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Does The Fourteenth Amendment Forbid De Facto Segregation?

Charles J. Bloch

THE PROVISION of the fourteenth amendment pertinent to the question — if any provision thereof is pertinent — is: "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."[1] The essence of the question is: If segregation exists which is not the result of the enforcement by a state of its laws, is there a violation of the fourteenth amendment?

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I. HISTORICAL PERSPECTIVE

A. Construction and Application of the Fourteenth Amendment

It is fundamental that for there to be a violation of the fourteenth amendment in the respect here under consideration, there must appear a denial by a state of equal protection of its laws. There can be no doubt as to what the Congress intended by the use of the word "State" in the fourteenth amendment. The word "State" or "States" had been used seventy times in the original Constitution. Furthermore, there can be no doubt as to what the Congress meant by the word "laws." The word "law" or "laws" as meaning statute or statutes enacted by a legislative body, state or federal, had been used twenty-five times in the Constitution.

(1) The Supreme Court Cases.—When, after the adoption of the fourteenth amendment, it first became necessary for the courts to construe or apply it, the Supreme Court spoke certainly and clearly:

> The fourteenth amendment prohibits a State from denying to any person within its jurisdiction the equal protection of the laws; but this provision does not, any more than the one which precedes it, and which we have just considered, add anything to the rights which one citizen has under the Constitution against another. The

1. U.S. CONST. amend. XIV, § 1.

> equality of the rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle, if within its power. That duty was originally assumed by the States; and it still remains there. *The only obligation resting upon the United States is to see that the States do not deny the right. This the amendment guarantees, but no more. The power of the national government is limited to the enforcement of this guaranty.*[2]

So at the October Term, 1875, just seven years after the adoption of the fourteenth amendment, a Chief Justice of the United States, Morrison R. Waite, appointed by President Grant from the State of Ohio, declared the meaning of the equal protection clause of the fourteenth amendment. The opinion which he wrote, and from which quotation has been made, had the concurrence of three other justices appointed from the states of New Jersey, Pennsylvania, and New York by President Grant. It also had the concurrence of four other justices appointed from the states of Ohio, Illinois, Iowa, and California by President Lincoln. Therefore, the pronouncement can hardly be deemed a sectional one.

There followed the Virginia cases;[3] then the *Civil Rights Cases*[4] decided in 1883 by Justices Bradley, Miller, Field, Woods, Matthews, Gray, Blatchford, and Chief Justice Waite — not a Southerner among them. In the opinion in the *Civil Rights Cases*,[5] Justice Bradley, writing for the Court, quoted that portion of the fourteenth amendment with which this article commences.[6] Immediately preceding that quotation, he wrote: "The first section of the Fourteenth Amendment (which is the one relied on), after declaring who shall be citizens of the United States, and of the several States, is prohibitory in its character, and prohibitory upon the States."[7] Immediately following this quotation, he wrote:

> It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject-matter of the amendment. It has a deeper and broader scope. It nullifies and makes void all State legislation and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws. It not only does this, but, in order

2. United States v. Cruikshank, 92 U.S. 542, 554-55 (1875). (Emphasis added.)
3. Virginia v. Rives, 100 U.S. 313 (1879); *Ex parte* Virginia, 100 U.S. 339 (1879).
4. 109 U.S. 3 (1883).
5. *Id.* at 11.
6. See note 1 *supra* and accompanying text.
7. The Civil Rights Cases, 109 U.S. 3, 10 (1883).

> that the national will, thus declared, may not be a mere *brutum fulmen*, the last section of the amendment invests Congress with power to enforce it by appropiate legislation. To enforce what? To enforce the prohibition. To adopt appropriate legislation for correcting the effects of such prohibited State laws and State acts, and thus to render them effectually null, void, and innocuous. This is the legislative power conferred upon Congress, and this is the whole of it. It does not invest Congress with power to legislate upon subjects which are within the domain of State legislation; but to provide modes of relief against State legislation, or State action, of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of State laws, and the action of State officers executive or judicial, when those are subversive of the fundamental rights specified in the amendment. Positive rights and privileges are undoubtedly secured by the Fourteenth Amendment, but they are secured by way of prohibition against State laws and State proceedings affecting those rights and privileges, and by power given to Congress to legislate for the purpose of carrying such prohibition into effect, and such legislation must necessarily be predicated upon such supposed State laws or State proceedings and be directed to the correction of their operation and effect.[8]

