IN THE

Court of Appeals of Maryland

SEPTEMBER TERM, 1960

No. 162

STATE BOARD OF PUBLIC WELFARE,
THE BOARD OF MANAGERS OF MARYLAND
TRAINING SCHOOL,
THE BOARD OF MANAGERS OF MONTROSE SCHOOL,
THE BOARD OF MANAGERS OF BARRETT SCHOOL,
AND
THE BOARD OF MANAGERS OF BOYS' VILLAGE,
Appellants,

V.

ROBERT MYERS, MINOR, BY
MAE COLEMAN, ETC.,
Appellee.

APPEAL FROM THE CIRCUIT COURT OF BALTIMORE CITY
(CHARLES E. MOYLAN, Judge)

BRIEF OF APPELLANTS

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STATEMENT OF THE CASE

This is an appeal from a declaratory decree of the Circuit Court of Baltimore City declaring Sections 657 and 659-661 of Article 27, Annotated Code of Maryland (1957 Ed.), requiring separation of the Negro and white races in the State's four correctional training institutions for

minors, to be unconstitutional as in violation of the Fourteenth Amendment to the Federal Constitution; and enjoining the Appellants from denying admission of Negro youths, solely on account of race and color, to any of the said facilities. The decree appealed from also adjudged that the courts could not, consistent with the requirements of the Fourteenth Amendment, select a training school to which a minor is to be committed solely on the basis of the minor's race or color.

QUESTION PRESENTED

Are Sections 657 and 659-661 of Article 27 of the Maryland Code Constitutional?

STATEMENT OF FACTS

The statutes in question, codified in the criminal law article of the Maryland Code under the designation "Places of Reformation and Punishment", relate to the State's four correctional training institutions for minors, namely, Boys' Village, Maryland Training School, Barrett School and Montrose School. The statutes provide that such institutions are public agencies for the care and reformation of minors committed thereto under the laws of this State, and further provide that the Maryland Training School shall be for white male minors, Boys' Village for colored male minors, Barrett School for colored female minors, and Montrose School for white female minors. Specifically, the statutes read:

> Section 657:
>
> "There shall be established in the State an institution to be known as the Boys' Village of Maryland. Said institution is hereby declared to be a public agency of said State for the care and reformation of colored male minors committed or transferred to its care under the laws of this State. * * *."

Section 659:

"From and after the acquisition by the State of Maryland from the Maryland School for Boys, a corporation of this State, of the property heretofore held, conducted and managed by said corporation as a reformatory institution for the care and training of white male minors committed thereto under the provisions of the laws of this State, the same shall continue under the name of the Maryland Training School for Boys to be conducted as a public agency of this State for the care and reformation of white male minors now committed thereto, and who may hereafter be committed thereto under the laws of this State. * * *."

Section 660:

"From and after the acquisition by the State of Maryland of the property of the Maryland Industrial School for Girls the same shall continue as a reformatory under the name of the Montrose School for Girls to be conducted as a public agency of this State for the care and reformation of white female minors now committed thereto, and who may hereafter be committed thereto under the laws of this State. * * *."

Section 661:

"There shall be established in this State, an institution to be known as the Barrett School for Girls. The said institution is hereby declared to be a public agency of this State for the care and reformation of colored female minors committed or transferred to its care under the laws of this State. * * *."

By the subtitle preceding Section 33 of Article 88A of the Maryland Code, these institutions are referred to under the designation: "Training Schools for Delinquent Children". Commitment of delinquent minors to the institutions is authorized by the several juvenile court acts in force in Maryland, principal among which are the so-called "State-wide Act" (Sections 51-71 of Article 26 of the Code) and the "Baltimore City Juvenile Court Act" (Sections

239-257, as amended, of the Charter and Public Local Laws of Baltimore City, 1949 ed.).

Appellee herein, a thirteen year-old Negro boy, by his mother and next friend, filed a bill for a declaratory decree in the Circuit Court of Baltimore City on February 26, 1960, in which he challenged the constitutionality of Maryland's racially-segregated training institutions, as provided for by said Sections 657 and 659-661 (E. 3-12). He alleged in his bill that on October 29, 1959, he was adjudged to be a delinquent child by the Circuit Court of Baltimore City, Division of Juvenile Causes; that the Juvenile Court announced its determination at that time to commit him to a public training school for delinquent minors; that on Appellee's behalf a motion was interposed that he be committed to the Maryland Training School for white boys, rather than to Boys' Village for colored boys since the latter, as a racially-segregated training school, could not provide him with rehabilitation and training equal to that provided by the Maryland Training School; and that the Juvenile Court held the motion *sub curiae,* in the meantime detaining him over his objection at Boys' Village. The bill alleged that racial segregation in the public training schools pursuant to the aforesaid statutory requirement contravened the Fourteenth Amendment to the Federal Constitution, and that the Order of court detaining him at Boys' Village deprived him of his constitutional right to enjoy non-racially-segregated public training school facilities provided by the State of Maryland for delinquent minors.

Named as Defendants in the bill were the State Board of Public Welfare and the Boards of Managers of each of the four training institutions. The bill alleged that Defendants were authorized by statute (Article 88A of the Code) to exercise supervision, direction and control over

the institutions and to provide for their general management; and to promulgate rules with respect to the use, availability and admission of minors thereto; and that the State Board of Public Welfare was additionally vested with authority to establish, by rule or regulation, standards of care, policies of admission, transfer and discharge.

On behalf of the Defendants, a combined demurrer and answer was filed (E. 13-16). The demurrer, later overruled, alleged that the challenged statutes represented a valid exercise of the police power of the State and were constitutional. The Defendants' answer to the bill admitted that the training institutions were operated on a racially-segregated basis pursuant to statutory requirement, and further admitted the statutory authority vested in them over the operation of the institutions.

At the trial it was stipulated between the parties that the physical and other tangible factors at the four institutions were substantially equal (E. 34). The question thus raised for determination by the court was simply whether racial segregation in the State's correctional training institutions for delinquent minors was, *per se,* a violation of the equal protection or due process clauses of the Fourteenth Amendment to the Federal Constitution.

A statement of the educational program at Maryland Training School was introduced in evidence as Plaintiff's Exhibit No. 3 and stipulated to be representative of the educational program at the other three institutions (E. 35-42). Also introduced by stipulation of the parties were two opinions of the Attorney General of Maryland holding racial segregation in the training schools to be constitutional (E. 18-28, 30-33).

Testimony adduced at the trial on behalf of the Appellee showed that prior to his detention at Boys' Village, he

had attended integrated public schools in Baltimore City and Baltimore County; that at the time of his adjudication as a delinquent child by the Juvenile Court, his mother requested that he be committed to an integrated training institution for the reason that "I thought if he goes to an integrated school, he would have a better chance of rehabilitation because he had been going to school with mixed groups" (E. 43).

Dr. Alvin Thalheimer, Chairman of the State Board of Public Welfare, testified for Appellee that the training schools were intended to be rehabilitative rather than penal institutions, and that school classes were conducted at the institutions in order that the children might continue their education during the period of their confinement (E. 50-51).

Raymond Manella, Chief, Division of Training Schools, State Department of Public Welfare, testified for the Appellee that the State Department of Education provides the training schools with a consultant "who carries responsibility for professional consultation on educational matters and educational programs" (E. 66). He further testified that it is the responsibility of the training school administration "to organize and administer and to operate an educational program for all the youngsters who come into the State training schools, which is an important part of the program" (E. 67).

An official document of the State Department of Public Welfare, entitled "Characteristics of 860 Committed Children in the Maryland Training Schools on January 1, 1960", was received in evidence as Defendants' Exhibit No. 1 (E. 77-78, 122-124). Table No. 12 of the Exhibit discloses the type of offense committed by each inmate at each institution. The offenses, as summarized in total, were as follows:

Type of Offense	*Number*
Arson	8
Assault	33
Automobile Theft	60
Breaking and Entering	126
Disorderly Conduct	16
Narcotics	—
Robbery	23
Sex Offense	14
Stealing	184
Vandalism	8
Being Ungovernable	113
Runaway	123
Trespassing	1
Truancy	85
Violation of Probation	12
Violation of After Care Supervision	2
Other	52
Total Offenses	860

The witness Manella, testifying on Defendants' cross and direct examination, stated that the training institutions were obliged to take any and all delinquent minors committed by the courts, but that the purpose of the institutions was to bring about the rehabilitation and training of the child, rather than to punish; that one of the objectives of the training schools was the protection of the community and the protection of the child while the rehabilitation process was being conducted; that all of the children committed to the training schools were maladjusted socially and that the large majority of the delinquents came from the lower economic strata (E. 70, 77, 79); that the training schools were open-custody institutions of the cottage type, with the inmates being in the cottages approximately two-thirds of the time, supervision being provided "around the clock"; that not much freedom of movement was permitted

except for inmates ready for release (E. 79-80, 82); that in all the training schools there is a combination of dormitory sleeping accommodations and single rooms; that the inmates eat all meals within the cottages; that "you won't be able to successfully treat children for problems in anything approaching a penal or correctional type facility" (E. 79-80). He further testified that the cottages in which the inmates are housed are "meant to resemble homes, the family with the intimate kind of mother or father-child relationship which you must have in a community if you are going to produce healthy kids" (E. 80); that supervision of the inmates was provided at all times by cottage parents or cottage masters who are symbolic of the inmates' own parents (E. 80); that the "hub" of the training in any cottage type training institution "is in the cottage and in the cottage program as such, since the youngsters are exposed to most of their time in the cottage with the cottage life program and unless this program is properly managed and unless the activities program is properly arranged, the rehabilitation program will probably fail" (E. 81).

