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August, 1983

TO: E. Richard Larson & Jon Dubin

FROM: Mary L. Dudziak

RE: The Role of the Kansas Supreme Court in the History of School Segregation in Kansas Before Brown v. Board of Education

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This is the first memorandum in an ongoing historical research project for Brown v. Board of Education III. It relies primarily on Kansas Supreme Court cases. Because of the unavailability of early Kansas statutes in New York, the memo draws from secondary sources for a description of early Kansas law. An analysis of the legislative history of Kansas segregation statutes will be forthcoming after research at the Kansas State Historical Society in Topeka. Conclusions drawn in this memo are preliminary and will be explored further through future research involving additional sources.

PRINCIPAL CASES DISCUSSED

I. INTRODUCTION

Through the first half of the twentieth century, Kansas policy on segregated schools, as embodied in its statutes, seemed ambivalent. Racial segregation was permitted in some communities and not in others. However, the facial ambivalence of the state's statutory policies belied widespread segregation in practice. Those cities that were entitled to segregate did so as much as possible, even when it created skewed patterns of schooling. Cities that had no authority to segregate did so anyway until ordered to integrate by the Kansas Supreme Court.

As legislative action in this area was infrequent, the Kansas Supreme Court, through its original jurisdiction over writs of mandamus, played a key role in refining and enforcing state policy on segregation. This essay will trace that court's role in the history of school segregation in Kansas through a discussion of the thirteen cases on racially segregated schools which the court considered before the U.S. Supreme Court decision in Brown v. Board of Education, 347 U.S. 483 (1954). The cases span nearly seventy years from 1881 to 1949.

II. THE STATUTORY FRAMEWORK FOR SEGREGATION

Kansas has a long history of ambivalence in its statutory policies on race. The first and most notorious example was enacted by the federal government when Kansas was part of the largely unsettled expanse of the Louisiana purchase. The Kansas-Nebraska Act of 1854 revoked the Missouri Compromise prohibition of slavery in the North with respect to the territory of Kansas. Under the Act, the permissibility of slavery would be determined by local rule. After its passage, southern advocates of slavery and northern anti-slavery Free-Soilers rushed to Kansas and eventually established rival state governments. A bloody civil war ensued. The conflict was not resolved until 1861, shortly after the southern states seceded from the Union, when the federal government finally recognized an anti-slavery state constitution and granted statehood to Kansas. Foster, The Negro People in American History 177-182 (1954).

Although opposition to slavery was a motivating force in the battle for control of Kansas, the new state's constitution did not extend equal rights to black freedmen. Suffrage was extended only to white male citizens. Race was also considered in the first Kansas school law. It provided that equal educational advantages be extended to all children in the state, but that boards of education could establish racially segregated schools. U.S. Office of Education, The History of Schools for the Colored Population 345 (2d ed. 1969)(1st ed. 1871).

According to one commentator in 1871, the people of the state of Kansas

> have from its earliest settlement been imbued with the spirit of freedom; and their legislation in reference to educational matters has consequently been free from invidious discrimination as to the several races. Their schools are generally open to black and white children alike; and it is only at a few points, where large numbers of negro emigrants are to be found, that schools for colored children exist separately.

Id. at 346. By 1871 there were approximately fifteen black schools in Kansas which were established and maintained by such charitable organizations as the American Missionary Association, the American Freedman's Union and the General Assembly of the Presbyterian Church. The latter group established a high school at Quindaro, where the Missouri River met the Pacific Railroad. Its location made it accessible from all over the region. "In the face of great discouragement," the school went "quietly forward," garnering the praise of the Superintendent of Education under the Freedman's Bureau, who found the school "unsurpassed." Id. at 346.

Yet it seems that the Kansas "spirit of freedom" tolerated blacks best when it had few to contend with. Between 1870 and 1890, the state's black population jumped from 364,000 to 1,428,000 due to emigration from the South. Aptheker, 2 A Documentary History of the Negro People in the United States, 713 (4th ed. 1968). As more and more blacks sought education in the Kansas schools, the state legislature enacted a statute which formalized the policy already in practice. It allowed segregation where there was a sufficiently large population to support separate schools. The legislature gave authority to segregate elementary schools to

the boards of education of cities with a population of over 15,000 called "cities of the first class." Kan. Gen. Stat. ch. 18 ar 5 § 75 (1868). Smaller cities, "cities of the second class," were not entitled to discriminate on the basis of race. 1876 Kan. Sess. Laws § 269.

