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Constitutional Law—Segregation in Recreation

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CONSTITUTIONAL LAW—SEGREGATION IN RECREATION

Since the United States Supreme Court in *Brown v. Board of Education of Topeka*[1] held segregation in public schools to be a denial of equal protection of the law,[2] the question arises whether the "separate but equal" doctrine[3] should be retained in other areas.

The purpose of this note is to trace the "separate but equal" doctrine and to re-examine its validity in education and recreation after the *Brown* case.[4]

I. "Separate But Equal" Before The Fourteenth Amendment

The pattern for the "separate but equal" doctrine was conceived in *Roberts v. City of Boston*.[5] In that case the Boston primary school committee had passed a regulation requiring a child to get a ticket of admission from a member of the district committee before entering a primary school.[6] The plaintiff, a Negro, applied to enter a particular school other than the two established for colored children, but the application was denied. Plaintiff brought suit for damages under a Massachusetts statute prohibiting unlawful exclusion of children from public schools.[7]

The abolitionists challenged the regulation on the ground that the constituional phrase "born equal"[8] necessarily implied that the

1 347 U.S. 483 (1953).

2 U.S. Const. Amend. XIV, § 1.

3 The "separate but equal" doctrine is based upon the theory that "equal protection" can be provided under a system of segregation, so long as facilities provided for the minority are "equal" or substantially equivalent to those reserved for the white race.

4 See also Bolling v. Sharpe, 347 U.S. 497 (1953).

5 5 Cush. 198 (Mass. 1849).

6 Id. at 199.

7 Mass. Gen. Laws. c. 214 (1845).

8 Mass. Const. § 2 Art. I. "Equality and Natural Rights of All Men—All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness."

Charles Sumner in arguing for petitioner said, "He may be poor, weak, humble, or black . . . he may be Caucasian, Jewish, Indian or Ethiopian race . . . he may be French, German, English or Irish extraction; but before the Constitution of Massachusetts all these distinctions disappear. He is not poor, weak, humble, or black; nor is he French, German, English or Irish; he is a man, the equal of all his fellowmen." See 2 Works of Charles Sumner 341 (1875).

law could make no distinctions among equal men.[9] The court held to the contrary. Thus the nucleus of racial segregation prior to the Fourteenth Amendment was established.[10]

Whether or not the framers of the Fourteenth Amendment intended to eliminate all forms of racial segregation has always been open to conjecture.[11] In the congressional debates on the Amendment, apart from one equivocal reference, segregation does not appear to have been specifically discussed.[12] Perhaps the reason for the absence of discussion was the general belief that the purpose of the first section of the Amendment was to incorporate into the Constitution the analogous provisions of the Civil Rights Act of 1866.[13] If this were the case, there is ample authority that the majority of the Amendment's supporters wished Congress to abolish segregation.[14]

Further reasons for the complete abolition of racial segregation were advanced in the congressional debates preceding the passage of the Civil Rights Act of 1875.[15] Although the Act was eventually declared unconstitutional as applied to the particular case before the court, the decision rested soley upon a restrictive interpretation of "state action" within the Fourteenth Amendment which excluded from the scope of congressional power the activities regulated in the Act.[16]

II. "Separate But Equal" Established In the Supreme Court

Whatever may or may not have been the intention of its framers, the Fourteenth Amendment proved to be of little consequence

[9] See brief of Amicus Curiae in Support of Petitioner, p. 6, Sweatt v. Painter, 339 U.S. 629 (1950).

[10] Mass. Gen. Laws c. 256 § 1 (1855). The *Roberts* case was overruled in 1855 by an amendment of the Wilson Act.

[11] See Frank and Munro, The Original Understanding of "Equal Protection of the Laws," 50 Col. L. Rev. 131 (1950). For a comprehensive and illuminating analysis of the history behind the Fourteenth Amendment see Crosskey, Charles Fairman, "Legislative History," and the Constitutional Limitations on State Authority, 22 U. of Chi. L. Rev. 1 (1954); Brief of Petitioner, p. 67, Brown v. Board of Education, 347 U.S. 483 (1953); and Crosskey, Politics and the Constitution in the History of the United States 1083 (1953).

[12] Cong. Globe, 39th Cong., 1st Sess. 219 (1866).

[13] 14 Stat. 27 (1866), as amended, 18 U.S.C. § 242 (1946).

