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Constitutional Law - Substantial Equality in Public Schools

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CONSTITUTIONAL LAW — SUBSTANTIAL EQUALITY IN PUBLIC SCHOOLS

The plaintiff, a Negro of high school age, wished to enroll in courses in Spanish, Civics III, Typewriting and Physical Education, but alleged she was told that such courses were not or could not be offered. Plaintiff then brought her action as a class suit, on behalf of all Negroes of high school age residing in the county. She sought a declaratory judgment and an injunction against the School Board of Arlington County from alleged discrimination against Negro students by failing to provide them, solely because of their race or color, with facilities and opportunities for high school education equal to those furnished white students. The United States District Court, E. D. Virginia, found the Negro school to be in need of certain major improvements, both in physical structure and courses offered, but classed these needs as administrative deficiencies. Judgment, however, was entered for the defendants since the evidence failed to establish discrimination and a lack of substantially equal facilities solely because of race or color. *Carter v. School Board of Arlington County, et al.*, 87 F. Supp. 745 (1950).

In reaching this result the court said, "While 'no intent' will not excuse actual disparity of treatment, if traceable to race or color, still just as truly, every inadequacy or insufficiency of provision in educational opportunities or other public facilities, is not discrimination as denounced by the Fourteenth Amendment. A difference in provision may exist between the white, between the colored citizens, or between the white and colored, without fouling the Amendment, if it is the result only of unattentive stewardship or faulty judgment or shortsighted planning by the responsible authorities. These are defects of administration for administrative correction, not constitutional offenses for judicial interference."

The Supreme Court of the United States has laid down and has recently reiterated the rule that a state may separate the white and the colored for educational purposes, but substantially equal facilities and opportunities must be furnished.[1] The guaranty of the equal protection of the laws contained in the Fourteenth Amendment operates as a protection against state action, by statute or otherwise, which denies to any person, on account of race or color, equal accommodation in public schools.[2] What constitutes "substantially equal facilities and opportunities" must of course be determined from the facts of each case. However the courts have formulated several governing principles in attempts to define this all important term. Equality of treatment does not necessarily

mean identity of treatment3 and equality of treatment does not require that privileges be provided members of the two races in the same place.4 The requirement of equal facilities is one of equal treatment in respect to any one facility or opportunity furnished to its citizens rather than a balance to be struck from the expenditures and provisions for each race generally.5

In the instant case the court goes to great lengths in a comparision of curricula, exterior and interior building facilities, health supervision and teachers, and has found that no discrimination in fact exists. Nevertheless, the court finds many differences, saying, "There are differences in the schools but they are only differences and nothing more. . . . The court finds there is no discrimination. Certainly none has been proved by the preponderance of the evidence." The court explains that many of these so called differences arise out of the difference in enrollment, pointing out that the Negro school had an enrollment varying from three to thirty-five while the white school was fairly constant at twenty-three hundred. However, the right to equal protection of the laws is an individual and personal right.6 The Supreme Court reiterated the rule saying that the essence of the constitutional right is that it is a personal right and is not dependant upon the number of persons discriminated against.7 The financial considerations involved in the maintenance of separate equal facilities and in providing separate equal educational facilities have no controlling force in the face of an invasion of a constitutional right.8 It is submitted that in the light of this language, a "difference" cannot cursorily be dismissed as an "administrative deficiency." If that "difference" amounts to a substantial inequality in the respective educational facilities or opportunities provided for the Negro and white, it is discrimination.

Several federal courts in Virginia have recently had occasion to deal with this problem of separate but substantially equal educational facilities. In the consolidated *Freeman* case,9 the court found differences and need for improvement in the facilities and opportunities provided the Negro children of King George County and Gloucester County and granted an injunction enjoining further continuance of such discrimination. A similar case arose in Pulaski County10 and Dobie, Circuit Judge, in reversing in part, found, after a comparison of the various educational facilities, "a glaring inequality of facilities when viewing the record as a whole." Judge Dobie went on to say "Absolute equality here is impractical and somewhat Utopian, yet substantial equality is required by mandate of the Fourteenth Amendment." In remanding in part as to the elementary schools, the court cautions, "The question cannot be decided by averaging the facilities provided for the two classes of

pupils throughout the county by comparing one with the other." It is again submitted that the classification of "administrative deficiencies" does not bear out the substantial equality mandate of the Supreme Court nor of the above language.