The only substantive change in segregation statutes in the ensuing years was the authorization of high school segregation in Kansas City. 1905 Kan. Sess. Laws ch. 414. However, in 1906, the Superintendent of Public Schools of Kansas wrote his counterpart in North Carolina that "[t]here is a movement in Kansas looking toward the segregation of the races in the public schools, where the per cent. of colored population will warrant the separation." Quoted in Stephenson, Race Distinctions in American Law 184 (2d ed. 1969)(1st ed. 1910). Kansas would not have to alter its statutes to achieve this purpose. By 1954, 90 per cent of the state's black population would live in cities of the first class which had the authority to segregate schools. Joint Committee of the National Education Association and the American Teachers Association, Legal Status of Segregated Schools 14 (1954).

III. PRELIMINARY SCHOOL SEGREGATION DOCTRINE IN THE KANSAS SUPREME COURT

A. The Court Overturns Unauthorized Segregation

When the first school segregation controversy reached the Kansas Supreme Court in 1881, two of the three justices were imbued with the liberal tendencies of the times, "when the minds of all men were inclined to adopt the most cosmopolitan views of human rights, and not to adopt any narrow or contracted views founded merely upon race, or color, or clan, or kinship." Board of Education of the City of Ottawa v. Tinnon, 26 Kan. 1 (1881). Their views about the disfavored status of segregation lead them to strictly construe Kansas school laws regarding the legislative grant of authority to segregate.

In Tinnon, the court considered school segregation in the City of Ottawa, a city of the second class. Until September of 1880, Ottawa had educated all city school children, grades one through twelve, in one school building. Separate grades were taught in separate rooms. By 1880, the accommodations had become somewhat crowded, prompting the Board of Education to order the use of two small buildings, one across the street from the main school building, and one two blocks away. The Board assigned all black students in grades one through six to the building across the street. According to the Board, the number of black children in those grades was so small that they could be "satisfactorily accommodated and thoroughly taught" in one room by one teacher. 26 Kan. at 3.

When Leslie Tinnon, a black second grader, was assigned to the black school, he sued the Ottawa Board of Education, claiming

that segregation violated his rights under the laws of Kansas and the Fourteenth Amendment of the U.S. Constitution. He sought a mandamus to compel the Board to admit him to the white school. Tinnon's counsel argued that Kansas law requiring communities to maintain a system of "common schools" "free to all children residing in such city" prohibited the establishment of separate schools for blacks. Kan. Gen. Stat. ch. 92 § 151 (1879). In addition, he construed the Fourteenth Amendment as extending to blacks a right of "exemption from legal discriminations, implying inferiority in civil society, lessening their enjoyment of the rights which others enjoy, and discriminations which are steps toward reducing them to the condition of a subject race." 26 Kan. at 8-10.

Counsel for the Board of Education argued that segregation was merely a permissible means of classification, and did not constitute an exclusion from common schools in violation of Kansas law. The Board argued that black students did not have a right to integrated schools, for

> whatever the subtle and indeterminable influence may be which is exercised by the company of white children with the colored, it is not one which the latter are entitled to demand as of right. It can only be claimed on the ground that the caucasian youth is brighter and quicker than his dark-skinned brother, and that the contact would tend to sharpen and inspirit the latter.

26 Kan. at 5. Segregation, they argued, was within the Board's discretion. Even if the decision to segregate was unwise, they claimed that "[m]andamus does not lie to supply the lack of good judgment in public officials. Neither can it be invoked to uproot prejudice or reprove passion." 26 Kan. at 7.

The Board articulated a distinction between political rights and social preferences, reflecting the ideology which would later be invoked by the U.S. Supreme Court in Plessy v. Ferguson, 163 U.S. 537 (1896). They argued that only the former were at issue in the adoption of the Fourteenth Amendment.

> Questions of association are different from questions from the political rights and protection aimed at, and in which the government has the right to demand an equality. Such political rights, meant to be conferred by the Fourteenth Amendment, are the material, substantial equality before the law, to be enjoyed by all citizens regardless of discrimination on account of any differences; but not the remote, imaginary and speculative rights claimed by the relator in this case. He is not denied any rights whatever; his opportunities for an education are admitted to be equal with the best, and his wrongs are only that his taste is violated.