Manella further testified that the training schools attempted to establish "a family setting or climate or atmosphere, that we want a small group atmosphere with a high degree of relationship so-called between the cottage parent as such and the youngsters in that particular cottage, which is a little larger than a realistic family group" (E. 83). He stated that in the rehabilitation process "I would not place prime emphasis on the education phase" (E. 81); that the educational program was not carried on within the cottages and that only at Maryland Training School were full-time teachers employed (E. 68, 81).

Manella also testified to having had experience with an integrated correctional training institution. He was asked:

"Q. In the integrated facility with which you have had experience, is there any air of tension because of the racial difference? A. I would say initially some youngsters, depending on their social and cultural form with reference to the neighborhood and the community area from which they came and they are brought into institutions and there is a lot of anxiety in those cases.

* * *

Q. Doesn't this tension detract from the basic purposes of the institution as you describe it? A. Unless the institution is properly managed and unless it operates with the proper reference to philosophy, it can very definitely destroy the rehabilitation intention of the institution, and that has happened" (E. 84).

Elbert Fletcher, Superintendent of the Maryland Train-in School, testified for Appellants that the "main real adjustment" of the inmates takes place in the cottages; that in many cases a boy and father relationship comes about between the cottage parent and the delinquent boy; and that within his experience with integrated public training school facilities in New York racial fights occurred (E. 90-91).

Other testimony at the trial indicated that the inmates were generally committed to the training institutions on indeterminate commitments but that the average period of confinement was actually between eight and nine months.

The trial court declared Sections 657 and 659-661 of Article 27 to be unconstitutional on the ground that State-imposed segregation of the races in the training schools violated both the equal protection and due process clauses of the 14th Amendment to the Federal Constitution. The Court based its decision largely on the premise that the training schools were an integral part of the State's public education system and, as such, were within the orbit of the Supreme Court's decision in the *School Segregation Cases* prohibiting racial segregation in public schools.

Pursuant to the Court's decree entered July 6, 1960, the Order of the Juvenile Court detaining Appellee at Boys' Village was rescinded, and he was committed to the Maryland Training School where he presently remains under confinement (E. 121).

ARGUMENT

SECTIONS 657 AND 659-661 OF ARTICLE 27 OF THE MARYLAND CODE ARE CONSTITUTIONAL.

It is fundamental that the equal protection clause of the 14th Amendment, applicable to State action, secures to all citizens without distinction of race or color equality of rights of a *civil* or *political* kind. In other words, the Amendment provides equal protection and security to all under like circumstances in the enjoyment of their civil and political rights. The guarantee of equal protection of the law is thus a pledge of the protection of equal laws. *Yick Wo v. Hopkins,* 118 U.S. 356. Manifestly, however, the equal protection clause does not prohibit the states from selecting and classifying objects of legislation according to need, and as dictated or suggested by experience, so long as the classification rests upon reasonable grounds of distinction. *Skinner v. Oklahoma,* 316 U.S. 535; *Stebbins v. Riley,* 268 U.S. 137. In *Morey v. Doud,* 354 U.S. 457 (1957), the Supreme Court summarized the operation of the equal protection guarantee in these words:

> "1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematic nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of

> facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary * * *."

In the broad sense, all classification by a state involves some discrimination. It is not, however, discrimination *per se* which is proscribed by the 14th Amendment; rather, the prohibition of the equal protection clause goes no further than the *invidious* discrimination. *Morey v. Doud, supra; Williamson v. Lee Optical*, 348 U.S. 483 (1955); *Kotch v. River Port Pilot Commissioners*, 330 U.S. 552 (1947). A classification, therefore, even though discriminatory, is not arbitrary nor violative of the equal protection clause if any state of facts reasonably can be conceived that would sustain it. *Allied Stores v. Bowers*, 358 U.S. 522 (1959). See also *Leonardo v. Commissioners*, 214 Md. 287.

The due process guarantee of the 14th Amendment demands only that the particular law not be unreasonable, arbitrary or capricious and that the means selected shall have a real and substantial relation to the object sought to be attained. This guarantee thus tends to secure equality of law in the sense that it makes a required minimum of protection for everyone's right of life, liberty and property which the State may not withhold. *Truax v. Corrigan*, 257 U.S. 312.

Against this background of well-established constitutional principles, the Supreme Court in 1954 decided the School Segregation Cases — *Brown, et al. v. Board of Education*, 347 U.S. 483, and *Bolling, et al. v. Sharpe*, 347 U.S. 497 — involving public elementary and public high schools, institutions which, broadly speaking, are open and

public to all in the locality, with the right to attend such facilities being a *fundamental* and *positive* civil right belonging to citizens as members of society. See 78 C.J.S., *Schools and School Districts,* Sec. 1, 445; *Clark v. Maryland Institute,* 87 Md. 643, at page 661. The question in each of the School Segregation Cases was essentially the same: Does segregation of children in public elementary and public high schools solely on the basis of race, even though the physical and other tangible facilities may be equal, deprive children of the minority group of equal educational opportunities? This question placed squarely in issue the validity, as applied to public schools, of the "separate but equal" doctrine laid down in *Plessy v. Ferguson,* 163 U.S. 357 (1896), a case upholding the constitutionality of a Louisiana statute providing for racially segregated public transportation facilities, in which the Supreme Court said:

> "The object of the (14th) amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not uniformly recognized as within the competency of state legislatures in the exercise of their police power * * *".

In the *Brown* case, the Supreme Court held that racially segregated public schools, though physically equal, had a detrimental psychological effect on the colored children, retarding their educational and mental development, and hence were "inherently unequal". This conclusion compelled the Court to repudiate, as applied to public schools,

the "separate but equal" doctrine of *Plessy v. Ferguson, supra* — a doctrine which depended *solely* for its validity upon the equality of the separate facilities provided the minority race. See *Missouri ex rel. Gaines v. Canada,* 305 U.S. 337. The colored children being thus deprived of equal educational opportunities by reason of such racially segregated public schools — and there being no reasonable basis to support such a classification — the Court held that the equal protection clause of the 14th Amendment prohibits the states from maintaining racially segregated public schools.

In the *Bolling* case, the Court held that segregation in the public schools of the District of Columbia imposed a burden on the Negro children which constituted an arbitrary deprivation of their liberty in violation of the due process clause of the 5th Amendment. In that case, the Court specifically held that segregation in public education is not reasonably related to any proper governmental objective. This conclusion was reaffirmed in *Cooper v. Aaron,* 358 U.S. 1 (1958), wherein it was held that even though racial segregation in the public schools may promote the public peace by preventing race conflicts, this aim could not be accomplished by laws which denied the *fundamental* and *positive* civil right of the individual to equal educational opportunities in the public schools. Compare, however, *Shuttleworth v. Board of Education,* 162 F. Supp. 372, *affirmed* 358 U.S. 101 (1958), upholding the constitutionality of the Alabama School Placement Law.

It is now entirely clear that the Supreme Court views racial segregation in the public elementary and public high schools to be *per se* an *invidious* discrimination, one without any reason or support, and, therefore, palpably arbitrary. It is equally clear, however, that these cases do

not purport to proscribe all state-imposed segregation of the races as being *per se* in violation of the Federal Constitution. On the contrary, the Supreme Court in the *Bolling* case said:

> "Classifications based solely upon race must be scrutinized with particular care since they are contrary to our traditions and hence constitutionally suspect. * * *".

In effect, therefore, the Supreme Court said that there are some classifications based solely on race which are constitutionally valid; that one is not merely substituting race for reasonableness in all cases when racial classifications are made.

THE STATE'S FOUR CORRECTIONAL TRAINING INSTITUTIONS FOR DELINQUENT MINORS ARE NOT PUBLIC SCHOOLS, AND FORM NO PART OF THE STATE'S PUBLIC EDUCATION SYSTEM IN THE SENSE CONTEMPLATED BY THE SUPREME COURT IN THE SCHOOL SEGREGATION CASES.