From an examination of the cases[11] the separate, but substantial equality rule seems to be *a matter of degree.* For example, the fact that the plaintiff was compelled to go approximately one-fifth of a mile further to attend the colored school than she would have had to go to attend the white school,[12] or that colored children had to travel a considerable distance and cross several railroad tracks to reach their school,[13] did not destroy the equivalence of educational facilities. But where a school for colored children is so located that access to it is difficult and dangerous or an *unreasonable* distance must be travelled, and the white children do not have these same substantial disadvantages, equal educational facilities have not been provided.[14]

Although it is true that some cases have stated that certain differences in colored and white educational facilities were mere administrative differences and not discriminatory,[15] it must be remembered that the basis of these decisions was that these differences did not amount to substantial inequality. The theory of the cases was not that since the differences were administrative deficiencies they were not discriminatory.

It may well be that the *Carter* case is in line with an apparent recent trend in the lower courts to decide this type of case as a matter of expediency according to local conditions and customs, thus circumventing the law rather than facing this issue squarely.

In a late Oklahoma decision,[16] the court said that forcing a Negro student to take an assigned desk, a special table in the library, and eat at different hours was not discrimination in as much as the student had equal educational opportunities and facilities in the class room. The court quickly disposed of plaintiff's contention that such conditions created a mental hazard by saying this was merely the carrying out of Oklahoma's valid segregation laws. In Georgia[17] after several years of litigation the court refused to face the issue of discrimination in teachers' salaries by relying on the old standby that the plaintiff must exhaust his administrative remedies before he is entitled to his day in court.

It is submitted that any difference in educational facilities which a Negro student is required to bear because of a state policy of segregation preventing him from attending a public school of his own choice within his local district, stems primarily from, and is

traceable to, his race or color. When this "difference" becomes substantial, then the Negro's constitutional right as guaranteed by the Fourteenth Amendment has been invaded. Although in a given case the "difference" may be the result of short sighted administrative planning, or inability of the administrative officials because of financial deficiencies, rather than of a patterned intent or custom, the distinction is without a constitutional difference. The separate but substantial equality rule, where a state policy is that of segregation,[18] is a matter of effect and not cause and in the light of recent cases will be strictly construed by the Supreme Court.[19]

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FOOTNOTES

1. Missouri ex rel. Gaines v. Canada, 305 U. S. 337 (1938); Sipuel v. Board of Regents of the University of Oklahoma, 332 U. S. 631 (1948); Comment, 46 Mich. L. Rev. 639, 645 (1948).
2. 14 CORPUS JURIS SECUNDUM 1171.
3. See Note, 24 R. C. L. §110 (1929).
4. **Ibid.**
5. Pearson et al. v. Murray, 169 Md. 478, 182 A. 590 (1936); See Note 103 A. L. R. 706 (1936).
6. McCabe v. Atchison, T. & S. Fe Ry., 325 U. S. 151 (1914).
7. Missouri ex rel. Gaines v. Canada, 305 U. S. 337 (1938).
8. Sweatt v. Pointer, Tex. Civ. App., 210 S. W. 2d 442 (1948).
9. Freeman v. County School Board, 82 F. Supp. 167.
10. Corbin et al. v. County School Board of Pulaski County, Virginia, 177 F. 2d 924 (1950).
11. See Note, 24 R. C. L. §110 (1929).
12. Roberts v. Boston, 5 Cush. (Mass.) 198, (1849).
13. Dameron v. Bayless, 14 Ariz. 180, 126 P. 273 (1912).
14. Williams v. Board of Education, 79 Kan. 202, 99 P. 216 (1908).
15. E. g. Reynolds v. Board of Education, 66 Kan. 672, 72 P. 274 (1903).
16. McLaurin v. Oklahoma State Regents for Higher Education, et al., 87 F. Supp. 528 (1950).
17. Cook et al. v. Davis, 178 F. 2d 595 (1950).
17. Va. Const. §141, Va. Code §22-221 (1950).
19. See Sipuel v. Board of Regents of the University of Oklahoma, 332 U. S. 631 (1948).