Later, Justice Bradley concluded:

> And so in the present case, until some State law has been passed, or some State action, through its officers or agents, has been taken, adverse to the rights of citizens sought to be protected by the Fourteenth Amendment, no legislation of the United States under said amendment, nor any proceeding under such legislation, can be called into activity; for the prohibitions of the amendment are against State laws and acts done under State authority. . . . In fine, the legislation which Congress is authorized to adopt in this behalf is not general legislation upon the rights of the citizen, but corrective legislation, that is, such as may be necessary and proper for counteracting such laws as the States may adopt or enforce, and which by the amendment, they are prohibited from making or enforcing, or such acts and proceedings as the States may commit or take, and which by the amendment, they are prohibited from committing or taking.[9]

So — if the clock is turned back to the fifteen year era immediately following the adoption of the fourteenth amendment, it will be found that it was firmly established as a principle of constitutional law that denials of equal protection within the meaning of the fourteenth amendment must be actions of state officers prescribed by state statutes or actions of state officers deliberately and purposefully denying to certain people the equal protection of the laws.

8. *Id.* at 11-12.

9. *Id.* at 13-14.

Justices, natives of Ohio, New York, California, and Massachusetts combined with others from Northern states in establishing these fundamental principles.

(2) State Court Construction.—While this principle was being established, other groups of judges in state courts in Ohio, Indiana, California, and New York were deciding just what state laws and state acts were prohibited by the fourteenth amendment. In a series of cases, these courts were deciding that the fourteenth amendment did not forbid even *de jure* segregation. They recognized that a state court could not by law deny to persons within its jurisdiction equal protection of the laws. But, they decided that state laws segregating the races in public schools were not denials of the equal protection of the laws.

The Ohio case, *State ex rel. Garnes v. McCam*,[10] was decided by the supreme court of that state in 1871, just three years after the ratification of the fourteenth amendment. There, the court held that the public school law of Ohio, as amended in 1864, authorizing the classification of children in schools on the basis of color did not contravene the fourteenth amendment in the light of the fact that a school for colored children was provided, "equal in every respect to those for white children. . . ."[11] In like manner, the Indiana Supreme Court decided *Corey v. Carter*,[12] in 1874, six years after the ratification of the fourteenth amendment. There the court held that the Indiana Act of 1869, providing for separate schools for colored children, did not conflict with the fourteenth amendment.

The California case was also decided by the supreme court of that state in 1874. In *Ward v. Flood*,[13] the court ruled on the effect of the fourteenth amendment upon the school law of California enacted two years after the ratification of the fourteenth amendment. The court held that the California law providing for the education of children of African descent in separate schools was not in conflict with the fourteenth amendment.

At just about the same time that the Supreme Court of the United States decided the *Civil Rights Cases*,[14] the court of last resort of New York was deciding a school case similar to those previously decided in Indiana, Ohio and California. In *People ex rel.*

10. 21 Ohio St. 198 (1871).
11. *Ibid.*
12. 48 Ind. 327 (1874).
13. 48 Cal. 36 (1874).
14. 109 U.S. 3 (1883).

King v. Gallagher,[15] the New York court cited the Ohio and Indiana cases with approval, deciding as they had that all that was required by the fourteenth amendment and the Civil Rights Act of 1875[16] was "the privilege of obtaining an education under the same advantages, and with equal facilities, as those enjoyed by any other individual."[17] Speaking through Chief Judge Ruger, the majority of the court stated that "equality and not identity of privileges and rights is what is guaranteed to the citizen. . . ."[18] No one of these cases was appealed to the Supreme Court of the United States. From them spawned the doctrine that a state did not deprive a person within its jurisdiction of the equal protection of the laws so long as all enjoyed equality of the rights and privileges afforded by the state.