26 Kan. at 15.

Noting that the law on the subject was unclear, the Kansas Supreme Court did not consider the constitutionality of the Kansas statute which permitted segregation in "cities of the first class" with populations of over 15,000. It limited its inquiry to the question of whether, in the absence of state legislation authorizing segregation, smaller "cities of the second class" had the authority to establish separate schools. The court found that

> [t]he tendency of the times is, and has been for several years, to abolish all distinctions on account of race, or color, or previous condition of servitude, and to make all persons absolutely equal before the law. Therefore, unless it appears clear beyond all question that the legislature intended to authorize such distinctions to be made, we should not hold that any such authority has been given.

26 Kan. at 18.

According to the court, the "tendency of the present age" was to educate all kinds of children together without classifying them on the basis of race, sex or other characteristics. Society as a whole gained from such integration, for

> [a]t the common schools, where both sexes and all kinds of children mingle together, we have the great world in miniature; there they may learn human nature....But on the other hand, persons by isolation may become strangers even in their own country; and by being strangers, will be of but little benefit either to themselves or to society. As a rule, people cannot afford to be ignorant of the society which surrounds them; and as all kinds of people must live together in the same society, it would seem to be better that all should be taught in the same schools.

26 Kan. at 19.

These considerations led the court to strictly construe Kansas school laws on the question of whether authority to segregate had been granted. It held that boards of education did not have the power to segregate students by race unless the legislature clearly authorized such segregation, and did not find such a clear authorization for segregation in cities of the second class. Rather, "by the clearest implication, if not in express terms, [the legislature] has prohibited the boards from establishing any such [segregated] schools." 26 Kan. at 20.

In 1881, the three justices of the Kansas Supreme Court did not often differ with each other. Of the 130 cases reported in volume 26 of Kansas Reports, seven special concurrences and one dissenting opinion were filed. 26 Kan. at viii. Justice Valentine's opinion in Tinnon prompted Justice Brewer to file the term's only dissent. Brewer found Valentine's analysis to turn on matters more properly reserved for the legislature.

For him, the question was not the wisdom of segregation as an educational policy, but rather the scope of the power the legislature had conferred upon boards of education. In addition, although Valentine had reserved the question of the constitutionality of legislatively authorized segregation, Brewer "dissent[ed] entirely from the suggestion" that school segregation might be unconstitutional. He would have held that "free schools mean equal school advantages to every child, leaving questions of classification by territory, sex, or color, to be determined by the wisdom of the local authorities." 26 Kan. at 25.

Ten years after Tinnon was decided, the court had its first opportunity to apply the principles it had laid down. The second school segregation case to reach the court also involved a city of the second class and, consequently, segregation that was not expressly authorized by the legislature. Knox v. Board of Education of the City of Independence, 45 Kan. 152 (1891).

The City of Independence, Kansas, was divided into several wards, and each ward constituted an elementary school attendance area. White children attended school in the ward in which they lived, but black children in the primary and intermediate grades were assigned to one school room in the fourth ward. Bertha and Lillie Knox, black students eight and ten years of age, lived 130 yards from the second-ward school building. Yet they would walk past that building to attend school 2,300 yards from their home at the fourth-ward black school. Their father sued the Independence Board of Education, seeking a mandamus to compel the Board to admit his daughters to the second-ward school. 45 Kan. at 152-155.

Years before suit was filed, blacks in Independence had apparently sought the establishment of a segregated black school. The commissioner appointed to find facts for the Kansas court reported that

> about ten years ago a number of the colored people of the said city requested that their children be permitted to attend school at a certain designated building in said city, to wit, the fourth-ward school building, as a matter of convenience, and that certain designated rooms in said building be assigned for their use, which request was granted by the school board as far as the grades, to wit, the first and second primary, were concerned...

45 Kan. at 155. In 1887, blacks successfully petitioned the Board of Education to employ a black teacher to teach black students.* 45 Kan. at 155.

The Kansas Supreme Court found that while previous segregation in Independence had been voluntary, the segregation of Jordan Knox's children was clearly compelled by the Board of Education. Following Tinnon, a unanimous court reaffirmed the principle that segregation not explicitly authorized by the legislature was unlawful, and granted plaintiff's writ of mandamus. 45 Kan. at 155-157.

