IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

CARL HEARD and FRANK HEARD by their next friends and parents WILLIAM HEARD and EMMA MANOR HEARD, husband and wife; and CYNTHIA WILLIAMS, MYRNA RUTH WILLIAMS, PEARLIE MAE WILLIAMS and FLENOY WILLIAMS, JR., by their next of friends and parents FLENOY WILLIAMS and BEATRICE WILLIAMS, husband and wife,

Plaintiffs,

vs

HAROLD DAVIS, as President, GEORGE T. MONROE, as Clerk, CALVIN McKNIGHT, as a Member of the Board of Trustees of the Wilson School District, a legally organized public school district in Maricopa County, State of Arizona; and G. S. SKIFF, as Superintendent of the Wilson Schools,

Defendants.

No. 77497

MEMORANDUM OPINION

Plaintiffs bring this action in their own behalf and in behalf of all other children of the African or Negro Race now attending school in the Wilson School District, Maricopa County.

The School District admits that members of the African or Negro Race are segregated from members of the Caucasian Race, thereby directly presenting the question whether such segregation is lawful.

The questions between the parties are:

1. Whether Chapter 138, 152 laws and Section 55-416 Arizona Code Annotated, 1939, and Section 54-430 Arizona Code Annotated, 1939, empowers the defendants as members of the Board of Trustees, to segregate groups of pupils solely because of race.

2. Whether the educational opportunities, advantages and facilities for children of the Negro or African Race of elementary school age, residing in the Wilson School District are equal to the educational opportunities, advantages and facilities

afforded and available to white children of elementary school age similarly situated.

Though there are other questions in the complaint, it appears to the Court that such questions are included in the two questions set forth above.

The laws of this State are found in its Constitution, statutes, institutions and general laws; then, if not there, the ancient common law of England. It is to these sources judges must resort to discover them. If they abandon these guides, they pronounce their own opinions, not the laws of those whose officers they are.

Unless the legislature has clearly conferred power upon the school boards to establish separate schools for the education of white and colored children, no such power exists.

Every society gets encumbered with dead wood from the past. The school has the duty of omitting such things from the environment which it supplies. By selecting the best for its exclusive use it strives to reinforce the power of this best. As a society becomes more enlightened it realizes that it is responsible not to transmit and conceive the whole of its existing achievements, but only such as make for a better future society. The school is its chief agency for the accomplishment of this end. It is the office of the school environment to balance the various elements in the social environment and to see to it that each individual gets an opportunity to escape from the limitations of the social group in which he was born and to come into living contact with a broader environment.

The school is society's chief agency for conserving and transmitting its culture; educational segregation has extra significance. A segregated educative system is likely to transmit to each succeeding generation the superiority-inferiority value attitudes of a racially conscious society. Furthermore, it provides public approval and reinforcement of private privileges

which has become the primary symbol of the Negro's inferiority.

Our Legislature, in 1952, recognizing this, amended the law and struck therefrom in Section 54-416:

> "* * * They shall segregate pupils of the African race from pupils of the Caucasian race in all schools other than high schools and provide all accommodations made necessary by such segregation."

And substituted therefor in Section 54-416, as amended 1952, Chapter 138, paragraph 1:

> "* * * they (the Board of Trustees) may segregate groups of pupils."

By doing this they, in effect, transferred the responsibility of the transition to the local school authorities. Such delegation is clearly unconstitutional; particularly is it true, as in this case, where the legislature has delegated its power to an administrative board without, at the same time, establishing a standard criterion or guide as to the circumstances under which such power may be exercised.

The State of Arizona vs. Marana Plantations, Inc., 75 Ariz. 111; 252 P. 2d 87:

> "* * * It may safely be said that a statute which gives unlimited regulatory power to a commission, board or agency with no prescribed restraints nor criterion nor guide to its action offends the Constitution as a delegation of legislative power. The board must be corralled in some reasonable degree and must not be permitted to range at large and determine for itself the conditions under which a law should exist and pass the law it thinks appropriate. To use the apt phraseology of the late Justice Cardozo in Schechter Poultry Corporation v. United States, 295 U.S. 495, 55 S. Ct. 837, 852, 79 L. Ed. 1570, an administrative board cannot be 'a roving commission to inquire into evils and upon discovery correct them' and it must be 'canalized within banks that keep it from overflowing.' It cannot be 'unconfined and vagrant.'"