B. The Separate But Equal Doctrine

This "separate but equal" doctrine was first announced by the Supreme Court of the United States in 1896 in the landmark case of *Plessy v. Ferguson*.[19] There in question was a Louisiana statute that required railroad companies to provide equal, but separate, accommodations for the white and colored races by separate or divided coaches. The statute was assailed as violative of the fourteenth amendment. The Court held, however, that it was *not* contrary to the fourteenth amendment. In the course of the opinion, the Court stated that "the 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 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."[20] The Court went on to state that "similar laws have been enacted by Congress under its general power of legislation over the District of Columbia . . ."[21] as well as by the legislatures of many of the States, and have been generally if not uniformly, sustained by the courts."[22]

15. 93 N.Y. 438 (1883).
16. 18 Stat. 335 (1875).
17. People *ex rel.* King v. Gallagher, 93 N.Y. 439, 447 (1883).
18. *Id.* at 445.
19. 163 U.S. 537 (1896).
20. *Id.* at 544. (Emphasis added.)
21. Here the Court cited D.C. REV. STAT. §§ 281-83, 310, 319, 20 Stat. 107 (1878) (now D.C. CODE ANN. §§ 31-807, -1109 to -1111, -1113 (1961)).
22. Plessy v. Ferguson, 163 U.S. 537, 545 (1896). The Court cited the Ohio, California, New York, and Indiana cases discussed at notes 10-15 *supra* and accompanying text.

(1) First Application in a School Case.—The "separate but equal" doctrine was applied in a school case for the first time by the Supreme Court of the United States in 1927. In *Gong Lum v. Rice*,[23] a unanimous Court[24] speaking through Mr. Chief Justice Taft stated: "Were this a new question, it would call for very full argument and consideration; but we think that it is the same question which has been many times decided to be within the constitutional power of the State Legislature to settle, without intervention of the federal courts under the federal constitution."[25] To demonstrate that the "separate but equal" doctrine was specifically applied by the Court in that school case, the last paragraph of Chief Justice Taft's opinion is revealing. He stated: "Most of the cases cited arose, it is true, over the establishment of separate schools as between white pupils and black pupils; but we cannot think that the question is any different, or that any different result can be reached, assuming the cases above cited to be rightly decided, where the issue is between white pupils and the pupils of the yellow races. The decision is within the discretion of the state in regulating its public schools, and does not conflict with the fourteenth amendment."[26] The syllogism is clear: if the black race is not denied equal protection by application of the doctrine, the yellow race is not; the black race is not under the decisions cited, therefore the yellow race is not. The doctrine had to be applied in order for this judgment to have been rendered.

(2) The Pre-Brown Generation.—In the generation which intervened from the date of the decision in *Gong Lum* to May 17, 1954, there were several decisions of the Court which illustrate that deliberate state action must appear for there to be a violation of the equal protection clause. Some of these also show that the "separate but equal" doctrine remained as a principle of American Constitutional law. Just before Chief Justice Taft's decision in *Gong Lum*, the Court had dismissed, for want of jurisdiction, an appeal in a case involving a restrictive covenant in an indenture.[27] The dismissal, so far as the alleged application of the fourteenth amendment was

23. 275 U.S. 78 (1927).

24. The Court deciding the *Gong Lum* case included among its members Justices Oliver Wendell Holmes, Louis D. Brandeis, and Harlan Fiske Stone, the last named of whom was later made Chief Justice.

25. Gong Lum v. Rice, 275 U.S. 78, 85-86 (1927). The Court again, just as in Plessy v. Ferguson, cited the Ohio, New York, California, and Indiana cases. See note 22 *supra*.

26. *Id.* at 87.

27. Corrigan v. Buckley, 271 U.S. 323 (1926).

concerned, ensued because it did not prohibit private individuals from entering into contracts respecting the control and disposition of their own property. Said the Court: "It is State action of *a particular character* that is prohibited."[28]

Not many years thereafter, a case arose in which the Court was of the opinion that the necessary state action appeared. Thus, in *Shelley v. Kraemer*,[29] the Court reiterated the rule that restrictive covenants based on race or color standing alone do not violate any rights guaranteed by the fourteenth amendment, and stated that so long as the purpose of the covenant is effectuated by voluntary adherence to its terms, there has been no action by the state and the provisions of the fourteenth amendment are not violated. But, when state courts move to enforce such covenants by injunction or otherwise, the requisite state action is supplied. In the course of its opinion, the Court said that when the effect of state action "is to deny rights subject to the protection of the Fourteenth amendment, it is the obligation of this court to enforce the constitutional commands."[30] A right to be free of denial of equal protection of the laws is one of such rights.