Through Tinnon and Knox the Kansas Supreme Court established what whould be a long-lasting, if unheeded, principle: school

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* While the facts of the case do not identify a reason for these efforts, it is likely that blacks in Independence requested segregated education not because they wanted segregation but because they wanted education. Not long before, the education of blacks in Kansas had been a new phenomenon introduced by charitable societies. History of Schools for the Colored Population, supra p. 2, at 345-355. It is likely that, in spite of their legal obligation to educate all children, some communities continued to neglect the education of blacks until they were pressured. In addition, Independence was only one of several cities that would ignore clear state law prohibiting segregation until they were directly ordered to integrate their schools by the Kansas Supreme Court. See infra pp. 16-18.

segregation was not permissible in the absence of clear legislative authorization. Whether segregation was ever permissible had not yet been decided. It would not be until 1903, 41 years after the state legislature had first authorized segregation, that the court would consider the question.

B. The Court Upholds Legislatively Authorized Segregation

In 1903, the Kansas Supreme Court was confronted with the question it had avoided in Board of Education of the City of Ottawa v. Tinnon, supra. Reynolds v. Board of Education of the City of Topeka, 66 Kan. 672 (1903), involved a city of the first class that had segregated its elementary schools in accordance with the Kansas statute permitting such segregation. 1879 Kan. Sess. Laws ch. 81. William Reynolds, a black resident of Topeka, sought admission of his son to a white school. When he was refused, Reynolds sought a mandamus in Kansas court, claiming that school segregation in Topeka violated state law and the federal Constitution.

The court first considered and rejected technical arguments that the statute permitting segregation had not been properly enacted. 66 Kan. at 673-679. It then turned to the question of whether segregation violated the provision of the state constitution requiring the establishment of "a uniform system of common schools." 66 Kan. at 679; Kan. Const. art. VI § 2. The court found it "perfectly plain" that a uniform system of schools did not imply integrated schools, but rather uniform educational facilities. And in Kansas,

> [t]he system of educational opportunities, advantages, methods and accommodations is uniform, constant, and equal, whether availed of by children in a rural district or a city ward; whether by males or females; whether by blacks and whites commingling, or by them separately; and whether race classification be made in one grade, or department, or city, or county, or in many.

66 Kan. at 679-680.

The court quoted at length from decisions by the courts of Indiana, New York and Massachusetts involving similar state law issues which supported the Kansas court's conclusions. Cory et al. v. Carter, 98 Ind. 327 ( ); People, ex. rel. Cisco v. School Board, 161 N.Y. 598 (1900); Roberts v. The City of Boston, 5 Cush. [Mass.] 198 (1859). Chief Justice Shaw of Massachusetts had written in 1859 that the principle of equality was not violated by racially segregated schools. Equality did not mean that all had the same rights, but rather that all "are equally entitled to the paternal consideration and protection of the law, for their maintenance and security." Each individual's rights "must depend on laws adapted to their respective relations and conditions." The plaintiffs in Roberts had urged that "this maintenance of separate schools tends to deepen the odious distinction of caste, founded in a deep-rooted prejudice in public opinion." However, Shaw responded that, "[t]his prejudice, if it exists, is not created by law and probably cannot be changed by law." 5 Cush. [Mass.] at 206-209, quoted in 66 Kan. at 684-686.

In disposing of the state law claim, the Kansas court noted that the convention which framed the state constitution had considered the question of education for blacks, and had intended to leave the legislature free to act as it saw fit. 66 Kan. at 686.

The court then turned to the validity of the Kansas law under the U.S. Constitution, again quoting at length from opinions by other state courts, all holding that the Fourteenth Amendment was not violated when states provided separate-but-equal schooling for blacks. 66 Kan. at 686-690, quoting The States, ex rel. Garnes v. McCann, et al., 21 Ohio St. 198 ( ); People, ex rel. King v. Gallagher, 93 N.Y. 438 ( ), Ward v. Flood, 48 Cal. 36 ( ). The Kansas court grounded its view of the Fourteenth Amendment on the U.S. Supreme Court's analysis in Plessy v. Ferguson. 163 U.S. 537 (1896). The Supreme Court had found that

> [t]he object of the 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 intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the 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 universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of states where the political rights of the colored race have been longest and most earnestly enforced.

