

Brown v. Board of Education Defense

Taken from the Master's Thesis of Liza R. Rognas

Defendants responded by reminding the court that the tradition of segregation enjoyed a long history. They expanded on this history with laborious quotes which sanctioned segregation as a normal practice of student classification. Relying upon the pedigree of earlier cases, the attorneys defined segregation by race as a "necessary incident of good school administration."¹ Defense attorneys Lester Goodell and George Brewster, invoked *Plessy*, and reiterated the familiar argument fostered by that decision. "[E]quality of educational privileges is not lost by separation [sic] of the races in the public school," they wrote, and "mere separation [sic] of the races does not destroy the citizens equal rights guaranteed under the Fourteenth Amendment."² They gave short shrift to the plaintiff's attempts to dismiss *Plessy's* pertinence to the case. Instead, Goodell and Brewster explained that the Supreme Court had addressed racial inferiority in its 1896 decision, and they quoted the often-cited passage in the opinion in which the Court determined that the Fourteenth Amendment "could not have been intended to abolish distinctions based on color, or to enforce social, as distinguished from political, equality, or a commingling [sic] of the two races upon terms unsatisfactory to either."³

Brewster and Goodell also used the practice of segregation in the District of Columbia to bolster their arguments. That schools in the nation's capital were segregated by an act of Congress before and after ratification of the Fourteenth Amendment provided for them a compelling argument to justify segregation in Kansas.⁴ The recent *Briggs* decision in South Carolina also favorably supported Topeka's case. Nowhere in case law, not even in *Sweatt v. Painter* nor *McLaurin v. Oklahoma*, could the plaintiffs find support for their decision, Brewster and Goodell charged:

We submit, therefore, in closing the discussion on this question, that neither the reasoning nor the authority shown by the overwhelming judicial opinion on the subject justifies this court in departing from the "separate but equal" doctrine.⁵

As in the other cases involving expert testimony from social scientists, attorneys for Topeka's Board of Education dismissed the "intangible" aspect of Carter's and Greenberg's attack. Concrete numbers formed Brewster and Goodell's defense, and they systematically returned to argumentative comparisons over expenditures and distances traveled to schools throughout their arguments. The differences in these numbers, they argued, failed to prove "that education furnished in the colored schools is substantially different from that furnished in white schools." Furthermore, the testimony of "the sociologists and psychologists" brought by the plaintiff's attorneys "furnished no legal grounds to change the interpretation of the Fourteenth Amendment."⁶ The tone of their brief was confident, and like defendants in other discrimination cases, they trusted Jim Crow's long legal tradition to support their arguments.

The brief submitted by defense attorneys in *Brown* carefully evaluated the discrimination cases brought by Charles Houston, Thurgood Marshall, and the NAACP Legal Defense and Education Fund (LDF) against universities and colleges during the preceding decades. The defense argued that these cases had no bearing on the current legal questions even though those black applicants eventually prevailed. Access to higher education, especially professional schooling, was an entirely different matter as far as the school board lawyers were concerned. In a clear refusal to Waring's dissent in the *Briggs* case, the attorneys protested, "[n]o one is justified in claiming the court even indicated, much less expressed a view, that this should apply to the public common schools."⁷ Their message was clear; no dissent would be tolerated in Topeka.

¹ *Oliver Brown, et al., v. Board of Education of Topeka*, Defendant's Brief, 7.

² *Oliver Brown, et al., v. Board of Education of Topeka*, Defendant's Brief, 10.

³ *ibid.*, 11.

⁴ *Oliver Brown, et al., v. Board of Education of Topeka*, Defendant's Brief, 12.

⁵ *ibid.*, 15.

⁶ *ibid.*, 30.

⁷ *Oliver Brown, et al., v. Board of Education of Topeka*, Defendant's Brief, 33.

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