fallacy of the plaintiff’s argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act [requiring racial segregation of railroad passengers], but solely because the colored race chooses to put that construction upon it.

But in 1954, the Supreme Court in *Brown* answered the same question differently. The Court’s opinion stated:

To separate [African-American students] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.

Citing factual findings from the district court decision in the Topeka, Kansas case, the Supreme Court in *Brown* went on to say this about the harm caused by segregation:

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 [retard] the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.

Possible Questions for the Dialogue

- Do you think that racial segregation in public school hurts the separated races, assuming the schools are “equal” in terms of facilities, class size, teacher pay, etc?
- Is the harm greater for one race than for the other?
- If there were a law in our state requiring the racial segregation of public school students, would you feel branded as inferior?
- Many schools today are virtually all white or all-minority, even though no law requires segregation. This is sometimes called “de facto segregation.” Do you think de facto segregation has a detrimental effect on students?

2. Could Equality Have Been Achieved Without Integrating the Racially Segregated Schools?

In the Jim Crow South, segregated public schools under the “separate but equal” system were almost never really equal. Schools for African-Americans were almost always worse – often much worse – than schools for whites. Of the five cases the Supreme Court decided (four state cases and the case from Washington, DC), a modicum of physical equality had been achieved only in the Topeka and Washington, DC cases. But even those schools were not truly equal. African-American kids like Linda Brown in the Topeka case had to walk through hazardous railroad yards to get to their segregated school, and the classrooms of the African-American schools in Washington, DC were overcrowded compared to the white schools.

For years before the *Brown* case, the NAACP and others had filed lawsuits to enforce the standard of *Plessy* by requiring school districts to improve the African-American schools enough to make them equal to the separate schools for white students. These were called “equalization cases,” and they often succeeded. But that approach required endless lawsuits filed case-by-case in one school district after another, sometimes repetitively in the same school district. It was a process that looked like it would never accomplish the goal of equalizing all schools. In the cases leading to the *Brown* decision, the NAACP shifted its strategy to attack segregation itself and get the Supreme Court to overrule the separate-but-equal doctrine of *Plessy*, at least for schools. The NAACP claimed in the *Brown* cases that segregated schools were unequal because of the fact of segregation itself, even if the facilities of the segregated schools were equal. The Supreme Court agreed.

Possible Questions for the Dialogue:

- If the Jim Crow South had actually followed the requirements of *Plessy* by providing its segregated schools with truly equal facilities, class size, teacher pay, and all other tangible ways, would an effort to challenge *Plessy* have succeeded?
- Would such an effort have been mounted in the first place?
- How would the country be different today if “separate but equal” were still the law?

3. Was the Court in *Brown* Influenced by The “Currents of History”?

By the time of the *Brown* decision in 1954, racial integration had begun to take root in some American institutions that had been racially segregated before. For example, in 1947 (seven years before the *Brown* decision), Jackie Robinson became the first African-American to play in major league baseball, and many other African-Americans soon joined him. In 1948, President Truman issued an executive order forbidding all discrimination in federal employment. That same year, he ordered the US armed forces to end racial integration. The Korean War, which ended in 1953 (one year before the *Brown* decision), was fought by integrated US troops. Meanwhile, America’s adversaries in the Cold War, like the Soviet Union and its communist allies, pointed to racial segregation in the US to discredit America in the eyes of the world. In briefs filed with the Supreme Court in the *Brown* case, the US government sided with the NAACP and told the Court that racial segregation was hurting the country’s national interests by drawing international condemnation on the United States.

Possible Questions for the Dialogue:

- How, if at all, do you think these developments might have mattered in the fight to desegregate schools?
- Do you think these developments might have strengthened the resolve of African-Americans to fight against segregation?
- Do you think these developments may have influenced the justices of the Supreme Court as they deliberated in the *Brown* case?
- The 14th Amendment of the US Constitution says no state may “deny any person within its jurisdiction the equal protection of the laws.” The Supreme Court in *Plessy* interpreted those words to permit forced segregation as long as facilities were equal. Fifty-eight years later, the Supreme Court in *Brown* interpreted the same words to prohibit forced segregation (at least in schools) even if the facilities were equal. Should courts change the legal understanding of what the words in the Constitution mean as circumstances in the country change?