163 U.S. at 543-544, quoted in 66 Kan. at 691.

Following Plessy, the Kansas court held that the Kansas statute permitting segregation did not violate the U.S. Constitution. It further held that the educational facilities provided to blacks in Topeka were not unequal and, consequently, the plaintiff's rights in the case before it had not been violated. 66 Kan. at 692.

In upholding segregation in Reynolds, the Kansas Supreme Court validated the dichotomy in Kansas law which would remain in effect until overturned by Brown v. Board of Education in 1954. 347 U.S. 483 (1954). Segregation was lawful in larger cities where it had been authorized by the legislature, and unlawful in smaller cities where it was not explicitly authorized. As the legislature would not choose to materially alter the school segregation laws in the intervening years, the only legal questions between Reynolds and Brown would be concerned with the refinement and application of these principles. What is most surprising is that litigation continued even though the law was so clearly settled by 1903. Smaller cities continued to segregate their elementary schools until ordered by the courts to comply with the law. And black students and their parents in larger cities continued to seek access to the white schools from which they were legally excluded.

Although Kansas statutes on segregation would be consistent over time, their very consistency would lead to a change in the permissible scope of segregation. The needs of school districts changed with population growth, yet Kansas maintained its increasingly anachronistic distinction between first and second class cities as those above and below 15,000. When the legislature wished to distinguish in the size of cities for the purpose of education-related regulation, it simply created population groupings within the category of cities of the first class. E.g. Kan. Gen. Stat. §§ 72-1725, 72-1725a, 72-1726, 72-1737 (1949). Because the definition of first- and second-class cities remained the same,

as Kansas communities grew in population, an increasing number would gain the authority to segregate.* Compare Cartwright v. Board of Education of the City of Coffeyville, 73 Kan. 32 (1906)(Coffeyville as a city of the second class) with Thurman-Watts v. Board of Education of the City of Coffeyville, 115 Kan. 328 (1924)(Coffeyville as a city of the first class). By 1954, ninety percent of black Kansans would live in cities of the first class, so that the state's seemingly ambiguous policy would mean widespread segregation in practice. Joint Committee of the National Education Association and the American Teachers Association, Legal Status of Segregated Schools 14 (1954).

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* Population figures from the 1860's to the 1950's will show the extent to which increases in population expanded the scope of legal segregation.

IV. IMPLEMENTATION OF THE SEGREGATION DICHOTOMY

A. Unlawful Segregation in Cities of the Second Class

The Kansas court had several opportunities to reaffirm the principle that segregation was unlawful unless authorized by the legislature, for smaller cities in Kansas continued to segregate their schools. Coffeyville, Kansas, was one such city. When Eva Cartwright, a black student in Coffeyville, sought admission to the sixth grade classroom attended by whites, she was told that she could attend sixth grade in the black classroom taught by a black teacher, or not at all. Cartwright sued for a writ of mandamus to compel the Board of Education to admit her to the white classroom. In a brief opinion, the court granted her petition. Under Tinnon and Knox, the Coffeyville Board of Education had no authority to segregate students. Cartwright v. Board of Education of the City of Coffeyville, 73 Kan. 32 (1906).

The City of Galena, Kansas, operated integrated schools until 1915. In September of that year, shortly after the school year had begun, the Board of Education reassigned black students in grades 1 through 6 to a separate room. There they would be taught by a black teacher, Mildred Grigsby, who had previously been a domestic worker for the president of the Board of Education. Black residents of Galena brought suit to compel the Board of Education to desegregate the school. The Kansas Supreme Court found that racial segregation in Galena was not authorized under Kansas law. Woolridge v. Board of Education of the City of Galena, 98 Kan. 397 (1916).

By the time the next case involving elementary school segregation in cities of the second class reached the court, the Kansas justices seemed tired of reiterating the same principles again. School District No. 90 in Johnson County had been segregated for generations. It maintained South Park School for white students and Walker School for blacks. In 1947, a new modern school building was constructed on the South Park site. The Walker School remained in poor repair. The new white school had indoor toilet facilities, an auditorium, music classes and a lunch program. The black school was "not comparable from any point of view and particularly as to sanitation and fire hazard." The school had outdoor toilet facilities and no auditorium or music classes. It had no lunch program, and no place sufficiently sanitary to provide one. Webb v. School District No. 90 in Johnson County, 167 Kan. 395, 398-399 (1949).

