

Volume 16 | Issue 3

1965

Editors' Preface

The Editors, Western Reserve Law Review

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>



Part of the [Law Commons](#)

Recommended Citation

The Editors, Western Reserve Law Review, *Editors' Preface*, 16 W. Res. L. Rev. 473 (1965)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol16/iss3/3>

This Front Matter is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

● EDITORS' PREFACE ●

Of all the forces that have come to bear upon American law and politics in recent years, the civil rights movement has created more human upheavals and social strife than any other. Close to the heart of this struggle for equality is the Negro's quest for equal educational opportunity in public schools.

This issue of the *Review* presents a *Symposium* on this problem — a phenomenon which has become known as *de facto* school segregation. Because of the timely and important nature of the subject, the *Review's* staff decided to publish a special issue devoted entirely to a discussion of this and other major issues in the civil rights movement. As a result, the *Review* will be published five times this year as opposed to the heretofore normal schedule of quarterly publication.

In organizing this *Symposium*, an attempt was made to solicit articles that would cover all aspects of the subject. It was recognized that, especially in this area, our system of jurisprudence ought to call upon other social studies to aid in the quest for deeper understanding. In the pages that follow, therefore, there appear the views of spokesmen from all of the major educational disciplines touched by this problem — history, education, law, and sociology.

In the first section of the *Symposium* — the law section — the reader will find the views of a noted federal jurist, legal counsel for a major civil rights organization, and a prominent Southern attorney. Dean Oliver Schroeder, Jr. sets the tone for this section of the issue with an introductory note on the divergent constitutional philosophies presented. He explains that the crux of this matter lies not in the due-process or equal protection clauses of the fourteenth amendment, but rather "the real power in the fourteenth amendment lies in bestowing *citizenship* on the slave." An integral part of this citizenship is equal educational opportunity. Judge J. Skelly Wright examines this aspect of the problem in a discussion of the legal remedies available to eliminate *de facto* segregation in the public school systems. After setting out the historical perspective of the problem, Judge Wright focuses attention on the recent school cases and their meaning in terms of traditional notions of constitutional law, federalism, and power of the courts. To the argument that there is no affirmative duty to integrate public schools after the

Brown case, this author suggests very persuasively that the existence in most states of compulsory school attendance laws which force children to attend segregated schools should alone be sufficient to bring all *de facto* segregation within the rule in *Brown*.

Mr. Robert L. Carter, General Counsel for The National Association for the Advancement of Colored People, presents the next article in the law section. Mr. Carter's article is clear and to the point on the question of equal educational opportunity: "If Negroes have been denied equality, whether by racial imbalance or in any other way, the fourteenth amendment's guarantees have been violated." Mr. Charles J. Bloch, however, disagrees. He contends, and very forcefully so, that the only question decided by the Supreme Court in the *Brown* case was that the "separate but equal" doctrine was not applicable to public education — that the fourteenth amendment forbids only *de jure* and not *de facto* segregation of the races in public schools.

In *A Historian Looks at School Segregation*, Dr. Harvey Wish records his views on the historical basis of the problem. From its genesis in the pre-Civil War caste system and marked acceleration "when state after state in the South adopted a vast array of Jim Crow laws," Dr. Wish concludes that "the years ahead will undoubtedly show even greater inventiveness by the racists to convert the great legislative and judicial gains into empty formulas."

The educational implications of *de facto* school segregation are studied in this *Symposium* by Dr. William B. Levenson, former Superintendent of the Cleveland Public School System. From a pedagogical standpoint, Dr. Levenson recognizes that *de facto* school segregation in areas of segregated housing is a complex problem, one which many believe cannot be solved on a wide scale basis without first integrating communities. This writer submits that education is the key in this process. The authors of the sociological section of the *Symposium* concur, *i.e.*, "that current educational practices serve to harden and compound the problem." In assessing the immense scope of *de facto* school segregation, attention is focused in this article on the specific socio-historical context in which segregation functions. In this respect, such factors as the changing character of agricultural practice, the great rural-urban population shift, the growth of residential segregation, the rapid introduction of new industrial cybernation, and the rise of a new class of color are examined in light of the impact they have had and will continue to have on generations of Negro students.