4. The Effect of *Brown* on the Jim Crow System

Today, experts debate whether *Brown* really accomplished anything, since so many public schools today are racially segregated. But it is important to remember *Brown*'s impact on other aspects of the Jim Crow system. Consider these facets of the Jim Crow system, as it existed in 1951. (From *Simple Justice*, by Richard Kluger, p. 327)

- In Arkansas, white and black voters could not enter a polling place in the company of one another.
- Texas did not allow interracial boxing matches.
- Florida did not allow white and black students to use the same editions of some textbooks.
- In Alabama, a white woman was forbidden to nurse a black man in a hospital.
- North Carolina required racially separate washrooms in its factories.
- In six states, white and black prisoners could not be chained together.
- In seven states, tuberculosis patients were separated by race.
- Ten states required separate waiting rooms for bus and train travelers.
- Eleven states required Negro passengers to ride in the backs of buses and streetcars.
- Eleven states operated separate schools for the blind.
- Fourteen states segregated mental patients.

The Supreme Court's decision in *Brown* served as the legal authority for striking down Jim Crow segregation in the years following the *Brown* decision.

Possible Dialogue Questions

- What do you think it felt like for people to live under a Jim Crow system? Can you imagine how you would have felt?
- Do you know people who lived under that system?

- Do you think the Jim Crow system would still exist today if people like Thurgood Marshall and the plaintiffs in the *Brown* cases had not decided to fight against it?

5. What Kind of Equality Did the “Separate But Equal” Doctrine Produce?

Up until the Supreme Court’s decision in *Brown*, the courts said that racial segregation imposed by a state did not violate the equal protection clause of the 14th Amendment as long as the segregated races enjoyed equal treatment. That interpretation, established by the Supreme Court in the 1896 decision in *Plessy v. Ferguson*, was known as the “separate but equal” doctrine. In operation, however, segregated facilities were often not equal for blacks and whites. Consider these facts about the all-black schools in Clarendon County, South Carolina, based on testimony given in the case of *Briggs v. Elliott*. [*Briggs* was one of the five cases the Supreme Court decided in what we now call collectively the *Brown* decision.] (From *Simple Justice*, pp 350-351)

- In two of the schools for African-American children there was no running water. When they got thirsty, the children drank from an open bucket using a metal dipper and glass. The white schools all had running water indoors.
- There were no lunchrooms in the schools for African-Americans. All the white schools had lunchrooms.
- At one school for African-American students there were no desks for the students, just a long beat-up wooden table the kids had to share when writing. All the white schools had desks for each student.
- At the schools for the African-American students, the toilet facilities were primitive. They were outdoor privies (“outhouses”) with no running water and no urinals for the boys. The white schools all had indoor restrooms with modern toilets and urinals.

In several of the cases, when African-American parents challenged the inequality of their schools by becoming plaintiffs in the lawsuits filed by the NAACP, their white employers fired them. Harry Briggs, a farmer and the father of one of the African-American students in the South Carolina case, lost his crops when the white-owned banks punished him by cutting off the credit he needed to run his farm. Another parent, Mrs. Maisie Solomon, lost her job at a white-owned motel and then was evicted from her home.

Possible Dialogue Questions

- If the law required the racially separate schools to be “equal,” why do you think such obvious inequalities existed?
- Do you know people who would have the courage to stand up for their rights in the face of such risks?

6. School Segregation Was Not Just a Southern Problem: It Happened in the North, Too

Southern states segregated schools by enacting so-called “Jim Crow” laws that explicitly required racial separation of students. But there were other ways a state could segregate its schools. Take Michigan, for example.

Detroit

In 1971, a federal court found that Detroit and the state of Michigan had unlawfully segregated Detroit public schools in a number of ways more subtle than the Jim Crow laws of Virginia and South Carolina. One was to construct new schools only in neighborhoods that were predominantly Black or predominantly white, which tended to preserve existing patterns of school segregation. Another was to relieve overcrowding in predominantly African-American schools by busing students to less crowded schools, but only if the less crowded schools were also African-American. Black students were not bused to predominantly white schools, and white students were not bused to predominantly Black schools.

(This was the case of *Millikin v. Bradley*, which eventually went to the US Supreme Court on the question of whether the District Court’s cross-district busing remedy was lawful. The Supreme Court ruled 5-4 against that remedy, but did not disturb the finding of unlawful segregation.)