Appellants concede at the outset that the content of the educational courses offered the inmates at the training institutions reasonably coincides with standards required in the public schools of the State. In itself, however, this fact does not transform the correctional training institutions for delinquent minors into public schools, or justify the conclusion that they are an integral part of the State's public education system, as held by the court below, any more than the existence of a library in a penitentiary transforms the penitentiary into a reading room; or the provision of recreational facilities at a university transforms the university into a playground. It is the total institution, and not its singular parts, which is determinative of its basic character and purpose.

By express legislative declaration, the training institutions are for "care and reformation", primarily of minors adjudged delinquent by the juvenile courts of this State.[1]

In *Baker v. State*, 205 Md. 42, the correctional training institutions were held to be reformatories, escape from which is punishable under Maryland's criminal escape staute. In accordance with the philosophy underlying enactment of Maryland's juvenile court laws, however, minors committed to these institutions, although there under total restraint of their liberty for wrongs perpetrated against the State, are not deemed to be criminals, nor are the institutions looked upon as being penal in nature. Instead, as recognized by this Court in *Moquin v. State*, 216 Md. 524, these institutions are corrective and protective facilities dedicated in the main to the rehabilitation of the State's erring youth by an enforced institutional program intended to check and remedy, rather than punish, the criminal tendency in its inception. In this setting the State assumes a parental role, acting under the

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[1] The State-wide and Baltimore City Juvenile Court Acts, *supra*, page 3, define a delinquent child to be a child under the age of eighteen years, and sixteen years, respectively, who (1) violates any law or ordinance, or who commits any act which, if committed by an adult, would be a crime not punishable by death or life imprisonment; (2) who is incorrigible or ungovernable or habitually disobedient or who is beyond the control of his parents, guardian, custodian or other lawful authority; (3) who is habitually a truant; (4) who without just cause and without the consent of his parents, guardian or other custodian, repeatedly deserts his home or place of abode; (5) who is engaged in any occupation which is in violation of law, or who associates with immoral or vicious persons; or (6) who so deports himself as to injure or endanger the morals of himself or others.

These acts provide that where a delinquent child is in need of "care and treatment", the juvenile judge shall have the right to place him, not beyond his minority, in the custody of a public or private institution. See also the Montgomery County Juvenile Court Act, Section 72, *et seq.*, of Article 26 of the Code, and the special provisions for Washington and Allegany Counties.

parens patriae doctrine as the protector, the ultimate guardian of the delinquent minors, so as to make good citizens of potentially bad ones. See 31 Am. Jur., *Juvenile Courts and Delinquent, Dependent and Neglected Children,* Sections 2 and 19; and *Roth v. House of Refuge,* 31 Md. 329 (1869), recognizing the training institutions to have reformation as their objective by training the inmates to industry; imbuing their minds with principles of morality and religion; and, "above all, by separating them from the corrupting influence of improper associations". See also *Taylor v. State,* 214 Md. 156; and *Jones v. House of Reformation,* 176 Md. 43.

In *Johnson v. State,* 114 A. 2d 1 (N.J.) (1955), the Court, in referring to juvenile proceedings under that State's juvenile laws, and particularly to the *parens patriae* doctrine, said:

> "* * * Its exercise can be spelled out of the many statutory provisions relating to the settlement, incarceration, care and support of such persons (minors under disability, such as juvenile delinquents) by the State. This jurisdiction and duty is called into play when it is found that such persons could be a danger to themselves or to the public if they were not taken and held under the protective custody of the sovereign, * * *.
>
> "The statute, by providing that a person under the age of 16 is deemed incapable of committing a crime, does not ignore the offense but merely has the effect of stating a child under that age cannot commit a crime, but it does have the effect of placing such a child under a legal disability and subjects his liberty to the *parens patriae* jurisdiction of the State. *It is the fact that the child committed the offense that is determinative of this restraint of liberty in aid of his rehabilitation through reformation and education.* The restraint under the *parens patriae* doctrine is for cura-

tive rather than punitive purposes. * * *." (Emphasis supplied.)

Along similar lines, this Court in *Baker v. State, supra,* noted:

> "* * * the statute creating Boys' Village states that it is a place for 'care and reformation'. Indeed, it has been so described throughout its legislative history. * * * It has been variously called 'The House of Reformation and Instruction', 'The House of Reformation', 'Cheltenham School for Boys' and 'Boys' Village', but all along the accent has been on education and training rather than punishment. *Changes in management, including the recent transfer to the supervision and control of the Department of Public Welfare, and changes in the legal concept of Juvenile Causes, have not changed the fundamental nature of the institution.* * * *". (Emphasis supplied.)

The academic courses conducted within the training institutions, though part of the corrective and rehabilitative process, do not constitute a prime phase of the total institutional program, as testified by the witness, Manella (E. 81). The lack of institutional requirement that inmates over sixteen years of age pursue any academic program at all during their period of confinement clearly substantiates this conclusion (E. 35). That prime emphasis is not placed on the academic phase is wholly logical since it was not academic deficiency that necessitated confinement in the first place, nor will it be scholastic achievement, or the lack of it, that determines suitability for release from confinement.

The lower court's opinion referred to two schools within the Baltimore City public school system that are maintained exclusively for boys formally adjudged delinquent

by the Juvenile Court of Baltimore City, and placed on probation. The court reasoned, in effect, that these schools, being part of the Baltimore City public school system, were no different from the State training institutions, concluding that if the former were part of the public education system, so were the latter. While the record does not contain any mention of these Baltimore City schools, and the court's opinion does not cite any reference pursuant to which they were created, it is believed that they owe their existence directly to the Public Education article of the Maryland Code, specifically Section 232 of Article 77, which authorizes Baltimore City to establish parental schools for habitual truants. In accordance with Sections 1 and 202 of Article 77, these schools are expressly provided for within the Baltimore City public school system and, as such, are under the jurisdiction and control of the Department of Education.

Contrariwise, the State's four correctional training institutions for delinquent minors are provided for in the Criminal Law article of the Code under the designation: "Places of Reformation and Punishment"; they are not under the control of the Department of Education, but rather under the exclusive jurisdiction and control of the Appellants, exercising powers granted by Article 88A of the Code. Unlike public schools, the training institutions are not open and public to all in the locality, and admission thereto is hardly a matter of right. Merely referring to the training schools as "schools", rather than as reformatories, does not change the fundamental nature of the institutions. *Baker v. State, supra.* Clearly, the Legislature did not intend that the training schools be included as a part of the State's general public school or public education system; and Appellants submit that the constitutionality of racial segregation in these institutions is not controlled

by the Supreme Court's decision in the school Segregation cases.

Nor do the decisions in *Dawson v. Mayor and City Council of Baltimore,* 220 F. 2d 386, *affirmed* 350 U.S. 877, or *Browder v. Gayle,* 142 F. Supp. 707, *affirmed* 352 U.S. 903, relied upon by the trial court, control the decision in the instant case. In the *Dawson* case, the Fourth Circuit held that segregation of the races in public recreational facilities, even though such facilities were entirely equal, violated the equal protection clause of the 14th Amendment. The Court held, on authority of the School Segregation Cases, that such segregation could not be justified as a means to preserve the public peace "*merely* because the tangible facilities furnished to one race are equal to those furnished to the other". It rejected the "separate but equal" doctrine in the field of public recreational facilities; and further could find no proper governmental objective to be served by segregating the races *in such facilities,* saying:

> "* * * if that power (State's police power) cannot be invoked to sustain racial segregation in the schools, where attendance is compulsory and racial friction may be apprehended from the enforced commingling of the races, it cannot be sustained with respect to public beach and bath house facilities, the use of which is entirely optional."

By like reasoning, the court in the *Browder* case held segregation of the races in public transportation facilities to be unconstitutional.

The "separate but equal" doctrine has, therefore, specifically been repudiated in the fields of public education[2], public recreation and public transportation, and addition-

[2] Extended to cover state universities and colleges in *Florida ex rel. Hawkins v. Board of Control,* 347 U.S. 971, and 350 U.S. 413; and *Board of Trustees v. Frasier,* 350 U.S. 979.

ally, *in these particular areas, each involving fundamental and positive civil rights belonging to citizens as members of society,* it is clear that the courts have considered, but rejected, the need to preserve the public peace as being a sufficiently weighty justification upon which to deprive the individual of his *basic* constitutional rights.

Apart from these particular areas, however, and in other areas where "the separate but equal" doctrine has never been applied as the constitutional test for separating the races — as in the facilities involved in the present case — the inquiry must be: Does the racial classification rest upon some real or substantial difference pertinent to a valid legislative objective? In other words, the question in these instances must be whether the racial classification is justified within the rules laid down by the Supreme Court in *Morey v. Doud, supra.* In this connection, the reasonableness of state action separating the races must take into account the relative weights of the beneficial consequences which will follow from upholding the classification, as against the price which must be paid therefor in the form of resulting deprivation, if any, of civil rights.

