The Long Road from the Emancipation Proclamation to *Brown*

Source Material: Richard Kluger, *Simple Justice* (1975)

Emancipation Proclamation - 1863

Thirteenth Amendment – 1865

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Civil Rights Act of 1866

Fourteenth Amendment – 1867

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Reconstruction begins with First Reconstruction Act, 1867

Fifteenth Amendment – 1869

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Civil Rights Act of 1875 – unsegregated schools not included

Blacks competing with white craftsmen for trade jobs. Unions did not want black membership. Blacks with no land working as contract workers or sharecropping land.

1877 Compromise – Rutherford B. Hayes, in return for certification of electoral votes in South Carolina, Florida and Louisiana, agreed to remove troops and direct federal money to South and let Southern leaders control federal patronage. Southern Democrats enacted laws that disenfranchised and eliminated Negroes as political force.

Supreme Court Cases

United States v. Reese, 92 US 214 (1876) – To bring case one must prove that vote was denied specifically because of race or color.

United States v. Cruikshank, 92 US 542 (1875) – Conviction of Louisiana rioters who broke up political rally of blacks not upheld because indictment failed to charge that rioters harassed Negroes because of their race, riot itself not state action and not covered.

Slaughterhouse Cases, 16 Wallace 27 (1879) – Citizenship of US and states distinct from each other, and it was not the purpose of the Fourteenth Amendment to transfer the security and protection of civil rights from the states to the federal government.

Strauder v. West Virginia, 100 US 303 (1879) – Overturned law of West Virginia that limited service on grand and trial juries to white males; language was explicit, no proof of hostility needed.

Virginia v. Rives, 100 US 313 (1879) – Virginia statute did not limit jury service to white male citizens, so black defendant had obligation to challenge and prove that discrimination had been practiced in selection of all-white jury.

Civil Rights Cases, 109 US 3 (1883) – Tested legality of public accommodations section of Civil Rights Act of 1875. Court held that statute exceeded the authority granted Congress under Fourteenth Amendment because amendment outlawed discriminatory action by state actor only.

Yick Wo v. Hopkins, 118 US 356 (1886) – San Francisco statute that prohibited laundry businesses from being conducted in wooden buildings for safety reasons invalidated as arbitrary classification based on race.

Plessy v. Ferguson, 163 US 537 (1896) – Louisiana law requiring separate but equal accommodations for white and colored passengers on railways upheld.

> The most common instance of this [state-sanctioned separation of the races] 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.
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> One of the earliest of these cases is that of *Roberts v. City of Boston*, [5 Cushing Reports 198 (1849)]

Harlan dissent:

> Our Constitution is colorblind, and neither knows not tolerates classes among its citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights guaranteed by the supreme law of the land are involved.

Guinn v. United States, 238 US 247 (1915) – Overturned Oklahoma "grandfather clause" which stated that no one lineally descended from a qualified voter as of 1866 could be denied vote even if illiterate, which excluded Negro race.

Gong Lum V. Rice, 275 US 78 (1927) – Denied Lum's request that his Chinese American daughter not be classified as colored for purposes of Mississippi segregation law.

Nixon v. Herndon, 273 US 536 (1927) – Texas law banning blacks from participating in Democratic primary election overruled.

In 1929, Charles Houston went to Howard University and established its law program as a first-class program. Many of the students who went to Howard Law worked on the cases – researching, drafting brief sections, etc. Thurgood Marshall graduated Howard Law in 1933.

NAACP started looking at bringing desegregation cases at same time. Original thought was to enforce the equal part of separate but equal ("equalization"), forcing the school districts to spend the money for two truly equal school systems and default to one because of cost. (Garland Fund grant of $100,000 in 1922, reduced by Crash) Would require thousands of lawsuits, estimated to cost $2,000 each.

Equalization cases filed throughout southern states, such as Virginia.

In 1948, Truman called on Congress to outlaw lynching, the poll tax, segregation on all interstate transportation, and to set up a permanent Fair Employment Practices Commission to prevent discriminatory hiring practices. By executive order, he ended discrimination in federal employment, segregation in the armed forces and told the FHA to end its ban on the insurability of racially mixed housing.

College level/law school cases - Separate black colleges were generally substandard, more like vocational technical schools, with no graduate programs.

Sipuel v. Oklahoma State Board of Regents, 332 US 631 (1948) – Oklahoma ordered to provide Ada Sipuel with legal education in conformity with the equal protection clause of the 14th Amendment and as soon as it does for applicants of any other group.

Sweatt v. Painter, 210 SW 2d 442 (1947), 339 US 629 (1950) – a legal education equivalent to that offered by the states to students of other races is not available to a black student in a separate law school established by state, and Texas ordered to admit Heman Sweatt to the University of Texas Law School.

McLauren v. Oklahoma State Regents for Higher Education, 339 US 637 (1950) – segregating restrictions within white law school handicapped George McLauren's pursuit of graduate education and those restrictions had to end.

Henderson v. United States, 379 US 816 (1950) – segregation of black diners in railroad dining cars not permissible.

Law schools also desegregated at the University of Virginia and University of North Carolina.

University of Maryland admitting blacks to school of nursing and graduate school of sociology.

University of Missouri admitting blacks to school of mining, only 12 years after being ordered to do so by court.

NAACP saw that separate but equal needed to be attacked, but was cautious because a bad decision too early would be disastrous.

In May 1951, 17 states required segregation of public schools, 4 other states permitted segregation if local communities wished it, and DC schools had been segregated for nearly 90 years.