

UNIT 11
AFRICAN-AMERICANS IN THE
LAND OF EQUALITY

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Chapter 1

The 14th Amendment and the Jim Crow Laws

Although the Civil War, the Emancipation Proclamation, and the Thirteenth Amendment to the Constitution ended slavery, these acts did not end the right to discriminate against the former slaves or their descendants. The first memorable attempt to end discrimination was heralded in the passage of the Fourteenth Amendment to the Constitution. A key provision of this amendment guaranteed all people born or naturalized in the US 'equal protection under the law.' Still, over 100 years after passage of this amendment, Americans had not yet come to a complete agreement on its meaning. For instance, did this phrase mean that all people must be allowed to attend the same schools? Become members of the same private clubs? Use the same rest rooms? Eat at the same place in a high school cafeteria? Belong to the same clubs? Exercise at the same facilities? Even more puzzling was the question of whether it was possible to be equal and also separate.

This chapter will look at the way people attempted to answer these questions at the close of the 19 century.

The Black Codes

Our study of the doctrine of 'equal protection under the law' must start with the infamous black codes passed by Southern legislatures immediately after the Civil War. Among these codes were provisions that freedmen (former slaves) could marry members of their own race, attend (segregated) schools and (in many states) own property. But in states of the Deep South such as Mississippi, black men had to have jobs. If they didn't, they could be made to pay a fine and remain in prison until the fine was paid. Furthermore, they could be forced to work for the person who paid their fine. In many states freedmen (or women) could not be out after dark, carry a knife or gun, or associate with one another. Other black codes prohibited freedmen from marrying whites or testifying against whites in court. Southerners defended these laws as honest attempts to restore order in the South. They also said these codes protected blacks from the results of their own "laziness and ignorance."

The 14th Amendment: A Reaction to the Black Codes

The freedman and his friends disagreed with Southerners on the purpose of the Black Codes. They believed these laws were passed to keep black people in the state of poverty and humiliation they had suffered as slaves. The freedman's friends in Congress, therefore, passed the 14th Amendment to the Constitution, and required southern states to ratify the amendment in order to return to the Union.

The most significant parts of the 14th Amendment were as follows:

- Every person born in a state was made a citizen of that state and a citizen of the U.S.A.;
- No state could deprive citizens of any privileges that other citizens had;
- No state could deny its citizens of life, liberty or property without due process of law
- *No State could deny to any person within its jurisdiction the equal protection of the laws "•*

-
- The exact wording of the 14th Amendment has been altered here to make it more understandable

Southern Opposition and Military Occupation

Southerners thought the 14th Amendment had been passed to punish them for starting the Civil War, and they refused to ratify it. Indeed there were sections which prevented ex-Confederates **from** voting, holding office, or being paid back for lending money to the Confederacy. But our attention will be focused mainly on *section one*, which gave all people born or naturalized in the US rights of equal citizenship.

When Southern states refused to ratify the Fourteenth Amendment, Congress placed the whole region of the country under military rule. Soldiers were sent to see that the freedmen were allowed to have the same rights as whites. Under military rule, freedmen were allowed to vote and hold political office, attend public schools, buy and sell property, and sue whites. In addition they could sit on juries, carry weapons, and sit on the same streetcar seats as whites

During the brief period that Northern soldiers were present to assure the exercise of their rights, freedmen actually voted and held office in all ex-Confederate states. But this period came to an abrupt



end in 1877 when the last Union soldiers were removed from the South. With the soldiers gone, Southerners restored white rule in the ex-Confederate states. Nevertheless, the 14th Amendment remained in the Constitution, and Southern states, for some 12 years, allowed the former slaves a few rights provided in the amendment. But in the late 1880's, Southern states began to pass laws challenging the equal treatment provisions of the 14th Amendment. One of the early examples of these so called *Jim Crow laws* passed in Louisiana provided that, on railroads in that state, provisions should be made equal *but separate* accommodations for the white and colored races.