The point is well illustrated by the case of *Nichols v. McGee,* 169 F. Supp. 721, *appeal dismissed,* 361 U.S. 6 (1959). In that case, the petitioner, an inmate of a state prison, contended that his constitutional guarantee of equal protection of the law was denied him in that he was required to join an exclusively Negro line formation when proceeding to his assigned cellblock for daily lockup and to the prison dining hall, and that he was required to eat in a walled-off and exclusively Negro compartment in the prison dining hall. He contended that such systematic segregation caused him a loss of self-respect, thereby making it difficult for him to effect the same degree of rehabili-

tation possible for unsegregated prisoners of other races. He relied principally on *Brown v. Board of Education, supra.* The Court there held: "By no parity of reasoning can the rationale of *Brown v. Board of Education* be extended to state penal institutions where the inmates, and their control, pose difficulties not found in educational systems. Federal courts have long been loath to interfere in the administration of state prisons." See also *United States ex rel. Morris v. Radio Station,* 209 F. 2d 105 (1953), wherein Morris, a Negro inmate of a state penitentiary, alleged, among other things, that he was discriminated against and denied equal protection of the laws solely because of his race, in that he was denied the privilege to audition or act as an announcer of a radio program heard within the prison, and using prison talent. The Court said:

> "Inmates of state penitentiaries should realize that prison officials are vested with wide discretion in safeguarding prisoners committed to their custody. Discipline reasonably maintained in state prison is not under the supervisory direction of Federal Courts. * * * A prisoner may not approve of prison rules and regulations, but under all ordinary circumstances that is no basis for coming into a Federal Court seeking relief even though he may claim that the restrictions placed upon his activities are in violation of his constitutional rights."

To the same effect, see *Siegel v. Ragan,* 180 F. 2d 785.

SEPARATION OF WHITE AND COLORED CHILDREN IN THE STATE'S FOUR CORRECTIONAL TRAINING INSTITUTIONS FOR DELINQUENT MINORS IS NOT AN ARBITRARY CLASSIFICATION, BUT RESTS UPON REASONABLE GROUNDS OF DISTINCTION, CONDUCING TO THE ATTAINMENT OF A PROPER GOVERNMENTAL OBJECTIVE.

Juvenile delinquency in the broad sense is a social problem, primarily rooted in social and psychological causes.

From the testimony at the trial, it is manifest that control and guidance of a parental nature, properly applied within minimum security facilities, is the first and most important essential overriding all other considerations in the State's effort to successfully rehabilitate its institutionalized juvenile offenders. Consistent with this end, the State's correctional training schools are open-custody institutions of the "cottage type", the cottages being meant to resemble homes, and being staffed with "cottage parents" who are intended to be symbolic of the inmates' own parents. The environmental setting thereby created is one as nearly as possible duplicating the home or family life atmosphere, and it is under such optimum conditions that the State, standing in the stead of the inmates' own parents, undertakes to bring about the requisite social readjustment of the delinquent offender prior to returning him to society.

The validity of these concepts is well recognized. See the Encyclopedia Brittanica, Vol. 13, *Juvenile Delinquency,* page 229-231, and Vol. 5, *Juvenile Courts,* page 476-479. See particularly the Montgomery County Juvenile Court Act, *supra,* stating (Section 74):

> "The purpose of this subtitle is to secure for each child under its jurisdiction such care and guidance, preferably in his own home, as will serve the child's welfare and the best interest of the State; to conserve and strengthen the child's family ties whenever possible, removing him from the custody of his parents only when his welfare or the safety and protection of the public cannot be adequately safeguarded without such removal; *and, when such child is removed from his own family, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents.* * * * ". (Emphasis supplied.)

The success of the rehabilitation program is thus primarily dependent upon, geared to, and revolves around the cottage life of the inmates. It is here that they spend approximately two-thirds of their time, living, eating, sleeping and playing together, and it is under such conditions — conditions most closely and realistically approximating the social environment to which the inmates must return upon release from confinement — that the basic reformation of the delinquents' antisocial tendencies must be effected. To mix the racial cultures in this setting would not only subject each to a social climate as an integral part of his treatment which neither will experience upon discharge from confinement, but it would further competely nullify the fundamental role played by the cottage parents in the rehabilitative process — for it is not to be expected that inmates of either race will look to the other for the parental attachment and guidance which lies at the very foundation of the institutional program. As the Supreme Court said in *Plessy v. Ferguson, supra,* the object of the 14th Amendment was not to enforce a commingling of the two races upon terms unsatisfactory to either.

Also to be considered in light of the foregoing is the fact that the institutional atmosphere — one already charged with natural tensions normally resulting among individuals compelled to live together under close restraint of their liberty — most conduces to attain its desired end when there is a minimum of extraneously caused friction or hostility. In *Durkee v. Murphy,* 181 Md. 259, 265, this Court made the following factual observation with reference to segregated recreational facilities:

> "* * * And these provisions must, we conclude, be construed to vest in the Board the power to assign the golf courses to the use of the one race and the other in an effort to avoid any conflict which might

> arise from racial antipathies, for that is a common need to be faced in regulation of public facilities in Maryland, and must be implied in any delegation of power to control and regulate. *There can be no question that, unreasonable as such antipathies may be, they are prominent sources of conflict, and are always to be reckoned with.* * * * ". (Emphasis supplied.)

Although the *Durkee* case was overruled, as to its legal conclusions, by the decision in *Dawson v. Mayor and City Council of Baltimore, supra,* this Court's factual observation as to racial antipathy remains a valid one of far greater application when applied to reformatory institutions. Just as overcrowding of too many disturbed children in cottage limits the possibilities of treatment, and invites the surrender of staff and program to mere custody, so would racial friction likely lead to such a result, and deprive both races of the essential treatment each requires independent of the other to most profitably effect their rehabilitation.

In view of the foregoing, to separate the races in the correctional training institutions for delinquent minors is not an arbitrary classification, but is one resting upon reasonable grounds of distinction, clearly serving to the attainment of a proper governmental objective. The classification under such circumstances is not discriminatory, much less would it be an invidious discrimination violative of the equal protection clause. Nor does separation of the races in these facilities constitute an arbitrary deprivation of the inmates' liberty violative of the due process clause of the 14th Amendment, as held by the lower court.

As heretofore noted, in assessing the reasonableness of any law, both from the standpoint of the equal protection and due process guarantees, it is necessary to evaulate the beneficial consequences which would follow from up-

holding the law, as against the price which must be paid therefor in the form of resulting deprivation of the citizens' constitutionally guaranteed rights. Appellants, though preferring to rest the constitutionality of racial segregation in the training schools on considerations of positive substance, cannot overlook the fact that unlike the *fundamental, positive* and *pervasive* civil rights of the individual involved in the public school, public recreation and public transportation cases, there is no constitutionally guaranteed right to be incarcerated in the training schools; nor does the individual enjoy any right, once there, to dictate to the State the terms under which he will consent to be rehabilitated. The individual has no civil right under the circumstances to consort with whom he pleases, when he wishes, or to be given rights and privileges without regard to the special and peculiar conditions existing within the institutions. Basically, the individual is confined in the training institution against his will for wrongs perpetrated against the State, and he will remain so confined until such time as his fledgling criminal and antisocial tendencies can be remedied by institutional treatment. As observed by the Supreme Court in *Price v. Johnson*, 334 U.S. 266:

> "* * * Lawful incarceration brings about the necessary withdrawal or limitation of many privileges or rights, a retraction justified by the considerations underlying our penal system. * * *".

The State's obligation to rehabilitate its offending minors in such manner, and under such conditions, as it deems best calculated to assure their return to society as useful citizens is a responsibility of the highest order. The extent to which the separation of the races in these facilities conduces to that end, the degree of its efficiency, the closeness of its relation to the end sought to be accomplished, are matters addressed to the judgment of the Legislature.

It is enough if it can be seen that in any degree, or under any reasonably conceivable circumstances, there is an actual relation between the means and the end. *Allied Stores v. Bowers, supra; Morey v. Doud, supra; Williamson v. Lee Optical, supra; Stephenson v. Binford,* 287 U.S. 251; *McBriety v. Baltimore City,* 219 Md. 223; and *Davis v. State,* 183 Md. 385.

This Court has many times stated and restated, emphasized and reemphasized, that every presumption favors the constitutionality of a legislative enactment, and a successful attack upon it must show clearly and affirmatively that it is arbitrary, capricious, discriminatory or illegal. The rule, while requiring no elaboration, was recently well summarized by this Court in *Magruder v. Hall of Records Commission,* 221 Md. 1, as follows:

> "* * * We have held time and time again that there is a presumption in favor of the validity of a statute, that it will not be stricken down as invalid unless it plainly contravenes a provision of the Constitution and that a reasonable doubt in its favor is enough to sustain it."

And in *Kirkwood v. Provident Savings Bank,* 205 Md. 48, this Court said:

> "* * * The Court will not denounce a statute as void on the ground that the lawmaking power has violated the Constitution, except when such violation is clear and unmistakable. Consequently the Court will always so construe a statute as to avoid a conflict with the Constitution and give it full force and effect whenever reasonably possible * * *".