[14] Cong. Globe, 39th Cong., 1st Sess. 499, 500, 1268 (1866).

[15] Cong. Globe, 42d Cong., 2d Sess. 763, 843-45, 3258-62 (1872); 2 Cong. Rec. 4116, 4143-45, 4167, 4171-74 (1874).

[16] Civil Rights Cases, 109 U.S. 3 (1883). It is noteworthy that although the United States Supreme Court construed the language "full and equal" to require identical facilities for both races, it did not assign that construction as a reason for avoiding the act.

in the years immediately following its adoption.[17] In *Plessy v. Ferguson*[18] the Supreme Court presented its views on the meaning of the Amendment and the legality of the "separate but equal" doctrine. In 1890 Louisiana adopted a separate coach law. Plessy was an intrastate railroad passenger of mixed descent, apparently 7/8 Caucasian and 1/8 Negro, who refused to obey the instruction of a train conductor that he move to the space reserved for colored passengers; instead he insisted upon a seat in the "white" coach. Arrested and faced with criminal prosecution under the statute, the petitioner, pleading both the Thirteenth and Fourteenth Amendments, raised the issue of the constitutionality of state-enforced racial segregation upon a common carrier.

The Supreme Court rejected both arguments on the rationale that the Amendments did not preclude "separate but equal" facilities.

Justice Harlan in his dissent in the *Plessy* case pointed out that many of the decisions of the state courts which the majority relied on were rendered before the Amendments were passed.[19] Although the majority's logic in the *Plessy* case may have been faulty, nevertheless, the "separate but equal" doctrine furnished a base from which those who sought to nullify the Reconstruction Amendments were permitted to operate in relative security.

The nucleus of the majority opinion was summarized in two sentences: "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

[17] People ex rel. King v. Gallagher, 93 N.Y. 438 (1883); Bertonneau v. Bd. of Directors of City Schools, 3 Fed. Cas. 294, No. 1361 (C.C.D. La. 1878); Cory v. Carter, 48 Ind. 327, 357 (1874); State ex rel. Garnes v. McCann, 21 Ohio St. 198, 207, 208 (1872). For citations to many of these early cases, see Morrison v. State, 116 Tenn. 534, 95 S.W. 495 (1906), which upheld a Tennessee statute requiring separation of white and Negro passengers on street cars. Where the Fourteenth Amendment was considered, primary attention was given to the privileges and immunities clause. Cf. Ferguson v. Gies, 82 Mich. 358, 364, 46 N.W. 718 (1890). The court, while invalidating a statute requiring racial segregation in public eating establishments in Michigan, dismissed the *Roberts* decision, 5 Cush. 198 (Mass. 1849), as an irrelevant precedent from "ante-bellum days." Board of Education v. Tinnon, 26 Kan. 1 (1881). Later when separate but legal education had been expressly provided for by the legislature, the same Kansas court in Reynolds v. Board of Education, 66 Kan. 672, 684-688, 691, 72 Pac. 272 (1903), upheld the act.

[18] 163 U.S. 537 (1896).

[19] Id. at 563.

in the Act, but solely because the colored race chooses to put that construction upon it."[20]

As Mr. Justice Harlan realized at the time of the decision, and as hindsight indicates, it is clear that segregation has been enforced as a means of subordinating the Negro, rather than insuring him substantially equal rights.[21]

Although the *Plessy* case was limited to transportation, it served as a springboard to apply to human activities at every level. It has followed the Negro into prisons,[22] wash houses in coal mines,[23] telephone booths,[24] and the armed forces.[25] The doctrine has been applied to every type of transportation,[26] education,[27] and amusement,[28] to public housing,[29] restaurants,[30] hotels,[31] libraries,[32] public parks and recretional facilities,[33] fraternal associations,[34] marriage,[35] employment,[36] and public welfare institutions.[37]

[20] Id. at 557, 559.

[21] Note, 30 Neb. L. Rev. 69, 72 (1950).

[22] Mangum, The Legal Status of the Negro 230-235 (1940).

[23] Ark. Stat. Ann. § 52-625 (1947); Okla. Stat. Ann. tit. 45, § 231 (1937); Tenn. Code Ann. § 5673 (Williams 1934).

[24] Okla. Stat. Ann. tit. 17, § 135 (1937).