Plessy v. Ferguson

On June 7, 1892, an African-American by the name of Homer Plessy bought a first class ticket from New Orleans to Covington, Louisiana. He entered the train, found an empty seat, and sat down. In keeping with the Louisiana law providing for equal but separate' accommodations, the section where Plessy sat was reserved for whites only. Noticing that Plessy wasn't white, the conductor told him to move to a 'colored' car or get off the train. Plessy refused. The conductor called the police and Plessy was forced off the train. Next, Plessy did what fewer than one out of a million victims of discrimination would and could have done. He found a lawyer to argue his case and sued for his right to equal protection of the law. Plessy lost the case because the court ruled that he had broken the Louisiana railroad law. But Plessy appealed his case to the Louisiana Supreme Court, claiming that the law he was accused of breaking was in violation of his 14 Amendment rights. Upon losing in Louisiana, Plessy appealed his case to the Supreme Court of the United States. The case was argued on April 18, 1896.

The Issues

The Plessy case was one of the most important ever decided by the Supreme Court. It set a precedent that for over 60 years has been used as legal cover for racial discrimination. It provided the South with an answer to the question raised in the beginning of this chapter: *Does the doctrine of separate but equal' facilities for each race discriminate against either?'* and to others like the ones below:

- Did the Louisiana law discriminate against blacks or was that only how black people chose to look at it?
- Could a verdict against Plessy set an unreasonable precedent or provide only for separation for good and reasonable cause?

Plessy: The Louisiana Law Discriminated Against Black People	Louisiana: The Louisiana Law Didn't Discriminate against Black people
Everyone knows that the law in question had its origin in the purpose not to exclude white persons from railroad cars occupied by blacks, but to exclude colored people from coaches occupied by whites. The thing to accomplish was to force the latter [blacks] to keep to themselves while traveling in railroad passenger coaches. The fundamental object—to the law is that it interferes with the personal freedom of citizens. If a white man and a black man choose to occupy the same public conveyance on a public highway, it is their right. No government, proceeding alone on grounds of race, can prevent it without infringing on the personal liberty of each.	We consider the underlying fallacy in Plessy's argument to consist in the assumption that forced separation of the races stamps the colored with a badge of inferiority. If this be so, it is solely because the colored race chooses to put that interpretation upon it. Legislation is powerless to eradicate racial instincts or to abolish distinctions based on sodal differences and the attempts to do so can only result in accentuation of the difficulties of the present situation. If one race be inferior to the other socially, the Constitution of the United States can not put them on the same level.

An Unfavorable Verdict Would Create an Unreasonable Precedent	Segregation Would only Result for Good and Reasonable Causes
If a State can prescribe, as a <i>rule of civil conduct</i> , that whites and blacks shall not travel as passengers in the same railroad coach, why may it not so regulate the use of the streets of its towns to compel white dtizens to keep on one side of the street and black dtizens to keep on the other? Why may it not, upon like grounds, punish those who ride together in streetcars? Why may it not require sheriffs to assign whites to one side of a courtroom and blacks to another? Why may not the State require the separation in railroad coaches of native and naturalized citizens of the United States, or of Protestants and Roman Catholics?	It is suggested by the learned counsel for the plaintive [Plessy's lawyer] that the same argument that will justify the state legislature in requiring railroads to provide separate accommodations for the two races will also authorize them to require separate cars for people whose hair is of a certain color, or who are aliens, ... or to enact laws requiring colored people to walk on one side of the street and white people upon the other.... The reply to all this is that every exercise of the police power must be passed in good faith, for the promotion of the public good, and not the annoyance or oppression of a particular class. ¹

*In case the reader had any doubt, the decision in the Plessy case was 8-1, favoring the arguments on the right hand part of this page.

Student Exercises:

1. Compare the positions taken by the opposing justices on the issues of discrimination and precedent. Which does each say about 'separate being equal'? Which one makes more sense to you? Why?
2. After reading the appendix to this chapter, name the five most unreasonable Jim Crow laws and explain whether these laws support Harlan's or the Court's reasoning.

