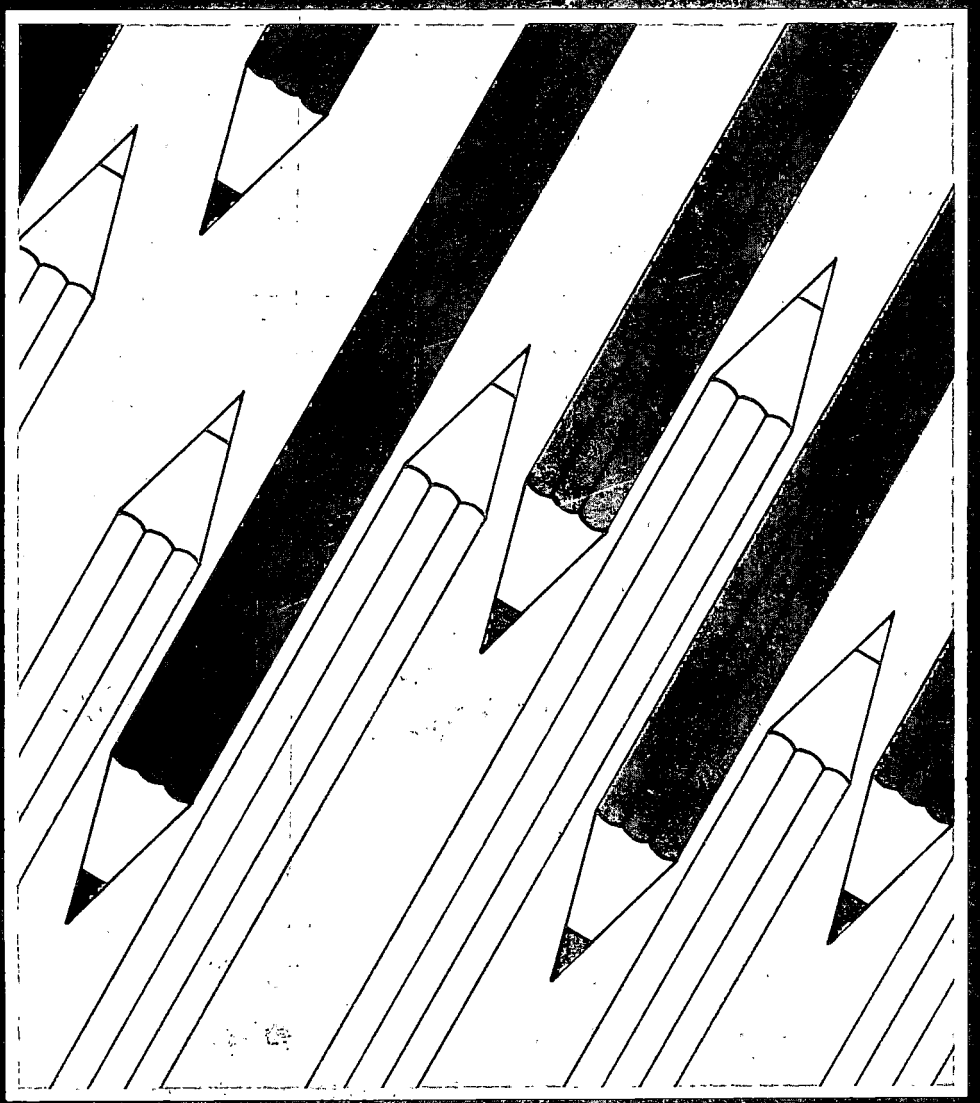
With All Deliberate Speed: 1954–197?



United States Commission on Civil Rights
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U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, handicap, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin;
- Submit reports, findings, and recommendations to the President and Congress.

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Introduction

The U.S. Commission on Civil Rights believes that school desegregation is the single most important task confronting the Nation today in the field of civil rights. Any retreat in our efforts to achieve this goal will seriously harm our efforts to move forward in other civil rights areas. Further, the Commission strongly believes that progress in desegregating our Nation's schools will not be achieved without the clear support and leadership of government officials at the national, State, and local levels. The Commission appeals to those in positions of responsibility to make such a commitment. There is no middle ground. Either we are for desegregation and a system of education that provides equality of opportunity, or we are for a system of education that makes a mockery of our Constitution.