CONCLUSION

For the reasons stated, it is respectfully submitted that Sections 657 and 659-661 of Article 27, Annotated Code of Maryland (1957 Ed.) are constitutional. The declaratory decree appealed from should, therefore, be reversed, with costs awarded to the Appellants.

Respectfully submitted,

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IN THE

Court of Appeals of Maryland

SEPTEMBER TERM, 1960

No. 162

STATE BOARD OF PUBLIC WELFARE,
THE BOARD OF MANAGERS OF
MARYLAND TRAINING SCHOOL,
THE BOARD OF MANAGERS OF MONTROSE SCHOOL,
THE BOARD OF MANAGERS OF
BARRETT SCHOOL, AND
THE BOARD OF MANAGERS OF BOYS' VILLAGE,
Appellants,

v.

ROBERT MYERS,
MINOR, BY MAE COLEMAN, ETC.,
Appellee.

APPEAL FROM THE CIRCUIT COURT OF BALTIMORE CITY
(CHARLES E. MOYLAN, Judge)

BRIEF OF APPELLEE

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BRIEF OF APPELLEE

STATEMENT OF THE CASE

Appellee accepts appellants' statement.

QUESTION PRESENTED

Appellee accepts appellants' "Question Presented."

STATEMENT OF FACTS

Appellee here augments appellants' statement of the facts for the purpose of bringing to the attention of this Court certain facts not set forth in appellants' presentation or not set forth, in appellee's opinion, with sufficient particularity.

Specifically, the training schools which are the subject of this action provide, as required by state law, regular educational programs (E. 50-51, testimony of Dr. Alvin Thalheimer, Chairman, Board of State Welfare). There is a consultant on the staff of the State Superintendent of Schools who carries responsibility for professional consultation on educational matters and educational programs in connection with educational programs at the training schools (E. 66, testimony of Raymond Manella, Chief, Division of Training Schools). The State Department of Education has a certification policy for these schools (Ibid). Education continues from the age of eight to almost nineteen, consuming 30 to 35 hours per week, probably a little longer than the time a youngster would spend in public or parochial school (E. 67, testimony of Mr. Manella). In the words of Mr. Manella, "the whole purpose is directed at the special training and rehabilitation of the youngsters, so that they can be prepared for return to the community as soon as they are ready" (69). This formal education, as Mr. Manella testified on cross examination, "is part of a battery or a number of programs which would include a religious program, a recreational program, medical, psychological, [and] case work programs" (E. 69). The trial court, who has served for seventeen years as Judge of the Circuit Court of Baltimore City, Division for Juvenile Causes (E. 104) concluded that the institutions in question were essentially educational:

> "(The program at the Maryland Training School for Boys (Plaintiff's Exhibit No. 3)), substantially equal

to that of the other three state training schools, is carried on in three schools:

"1. The Junior School with grades for the primary group (8, 9, 10 and 11 years old) and through the ninth grade for boys 12, 13 and 14 years old;

"2. The Senior School; and

"3. The Junior-Senior High School with grades up to the 12th. The curriculum includes algebra, geometry, trigonometry, chemistry, physics, world history, Problems of Democratic Living, and Civics.

"The school day runs from 8:30 a.m. to 12:00 noon, and from 1:00 p.m. to 4:30 p.m. Vocational shops are: automobile, machine shop, printing and carpentry.

"The training school curriculum is so closely patterned after that in other public schools that a child, committed on December 6th or on March 2nd, for instance, can enroll in and keep up with his regular class, and when his scholastic grades and credits are earned, can usually return to his former school in his neighborhood for the opening of the fall semester, or even in mid-semester, without academic difficulty.

"The public records of every juvenile court in Maryland contain additional convincing proof that our State training schools are *bona fide* schools. Court records reveal that even the responsibility for custody is met by means of the Schools' coordinated educational program" (E. 112-113).

The record establishes that the training schools in question board the children involved in cottages (E. 79, testimony of Mr. Manella). The cottage concept came into practice in the nineteenth century in Ohio with the cottage parent as symbolic of the child's parent (E. 80), but this approach has now changed because the cottage parent is now so psychologically related to the child under its tutelage as to provide true parental supervision. Therefore,

professional direction and supervisory guidance are now given through this medium (E. 81).

In other words, in the language of the experienced trial judge, and as this Court clearly recognized in 1869: ". . . when the House of Refuge and other training schools were in their infancy, and the educational courses and facilities provided for the young wards of our courts were comparatively meager and primitive, . . . nothing in their early status as 'reform schools' or in the fact that the youths were committed to these schools by courts stripped the schools of their basic character as educational institutions" (E. 107). Furthermore, as was observed by the distinguished court below:

> "The very statutes which established the Maryland Training School for Boys, the Cheltenham School for Boys (since renamed Boys' Village), the Montrose School for Girls and the Barrett School for Girls and which refer to them as 'public agencies for the care and reformation of the inmates,' *specifically designated these institutions as schools by name.* Any suggestion that a 'reform school'; or 'Reformatory' cannot be at the same time a full-fledged school is clearly a *non-sequitur.* In addition, the Maryland Training School for Boys, the Montrose School for Girls and the Barrett School for Girls were by *statute specifically made a part of the general educational system of the State*" (E. 109).
>
> * * * * * *
>
> "The proof is overwhelming that the State established these public schools as schools. They are a part of the State's public education system" (E. 109).

Related institutions in the State of Maryland are conducted on a nonsegregated basis. Various forestry state camps are integrated (E. 57, testimony of Dr. Thalheimer).

The Maryland's Children Center is not segregated (Ibid. E. 59). It is well known that the schools of Baltimore City and innumerable schools throughout the State of Maryland are not segregated. Various types of special educational institutions in the State of Maryland and Baltimore City are not segregated (E. 100 et seq.). Indeed, adverting for a moment to the argument of appellants that the institutions in question are penal rather than educational, a characterization rejected below, "the state prisons . . . have never been segregated" (E. 103).

The experienced public officials who operate the training schools in question, to use Dr. Thalheimer's language, "would welcome integration" (E. 56).

At the Maryland's Children Center which is not segregated, the superintendent testified, "We have never had any problem in this area whatsoever. We have had some prejudiced youngsters of both races, but it has not been a problem where they get into personal conflicts. We handle that like any other problem" (E. 74). And to quote Mr. Manella as he testified as a witness for the State, ". . . as long as our culture includes a variety of racial and social groups, . . . I think we have to train these youngsters for living in the world and in convincing them that a segregated world does not exist today" (E. 84). Testifying concerning experience with nonsegregation at the Children's Center, again as witness for the State, he stated in response to a question inquiring whether desegregation led to racial conflict:

> "As far as I know and based on the facts available to me, and I am not basing this on rumor, hearsay, or what-not, but what I happen to know about the program, I would answer definitely no."

ARGUMENT

I.

The United States Supreme Court in a long series of cases has now established that governmental action may not be based upon race and that racial distinctions by government violate the Fourteenth Amendment to the United States Constitution. This has been established in cases involving the widest area of institutions: e.g., education: *Brown v. Board of Education,* 349 U.S. 294; *Bolling v. Sharpe,* 347 U.S. 497 (1954); transportation: *Browder v. Gayle,* 142 F. Supp. 707 (M.D. Ala. 1956), aff'd. 352 U.S. 903; recreation: *Muir v. Louisville Park Theatrical Assn.,* 202 F. 2d 275 (C.A. 6th 1953), vacated and remanded, 347 U.S. 971; interstate travel: *Mitchell v. United States,* 313 U.S. 80; jury selection: *Strauder v. West Virginia,* 100 U.S. 303; housing: *Buchanan v. Warley,* 255 U.S. 60. There is no justification in reason, logic, or authority to single out the type of institution involved in the instant case and subject it to racial segregation. So far as *Nichols v. McGee,* 169 F. Supp. 721, app. dism. 361 U.S. 6, cited by appellants, is concerned, appellees submit that it foundered first on procedural obstacles (the court below ruled that the cause should first have been submitted to a state court; the United States Supreme Court undoubtedly dismissed because the case was not properly one for three judges). But to the extent that the case indicated approval of segregation by government officials, appellee submits, it is an isolated, incorrect determination.

II.

Quite apart from general doctrine, the evidence below conclusively establishes, and the experienced trial Judge who has been intimately familiar with the institutions in

question found, that the Maryland training schools are educational establishments. The State itself calls them "schools." The evidence indicates that they provide a full educational program, although in some respects and to some extent this program has special aspects. This, however, is not unusual, for Maryland, like other states, provides special education for special categories of children who have particular problems. Therefore, the doctrine of *Brown v. Board of Education* which has been applied to a variety of educational institutions should be applied also to the suit at bar, as held below.

III.