¹ Plessy v. Ferguson (1896) 163 US 537, pp.540-42 (edited)

Epilogue

There was no doubt that Justice Harlan's prediction as to the possible extremes of segregation was prophetic. No longer restrained by outraged northern citizens concerned with the plight of African-Americans, Southern State legislatures passed thousands of Jim Crow laws. They regulated even the most minute details of black/white relations. Some of the more bizarre examples have been collected by the historian C. Vann Woodward in his book *The Strange Career of Jim Crow*:

The South Carolina Code of 1915, with later additions, prohibited textile factories from permitting workers of different races from working together in the same room, ...using the same entrances, pay windows, exits, doorways, and stairways at the same time, or using the same toilets, drinking water buckets, pails, cups or glasses at any time.

In 1909 Mobile, (Alabama) passed a curfew law applying only to Negroes and requiring them to be off the streets by 10 P.M. The Oklahoma legislature in 1915 required telephone companies to maintain separate booths for 'white and colored patrons/North Carolina and Florida required that textbooks used by the public school children of one race be kept separate from those used by the other, and the Florida law specified separation even while the books were in storage. A New Orleans ordinance segregated white and Negro prostitutes in separate districts. An Atlanta ordinance in 1932 prohibited amateur baseball dubs of different races from playing within two blocks of each other, A Birmingham ordinance got down to particulars in 1930 by making it 'unlawful for a Negro and a white person to play together or in company with each other at dominoes or checkers. ²

2. Quoted in C. Vann Woodward *The Strange Career of Jim Crow*, New York, 1966), pp. 101-102, 227-28

Chapter 2

The Supreme Court Orders Desegregation

Although, by the 1950's, some progress had been made, many of the laws and attitudes behind the

Jim Crow laws had not changed significantly. Reliance on 'separate but equal' laws still segregated the races in buses, planes, and trains. Separate drinking fountains and restrooms were still required in Southern states. African-Americans were denied jobs and a place to live because of their race.

Still, there were some small victories. During World War II President Roosevelt ordered the end of job discrimination in factories making goods needed to defeat the enemy. In 1947 Jackie Robinson became the first African-American allowed to play major league baseball, and the color line gradually disappeared in sports. And in 1948, President Truman integrated the armed forces. Even though they were often broken, civil rights laws in northern states made discrimination on the account of race and religion illegal. Nevertheless, almost all African-American children in the South were segregated by the Jim Crow laws sanctioned by the *Plessy v. Ferguson* decision.

A frontal attack on the infamous Plessy decision was made in the field of public education. In carefully chosen cases, building legal precedent after precedent, the NAACP brought the famous case. *Brown v. the Board of Education* to the Supreme Court. In its landmark decision, the Supreme Court, involving four different cases of discrimination in education, ruled that racially segregated schools were "inherently unequal." This chapter tells the story of one small town involved in the case. The town, Summerton, South Carolina, was chosen because it represented racial attitudes and relations typical of the rural south.

Summerton, South Carolina

Summerton was named more than two centuries ago. Plantation owners sent their families there to escape the summer heat of the lowlands along the Santee River. In the 1950's tobacco and cotton were still the main products of Clarendon County as they had been for over a century. African-American sharecroppers and tenants farmed this county as they had since slavery ended. Their two or three room cabins housing families crowded with children dotted the countryside. And their children attended schools separated by race.

Summerton itself was a pleasant town with a population of 1,500. Old homes imitating the pre-Civil War plantation architecture stood side by side with the newer ranch houses. White children played on green lawns where African-American maids watched the younger ones. In the 1940's, whites drove cars into town to shop while black tenant farmers rode into Summerton in their horse-drawn wagons.