After the new South Park School building was built, black parents requested the admission of their children to the school. Their request was denied on the ground that they did not live in the appropriate attendance area. In response to the black parents' demands, the school board held a special meeting to fix the boundaries of school attendance areas. As a court commissioner would later find

> The metes and bounds of these attendance areas does [sic] not divide the district East and West or North and South, but meanders up streets and alleys, and by reason thereof all the Negro students are placed in the Walker School attendance area.

167 Kan. at 399. The black parents then turned to the court.*

* Their counsel included Elisha Scott of Topeka and his sons, with Thurgood Marshall on brief.

The Kansas Supreme Court found that the Johnson County School District had gerrymandered attendance areas to justify its segregated schools. The district had tried to accomplish by subterfuge what it could not do directly. The court emphasized that

> defendants and their predecessors have for generations and perhaps since the district has been organized violated the laws of Kansas by segregating the white from the colored pupils. There are very few matters of public policy any better established in this state than that grade-school districts cannot do this....It seems futile to labor the point any further. Such is the law.

167 Kan. at 401 (citations omitted).

The commissioner appointed by the court for fact-finding purposes had recommended that the Walker School be reconstructed to make it comparable to South Park School, and that reasonable territorial boundaries be drawn. 167 Kan. at 400. However the court rejected the implication in the commisioner's report that the harm to plaintiff would be remedied once Walker School was repaired. Instead, it ordered that, in the upcoming school year, all students were to attend South Park School and were to remain there until Walker School was repaired. Once school facilities were comparable, the School District could draw territorial boundaries, however "this allocation must be made...upon a reasonable basis without any regard at all as to color or race of the pupils within any particular territory." The court retained jurisdiction over the case in order to ensure compliance with its order. 167 Kan. at 404-405.

B. Challenges to Segregation on the Basis of Educational Inequality

In keeping with the separate-but-equal doctrine of Plessy v. Ferguson, 163 U.S. 537 (1896), segregated schools in Kansas were required to provide black and white students with equal educational facilities and programs. In the years between Reynolds v. Board of Education of the City of Topeka, 66 Kan. 672 (1903) and Brown v. Board of Education, 347 U.S. 483 (1954), blacks challenged elementary school segregation in cities of the first class on the ground that educational opportunities were unequal.

The first such case involved the schools in the City of Parsons. D. A. Williams, a black parent, sought a writ of mandamus in the Kansas Supreme Court to compel the Board of Education to admit his children to a white school near their home. He claimed that the route his children had to travel to attend the black school was dangerous, as they would have to cross sixteen railroad tracks over which more than 100 trains would pass daily. He argued that their lives were imperiled in traveling this route so that they were "practically excluded from attending the public schools of the city without endangering life and limb." Williams further alleged that the black school was very close to several train tracks and that "the noise and confusion from the ringing of bells and blowing of whistles and the passage of trains is so great as to interfere with studies in the school." Williams v. Board of Education of the City of Parsons, 79 Kan. 202 (1908).

The Board of Education moved to quash the motion for a writ of mandamus. Consequently, the case was decided by the court on the pleadings, taking plaintiff's allegations as true. The court

found that Williams was

> called upon to choose between a violation of the law and the risk of fine and imprisonment by refusing to send his children to school...and the peril to their lives in crossing twice a day sixteen railroad tracks, upon which cars are constantly being switched and trains made up and operated, with the incidental sounds of whistles and bells and all the noise and excitement incident to such a situation. It would seem that ordinary prudence, as well as just parental anxiety, would impel the father and mother to refrain from exposing their children from such hazards.

79 Kan. at 207.

The court reiterated the principal in Reynolds that equal educational facilities must be provided in segregated school systems. It held that "where the location of a school is such as substantially to deprive some of the children of the district of any educational facilities it is manifest that this equality is not maintained..." 79 Kan. at 208. The court ordered that the plaintiff was entitled to relief, but was not necessarily entitled to have his children admitted to the white school he wished them to attend. Rather, they were to be admitted to "some school where they will have the privileges given to them by the law." 79 Kan. at 208.