In any event, quite apart from the overwhelming might of authority, dealing with segregation generally and schools specifically, it is unquestionable that racial classifications are "odious to free people" and constitutionally "suspect". *Korematsu v. United States,* 323 U.S. 214, 216. In this disadvantageous condition, they must be justified to survive. No special justification has been presented by appellants to remove them from the constitutionally condemned status. In fact, the authorities familiar with the institutions in question and charged with their direction would "welcome" desegregation. Other institutions of a similar sort are not segregated. Indeed, hardened criminals who, to adopt the state's argument, it might be urged, present special questions of discipline are nonsegregated. There is in the record no justification whatsoever to overcome the constitutional suspicion automatically attaching to the racial classification. The state having presented no evidence whatsoever to overcome its heavy burden has not justified the statute in question. Therefore, this segregation is in no better case than racial segregation generally.

CONCLUSION

For the reasons stated, it is respectfully submitted that Sections 657 and 659-661 of Article 27, Annotated Code of Maryland (1957 Ed.) are unconstitutional. Therefore the Declaratory decree appealed from should, be affirmed, with costs awarded to the Appellees.

Respectfully submitted,

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IN THE

Court of Appeals of Maryland

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No. 162

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THE BOARD OF MANAGERS OF MARYLAND
TRAINING SCHOOL,
THE BOARD OF MANAGERS OF MONTROSE SCHOOL,
THE BOARD OF MANAGERS OF BARRETT SCHOOL,
AND
THE BOARD OF MANAGERS OF BOYS' VILLAGE,
Appellants,

V.

ROBERT MYERS, MINOR, BY
MAE COLEMAN, ETC.,
Appellee.

APPEAL FROM THE CIRCUIT COURT OF BALTIMORE CITY
(CHARLES E. MOYLAN, Judge)

BRIEF OF AMICUS CURIAE
MARYLAND PETITION COMMITTEE, INC.

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The Daily Record Co., Baltimore 3, Md.

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Appellee.

APPEAL FROM THE CIRCUIT COURT OF BALTIMORE CITY
(CHARLES E. MOYLAN, Judge)

BRIEF OF AMICUS CURIAE MARYLAND PETITION COMMITTEE, INC.

STATEMENT OF THE CASE

This case involves several criminal acts, namely: robbery of two stores by the thirteen year old boy here represented, in conjunction with two other boys. The offenses

were committed several weeks apart, and none of the cash was recovered.

This Minor was committed, as a consequence thereof, to a wholly Negro reformatory, in conformity with the pertinent Maryland Statutes, and on the Bill of Complaint filed herein, the statutes were held to be unconstitutional, which it is here contended was erroneously done.

QUESTIONS PRESENTED

1. Are Sections 657 and 659-661 of Article 27 of the Maryland Code unconstitutional?

2. Should the Courts substitute their own value judgments and classifications for those of the Legislature, as to whether these institutions are primarily schools for education and are not correctional institutions?

3. One of the basic questions in all these cases, is, should the lower courts press the *Brown* case holding to the very outer edge of the penumbre, or should such extension be relegated back to the Supreme Court, when it is obvious the decision will result in the genocide of the Antipodal Races, the establishment and separation of which are God's own handiwork (Appendix A — 17 verse, Ch. 17, Book of Acts).

STATEMENT OF FACTS

We accept generally the Statement of Facts by the Appellants, for the purposes of this case, and will discuss and re-interpret and re-evaluate some additional facts included in the Brief of the Appellee.

ARGUMENT

I.

The fact that this Minor is treated by law in a different manner for his offense than adults are treated does not

change the character of the offense. The category of the said acts and detention is the subject of this case, though it is undeniable that the acts here involved are universally known as criminal acts, whatever the type of correction may be, and are of a serious character, and in some instances result in the death of one or more of the persons involved or concerned. It is the *offense* and not the name of the Institution that determines the classification of the acts. The purpose of the apprehension may be punishment or reformation, or both. The type of treatment is not important in fixing the classification of such acts, apprehension and restraint are of more, real, importance, as apprehension takes freedom and any type of punishment or restraint control is a form of punishment. Deprivation of liberty in such cases is, in itself, a qualified type of punishment.

This is true, at least, unless and until it is shown that the person (13 years old) charged did not have sufficient mentality to reasonably understand or know right from wrong — did not know, here, that robbery was wrong. If such was the case, the Training School was not the place for him. Surely his parents would not, and did not, contend that he did not know right from wrong; so, there is here some degree of public responsibility.

Therefore, it cannot be denied that the essential reason for the confinement here is several breaches of the criminal law of the State, else this minor would not be here, and the fact that minors are treated more tenderly than adults, and afforded education, does not blot out the Macbeth damned Spot quality of the legal status of those acts. There is as much incarceration here as the State deemed necessary or desirable. It is obvious, of course, that minors in such circumstances because of the necessity of restraint, should not be allowed to grow up deficient in education

while in public hands, when the statute itself provides for correction and reformation. This would be a rank contradiction in terms and nullification of hoped for results.

Now, in dealing with adults, suppose the State were to provide educational facilities for them while in jail, including some sort of business or trade training, could it be contended that the jail had been transformed? Certainly not. Surely names of institutions, and methods of correction cannot change substance. Shakespeare puts it another way — a rose by any other name would be as sweet.

Now, in conclusion, we thoroughly agree with the appellant in its comments on the case of *Nichols v. McGee*, 169 F. Supp. 721 (Brief page 21), that: "By *no parity of reasoning*[1] can the rationale of *Brown v. Board of Education* be extended to state penal institutions where the inmates, and their control, pose difficulties not found in educational systems."

So, *regulations* may mitigate punishment but do not affect the substance of acts. Neither does the *attitude* towards the inmates. The *cause* of restraint and the responsibility of the person are the determining factors.

The Parents have the termerity to argue that because the offender here had been in a mixed school is a reason for sending him to a mixed or white school is more against than for him (E. 43). This argument falls flat, as his being in an integrated school did not help him — maybe did him harm; therefore, now, it may be that a segregated school will help him, as it is believed, and so intimated in the testimony, that there is resentment and "prejudice" if you please, in integrated schools by the white inmates who would be imposed upon, as they view it.

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[1] All italics supplied unless otherwise indicated.

The parent's attitude is perfectly consistent with the rationale of this whole movement, but it was not fully developed and *evaluated* in the *Brown* case, as it took into consideration *only* the wish and interest of the Negro, and, accordingly, this Court need not be bound by the *Brown* case.

The harm that he may do the whites is ignored.

It may be here remarked that there were *three* boys involved in each case, and it is a matter of speculation, so far as the record discloses, who was the leader, as there was *one different boy* in each case, leaving this and one other boy in both cases. So, he or the other boy is the leader. He will, we submit, probably fare better and be more correctable in a Negro "School". This is a matter for the *Legislature* and not the Courts. In this case the State of Maryland is asked to act to spare the feelings of *one group* by offending the feelings of *another group*. Social elements will surely become involved which will probably end bad for both groups.

This amalgamation and brain-washing movement is as reprehensible when done by this State as such practice was when done by the Nazis and Communists. This whole movement is as bad as the doings of the Nazis and the Reds, brain-washing of the *defenseless* of both Races, and those two Peoples have been excoriated and berated no end for taking advantage of the young.

There is more hypocrisy and moral cowardice in this genocide movement than in any other matter before the public. When an effort was made by the same elements to strike out the word *White* from said Statutes during the last Legislature, it failed, and although the Legislature, under great pressure, refused to amalgamate these

"Schools", the lower Court saw fit to do so. The final result of this socializing program, if persisted in, will end as shown in the letter attached hereto — something that a few years ago, we assert, no respectable person would have considered or countenanced for a moment (Exhibit A).

In that respect, we now, however, have the Chairman of the State Welfare Board, *Dr. Thalheimer* (personally an estimable gentleman), saying that "We would welcome integration" (E. 56), when everybody knows, and it may be judicially noticed, as something that everybody knows, that whenever Negroes move in the Whites move out, and the Jewish people and other so called minority groups moved, if anything, faster than the Gentiles." Therefore, *moveitis* is not simply a Gentile *disease*. The same as to bigotry, prejudice, etc. Note Northwest Baltimore now as against five years ago. If this statement has any element of offense in it, it is because of its *truth*. The combination of the so-called minority groups are now the majority. Note the last election. Will even the Appellee deny it? *We argue facts*. We repeat, that this bayonet pressure and fear of one kind or another has made hypocrites and moral cowards of a vast part of this Country — and everybody knows it. Many people are so situated that they have to give regard to primary demands and do and therefore act as private feeling dictates.

As to possible trouble and harm to ensue this *pot pouri* effort, even the Superintendent of the Maryland Children's Center, Dr. Manella, admitted that at least they "have had some prejudice (God save the Mark!) youngsters of both Races" there, and "anxieties", but the anxieties had no weight with him (E. 84). Their feelings must have been pretty deep and strong else they would not have had either the interest or courage to protest against that imposition (Appellees' Brief, page 5). This same witness also said

that "as long as our culture includes a variety of racial and social groups" (Appellees' Brief, page 5) integration is necessary whatever the ultimate result may be to the two antipodal Races (note our Appendix A).