The commitment that must be made today so that children may be educated in environments where they will come to know one another as human beings and to learn that all people are truly created equal may require sacrifice on our part. But as the Supreme Court wrote in 1971:

> All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. The remedy for such segregation may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot

be avoided in the interim period when remedial adjustments are being made to eliminate the dual system. . . .[1]

A commitment to school desegregation will move our Nation closer to a Nation of one people.

[1] 402 U.S. at 31 (1971).

The History of Separate But Equal

Although the story of school desegregation could begin with the first blacks brought to these shores at Jamestown, Virginia, in 1619, this chronicle will begin at the end of the Civil War. The end of the Civil War and the Emancipation Proclamation brought hope to blacks that they would begin to enjoy the fruits and rewards of freedom, previously denied them.[2] Hope was further heightened when the 13th amendment, proposed in February 1865 and ratified on December 18, 1865, officially terminated slavery in the United States.[3] Blacks believed that the amendment would end the debate over slavery. Black hope and optimism were short lived as the Southern States quickly enacted the infamous Black Codes that substantially restricted the newly gained freedom of ex-slaves.[4]

The Black Codes differed from State to State. Provisions of various codes resulted in blacks not being allowed to enter a town without a permit, to own firearms, to purchase land within city limits, or to purchase liquor. Blacks could serve as witnesses in court only against other blacks and often had to adhere to curfews.[5]

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[2] U.S., Commission on Civil Rights *Twenty Years After Brown* (1974), p. 10 (hereafter cited as *Twenty Years After Brown);* Bernard Schwartz, *Statutory History of the United States: Civil Rights* (New York: McGraw-Hill, 1970), vol. 1, p. 19. It should be noted that it was prohibited in many States to teach a slave to read or write. "So apprehensive were members of the Slavocracy about the great mischief that literacy might stir that in many States it was illegal to teach free as well as enslaved Negroes." Richard Kluger, *Simple Justice* (New York: Vintage Books, 1977), p. 28.

[3] Ibid.

[4] *Twenty Years After Brown,* p. 11; Laughlin McDonald, "The Legal Barriers Crumble," in *Just Schools* (Institute for Southern Studies, May 1979), p. 20 (hereafter cited as *The Legal Barriers Crumble).*

[5] *Twenty Years After Brown,* p. 11.

Thirty-one years after slavery was abolished, the South's movement into two separate societies—one black, one white—was to be sanctioned by the Supreme Court of the United States in *Plessy v. Ferguson.* [6] This decision was in response to a Louisiana law passed in 1890:

> requiring railway companies carrying passengers in their coaches, to provide equal but separate, accommodations for the white and colored races, by providing two or more passenger coaches for each passenger train, or by dividing the passenger coaches by a partition so as to secure separate accommodations; and providing that no person shall be permitted to occupy seats in coaches other than the ones assigned to them, on account of the race they belong to. . . .[7]

The Court rejected the argument of Plessy, the black plaintiff, that to be forced to ride in separate railroad cars stamped him with a "badge of inferiority." In disagreeing with Plessy, the Court upheld the doctrine of separate but equal:

> 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, but solely because the colored race chooses to put that construction upon it.[8]

The "separate but equal" doctrine emerged in "Jim Crow" laws across the South.[9] Laws were enacted that required the separation of blacks and whites in almost every realm of life: in schools, housing, jobs, public accommodations, cemeteries, hospitals, and labor unions. In courts of law, separate Bibles were used for white and black witnesses. In public places, white and "colored" signs dictated which restrooms or water fountains were to be used. Blacks were allowed in public parks only on "Colored Day." Blacks were forced to sit in the rear of streetcars and buses. In restaurants, blacks could buy food only by entering a back door and then leaving to eat outside.[10]

Racial separation of blacks and whites in public education had long been institutionalized throughout the United States, in both the North and the South. In fact, a case relied upon in *Plessy v. Ferguson* [11] was *Roberts v. City of Boston,* [12] which had upheld public school racial segregation. Undergirded by the doctrine of separate but equal, enunciated in *Plessy,* segregated education became the status quo. By the turn of the century, segregation by either school or classroom was widespread for other persons of color as