Also in that interval between *Gong Lum*[31] and 1954, the question of state action was involved in several cases in which voting rights were discussed and adjudicated. A discussion of two of them must suffice for the purpose here. One was a Texas primary case[32] in which the Court held that the exclusion of Negroes from voting in a Democratic primary to select nominees for a general election — although by resolution of a state convention of the party its membership was limited to white citizens — was state action in violation of the federal constitution. The other was also a Texas primary case[33] involving the fifteenth amendment. There it was stated that the fifteenth "not the Fourteenth, outlawed discrimination on the basis of race or color with respect to vote."[34] It is important because it is state action, state abridgement, state denial which is forbidden by the fifteenth amendment. In this respect, the Court said that "the application of the prohibition of the Fifteenth Amendment to 'any State' is translated by legal jargon to read 'State action.' . . . The vital

28. *Id.* at 330. (Emphasis added.)
29. 334 U.S. 1 (1948).
30. *Id.* at 20.
31. Gong Lum v. Rice, 275 U.S. 78 (1927).
32. Smith v. Allwright, 321 U.S. 649 (1944).
33. Terry v. Adams, 345 U.S. 461 (1953).
34. *Id.* at 472.

requirement is State responsibility — that somewhere, somehow, to some extent, there be an infusion of conduct by officials, panoplied with State power, into any scheme by which colored citizens are denied voting rights *merely because they are colored.*"[35]

There are other cases in that era in which not only "state action" but the "separate but equal" doctrine was involved. Among them are three, all of which reveal that the doctrine then remained vital. In the first, *Missouri ex rel. Gaines v. Canada*,[36] the Court held that the State of Missouri was bound to furnish Lloyd Gaines, a Negro within its borders, facilities for legal education substantially equal to those which the state then afforded for persons of the white race, whether or not other Negroes sought the same opportunity.[37] In so holding, Chief Justice Hughes, writing for the majority, quoted the old phrase: "The equal protection of the laws is 'a pledge of the protection of equal laws.' "[38] In the Texas Law School case,[39] the opinion was written by Chief Justice Vinson. There, the Court held that "petitioner may claim his full constitutional right: legal education equivalent to that offered by the State to students of other races. Such education is not available to him in a separate law school *as offered by the State.*"[40] The Court had thus applied the yard stick of "separate but equal" to the facts appearing with reference to the separate law school as offered by the state, but found the separate law school lacking in essential requisites to prevent its being treated as equal to that offered to white students.

On the same day, the Court decided the Oklahoma graduate student case.[41] There the only question decided was whether a state might, after admitting a student to graduate instruction in its state university, afford him different treatment from other students solely because of his race. The Court held that, in order to produce equality, certain state-imposed restrictions which produced inequalities had to be removed. Said the Court:

> It may be argued that appellant will be in no better position when these restrictions are removed, for he may still be set apart by his fellow students. This we think irrelevant. *There is a vast difference — a Constitutional difference — between restrictions imposed*

35. *Id.* at 473. (Emphasis added.)
36. 305 U.S. 337 (1938).
37. *Id.* at 351.
38. *Id.* at 350, quoting from Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886).
39. Sweatt v. Painter, 339 U.S. 629 (1950).
40. *Id.* at 635. (Emphasis added.)
41. McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950).

> *by the state which prohibit the intellectual commingling of students, and the refusal of individuals to commingle where the state presents no such bar.* . . . The removal of the state restrictions will not necessarily abate individual and group predilections, prejudices and choices. But at the very least, the state will not be depriving appellant of the opportunity to secure acceptance by his fellow students on his own merits. . . . We hold that under these circumstances the Fourteenth Amendment precludes differences in treatment by the state based upon race. Appellant, having been admittted to a state-supported graduate school, must receive the same treatment at the hands of the state as students of other races.[42]

Here is a clear-cut ruling that it is *de jure* segregation, state-imposed discrimination, which the fourteenth amendment forbade. In what respect, therefore, was that ruling altered by the public school cases decided four years later?