So, the State is to force amalgamation upon the white race to please the negroes; *ibid;* hence the whites are now just becoming second class citizens as their feelings — the feelings of the children and parents here — are ignored while those of others are respected and nurtured. The Supreme Court's remark about tradition is as false as Baal. It took a terrible Civil War and three constitutional amendments to force upon the whites and country the present distressing conditions — virtually Negro denomination, and it has taken the full power of government, in some areas to do it with bayonets. It does not involve *tradition,* but *bayonet law,* in effectuating this Genocide Program (*Ibid*).

II.

The Constitution had great danger of failing adoption and the Federalist Papers were written to dispel the fears of the People.

The Ninth and Tenth amendments were added to make sure that what many of the intelligent and farsighted statesmen and public feared would not come about; but, as many times observed, words do not prove the "claims" of which *Jefferson* speaks, realizing the truth of *West's* remark in his Ancient World, 493, "Statesmen come to disregard all checks of the Constitution in order to carry a point".

These amendments prove the futility of the wisdom of the ages, when faced with the *monetary* demands of the times.

That the fear was justified clearly appears from the fact that only *Hamilton* signed for New York and only *Madison* and *Blair*, aside from the President, for Virginia, and the former ratified by only 10 votes and the latter by 3 votes — at *which time* the Constitution had already come into effect, nine states having previously ratified.

The Supreme Court, by jumping from one clause to another — "equal protection" and the "due process" has nullified Acts of Congress and the Constitution and laws of many States. It has become a virtual *Juggernaut* and is crushing the States as the ancient one did the people who came in its path. When in the range of Congressional power, the Congress has made many reversals.

III.

The present course pursued by the Supreme Court will nevertheless result in the virtual destruction of our Dual System of Government, which the Congress of 1868 did not intend, as it is one of the Pillars of our Constitution.

States may be obliterated in a constitutional sense without breaking down the physical boundaries, as represented by M. & D. Line, and much of the work of the Supreme Court, in particularly later years, has been iconoclastic, which, we submit, cannot be denied. Note the case of *Butler v. U. S.*, 297 U.S., where the Supreme Court imported *contents* into the words *General Welfare,* despite the fact that *Madison's* Federalist Article No. 41, in order to refute any such idea and to secure the approval of the Constitution, said the opponents *"stooped"* to argue that such was the case. The court has now declared that *Madison,* the "Father of the Constitution", did not know what he was talking about, hence, *the voting public was defrauded.*

This obliteration is taking place in the face of this pungent declaration of Marshall, C.J. *McCulloch v. Maryland,* 4 Wheat 316 (1819):

> "No political dreamer was ever wild enough to think of breaking down the lines which separate the states, and compound the American people into one common mass."

There, was, in fact, a suggestion in this Convention that the country be divided in four parts based on economic grounds, but it received, of course, very short shrift. However, it has been declared of late in *Seward Machine Co. v. Downs,* 301 U.S. 548 (1937), that the U.S. must do what the U.S. thinks should be done, when the States fail to act.

This case is the reverse of the story of *Cronos* — it is a case of the child devouring the parents.

> "In the first place it is to be remembered that the general government is not to be charged with the whole power of making and administering laws. Its jurisdiction is limited to *certain enumerated* (sic) objects." Hamilton, The Federalist No. 13. Cf. *Butler v. U. S., supra.*

To prevent combinations, acting under the federal government, from acting in a harmful way to the reserved Rights of the States, the Founding Fathers, speaking through *Hamilton,* reminded the public that:

> "There is sufficient diversity of property and the genius, manners, and habits of the people of the different parts of the Union, to occasion a material diversity of disposition in their representatives towards the *different ranks* and *conditions of society*" and "there are causes, as well *physical* as moral, which may, in a greater or less degree, permanently nourish different propensities and inclinations in this respect." Hamilton, The Federalist No. 60.

Madison tells us that:

> "(1) 'The powers delegated by the proposed constitution to the *federal* government are *few* and *defined* (sic). Those which are to remain in the State governments are numerous and indefinite. The former will be exercised on external objects, as war, peace, negotiation, and foreign commerce; * * * The powers reserved to the States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State." Article 45; The Federalist.

There was, in fact, a suggestion in this Convention that the country be arranged in four sections on an economic basis, but it received short shrift.

The injection of the Federal Government into the areas reserved to the States is equivalent to *carpetbag government,* the viciousness of which type of government is generally recognized, and a type that the founding Fathers never expected to exist under the Federal Constitution, which clearly appears in the above items from the Federalist.

Montesquieu has long since reminded the *wary* that "the corruption of government begins with the corruption of the principle, and the duration of any form of government depends upon the persistence in any given society of the particular principle which is characteristic of that form."

See also *Pres. Roosevelt's* speech March 2, 1930, and *President Eisenhower* at the dedication of the McNary Dam.

In *Kansas v. Colorado,* 206 U.S. P. 80, the Court declared that:

> "This amendment discloses the wide-spread fear that the national government might under the pressure of

> a supposed *general welfare* attempt to exercise powers which had not been granted. *With equal determination the framers intended that no such assumption should ever find justification in the organic act, and that if in the future other powers seemed necessary they should be granted by the people in the manner they provided for amending that act* * * *".

That is exactly what was done in the *AAA case*, and, *mirabile dictu*, by the hand of Justice Roberts.

As Justice Miller, in *Davidson v. New Orleans*, 96 U.S. 103, remarked: "There is here abundant evidence that there exists some strange misconceptions of the *Scope* of this provision", the due process clause, "as found in the fourteenth amendment."

He would find it more strange today, *McCabe v. Santa Fe Ry. Co.*, 225 U.S. 151; *Gong Lum v. Rice*, 275 U.S. 78; *DeCuir v. U. S.*, 95 U.S. 485.

Much material bearing on this problem and the *Brown* case is contained in our *Appellant's Brief and Appendix in Heintz v. Bd. of Education* No. 179, Oct. Term 1956 — 213 Md. 340. He would find his Court to be virtually in the Role of Ate, or, if you please, an Eris.

IV.

In a virtually concurrent decision the court declared its incompetence to deal with subtle matters such as human science.

The Court in the *Beauharnais* case, 343 U.S. 924, speaking through Justice Frankfurter, discussed the subject of "*human sociology*", and, *inter alia*, proceeded to say:

> "Only those lacking responsible humility will have a confident solution for problems as intractable as the frictions attributable to differences of race, color, re-

> ligion. * * * Certainly the *due process* clause does not require the legislature to be in the vanguard of science — especially sciences as *young as* HUMAN SOCIOLOGY *and* CULTURAL ANTHROPOLOGY. * * *"

Yet *in the face of this* the Court, in the *Brown* case used sociologists to bolster up that decision, as appears in its footnote 11, and see the speech of *Senator James O. Elsland* in the Appendix of *Heintz, et al. v. Board of Education,* 213 Md. 340.

This action by the court surely brings it within the scathing remarks of *Justice Roberts — Smith and Albright,* 321 U.S. 649, 669, 701, which are worth reading.

The Court had previously said, in another but pertinent connection, that "Courts are not possessed of instruments of determination so delicate." *Freeman v. Hewitt,* 329 U.S. 249, 256.

Certainly the field of "human sociology" is as complicated as economics, and there was no such substantial advance between *1952* and 1954 as to nullify what they had just said in the *Beauharnais* case (1952). The court seemingly had taken a course in sociology in the *interim.*

What was said by *Justice Frankfurther* in *Secretary of Agriculture v. Central Roig Rep. Co.,* 338 U.S. 604, applies in principle to social science areas. "The final judgment is too apt to be a hodge-podge of considerations" etc., Cf. the *Beauharnais* case, *supra,* and see *Hamilton* under III, *supra.*

V.

History reveals that in regular practice the Court always sooner or later, injects itself into political areas.

Justice Frankfurter in *Communications Assn. v. Douds,* 339 U.S. 382, 415, tells us that —

> " *'Scarcely any political question arises in the United States' observed the perceptive de Tocqueville as early as 1835, 'that is not resolved, sooner or later, into a judicial question'* 1 Democracy in America 280 (Bradley ed. 1948). And so it was to be expected that the conflict of political ideas now dividing the world more pervasively than any since this nation was founded would give rise to controversies for adjudication by this Court. * * *."

The old Justice Harlan responding to a Bassanio type plea, in *Monongahela Bridge Company v. U. S.*, 216 U.S. 179, 195, reveals to us the process by which it is done, by saying:

> "Suffice it to say, *that the courts have rarely, if ever, felt themselves so restrained by technical rules that they could not find some remedy, consistent with the law, for acts, whether done by government or by individual persons, that violated natural justice or were hostile to the fundamental principles devised for the protection of the essential rights of property.*" (As quoted by Justice Frankfurter in *Communications Assn. v. Douds*, 339 U.S. 382, 415.)