Briggs v. Elliot

In the 1940's, Summerton's African-American children attended the Scott Branch School. In one class, 104 youngsters were crowded into the same room. In another class, the children sat in the hall while the teacher taught from the principal's office. The school had no auditorium or facilities for teaching either science or industrial arts. Disgusted by these conditions 107 black parents petitioned the Board of Education to equalize Summerton's black and white schools. The all white school board refused to recognize these inequalities. With the aid of the National Association for the Advancement of Colored People's lawyers, the parents of one student, Harry Briggs, sued the school board that was under the leadership of R.W. Elliot. Briggs charged that the Scott Branch school was inferior and that separate schools for blacks violated the 14th Amendment to the Constitution. The school board admitted that

African-Americans received an inferior education but pleaded lack of funds to improve conditions. Faced with a threat to segregated education, the state of South Carolina came to the rescue of the Jim Crow schools. It financed a statewide construction program paid by a sales tax.

Schools for African-Americans in Summerton were still inferior to white schools five years later, but the differences were much less obvious. The case, *Briggs v. Elliot* was filed again, this time solely on the grounds that separate (even though they might otherwise be equal) schools violated African-American's rights guaranteed by the 14th Amendment.

When the Federal court in Columbia, South Carolina upheld segregation in Summerton. The decision was appealed. The Supreme Court agreed to review the case at the same time it was reviewing similar complaints concerning segregation in Kansas, Virginia, Washington, DC, and Delaware. The Supreme Court's ruling, known as *Brown v. Board of Education of Topeka*, reversed the Plessy decision.

The Origins of the Brown v. Topeka Case

An African-American third grader, Linda Brown had to walk one mile from her house through a dangerous railroad switchyard. Concerned for his daughter's safety, Linda's father petitioned to have her attend an all-white school only seven blocks from her house. When the request was denied, Brown contacted the local NAACP and took his case to court.

Summerton's Case

Summerton's school board hired S. Emory Rogers, a hometown lawyer to defend itself. With the help of two Charleston lawyers, Rogers based his brief for the Supreme Court on the *Plessy v. Ferguson* decision of 1896:

This court recognized in Plessy v. Ferguson that racial segregation is the result of racial feeling. But it wisely understood that segregation cannot be effectively destroyed without destroying its causes, and that those causes cannot be legislated out of existence. Neither can they be removed by court decree. We have learned by bitter and costly experience that a prohibition upon human conduct (such as the 14th Amendment) not acceptable by the people, although perhaps a 'noble experiment,' will inevitably fail.³

"Separate Educational Facilities are Inherently Unequal"

Chief Justice of the Supreme Court, Earl Warren, knew that his decision in this case would cause a storm wave of protest throughout the South. So he did his best to make sure that he had the entire Supreme Court behind him before writing his opinion. The decision itself, announced on May 17, 1954, made Warren the most hated man in the South.

In his famous opinion in *Brown v. Board of Education*, Warren declared that even if physical facilities were equal as far as measurable qualities were concerned (books, labs, classrooms) segregation deprives African-American children of equal protection under the law. The reason is that segregation implies inferiority. This affects the child's motivation and ability to learn:

To separate them 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* [emphasis added] in a way unlikely to ever be undone.⁴

³ quoted in John Barlow Martin, *The Deep South Says "Never,"* New York, 1957, pp. 48-49.

⁴ 347 U.S. 491-92

Warren concluded that separate schools for blacks and whites could never be equal schools:

We conclude that in the field of public education the doctrine of "separate but equal" has no place. *Separate educational facilities are inherently unequal* [emphasis added]. Therefore we hold 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 under the law guaranteed by the Fourteenth Amendment.⁵

"All Deliberate Speed"

In the fall following the Court's momentous decision, Summerton's 2,800 African-American students returned to the all-black Scotts Branch school. Summerton's 300 white pupils again attended their all-white school. Nothing had changed. Meanwhile, Attorney Rogers and others prepared a brief for Chief Justice Earl Warren to delay integration in Summerton. Warren waited over a year. His ruling of "good faith compliance" in layman's terms means "go slow." Then the Supreme Court turned desegregation cases to the same federal justices in the South that had often permitted segregation under the guidelines established in the Plessy case.