[6] 163 U.S. 537 (1896).
[7] *Id.* at 537, 538.
[8] *Id.* at 551.
[9] *Twenty Years After Brown,* p. 14.
[10] Ibid.
[11] 163 U.S. 537 (1896).
[12] 59 Mass. (5 Cush 198) (1850). The Supreme Judicial Court of Massachusetts held that the general school committee of Boston had power to make provision for the instruction of colored children in separate schools established exclusively for them and to prohibit their attendance at the other schools. 163 U.S. at 544.

well. For example, some parts of Texas maintained three separate systems: for Anglos, Mexican Americans, and blacks.[13] This segregation was to continue well into the 20th century, and in 1946 evidence was presented in *Mendez v. Westminister* [14] to show that in certain California school districts children of Mexican or Latin descent were segregated and required to attend schools reserved for and attended solely and exclusively by children of Hispanic origin. Although the school district contended that the segregation was due to a language deficiency, none of the students had been tested for language proficiency and school assignments were made on the basis of Hispanic-sounding last names.[15] As late as 1950 separate educational facilities were required for black and white students in 21 States and in the District of Columbia.[16]

During these years the "equal" aspect of the doctrine was overshadowed by the "separate" aspect:

> In 1915. . .white students in South Carolina went to school 133 days a year, blacks only 67. The pupil-teacher ratio was 36 to 1 for whites but 64 to 1 for blacks. White teachers made more than twice as much as black teachers, while the State spent $16.22 to teach each white child but only $1.13 for each black child.[17]

The disparity between expenditures for black and white schools in 1930 clearly demonstrates the fallacy of "separate but equal." Alabama, Florida, Georgia, and Mississippi were spending five times as much on the education of every white child as on every black child. Maryland, North Carolina, Oklahoma, Texas, and Virginia were spending twice as much.[18]

Moreover, it has been estimated that as late as 1930 one million black youths of high school age (primarily in the South) were not attending school. Approximately 50 percent were out of school because their local governments did not provide high schools for blacks.[19]

Disparities in educational resources were to continue well into the 20th century for blacks and other persons of color. For example, a Commission study of nine school districts in the San Antonio area showed that in the northeast districts (predominantly white), expenditures per pupil from all revenue sources in the 1967–68 school year amounted to $745. In the Edgewood school districts (predominantly Mexican American), expenditures per pupil amounted to $465.[20] The report also showed that 98 percent of the noncollege-degree teachers employed in the nine San Antonio

[13] U.S., Commission on Civil Rights, *The Mexican American* (1968), p. 9.
[14] 64 F. Supp. 544 (1946); 161 F.2d 744 (1947).
[15] Kluger, *Simple Justice,* p. 399.
[16] *The Legal Barriers Crumble,* pp. 22–23.
[17] Harold W. Horowitz and Kenneth L. Karst, *Law, Lawyers and Social Change* (Indianapolis: Bobbs-Merrill, 1969), p. 162, as reported in *The Legal Barriers Crumble,* p. 23.
[18] Kluger, *Simple Justice,* p. 134.
[19] Ambrose Caliver and J.H. Douglas, "Education of Negroes: Some Factors, Relating to its Quality," *School Life,* vol. XXXVI (1954), pp. 142–43, as reported in Leon Jones, "School Desegregation in Retrospect and Prospect," *The Journal of Negro Education,* vol. XLVII (Winter 1978), no. 1, p. 46.
[20] U.S., Commission on Civil Rights, *Stranger in One's Land* (May 1970), p. 24.

districts were concentrated in the predominantly Mexican American districts.[21]

At Commission hearings on school desegregation, witnesses have discussed the disparities that existed in educational resources available to black and white students. These disparities, in many instances, were eliminated only after school districts were forced to desegregate. For example, a black high school principal testifying in Tampa, Florida, stated that his budget had improved 300 percent since school desegregation.[22] Similarly, an English teacher reported tremendous gains in staffing, pupil personnel services, and school building facilities since school desegregation.[23] A black student testified that after school desegregation she attended a school where students had their own desks and books. Previously, she had attended a school with broken desks where three students often had to share one book. She also discussed the improvements that were made at the all-black school she had attended: Grass was planted, the windows were repaired, and a new basketball court was constructed. The student stated that before school desegregation every other window was broken and in the winter "if you weren't prepared. . .you would freeze."[24]