II. DE JURE VS. DE FACTO SEGREGATION

A. The Question Decided in Brown

In 1950, the "separate but equal" doctrine may have been gasping for breath, but it still survived. It was not until May 17, 1954, that it received its death blow, and then only with respect to public education, or so the Court then said. That day, the Court decided a group of four cases which are colloquially grouped under the name *Brown v. Board of Educ.*[43] The *Brown* case from Kansas originated in an action brought by Negro children to enjoin enforcement of a Kansas statute which permitted separate schools for Negro and white children. A companion South Carolina case was commenced in a similar action to enjoin provisions in that state's constitution and code requiring such segregation.[44] The Virginia[45] and Delaware[46] cases were brought on similar grounds to enjoin state constitutional and legislative provisions requiring segregation. So — in none of these cases, therefore, was there any doubt of "state action."

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 forbade *de jure* segregation of the races in public schools. There can be no doubt of that, for the Court posed the "question presented" as fol-

42. *Id.* at 641-42. (Emphasis added.)

43. 347 U.S. 483 (1954).

44. Briggs v. Elliott, 98 F. Supp. 529 (E.D.S.C. 1951), *vacated*, 342 U.S. 350 (1952).

45. Davis v. County School Bd., 103 F. Supp. 337 (E.D. Va. 1952).

46. Gebhart v. Belton, 32 Del. Ch. 343, 87 A.2d 862, *aff'd*, 33 Del. Ch. 144, 91 A.2d 137 (1952).

lows: "Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities?"[47] Having posed the question, the Court succinctly answered it: "We believe that it does."[48] Also, the Court concluded "that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, *by reason of the segregation complained of*, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment."[49] The words in italics are emphasized to make clear that the segregation complained of was *de jure* segregation — segregation in each of the four cases compelled or permitted by a state law, segregation deliberately ordered by state school authorities pursuant to state law theretofore valid according to century-old decisions of many courts. While American courts might have "labored with the doctrine for over half a century,"[50] the labors had produced a result which was unanimous.

There is not one word in *Brown v. Board of Educ.*[51] that may fairly be said to indicate that the court intended to decide anything but that segregation of white and colored children in public schools imposed by school authorities under sanction or compulsion of state law was violative of the fourteenth amendment. If there should be any doubt about that in the mind of anyone, that doubt will disappear after reading Chief Justice Warren's opinion rendered after further argument in the cases on the question of relief.[52] In that opinion, rendered a year after the original decision, the Chief Justice explained what he had held in these words: "All provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle . . . that racial discrimination in public schools is unconstitutional."[53] For the further argument on the question of relief, the Court "invited the Attorney General of the United States and the Attorneys General of all states requiring or permitting racial discrimination in public education to present their

47. Brown v. Board of Educ., 347 U.S. 483, 493 (1954).
48. *Ibid.*
49. *Id.* at 495. (Emphasis added.)
50. *Id.* at 491.
51. *Id.* at 483.
52. Brown v. Board of Educ., 349 U.S. 294 (1955).
53. *Id.* at 298.

views. . . ."[54] *De jure,* not *de facto* segregation, was the subject of the judgment of the Court, and the arguments which preceded and followed it.

B. Is There an Affirmative Duty to Integrate After Brown?

(1) The Established Principle.—Revolutionary as was the decision in *Brown* in its rendition and subsequent application, the Court has not sought to overturn the established principle of constitutional law that "the unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination."[55] In one of its first cases[56] construing the equal protection clause of the fourteenth amendment, the Court held that a mere showing that Negroes were not included in a particular jury was not enough; there must be a showing of actual discrimination because of race.[57] Down through the years, this has been the law of the land: "The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents."[58] No different purpose was attributed to the amendment by the Court either in *Brown* or any case since decided.