In keeping with this order, the Summerton case was quickly returned to a three-judge federal court in Columbia, South Carolina. This was the same court that had originally ruled against the NAACP. Its decision, this time, announced in July 1955, held that the Supreme Court's ruling did not require integration. It merely outlawed 'forced' segregation of schools while permitting 'voluntary' segregation. In other words, African-Americans could choose to enroll in all-white schools (if they dared) but could continue to attend segregated schools if they wished.

No Desegregation in Summerton

In September 1955, Summerton's schools opened amidst a certain amount of expectation. Would African-Americans try to enroll in the all-white school? None tried and nothing out of the ordinary happened. During the next several months many parents who had signed the original desegregation petition lost their jobs or their credit at local stores. Some were forced to leave town. The church of the minister who had gathered the signatures of the original petition left town after his church was burned to the ground and his life was threatened.

Ten years later, the Summerton schools were still as segregated as they had been in 1954.

Racial attitudes in Summerton were not much different from feelings in most of the rural South. Rather than integrate its public schools as required by the courts, Prince Edward County in Virginia shut them down completely. White children were educated in private schools and most of the county's African-American children attended no school whatsoever. In 1957, violence erupted in Little Rock, Arkansas, when nine African-Americans tried to attend previously all-white Central High School.

As late as eleven years after *Brown v. Board of Education*, the vast majority of African-American students in the Deep South attended segregated schools and only 3% attended schools with whites.

5. 347 U.S. 494



QuickTime™ and a
TIFF (Uncompressed) decompressor
are needed to see this picture.

It took the National Guard to Integrate Little Rock High School

Suggested student exercises:

1. Describe conditions in Summerton, South Carolina schools both before and after the two Briggs v. Elliot decisions.
2. Contrast the Supreme Court's logic as well as the decision in the Brown case to the logic and decision of Plessy v. Ferguson.
3. Comment on Emory Rogers's logic (see Epilogue)

10-Appendix: "We Segregate all the Time and so do You

Speaking to a northern reporter, John Barlow Martin, Summerton's Attorney, Emory Rogers explained why he and his neighbors fought integration. What does this say about racial attitudes in both the North and South? There is four, five Nigra houses in my front yard. Down here they are all over our front yard and our back yard. Working with us, playing with our children. We can't possibly see our children in their schools. Then at about sixteen, they'll be, probably, a marriage.... If we desegregate the schools here, it would mean twenty-five Nigra children and three white children in every classroom. I don't think your daughter would be comfortable in that situation. I know mine wouldn't.

It goes far beyond the color of the skin, too. I wouldn't want my child to be constantly associating with Brooklyn Jews, or Harlem Puerto Ricans or Mott Street Chinese. We have a little different standard... and so do you. We segregate all the time on an economic basis, and so do you.⁶

⁶ John Barlow, op. cit., pp. 70-71.

Chapter 3

Segregation in the North; Case Study: Boston⁷

When the Supreme Court issued its landmark decision, *Brown v. Board of Education*, everyone thought it applied only to Southern schools. As years passed it became increasingly obvious that segregated schools existed in Northern cities as well as in Southern counties. Recognizing these facts led civil rights leaders in the North to try integrating their schools. This chapter studies these efforts using the Boston School system as an important case study.

De facto and De jure Segregation

During the 1960's and 1970's, Southerners as well as civil rights workers pointed out that segregated schools were not limited to the South. In 1973 only 13 of the 20 largest school systems in the North had more than 50% minority enrollment. Topping the list was Washington, D.C. with 97% minority, followed by Detroit (72%), Chicago (71%), and Baltimore, San Francisco, and St. Louis, each with 70%. In contrast to the above, the city of Boston had a minority school population of 37%.