After the motion to quash was denied, a commissioner was appointed by the court to take evidence. The commissioner found that the facts were different from those the plaintiff had alleged. He found that "while some tracks have to be crossed they are fewer in number than stated, and are used less frequently; and that the crossings are reasonably safe." Williams v. Board of Education of the City of Parsons (II), 81 Kan. 593 (1910).

According to the court, the state legislature delegated broad discretion over schools to local boards of education. That discretion was not to be disturbed unless exercised in an arbitrary and capricious manner. Under the facts as found by the commissioner, the court could not find that the assignment of William's children to the black schools in Parsons was arbitrary and capricious. The court therefore denied plaintiff a peremptory writ. 81 Kan. at 594.

Twenty years later, in 1930, a black student in Topeka sought to use the court's reasoning in Williams I to gain admission to a white school. Wilhelmina Wright lived a few blocks from Randolph School for whites, but was assigned to Buchanan School twenty blocks away. She sued the Topeka Board of Education for the right to attend Randolph School, claiming that her assignment to Buchanan was unreasonable due to the distance and the number of busy intersections she would have to cross. Wright did not argue that the facilities at the schools were unequal. Wright v. Board of Education of the City of Topeka, 129 Kan. 852 (1930).

The court found that, as a city of the first class, Topeka had maintained segregated schools for many years in accordance with state law.* The city provided the plaintiff with bus transportation to and from Buchanan School, and the plaintiff did not allege that the transportation was inadequate. Consequently, the court held that Wright's assignment to Buchanan was not unreasonable. 129 Kan. at 853.

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* The evidence relied on by the court for this finding, if available in court archives, might be very useful for Brown III.

C. Special Circumstances

1. High School Segregation Authorized in Kansas City

In 1905 Kansas broke from its tradition of allowing segregation only in elementary schools. The legislature passed a special act authorizing high school segregation, but only in Kansas City. 1905 Kan. Sess. Laws ch. 414. Although Kansas City had only one high school, it achieved racial segregation by instituting split sessions. When school opened that September, white students were assigned to the morning session and blacks to the afternoon session. Richardson v. Board of Education of Kansas City, 72 Kan. 629 (1906).

Mamie Richardson, a black student, wished to attend the morning session. When she was refused admission because of her race, she sued the Board of Education. After Reynolds v. Board of Education of the City of Topeka, supra, pp. 11-14, she could not argue that segregation authorized by statute was unlawful. Instead she claimed that, under the state constitution, a special act could not amend the general act prohibiting segregation in high schools. In a technical discussion of the difference between "general laws" and "laws of a general nature," the court held that the statute at issue in this case was valid, notwithstanding the general prohibition on segregation in high schools. With one Justice dissenting, the court denied Richardson's petition. 72 Kan. at 631-637.

2. Elementary School Segregation Not Authorized in Wichita

The reasoning in Richardson would compel the opposite result in the only Kansas case before Brown ordering desegregation of elementary schools in a city of the first class. In Wichita, the public schools were governed by the Kansas general statutes until

3. Segregation in Junior High Schools Under Kansas Law

The introduction of the junior high school in Kansas presented new problems for the court. The Kansas school laws were written with an 8-4 system in mind: elementary school included grades one through eight and high school included grades nine through twelve. Segregation in elementary schools was permitted in cities of the first class, while segregation in high schools was only permitted in Kansas City. When some cities switched from the 8-4 system to the 6-3-3 system by creating junior high schools, the status of the junior high school as a high school or an elementary school became an important question. Its answer would determine whether school segregation in Kansas would be expanded or contracted.

The first junior high school case was brought against the City of Coffeyville. Coffeyville had grown to be a city of the first class since its last segregation battle before the court, Cartwright v. Board of Education of the City of Coffeyville, 73 Kan. 3 (1906), and was now entitled to segregate its elementary schools. When the city switched to the 6-3-3 system, it assigned white students to the junior high with the newest facilities, assigned only blacks to another junior high, and maintained one integrated school. Celia Thurman-Watts brought suit on behalf of her sixteen-year-old daughter who was in the ninth grade at the black junior high. Through her attorney, Elisha Scott of Topeka, she argued that ninth grade was part of high school, and therefore Coffeyville had no authority to segregate ninth graders. The court held that, under Kansas law, ninth grade was part of high school, and was therefore subject to the prohibition on segrega-

tion in high schools. Thurman-Watts v. Board of Education of the City of Coffeyville, 115 Kan. 328 (1924).