Questioning by the Supreme Court

During the 1930s and the 1940s, the National Association for the Advancement of Colored People (NAACP)[25] began to carry out a legal strategy that had been fashioned in the late 1920s.[26] The decision was made to "boldly challenge the constitutional validity of segregation if and when accompanied irremediably by discrimination [so as to] strike directly at the most prolific sources of discrimination."[27] The strategy was to begin the legal challenge to segregation by confronting education in graduate and professional schools, since blatantly discriminatory and unequal school systems produced by segregation were most obvious at this level.[28] The NAACP also thought that to begin to address discrimination in legal education might be especially productive, since the judges who would rule on the cases were intimately familiar with the training required to produce a lawyer.[29] Between 1938 and 1950, four major cases brought by the NAACP reached the Supreme Court of the United States. The Court began to question the "equal" aspect of the doctrine of "separate but

[21] Ibid.
[22] *Hearing Before the United States Commission on Civil Rights, Tampa, Florida,* Mar. 29–31, 1976, p. 324.
[23] Ibid., p. 325.
[24] Ibid., p. 250.
[25] The NAACP was founded in 1909, and since its inception had fought for the rights of blacks in the courtroom. A legal arm of the NAACP was founded in 1939 with Thurgood Marshall as its head. It was eventually called the NAACP Legal Defense and Educational Fund, Inc.
[26] Kluger, *Simple Justice,* p. 132.
[27] Ibid., p. 134.
[28] Ibid., p. 136.
[29] Daniel M. Berman, *It Is So Ordered* (New York: W.W. Norton & Co., 1966), p. 6.

equal" and invalidated school segregation when tangible facilities provided for blacks were found unequal to those provided for whites. In 1938 in *State of Missouri ex rel. Gaines v. Canada,* [30] the Court considered the case of a black who had been denied admission to the School of Law at the all-white University of Missouri, a State institution. The State, in attempting to uphold the doctrine of separate but equal, offered to pay the black's tuition at the law school of an adjacent State that accepted blacks. The Court stated:

> The admissibility of laws separating the races in the enjoyment of privileges afforded by the State rests wholly upon the equality of the privileges which the laws give to the separated groups within the State. The question here is not of a duty of a State to supply legal training, or of the quality of the training which it does supply, but of its duty when it provides such training to furnish it to the residents of the State upon the basis of an equality of right.[31]

Despite the decision of the Supreme Court of the United States, the black student never attended the law school of the University of Missouri. Missouri responded to the decision by passing legislation providing for establishment of a law school at Lincoln University, the black institution in Missouri.[32] Nevertheless, *Gaines* was to be viewed as a significant milestone. Counsel believed that the principles established in *Gaines* could be made to apply to every county in America, to every educational level, and not only to physical facilities, but also to teacher salaries, length of school terms, and the availability of bus transportation. They believed not only that the principles should cover the field of education, but that they should also apply to parks, libraries, hospitals, and other facilities.[33]

The Court again questioned the doctrine of "separate but equal" in 1948 in *Sipuel v. Board of Regents.* [34] The Supreme Court wrote that Ada Sipuel, a black woman who applied to the School of Law at the University of Oklahoma, was:

> entitled to secure legal education afforded by a state institution. To this time, it has been denied her although during the same period many white applicants have been afforded legal education by the state. The state must provide it for her in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group.[35]

By 1950 the Supreme Court of the United States moved beyond the tangibles when considering the "separate but equal" doctrine to an assessment of intangible qualities. In *Sweatt v. Painter* [36] the Court ruled that Texas could not provide black students with equal educational opportunity in a separate law school. The case was not decided on the

[30] 305 U.S. 337 (1938).
[31] *Id.* at 349.
[32] *The Legal Barriers Crumble,* p. 23.
[33] Kluger, *Simple Justice,* p. 213.
[34] 332 U.S. 631 (1948).
[35] *Id.* at 632–33.
[36] 339 U.S. 629 (1948).

issue of facilities, although the facilities at the University of Texas Law School were clearly superior to those at the black law school. The key factor upon which the Court based its decision was that the University of Texas "possesses to a far greater degree those qualities which are incapable of objective measurement but which make for greatness in a law school."[37] Further, the Court stated:

> The law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts. Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned. The law school to which Texas is willing to admit petitioner excludes from its student body members of the racial group which number 85 percent of the population of the State and include most of the lawyers, witnesses, jurors, judges and other officials with whom petitioner will inevitably be dealing when he becomes a member of the Texas bar. With such a substantial and significant segment of society excluded, we cannot conclude that the education offered petitioner is substantially equal to that which he would receive if admitted to the University of Texas Law School.[38]