The causes for racially segregated schools in the North were much more difficult to detect than in the South. In most cases, the African-American children who attended schools different from the ones attended by whites lived in predominantly black sections of their cities. Apologists for segregated schools in the North claimed that there was no intent to segregate – segregation was the product of private preferences of blacks and whites to live in communities with people like themselves.

The reasons for separate schools developing in the North might not be important except for a legal practice used to allow the continuation of segregated Northern schools. The doctrine distinguished between unintentional segregation, called '*de facto*' (roughly translated from Latin to mean "in fact") as opposed to '*de jure*' segregation (roughly translated from Latin meaning "by law"). For purpose of simplicity, one can translate *de facto* segregation to mean 'unintentional', while *de jure* segregation would mean 'intentional' separation.

School Segregation in Boston, Massachusetts

In writing his verdict for the Brown decision, Chief Justice Earl Warren referred to Boston as an example of a city which had desegregated its schools. The time frame that had come to Warren's attention, however, covered the years, 1849 to 1954. During that time, Boston dismantled a segregated school system and allowed black students to attend the same classes as whites. But segregation has a way of returning. By 1974, some Boston High Schools such as South Boston had no African-American students. [The last one at 'Southie' quit shortly after being dangled out of a third story window.] Other Boston High Schools, such as Roxbury High, were 98% African-American. Altogether, 24 schools were 90 to 100 percent black while 78 were 90 to 100 percent white. In 1974, the Boston School Committee was accused of running a 'dual school system.'

In 1972 the NAACP filed charges against the Boston schools. The case, *Morgan v. Hennigan*, charged that the schools were racially segregated, because of intentional steps taken by the Boston School

⁷ Source: Thomas Ladenburg, *Civil Rights in the Land of Equality*, Arlington Dissemination Center

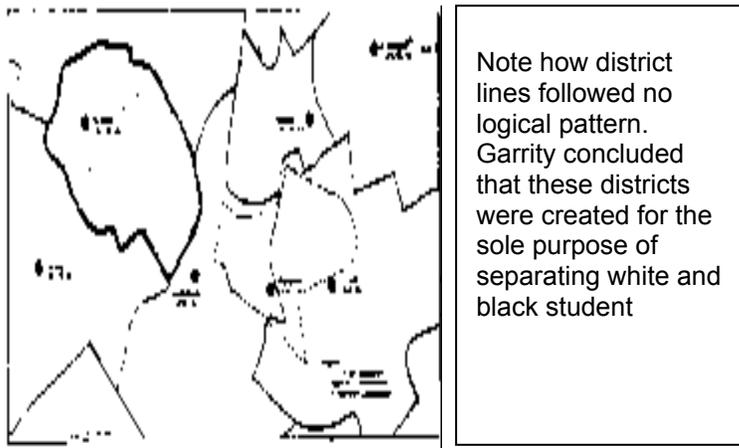
Committee. The NAACP asked the courts to take action to undo what had been done intentionally (*de jure*) and had violated the 14th Amendment rights of African-American students to equal educational opportunities. The School Committee responded by claiming that segregation in Boston was entirely due to the segregated communities, either predominantly black or predominantly white. Segregation in the schools supposedly was *de facto* and not the result of the School Committee's action. Since the schools were not responsible for creating these conditions, they could not be required to correct them.

Facts in the Case

The case brought against the Boston School Committee was tried by Judge Arthur Garrity. Garrity had worked on President John F. Kennedy's election campaign for the Senate in 1958 and for President in 1960. Kennedy later appointed him to his position on the Federal Court. Garrity had a reputation as a fair-minded and impartial judge. But the fact that he did not live in Boston and his children did not attend its schools caused many in the city not to trust him. Whatever can be said of Garrity's motives, no one can doubt his willingness to work. He spent 15 months in deliberation making his decision. Day after day he studied over 1,000 different exhibits presented as pieces of evidence. Night after night he brought work home with him and poured over maps of Boston showing ethnic divisions and school population. Garrity was determined to write a verdict that would not be reversed in appeal to a higher court.