Compliance with the Kansas court ruling in Thurman-Watts lead to an odd pattern of schooling for blacks in at least one community. The city of Topeka wished to have junior high schools, and yet to retain as much segregation as it could. Consequently, white students in Topeka went to white elementary schools through the sixth grade, to junior high schools for grades seven, eight and nine, and to high school for grades ten through twelve. Black students attended black elementary schools through the eighth grade, while black ninth graders went to the junior high schools attended by whites. In grades ten through twelve, blacks attended high school with whites.

In 1940, Oaland Graham, Jr., a black twelve-year-old, challenged Topeka's system of schooling. Upon his promotion from the sixth grade at black Buchanan school, he presented himself for admission to grade 7B at Boswell Junior High School. When he was refused the right to enroll on account of his race, he sued the Topeka Board of Education. Graham v. Board of Education of the City of Topeka, 153 Kan. 840 (1941).

The Kansas Supreme Court considered two arguments raised by Graham: first that Boswell Junior High was a high school within the meaning of Kansas law, and therefore Topeka was not entitled to segregate junior high school students, and second that the educational facilities in the seventh grade at Buchanan school were not equal to those at Boswell Junior High School.

The court first considered the differences between the two schools. It found that, at Buchanan, grades 6A, 7B and 7A were

taught in one room by one teacher and that the teacher was required to teach twenty-eight different subjects. At Boswell, students in grade 7B were taught nine subjects by nine different teachers. The court found many other advantages at Boswell that were lacking at Buchanan, such as a gymnasium, an auditorium, and a school orchestra. 153 Kan. at 844-845.

The court concluded that the defendant's position that students at Buchanan were provided an equal education was "untenable." The junior high school method of education was considered to be an advanced and improved method. If a school district chose to provide this method of instruction for some of its students, it could not deny black students the same benefits because of their race. 153 Kan. at 844-847. However, in upholding Graham's right to attend junior high school, the court did not require junior high school integration as a matter of law. It held that, under Thurman-Watts, high school began at ninth grade. Therefore, the seventh and eighth grades were part of elementary school and segregation was permissible as long as facilities were equal. The court did not issue a writ of mandamus to compel Graham's admission to Boswell. Rather, it issued a declaratory judgment and retained jurisdiction over the action "for such specific orders as may be necessary." 153 Kan. at 898.

V. CONCLUSION

By the time the last pre-Brown school segregation case was considered, Webb v. School District No. 90 in Johnson County, 167 Kan. 395 (1949), Kansas had drifted far from the "spirit of freedom" which some felt motivated its post-Civil War approach to race-related issues. The tendencies of the times had changed from the era when the Tinnon court found "the minds of all men...inclined to adopt the most cosmopolitan views of human rights, and not to adopt any narrow or contracted views founded merely upon race, or color, or clan, or kinship." Board of Education of the City of Ottawa v. Tinnon, 26 Kan. 1, 18 (1881). Yes, blacks in some communities were admitted to integrated schools, but often only under court order after generations of unlawful segregation. And though segregation was only permitted in first-class cities, the legislature had not chosen to change the population figures defining those cities so that, as Kansas grew over the years, more and more of its cities gained the power to segregate. By the time the federal courts considered Brown, segregation was a way of life for most black Kansas school children.

Apart from segregation, these thirteen Kansas cases tell another story. They tell of black children travelling far from home to attend schools that were worn down, to be taught in buildings bordered by railroad tracks with classes punctuated by the continual passing of trains. They tell of unsanitary conditions and unequal educational programs. They also tell of years of tolerance by Kansas blacks, and of occasional lawsuits generated, at times, by exascerbated inequality.

The state of Kansas was born amidst a struggle over the role of blacks within its borders. However, once freedom from slavery was affirmed, equality for free blacks remained elusive. And though the Kansas court once glimpsed at the prospect of integration as a requisite for equality, it soon settled into its long-standing practice of upholding segregated schools. The court, at times, challenged unequal educational programs. However, it continued to find separate schooling for most black Kansans to be perfectly within its view of equality under law.