[25] See Dollard and Young, In the Armed Forces, 36 Survey Graphic 66 (1947); To Secure These Rights, Report of the President's Committee on Civil Rights 40-47 (1947).

[26] McCabe v. Atchison T. and S.F. Ry., 235 U.S. 151 (1914); C. and O. Ry. v. Comm'n of Ky., 179 U.S. 388 (1900); Louisville, N.O. and T. Ry. v. Mississippi, 133 U.S. 587 (1890); Cf. Henderson v. United States, 339 U.S. 963 (1949), rehearing denied, 340 U.S. 846 (1950); Mitchell v. United States, 313 U.S. 80 (1941).

[27] Gong Lum v. Rice, 275 U.S. 78 (1927); Berea College v. Kentucky, 211 U.S. 45 (1908); Carr v. Corning, 182 F.2d 14 (D.C. Cir. 1950).

[28] Law v. Mayor and City Council of Baltimore, 78 F. Supp. 346 (D. Md. 1948); Sweeney v. City of Louisville, 309 Ky. 465, 218 S.W.2d 30 (1949).

[29] Favors v. Randall. 40 F. Supp. 743 (E.D. Pa. 1942); Seawell v. MacWhithey, 2 N.J. 563, 67 A.2d 309 (1949); Denard v. Housing Authority, 203 Ark. 1050, 159 S.W.2d 764 (1942).

[30] Nash v. Air Terminal Services, 85 F. Supp. 545 (E.D. Va. 1949); Galloway v. Strauss, 67 Fla. 426, 65 So. 588 (1914).

[31] State v. Steele, 106 N.C. 766, 11 S.E. 478 (1890).

[32] Mo. Rev. Stat. Ann. § 10474 (1939); Tex Stat., Rev. Civ. Art. 1688 (1945); N.C. Gen. Stat. § 125-10 (1943)

[33] Infra notes 48, 49, 50, 51.

[34] Va. Code § 38-281 (1950); N.C. Gen. Stat. § 58-267 (1943).

[35] Note, 28 Neb. L. Rev. 475 (1949).

[36] S.C. Code § 1272 (1942); see Mangum, The Legal Status of the Negro 171-180 (1940).

[37] See compilation in Mangum, The Legal Status of the Negro 223-230 (1940).

III. Recent Decline Of Segregation

In recent cases involving other activities there is a clear trend against segregation.

A. HOUSING

When faced with segregation of housing facilities, the Supreme Court invalidated as an arbitrary interference with property rights a municipal ordinance which established separate residential areas for Whites and Negroes.[38]

Similarly in *Shelley v. Kramer*[39] the court refused to uphold state court enforcement of racial restrictive agreements which were made by private individuals and which ran with the land.

B. INTERSTATE TRANSPORTATION

The "separate but equal" doctrine was first accepted[40] and later rejected in interstate transportation.[41] However, the Court rested its decisions on the premise that state segregation statutes were burdens on interstate commerce.[42]

From the language in the cases, it is doubtful that the Court would uphold segregation in interstate transportation if forced to decide the equal protection issue.

C. EDUCATION

When approached with the problem of equality in education at the graduate level, the court intimated in *Sweatt v. Painter*[43] and *McLaurin v. Oklahoma Board of Regents*[44] that substantially equal facilities were not feasible when education of a technical nature was involved.[45]

Not until the *Brown* decision[46] did the Court fully reject *Plessy v. Ferguson*[47] as applied to education.

[38] Buchanan v. Warley, 245 U.S. 60 (1917).

[39] 334 U.S. 1 (1948).

[40] Chiles v. C & O Ry., 218 U.S. 71 (1910); C & O Ry v. Comm'n of Ky 179 U.S. 388 (1900).

[41] Henderson v. United States, 339 U.S. 816 (1950); Morgan v. Virginia, 328 U.S. 373 (1946); Mitchell v. United States, 313 U.S. 80 (1941).

[42] Ibid.

[43] 339 U.S. 629 (1950).

[44] 339 U.S. 637 (1950).

[45] See Sipuel v. Board of Regents of Oklahoma, 332 U.S. 631 (1948) and Missouri ex rel. Gaines v. Canada, 305 U.S. 337 (1938).

[46] 347 U.S. 483 (1953).

[47] 163 U.S. 537 (1896).