Pontiac

In 1970, Judge Damon J. Keith (then on the district court) found that Pontiac had violated the 14th Amendment by segregating its public schools. (*Davis v. School District of the City of Pontiac*) Pontiac had intentionally drawn the boundaries of school districts to conform to segregated residential patterns, thereby preserving segregation in the schools. After Judge Keith ordered Pontiac to remedy the segregation, a group of Ku Klux Klansmen dynamited the buses that Pontiac needed to integrate the schools. The Klansmen were arrested and convicted in a separate proceeding.

Possible Dialogue Questions

- Do you think race relations in the North were better than race relations in the South in the 1950s –1970s? Today?

- The Supreme Court in *Brown* decided that forcible segregation creates a harmful “sense of inferiority” among African-American students. Do you think Pontiac and Detroit students suffered the same harmful effects as the students in the Jim Crow schools of the South?

7. The Role of Students in Fighting Racial Discrimination

In the 1960s, college students gained national attention as activists in the Civil Rights movements. They organized “sit-ins” at segregated lunch counters all across the South and risked their lives on “freedom rides” designed to protest segregation at Southern bus terminals. But well before that, a lone high school student almost single-handedly sparked the battle over segregated schools in Virginia. Her name was Barbara Rose Johns. She was a popular African-American student who earned good grades in her segregated school. As a 16-year-old junior at Moton High School in Farmville, Virginia, Barbara Johns became indignant at the inequality between her school and the much better school reserved for white students. For example, there was no lunchroom at Moton High and no locker rooms or showers for the school’s athletic teams. She organized a student strike that shocked her community. The strike in turn inspired parents of the Moton High students to sign on as plaintiffs in the legal challenge against school segregation. She personally contacted the NAACP attorneys and asked them to take the case. The lawsuit sparked by Barbara Johns’s activism was *Davis v. County School Board of Prince Edward County, Virginia*. It was one of the cases the Supreme Court decided in what we today refer to as the *Brown* decision.

Possible Dialogue Questions

- The *Brown* decision resulted from lawsuits in which individual citizens challenged injustice through the courts. There would have been no court challenges, and no *Brown* decision, if such individuals had not stepped forward as plaintiffs. How do you think the country today might be different if those court challenges had not happened?
- Can you think of reasons that might explain why parents of Black students in segregated schools might have been reluctant to fight against segregation in a place like Prince Edwards County, Virginia?
- How do you think the white school officials in Prince Edwards County reacted when the courts eventually ordered its schools desegregated following *Brown*? (Answer: They closed the entire school system, and then set up “private” schools for whites. For four years, many

Black students in the county received no education at all. A new legal challenge and another Supreme Court decision were needed before the county finally integrated its schools.)

8. Was It a Mistake for The Supreme Court to Order Desegregation “With All Deliberate Speed” Instead of Immediately?

We now know that the *Brown* decision, which resulted in many positive changes in the United States, did not achieve lasting or widespread integration in America’s schools. Some critics blame the Supreme Court for this. They fault the Court for failing to order immediate desegregation and instead requiring integration to be implemented gradually under the vague standard of “with all deliberate speed.” This gradual approach, the critics maintain, made it easier for those who resisted integration to drag their feet.

The Court made a conscious decision against requiring immediate integration. Several of the justices believed that an order requiring immediate desegregation would have been unfair to the South in light of the Court’s approval, for over 50 years, of “separate but equal” segregation. And they believed that an order for immediate integration would have met with massive resistance.

The Chief Justice, Earl Warren, knew that a decision against segregation in public schools would be very controversial, and he wanted as much public support for the decision as he could get. He believed that to get public support, the Court needed to speak unanimously. At least five of the nine justices were so strongly opposed to immediate, instead of gradual, relief that they would not have joined in any decision ordering immediate integration. (They were Justices Frankfurter, Clark, Burton, Jackson, and Reed.) By agreeing to a gradual approach to integration – with “all deliberate speed” – Chief Justice Warren secured the unanimous decision he wanted so badly.

Possible Dialogue Questions

- We now know that the gradual approach to integration did not avoid massive resistance, especially in the South. For example, federal troops were required to overcome violent opposition to school integration in Little Rock, Arkansas. Do you think Chief Justice Warren paid too high a price to secure a unanimous 9-0 opinion in *Brown*?

- Why should the Supreme Court concern itself with public support for its decision? Would the public be more likely to support a 9-0 decision than a 5-4 decision?
- Try putting yourself in the shoes of the Supreme Court justices in 1954-55. You know that integration will be fiercely opposed in parts of the country where segregation has been a way of life, but you also believe that school segregation is unconstitutional and harmful to minority students. What do you do: order immediate integration or gradual integration?