The present Vice-President claimed credit for the Republican Party and cited Chief Justice Warren as virtually being responsible for the *Brown* case and probably had in mind this interview with the U.S. News and World Report, May 2, 1952 (p. 60):

> "The Platform makes no distinction, and I think the *fair import* of both of these planks *in our platforms of 1944 and 1948* is to the effect that the intention is *to rid the country of the evil* that presents itself, and that *our party proposes to do it by effective means, whatever means* MIGHT BE NECESSARY."

The *Brown* case indicates a fulfillment of the above.

VI.

The Process by which the Supreme Court engages in the Extension of its Jurisdiction and the Scope of the Federal Power has been noted many times, that the process is a "creeping" one.

First, see this letter of *Jefferson to Charles Hammond,* August 18, 1821, oft quoted. See *Heintz v. Board of Education Brief,* App. p. 15.

Justice Harlan sets forth one method in *Monongahela Bridge Co. v. U. S., supra.*

See also: *Justice Frankfurter's* concurring opinion in *Communications Association v. Douds, supra.* The Process has also been characterized as a *stretching* one in the dissent by *Justice Clark in Williams, Georgia,* 349 U.S. 375, 393; also "Creeping", as used in *Int. Salt Co., v. U. S.,* 322 U.S. 392.

In the *Rabinowitz* case, 339 U.S. 68, the effect of *"Momentum" of decision* is referred to and *"self-preservation of extension"* of decision, as well.

Like the animal, the Court's appetite seems to grow on what it feeds on, and its appetite reminds of Gargantua. Note the report of the State Chief Justices.

Later this process of Court expansion is described by the then *Solicitor General,* now Judge Sobeloff, as reported in The Baltimore Sun, December 14, 1954:

> "The Supreme Court, he said, *is not only the adjudicator of legal questions,* but 'in many instances is the final formulator of *national policy.*'
>
> "The example he offered of the Court's policy-making function was the decision last May in which the court ruled school segregation unconstitutional.

"Like Congress, or any *other policy-making body,* the court *chooses the appropriate time* to decide important questions, he said.

" 'For example, for several years before taking the school segregation cases the court *repeatedly turned away opportunities to decide questions in that area.* * * *'

"And lately, the court *declined to review a ruling on segregation in public housing,* 'perhaps' Mr. Sobeloff said, *'because the court thought it best, after deciding the school cases, not to say more about other aspects of segregation at this time.'*

"The *question of timing,* especially in cases involving *political* controversy, 'can be of supreme importance' to the court."

If these forays were merely in the Congressional field they could be put to rout, as in a number of cases since the Court has become vital as to jurisdiction and interpretation powers — the adoption of *Alice in Wonderland* self-constituted power of interpretation and lifting itself by its own bootstraps to this tried position, Court, Legislative and Constitutional ~~Court~~ Convention.

VII.

It is evident that the Congress intended to keep control of the enforcement of the Fourteenth Amendment as included therein Section 5: Fundamental Changes are all in order under the Fifth Article of the Amendments.

If it was not intended that Congress should enforce this Amendment why add the said Section 5? The Congress would have automatically the power to enforce it, as it is invested with all powers of legislation, the amendments being as much a part of the Constitution of the Country as the body thereof. The Congress had acted in some respects

on this subject but refused to do what the Supreme Court now has forced on them and the Country.

The Congress and 21 States had provided for segregating schools at the time of the proposing of the *14th Amendment,* and segregation was still in effect in the District of Columbia and many States until the *Brown* case, and in others, changes had been made only in later years.

Changes are to be made in the Constitution not through specious and tortuous construction, but by respecting said *Fifth Amendment,* as the Court pertinently remarked in *Sun Theatre Corp. v. R.K.O. Radio Pictures,* 213 Fed. (2d) (C.C.A. 7) 284 "but we may not, under the guise of interpretation, usurp the powers of Congress". Note said *Section* 5 of the Fourteenth Amendment. Cf. *U. S. v. Southeastern Underwriters Ass'n.,* 322 U.S. 533, which Congress reversed by the *McCarran Act; Prudential Ins. Co. v. Benjamin,* 328 U.S. 408, 413, ... See Appellants' Brief, page 17 et seq., in the *Heintz* case, *supra,* for an extended discussion.

CONCLUSION

We contend in conclusion:

1. That the Statutes involved are constitutional and therefore valid;
2. That any *extension* of the *Brown* case ought to be made by the Supreme Court if to be made at all, and not by any lower Court, as was done on the *Lonsome & Dawson* cases, unless the encompassment is very clear; and this is one of the most important points of our argument and, therefore we contend that the *Brown* case does not rule this case;
3. That this problem is one that belongs to the Legislature and not the Courts, and the Legislature, at the last session, refused to strike out the word *white;*

4. If this seems to have some aspects of a treatise, or even diatrise if you please, it is still, we submit, within the ambit of the subject as fairly as the Supreme Court decision was within the Constitution.
5. That, therefore, the order in the case should be reversed, and the Bill of Complaint dismissed.

Respectfully submitted,

GEORGE WASHINGTON WILLIAMS,
C. MAURICE WEIDEMEYER,
Attorneys for the
Maryland Petition Committee.

APPENDIX

EXHIBIT A

The Sesqui-centennial and to the Citizens of the United States:

Re: Jefferson, Lincoln & Prof. Nevins on Integration & Effects

Greetings:

The 17th of May, 1959 marked the Fifth Year since the so-called Segregation Decision by the Supreme Court, and one of the Press Associations says that "Segregationists" labeled that day 'Black Monday'. Others call it the 'Second Emancipation', and thus this integration movement is associated with Lincoln, and implies that Lincoln would be for this integration program, which I dispute. The Emancipation proclamation itself was not *general,* but covered only the *actual war area,* a war measure only.

Lincoln worked on three hypotheses, namely: (1) in Holy Writ it is said that a House Divided against itself cannot stand, and (2) he said that the country could not exist half slave and half free, that it would have to be all one or the other, and (3) he was, himself, working on the last item when he was in the White House, *namely, that the country could not live in peace half Black and half White,* and therefore, he was hoping to arrange for either a *repatriation* or a *colonization* in Central or the edge of South America. As to the third item, see the *Diary of Gideon Welles,* Secretary of the Navy, Vol. I, page 150, et seq: Summer *1862,* I quote a couple of items therefrom to support my statement:

> (1) "The President was earnest in the matter of wishing to send the negroes out of the country." Defense of Race and hatred are not synonymous. Speech, Congress, December 1, 1862.
>
> (2) "Thought it essential to provide asylum for a race which we emancipated but which could never be recognized or admitted to be our equals."

(3) Attorney General Bates "desired that deportation, by force if necessary, should go with emancipation" p. 158.

The Great Emancipator had previously made the following declarations in a Speech at Ottawa, Illinois, in the Douglas-Lincoln Debates, on August 21, *1858* "I have no *purpose* to *introduce political and social equality* between the white and the black races. There is a *physical* difference between the two, which, in my judgment, will probably forever forbid their living together upon the footing of perfect equality."

When a Delegation of Negro Preachers, *et al.*, called upon him on August 14, *1862* he, inter alia, stated that: "You and we are different races. We have between us a broader difference than exists between almost any other two races. Whether it is right or wrong, I need not discuss; but this *physical* difference is a great disadvantage to us both, *I think*. Your race suffers very greatly, many of them, by living among us, while ours suffers from your presence. In a word, we suffer on each side. If this is admitted, it affords a reason, at least, *why we should be separated.*"

In a speech at Springfield, on December 12, 1857, re amalgamation, he said that "*A separation of the races* is the only perfect prevention of amalgamation, but as an immediate separation is impossible, *then the next best thing to keep them apart where they are not already together.*" *What is the answer to Lincoln?*

Prof. Allan Nevins, Professor of American History at Columbia University and author, tells us in the U.S. News and World Rep., Nov. 14, 1958, page 72, that amalgamation will be the result, as things are now going: *As a historian, I do not for a moment believe that, in our mighty American river of many nationalities, two currents can flow side by side down the centuries without ultimately becoming one*" and he says that "any *sociologist* could *cite a dozen reasons* why it is *inevitable*" and that he "could *cite*

a dozen analogies from history to prove that such a process is *inexorable, irresistable.*" *Same as to Nevins.*

Thomas Jefferson says, "Nothing is more certainly written in the book of fate than that these people are to be free, *nor is it less certain* that these two races, equally free, *cannot live under the same government.*" Letter to Holmes, April 22, 1820.

Many quotations sustaining the above expressions could be supplied, and I do not like to see Lincoln and Jefferson misunderstood and libeled as they have been down through the years, and are now at least inferentially libeled, and such people become *Judas Goats by associating them with the current integration movement.*

Yours sincerely,

GEO. WASHINGTON WILLIAMS