D. SEGREGATION IN RECREATION

Segregation in public swimming pools,[48] golf courses,[49] playgrounds,[50] and tennis courts[51] has been upheld by state and lower federal courts. In considering desegregation of recreational facilities the following question should be asked: can recreational facilities ever be substantially equal?

A sizable proportion of the lower court decisions on segregation in recreation have held facilities for Negroes not substantially equal to those for Whites.[52]

In *Williams v. Kansas City*[53] the court held that the swimming facilities in Kansas City were not substantially equal; although Negroes were allowed to use other facilities of the city's largest park, they could not use its pools, but had to swim at a segregated pool in another part of the city.

However, in *Rice v. Arnold*[54] the Florida Court held golf facilities to be substantially equal although Negroes were allowed to play on the courses only once a week. Upon remand by the United State Supreme Court for reconsideration[55] in light of the *Sweatt*[56] and *McLaurin* cases,[57] the Florida Court[58] again upheld segrega-

[48] Valle v. Stengel, 176 F.2d 697 (3d Cir. 1949); Williams v. Kansas City, Mo., 104 F. Supp. 848 (W.D. Mo. 1952); Draper v. City of Saint Louis, 92 F. Supp. 546 (E.D. Mo. 1950); Lawrence v Hancock, 76 F. Supp. 1004 (SD. W. Va. 1948); Culver v. City of Warren, 84 Ohio App. 373, 83 N.E.2d 82 (1948); Lopez v. Seccombe, 71 F. Supp. 769 (S.D. Cal. 1944); Kern v. City of Newton, 151 Kan. 565, 100 P.2d 709 (1940).

[49] Easterly v. Dempster, 112 F. Supp. 214 (D. Md. 1953); Hayes v. Crutcher. 108 F. Supp. (M.D. Tenn. 1952); Sweeney v. City of Louisville, 102 F. Supp. 525 (W.D. Ky. 1951); Beal v. Holcombe, 103 F. Supp. 218 (S.D. Tex. 1950); Law v. Mayor and City Council of Baltimore, 78 F. Supp. 346 (D. Md. 1948); Rice v. Arnold, 45 So.2d 195 (Fla. 1950).

[50] Boyer v. Garrett, 183 F.2d 582 (4th Cir. 1950); Camp v. District of Columbia, 104 F. Supp. 10 (D. D.C. 1952).

[51] Winkler v. State, 194 Md. 1, 69 A.2d 674 (1949).

[52] Williams v. Kansas City, Mo., 104 F. Supp. 848 (W.D. Mo. 1952); Sweeney v. City of Louisville, 102 F. Supp. 525 (W.D. Ky. 1951); Beal v. Holcombe. 103 F. Supp. 218 (S.D. Tex. 1950); Lawrence v. Hancock, 76 F. Supp. 1004 (S.D. W. Va. 1948); Law v. Baltimore, 78 F. Supp. 346 (D. Md. 1948); Lopez v. Seccombe, 71 F. Supp. 769 (S.D. Cal. 1944); Culver v. City of Warren, 84 Ohio App. 373, 83 N.E.2d 82 (1948); Kern v. Newton, 151 Kan. 565, 100 P.2d 709 (1940).

[53] 104 F. Supp. 848 (W.D. Mo. 1952).

[54] 45 So.2d. 195 (Fla. 1950).

[55] 340 U.S. 848 (1950).

[56] 339 U.S. 629 (1950).

[57] 339 U.S. 637 (1950).

[58] 54 So.2d. 115 (Fla. 1951).

tion on the rationale that those cases had not expressly reversed *Plessy v. Ferguson.*[59] Thus the court on rehearing held that Negroes denied access to the golf courses six days out of seven had rights substantially equal to those of Whites.

Assuming that the Negro is allowed his one day per week on the golf course or in the swimming pool, it is a perversion of language to say he has substantially equal rights when denied admittance six days out of seven.

Although substantially equal facilities are feasible, nevertheless, as a practical matter, such a situation almost never exists.

IV. The Brown Case: What Effect On Segregation In Recreation?

In the *Brown* case it was stated, "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."[60] Will this doctrine of inherent inequality be applied to the field of public recreation, thus completely banning segregation in recreational facilities? This question has never arisen in the United States Supreme Court.