That same year the Court again addressed the issue of intangible considerations in *McLaurin v. Oklahoma State Regents for Higher Education.* [39] The Court required that a black student be treated like all other students and not be segregated within the institution. Engaging in discussions and exchanging views with other students, the Justices declared, are "intangible considerations" indispensable to equal educational opportunity.[40]

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[37] *Id.* at 634.
[38] *Id.*
[39] 339 U.S. 637 (1950).
[40] *Id.* at 641, 642.

Brown v. Board of Education

These cases laid the foundation for direct confrontation of the concept of "separate but equal," which was challenged in *Brown v. Board of Education.* [41] *Brown* was a consolidated case involving school segregation in four States: Kansas, Delaware, Virginia, and South Carolina. The lead case had begun in 1950 when the Rev. Oliver Brown had attempted to enroll his daughter at the traditionally white school four blocks from their home rather than have her travel by bus to the black school 2 miles away. One year later, Reverend Brown filed suit against the school board of Topeka, Kansas.[42] The four cases consolidated in *Brown* were all handled by the NAACP Legal Defense and Education Fund, Inc., which had previously attacked segregation in higher education and now turned its attention to the elementary and secondary education that directly affected all black children.[43]

In an unanimous opinion, the Supreme Court of the United States ruled that in public schools legally compelled segregation of students by race is a deprivation of the equal protection of the laws as guaranteed by the 14th amendment.[44] The opinion stated:

> To separate. . .[children] 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. . . .Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson,* this finding is amply supported by modern authority. Any language in *Plessy v. Ferguson* contrary to this finding is rejected.

[41] 347 U.S. 483 (1954).
[42] *Twenty Years After Brown,* p. 1.
[43] Berman,*It is So Ordered,* pp. 28, 33.
[44] 347 U.S. at 495. In a companion case, Bolling v. Sharpe, 347 U.S. 497 (1954), the Court held that racial segregation in the District of Columbia violated the due process clause of the fifth amendment.

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.[45]

The date was May 17, 1954.

Testimony by social scientists emphasized the serious psychological harm inflicted on children subjected to segregation. The testimony noted that racial isolation could result in black children developing inclinations towards escapism, withdrawal, hostility, and resentment. Furthermore, the social scientists noted that such treatment could warp black children's sense of self-esteem, since segregation was based on the belief that they were inferior to whites and thus not worthy of the treatment provided to white children.[46] Although the Court did not rely on it, testimony was also presented that white children could be scarred by the practice of racial isolation. They could experience "confusion, conflict, moral cynicism, and disrespect for authority," the testimony argued, as a "consequence of being taught the moral, religious, and democratic principles of the brotherhood of man and the importance of justice and fair play by the same persons and institutions" who, by supporting racial segregation, seemed to be acting in a prejudiced and discriminatory manner.[47]

Although the holding in *Brown* was directed against legally sanctioned segregation in public education, the language in *Brown* gives support to a broader interpretation.[48] The Court expressly recognized the inherent inequality of all segregation, noting only that the sanction of law gives it greater effect.[49] *Brown* set the stage for the ending of Jim Crow laws and for prohibiting officially sanctioned racial segregation in almost every aspect of American life.[50]

Having disavowed "separate but equal" in public education, the Justices turned to the question of how to dismantle segregated education. The Court requested further arguments on implementation of the decision. Following oral argument, the Court handed down *Brown II* [51] in May 1955, which set the standard for implementation of school desegregation. Under the jurisdiction of district courts, the standard required a "good faith" start in the transformation from a dual to a unitary system "with all deliberate speed."[52]

[45] 347 U.S. at 494, 495.

[46] Kenneth B. Clark, *Prejudice and Your Child* (Boston: Beacon Press, 1955), app. 3, Appendix to Appellants Briefs, pp. 166–84. *Prejudice and Your Child* is a summary and revision of the manuscript, "Effect of Prejudice and Discrimination on Personality Development," which Dr. Clark prepared for the midcentury White House Conference on Children and Youth, 1950. It was this manuscript that was cited in footnote 11 of the *Brown* decision.

[47] Ibid., p. 170.