It is impossible at this time to review all of the information that guided Judge Garrity's decision. However, one can draw some conclusions as to whether segregation of the Boston schools was *de facto* or *de jure*, based upon a limited examination of some relevant facts.

Charge: Drawing District Lines to Create Predominantly Black and Predominantly White Schools



The district lines shown in the illustration above had been drawn for 8 school districts, in an area of 2 miles by 3 miles. The result of these lines, claimed lawyers for the NAACP, resulted in "the maximum possible amount of racial isolation," and had the effect of keeping white neighborhoods together to conform with the wishes of the people who elected the School Committee members. They claimed that the lines were intentionally drawn to create or maintain segregated districts, and that they deprived black children of their constitutional right to equal education opportunities. No one has a constitutional right to attend a neighborhood school.

Lawyers for the School Committee argued that these lines were not drawn intentionally to create mostly all white or all black schools.

Charge: Intentionally Segregating the Henning School

The Henning School, capacity of 1080 students, was built in response to Boston's racial imbalance plan in 1965. It was meant to serve students in a predominately black housing project. White students were to be recruited from outside the district. The school opened in 1972, 65 percent black and 13 percent other minority.

The NAACP argued that the Committee had been warned that the school would not attract whites and that students from white elementary schools could have been assigned to attend the Henning School to give it a racial balance. Failure to do so showed *intent* to discriminate

The School Committee argued that it had distributed 50,000 brochures in an attempt to attract white students to the Henning. The Committee said it had done all it could to recruit white students to what became a black school. The Committee could not be blamed for the preference of whites to attend mostly white schools.

Charge: Hiring and Promoting on the Basis of Race

Of 4,243 teachers in the Boston School system with a minority population of 30,000, only 231 teachers were African-American, about 5.4 percent of the total. Furthermore, African-Americans were even a smaller percent of administrators, about 3.5 percent. The following chart shows numbers of black and white administrators by positions:

Category	White	Black
Principle/Headmaster	76	3
Assistant Principle/Headmaster	194	11
Director of Department and Manager	27	0
Supervisor & Consultant	29	2
Truant Officer	46	0
Psychologist	28	0

All three African-American principals were assigned to predominantly black schools with percentages of minority populations ranging from 66% at Emerson to 97% at Timilty.

The School Committee argued that black teachers were assigned to predominantly black schools to provide positive role models for African-American students; and lack of African-American teachers and administrators was due to lack of qualified candidates.

The NAACP argued that there was no record indicating that African-American teachers were assigned to predominantly black schools in order to provide positive role models, and that the School Committee made no consistent effort to find and hire African-American teachers and administrators.

Other Charges against School Committee for Intentionally Segregating Boston Schools:

- Using open enrollment policy to transfer white students out of predominantly black schools, but never for racial balance for which open enrollment was intended.

- Funneling African-Americans into three-year trade schools where they were taught manual skills while white students were directed into academic high schools with a curriculum tending to prepare students for college.
- Installing portable classrooms in order to prevent the transfer of white students into predominantly black schools.

Judge Arthur Garrity's Options

An article in the Focus section of *The Boston Globe*, published the day the suit was filed, predicted one of three outcomes to the decision. •

The Judge could:

- A. Find that the School Committee indeed had not intentionally segregated the schools, and allow *de facto* segregation to continue.
- B. Find the Boston School Committee had intentionally segregated or increased the pattern of segregation in its schools, but not be held accountable for its actions and be allowed to continue its segregating ways.
- C. Find Boston guilty as charged and responsible for making restitution by correcting the segregation it caused. This must involve massive busing because Boston Schools could not be desegregated without transporting students beyond walking distance from their homes.
- D. Find the Boston School Committee guilty as charged. However, desegregate the Boston Schools by busing students to 45 of the neighboring suburbs, all of which had an African-American population of less than 5%.