Since the Supreme Court tends to restrict its decisions in each case to the narrowest possible field,[61] the lower courts may continue to apply the "separate but equal" doctrine until the Supreme Court definitely rules upon the question whether the "separate but equal" doctrine retains any vitality and whether it may specifically be applied to the field of recreation. The *Brown* case, however, may contain hints as to the Court's present attitude concerning the legality of publicly maintained segregation.

The Supreme Court cited as inconclusive, arguments surrounding the adoption of the Fourteenth Amendment.[62] Though admitting that such sources cast some light on the problem, the Court added that it must consider public education in the light of its full development and its present place in American life throughout the nation.[63] Certainly recreation in public owned or operated facilities has also reached a highly important place in American life. Furthermore, the Court in the *Brown* case stressed that "to separate them [children in grade and high schools] from others of similar age and qualifications solely because of their race gener-

[59] 163 U.S. 537 (1896).

[60] 347 U.S. 483, 495 (1953).

[61] See Rescue Army v. Municipal Court of Los Angeles, 331 U.S. 549 (1947).

[62] Brown v. Board of Education, 347 U.S. 483, 489 (1954).

[63] Id. at 492.

ates 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."[64]

With a general ban on segregation in public education it would be a necessary corollary that a public school could not invoke segregation on its playgrounds and other physical education facilities.[65] Can it be said that segregation in other forms of public recreation has a greatly different effect on the Negro?

In the *Brown* opinion, it was stated that the impact of segregation is greater when it has the sanction of law.[66] The Court cited seven modern authorities on psychology[67] to the effect that enforced segregation has generally harmful effects. Only one of those authorities, at the pages cited by the Court, directed his attention primarily to the effect of segregation in education.[68] It is unlikely that the Court will place less weight on such sources when deciding future segregation cases.

In cases involving the District of Columbia, the equal protection clause of the Fourteenth Amendment does not apply. Therefore, the Court in *Bolling v. Sharpe*,[69] a companion case to the *Brown* decision, held segregation in the public schools of the District of Columbia to be violative of the Due Process Clause of the Fifth Amendment.

V. Decisions Since The Brown Case

Seven days after the *Brown* case, six segregation cases were disposed of by the Supreme Court, one of which concerned recreation.[70] In every instance where the lower courts held segregation

[64] Id. at 494.

[65] McLaurin v. Oklahoma Board of Regents, 339 U.S. 637 (1950).

[66] 347 U.S. 483, 494 (1954).

[67] Ibid.

[68] Brameld, Educational Costs in Discrimination and National Welfare 44-48 (1949).

[69] 347 U.S. 497 (1953). See also Hurd v. Hodge, 334 U.S. 24 (1948) where the Supreme Court held that the restrictive covenant violated the Due Process Clause of the Fifth Amendment.

[70] Florida ex rel. Hawkins v. Board of Control of Florida, 347 U.S. 971 (1953); Holcombe v. Beal, 347 U.S. 974 (1953) (segregation in use of golf facilities); Housing Authority of San Francisco v. Banks, 347 U.S. 974 (1953); Muir v. Louisville Park Theatrical Ass'n, 347 U.S. 971 (1953); Tureaud v. Board of Supervisors of Louisiana State University, 347 U.S. 971 (1953); Wichita Falls Junior College v. Battle, 347 U.S. 974 (1953).

invalid, the Supreme Court denied certiorari;[71] but in each instance where the lower court had held segregation valid, the Court granted certiorari, vacated the judgment, and remanded the case to the lower court.[72]

Since the *Brown* case, two federal courts have decided segregation cases on the basis of the "separate but equal" doctrine. *Lonesome v. Maxwell,* the first of the two cases, held segregated swimming facilities "inherently as well as physically equal."[73]

In the second case, *Holmes v. City of Atlanta,*[74] several Negroes sought a declaratory judgment enjoining the city of Atlanta from denying them the use of the city's golf courses. Atlanta provided no golfing facilities for Negroes; money had been earmarked for a Negro course, but it was estimated that completion of a nine-hole course would require at least a year.

The federal court granted the injunction on the ground that plaintiffs were not offered facilities substantially equal to those offered Whites. It reaffirmed the "separate but equal" doctrine, stating that the ruling in the *Brown* case applied only to public education.