[48] *Twenty Years After Brown,* p. 31; *The Legal Barriers Crumble,* p. 25.

[49] Ibid.

[50] *The Legal Barriers Crumble,* p. 25.

[51] 349 U.S. 294 (1955).

[52] *Id.* at 299, 301.

The Southern Response

Although blacks were to view the decision as a clear victory and movement towards the American mainstream, many whites, particularly southern whites, were resentful and angry. "With all deliberate speed" became a snail's pace, and the decision was resisted by officials in the Southern States.[53] In 1956 the "Southern Manifesto" was endorsed by nearly every elected Representative and Senator from the 11 Southern States. The manifesto pledged: "To use all lawful means to bring about a reversal of this decision which is contrary to the Constitution and to prevent the use of force in its implementation."[54] Segregation continued over the next decade under freedom-of-choice plans, transfer programs for white students into majority-white schools, the closing of public schools, and the provision of tuition grants and other aid to private white segregated schools.[55]

Litigation Continues

Black plaintiffs had to return to the courts repeatedly to secure implementation of *Brown.* In 1958 in *Cooper v. Aaron* [56] (Little Rock, Arkansas), the Supreme Court ruled that:

> [T]he constitutional rights of children not to be discriminated against in school admissions. . .can[not] be nullified indirectly. . .through evasive schemes of segregation whether attempted "ingeniously or ingenuously."[57]

[53] *Twenty Years After Brown,* p. 31.
[54] *The Legal Barriers Crumble,* p. 25.
[55] Ibid.
[56] 358 U.S. 1 (1958).
[57] *Id.* at 17.

The decision in the *Cooper* case followed mob scenes in Little Rock with segregationists trying to prevent the enrollment of nine black high school students at Central High School in September 1957.[58] These students were the first of thousands of black students who would commit themselves across the South to abolition of the Jim Crow society. Governor Orville Faubus called up the Arkansas National Guard to prevent the students from enrolling. Continuing violence led President Dwight Eisenhower to federalize the State forces and send in paratroopers to restore order and to escort the black students to school.[59]

Although the Court made clear that unequivocal resistance would be firmly condemned and although the executive branch stood firm in support of desegregation in Little Rock, massive resistance proved an apparent success. A decade after the *Brown* decision only 1.2 percent of black students in 11 Southern States attended schools with whites.[60] That figure had increased to only 2.2 percent in the following school year (1964–65) when the Civil Rights Act of 1964[61] was passed by the U.S. Congress.[62]

In 1964 the Supreme Court was again to show its impatience with tactics of evasion and delay in its decision in *Griffin v. County School Board of Prince Edward County, Va.* [63] Prince Edward County, whose officials fervently supported Virginia's "massive resistance" stance, had closed its public schools rather than permit black and white children to attend school together. The Court held that the action of the county school board in closing the public schools while, at the same time, contributing to the support of private segregated schools resulted in a denial of equal protection of the laws to black children.[64] Further, the Court ruled: "The time for mere 'deliberate speed' has run out, and that phrase can no longer justify denying these Prince Edward County school children their constitutional rights to an education equal to that afforded by the public schools in the other parts of Virginia."[65] In 1965 the Supreme Court again stated, in *Bradley v. School Board of Richmond,* [66] that "delays in desegregating school systems are no longer tolerable." The Court clearly wanted an end to delay and evasion. However, segregation persisted, and the lower courts continued to accept techniques that postponed full

[58] *Twenty Years After Brown,* p. 17.
[59] Ibid., p. 18.
[60] Ibid., p. 48. Data are summarized from the Office for Civil Rights, U.S. Department of Health, Education, and Welfare's Survey, 1968, 1970, 1972 (hereafter cited as HEW Survey).
[61] 78 Stat. 252, Pub. L. No. 88–352, July 2, 1964.
[62] HEW Survey; *Twenty Years After Brown,* p. 48.
[63] 377 U.S. 218 (1964).
[64] *Id.* at 232.
[65] *Id.* at 234. The case was remanded to the district court with directions to enter a decree which would guarantee that petitioners received the kind of education provided in the other public school districts of the State. In regard to desegregation, this consisted of a freedom-of-choice program. See discussion of Green v. County School Board of New Kent County for a later decision by the Supreme Court that relates to freedom-of-choice plans.
[66] 382 U.S. 103 (1965).