(2) Recent Affirmations of the Principle.—That no different purpose was so attributed to the amendment is graphically illustrated by the case which had its origin in the United States District Court for the Northern District of Indiana. In *Bell v. School City,*[59] the plaintiff presented, among others, the question whether she and other members of the class "have a constitutional right to attend racially integrated schools and the defendant has a constitutional duty to provide and maintain a racially integrated school system."[60] The plaintiffs conceded that this question had not been passed upon by the Supreme Court, or by any other court where the question had been specifically presented. They relied upon certain

54. *Id.* at 298-99.
55. Snowden v. Hughes, 321 U.S. 1, 8 (1944).
56. Virginia v. Rives, 100 U.S. 313 (1879).
57. *Id.* at 322-23.
58. Sunday Lake Iron Co. v. Township of Wakefield, 247 U.S. 350, 352 (1918).
59. 213 F. Supp. 819 (N.D. Ind. 1963), *aff'd,* 324 F.2d 209 (7th Cir.), *cert. denied,* 377 U.S. 924 (1964).
60. *Id.* at 820.

language from the decision in *Brown* to the effect that "to separate them [Negroes] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."[61] They also relied on certain language in *Taylor v. Board of Educ.*[62] and *Branche v. Board of Educ.*[63]

The District Judge found no violation by the defendant of the plaintiffs' constitutional rights. In so doing, he alluded to the language of the three-judge district court in Kansas when it was carrying out the instructions of the Supreme Court as delivered after the last argument in the *Brown* case. He stated:

> It was stressed at the hearing that such schools at Buchanan are all-colored schools and that in them there is no intermingling of colored and white children. Desegregation does not mean that there must be intermingling of the races in all school districts. It means only that they may not be prevented from intermingling or going to school together because of race or color.
>
> If it is a fact, as we understand it is, with respect to Buchanan School that the district is inhabited entirely by colored students, no violation of any constitutional rights results because they are compelled to attend the school in the district in which they live.[64]

The United States Court of Appeals for the Seventh Circuit affirmed the District Judge in the *Bell* case.[65] That court, in addition to quoting from *Brown v. Board of Educ.*,[66] quoted this succinct statement from *Briggs v. Elliott*:[67] "The Constitution, in other words, does not require integration. It merely forbids discrimination."[68] The Supreme Court of the United States denied certiorari in the case on May 4, 1964.[69]

Since *Bell* was decided, federal courts in Illinois[70] and Ohio[71] have followed it. In *Lynch v. Kenston School Dist.*,[72] decided with-

61. Brown v. Board of Educ., 347 U.S. 483, 494 (1954).
62. 294 F.2d 36 (2d Cir. 1961).
63. 204 F. Supp. 150 (E.D.N.Y. 1962).
64. Brown v. Board of Educ., 139 F. Supp. 468, 470 (D. Kan. 1955).
65. Bell v. School City, 324 F.2d 209 (7th Cir.), *cert. denied*, 377 U.S. 924 (1964).
66. 139 F. Supp. 468 (D. Kan. 1955).
67. 132 F. Supp. 776 (E.D.S.C. 1955).
68. *Id.* at 777.
69. Bell v. School City, 377 U.S. 924 (1964).
70. Webb v. Board of Educ., 223 F. Supp. 466 (N.D. Ill. 1963).
71. Lynch v. Kenston School Dist., 229 F. Supp. 740 (N.D. Ohio 1964).
72. *Ibid.*

in three weeks after certiorari was denied by the Supreme Court in the *Bell* case, an Ohio District Court distinctly found that constitutional rights in this area cannot be infringed by *de facto* segregation which results from good faith adherence to a neighborhood school policy. The court also noted two New York District Court cases[73] and said of them that to the extent that they are in conflict with the case before it, "the court believes that they were erroneously decided and it respectfully declines to follow their precedents."[74]

Despite the nine-way stretch which has been applied to the Constitution and the amendments thereto in certain areas, it is difficult to see how the language, history, and repeated constructions of the fourteenth amendment could be so distorted as to read into it a veto of *de facto* segregation.

73. Blocker v. Board of Educ., 226 F. Supp. 208 (E.D.N.Y. 1964); Blanche v. Board of Educ., 204 F. Supp. 150 (E.D.N.Y. 1962).

74. Lynch v. Kenston School Dist., 229 F. Supp. 740, 744 (N.D. Ohio 1964).