The *Holmes* case, in asserting that the "separate but equal" doctrine was rejected only in application to public education, added, "This is further evidenced by the fact that the Supreme Court at the time of the decision in *Brown v. Board of Education* ... had before it the case of *Beal v. Holcombe* ... on application for certiorari wherein the Court reasserted the 'separate but equal' doctrine as it applied to municipally owned and operated golf courses, and the Supreme Court denied certiorari."[75]

Thus the court in the *Holmes* case seemed to infer approval of the "separate but equal" doctrine from the Supreme Court's denial of certiorari in the *Beal* case.[76] However, in that case, the Negro plaintiffs had won in the court of appeals[77] and it was the defendant city which sought certiorari. Thus the Supreme Court

[71] Holcombe v. Beal, 347 U.S. 974 (1953); Housing Authority of San Francisco v. Banks, 347 U.S. 974 (1953); Wichita Falls v. Battle, 347 U.S. 974 (1953).

[72] Florida ex rel. Hawkins v. Board of Control of Florida, 347 U.S. 971 (1953); Muir v. Louisville Park, 347 U.S. 971 (1953); Tureaud v. Board of Supervisors of Louisiana State University, 347 U.S. 971 (1953).

[73] 123 F. Supp. 193 (D. Md. 1954).

[74] 124 F. Supp. 290 (N.D. Ga. 1954).

[75] Id. at 293.

[76] Holcombe v. Beal, 347 U.S. 974 (1954).

[77] Beal v. Holcombe, 193 F.2d. 384 (5th Cir. 1954).

would have had to go out of its way to decide the case on the ground of the "separate but equal" doctrine to recreation. As Mr. Justice Frankfurter pointed out in *Maryland v. Baltimore Radio Show*, "A variety of considerations underlie denials of the writ [of certiorari], and as to the same petition different reasons may lead different justices to the same result."[78]

VI. Policy Considerations

It has been argued that legislation planned to prevent friction between Negroes and Whites is more necessary to preserve the peace than is legislation enforcing segregation in the schools.[79] Fear of racial violence, presupposing inadequacy of local police forces, has been raised in many segregation cases. Such fear does not, however, present a legal warrant for deprivation of constitutional rights. This was well stated by Mr. Justice Day in *Buchanan v. Warley:*

> It is urged that this proposed segregation will promote the public peace by preventing race conflicts. Desirable as this is, and important as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances (or customs) which deny rights created or protected by the Federal Constitution.[80]

As the Court stated in the *Brown* case, the actual manner in which desegregation is to be administered will be decided on further argument. It is unlikely that the Court will grant certiorari in the recreation cases before desegregation in education is completely effected. Further segregation cases might well be delayed for an extended period, that is, until such time as the Court feels that the nation is ready for a further step.

[78] 338 U.S. 912 (1950); cf. Mr. Justice Jackson's concurring opinion in Brown v. Allen, 344 U.S. 443, 542, 543 (1952).

[79] Myrdal, An American Dilemma 60 (1944) gives the ranks of discriminations: "1. Highest in this order stands the bar against intermarriage and sexual intercourse involving white women. 2. Next comes the several etiquettes and discriminations, which specifically concern behavior in personal relations. (These are the barriers against peculiar rules as to handshaking, hat lifting, use of titles, house entrance to be used, social forms when meeting on streets and in work, and so forth. These patterns are sometimes referred to as the denial of social equality in the narrow meaning of the term.) 3. There after follow the segregations and discriminations in use of public facilities such as schools, churches and means of conveyance. 4. Next comes political disfranchisement. 5. Thereafter comes discriminations in law courts, by the police, and by other public servants. 6. Finally come the discriminations in securing land, credit, jobs, or other means of earning a living, and discriminations in public relief and other social welfare activities."'

[80] 245 U.S. 60, 81 (1917).

Conclusion

The "separate but equal" doctrine has provided the basis for segregation in the United Stated for a long period of time. But the Supreme Court has carved away at it until today there is no legal sanction for segregation in housing, in interstate transportation, and in most, it not all, levels of publicly provided education. In light of this clearly established trend of decisions, it is inconceivable that the Supreme Court would in the future uphold segregation in recreation.

An analysis of the *Brown* and *Bolling* cases, both of which stressed sociological and psychological factors, along with the Supreme Court's manner in disposing of a number of segregation cases following them, points even more strongly to the conclusion that the "separate but equal" doctrine will be quashed in recreation.

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