

Race and the Schools

Terms:

Unitary School System

Dual School System

All Deliberate Speed

Dolls Test

Assigned Cases:

Brown v. Bd (I); *Brown v. Bd (II)*; *Cooper v. Aaron*; *Swann v. Charlotte-Mecklenberg*; *Milliken v. Bradley*; *Freeman v. Pitts*; *U.S. v. Fordice*

Questions for Reading Assigned Cases:

How does *Brown v. Bd* draw upon such earlier cases as *Canada v. Gaines*, *Sweatt v. Painter*, and *McLaurin v. Oklahoma State Regents*? What should be the role of “intangible factors” in assessing equal educational opportunity?

Brown II and *Cooper v. Aaron* both concern the problems of requiring compliance with the Court’s order in *Brown I*? What are the major elements in the Supreme Court’s approach to creating compliance with *Brown I* over the massive resistance it encountered?

Swann v. Charlotte-Mecklenberg and *Milliken v. Bradley* both concern which mechanisms can be used to create fully desegregated school systems. Which mechanisms are allowed and what are their limits?

What are the conditions under *Freeman v. Pitts* that qualify a school system to be excused from judicial oversight after it has complied with a desegregation order?

Reflecting back on *Canada v. Gaines*, *Sweatt v. Painter*, and *McLaurin v. Oklahoma State Regents*, was the Court’s decision in *U.S. v. Fordice* the proper one?

Additional Cases:

Missouri ex rel. Gaines v. Canada (1938). Missouri did not offer state supported legal education to African American, but provided scholarships to send them to neighboring states. Chief Justice Hughes wrote that the state must provide services, such as legal training, to every qualified person under similar conditions (including remaining in-state, close to family and other connections) to satisfy equal protection. The state also cannot condition provision of that training for one group of people (such as blacks) on the level of demand from that group.

Sweatt v. Painter (1950). Texas, like Missouri, prohibited blacks from attending law school at its state universities, but, attempting to comply with *Gaines v. Canada*, created a separate school just for blacks, which was located in several rented rooms, with fewer, less well-known faculty, and a much smaller library. The Court found that the school, while separate, could not be equal because, even if facilities were improved, it could not be equal in such intangible factors as reputation and access to alumni networks, both essential to hiring and professional success.

McLaurin v. Oklahoma State Regents (1950). McLaurin, an African-American, was admitted to the University of Oklahoma to pursue a graduate degree in education, but was kept separate from whites, restricted to a specially designated row in classrooms, a special table in the lunch room, and a designated desk in the library. The Court held that, “having been admitted ... [McLaurin] must receive the same treatment at the hands of the State as students of other races.”

Green v. School Bd of New Kent County (1968). The Court held that New Kent County's freedom of choice plan, in which students could attend the school of their choice by applying to do so, was not enough to satisfy the school board's responsibility to undo its previous policy of segregation, and that the Board take affirmative actions, such as changing attendance zones and bussing, to achieve a “unitary, nonracial system of public education.”

Meredith v. Jefferson County Board of Education and Parents Involved in Community Schools v. Seattle School District No. 1 (2007). These two cases asked the same question of when race could be used in attendance decisions as a way of preventing racial imbalance in the schools. The Jefferson County (Louisville KY) School District required each school to have an enrollment of black students between 15% and 50% of the school population (the proportion in the system's total enrollment was 38%). Besides race, placement was determined by factors such as place of residence, school capacity, program popularity, random draw, and the student's choice. Several black parents sued when their children were denied enrollment in a magnet school which had hit the upper limit for black enrollment. In Seattle, if students applied to a school which had reached its top enrollment, the District used several tiebreakers to decide among applicants. The second most important tiebreaker, after whether a sibling attended the school, was a racial preference intended to ensure that schools did not move too far away from a mix close to the racial composition of Seattle's total student population, meaning that either whites or non-whites could be favored for admission depending on which race ensure racial balance.

The Court found that both programs violated the 14th Amendment because the districts failed to show compelling reasons for using race as a factor in such decisions. Because neither district was still under judicial supervision because of a continuing pattern of racial discrimination, the interest in maintaining a diverse enrollment through affirmative measures was not compelling, nor was the concern to prevent re-segregation because of choices made by private actors. The Court found that the plans involved no individualized consideration of students, and each employed a very limited idea of diversity (Black and “other” in Louisville, White and “other” in Seattle). The Court also found that the plans were set around demographic goals, rather than any specific and demonstrable educational benefit from racial diversity.