Our Supreme Court in Hernandez vs. Frohmiller, 68 Ariz. 245, 204 P. 2d 854, has adopted the strictest of requirements concerning the criteria and standards with which the legislature may surrender its delegation of legislative power to administrative boards. This attitude is clearly indicated when our courts said:

> "* * * May the state, in order to accomplish this, transfer to an administrative board the unlimited

power to use its judgment and discretion in determining what conditions shall be rectified and how this shall be accomplished? We have no hesitation in saying such is legally impossible. Legislation may pass to administrative boards or officials the right or power to find facts or conditions properly prescribed under which the law as passed will or will not operate, but it may not permit the board to say what the law shall be."

This Court holds that the Legislature of this State has not given or attempted to give the power of establishing separate schools for the education of white and colored children. Article 11, Section 6 of the Arizona Constitution provides:

"* * * The Legislature shall provide for a system of common schools by which a free school shall be established and maintained in every school district for at least six months in each year, which school shall be open to all pupils between the ages of six and twenty-one years."

The Legislature, under the mandate of this constitutional provision, provided for a uniform system of common schools by which a school shall be established and maintained in the Wilson District. The school board does not have authority, because the Legislature has not conferred power upon the school board to establish separate schools for the education of white and colored children. The history of legislation and decisions of the courts on this subject from 1868 to the present time amounts almost to a legislative declaration that in the absence of an express grant thereof, no school district or trustee of a school has any authority to discriminate against any child or to deny its admission in any public school thereof on account of its color. This has been the uniform tenor of the decisions.

State of Nevada ex rel Stroutmeyer v. Duffy, 7 Nev. 342
Roll v. Board of Education, 91 Pac. 88
Board of Education v. Tennon, 26 Kan. 1
Knox v. Board of Education, 45 Kan. 152, 25 Pac. 382
Cartwright v. Board of Education, 84 Pac. 382
Board of Education v. Dick, 70 Kan. 434, 78 Pac. 812
Richardson v. Board of Education, 72 Kan. 629, 84 Pac. 538
Bibb v. Alton, 193 Ill. 290, 61 N.E. 1077
Westminister School District of Orange County v. Mendez, 161 Fed. 774
Gonzales v. Sheeley (Ariz.) 96 F. Supp. 1004
Sweatt v. Painter, 339 U.S. 629
McLaurin v. Oklahoma State Board of Regents, 339 U.S. 367

The second question as to whether the educational opportunities, advantages and facilities for children of the Negro or African Race are equal to the educational opportunities, advantages and facilities afforded and available to the white children of elementary school age similarly situated is answered by counsel for the defendants conceding to the Court's question on oral argument that facilities afforded the children of the Negro or African Race were not and are not now equal to those afforded and available to white children at the school. The courts have held without exception that such a denial of equal facilities is a violation of the equal protection of law and a consequent deprivation of liberty and property without due process of law, as guaranteed by the Fourteenth Amendment of the Constitution of the United States.

In all of the cases the courts have discussed the physical equality of facilities in teaching and school plant; however, there are intangible inequalities in segregation. These are more difficult to demonstrate. However, we know the impact on the child of the Negro Race. These children would seem either to be in conflict about their status or to have resigned themselves to inferior self-images. Our general experience as we observe human status each day, tells us that segregation intensifies rather than eases racial tension. Instead of encouraging racial cooperation, it fosters mutual fear and suspicion which is the basis of racial violence.

For the foregoing reasons, it is ordered that the plaintiff have judgment on his motion for summary judgment and that he prepare the proper written form of judgment in accordance with the foregoing decision.

DATED this 5th day of May, 1954, Phoenix, Arizona.

Charles C. Bernstein
Judge of the Superior Court