Suggested Student Exercises:

1. Come to class prepared to argue whether segregation in the Boston Schools was *de facto* or *de jure* and to support one of the four alternatives for Judge Garrity's decision. Make reference to specific charges against the School Committee and the Committee's defense.
2. Decide which of the four suggested options should be required by Judge Garrity, or suggest your own. Your suggestion must consider:
 - a. The meaning of the 1954 Supreme Court desegregation decision.
 - b. Whether the Boston Schools were intentionally segregated.
 - c. The effect of the decision on white as well as on black students.

-
- A fourth option has been added

Epilogue

After 15 months of deliberation, Judge Garrity found for the plaintiff, the NAACP, in the case of *Morgan v. Hennigan*. One reason Garrity had taken so long to write his decision was that he did not want to be overruled by higher Federal courts. He succeeded in this objective, for within a year, Garrity's decision was upheld in the next higher court, and eventually in the US Supreme Court.



By the time Garrity announced his opinion, June 1974, the Boston Schools had already closed for the year. With no time to draw up his own plan to desegregate the Boston Schools (and the School Committee did not present him with one) Garrity adopted the state of Massachusetts's plan for desegregating the schools. Garrity admitted that he had not studied it thoroughly and was uninformed of many of its details.

Phase I of the State plan affected 137 schools, including 37 high schools, and involved busing 17,000 of the 93,000 children enrolled in the Boston schools. It allowed seniors in high school to complete their last year in their schools. Otherwise, black and white students were bused into schools that were not in their neighborhoods

Tension was high when school started in September 1974. In the overwhelming number of 137 elementary and middle schools much progress in integrating had already been accomplished. But African-American students arriving at South Boston High School were welcomed by a mob of 400 demonstrators throwing bricks and shouting racial epithets. Policemen had to physically restrain the mob as a handful of black students left the bus and ran into the school. The partially erased graffiti on the front of the school read "...gers go home." Eight African-American students were injured on the ride home later that day. In the meantime, an African-American TV soundman was karate kicked in the back, and a cameraman was thrown across a car. "If what I've been seeing isn't hate," a Jesuit Priest was heard exclaiming, "then I do not know what hatred is."

The Boston School Committee promised to provide Stage 2 of the plan to desegregate the Boston schools, but when on December 11, 1974, an African-American student stabbed a white student in South Boston High, School Committee member John J. McDonough announced publicly that he opposed submitting the plan. McDonough, the swing vote on the 5-member committee, claimed that the plan would "end in the destruction of the City of Boston and the death of one or more individuals." He added that he could not go along with a decision that he thought was wrong.

The School Committee was unwilling to announce its own plan to continue desegregating the schools it had intentionally segregated. In the face of this lack of cooperation, Garrity concluded he had no choice but to continue drawing up plans to desegregate the schools. In drawing up plans for phase II, Judge Garrity relied on a number of "Masters" with prior experience in implementing desegregation plans. But, the final plan submitted to him, Garrity thought, was not thorough enough. So Phase II, in 1975, increased busing from 17,000 to 30,000, students of both races while trying to keep students within one of 9 different pie shaped zones.

Unfortunately Phase II was just as unpopular in South Boston and Charlestown High Schools as Phase I. In other parts of the city it led to a minimum amount of success, with test scores increasing slightly, and some evidence of racial mixing. Despite continued opposition from the School Committee,

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Garrity continued supervising the schools to make certain there was compliance with his desegregation orders.

Critics of Judge Garrity have failed to demonstrate how he could have prevented continued unconstitutional racial isolation of African-American and other minority students. But those who favored integration of the Boston Schools are unable to show real progress in this area given the unprecedented exodus of white students (called 'white flight') from Boston. About 20,000 white students left the Boston schools in the first 14 years since busing was ordered. Those who are left behind are minorities and whites unable to find affordable housing outside Boston or to send their children to private schools.

As of this writing (1999) the Boston Schools have a teaching staff that is more than 20% African-American [Judge Garrity had ordered hiring 1 black teacher for every white teacher until the 20% target goal was reached.] Whites bitterly opposed to integrating the schools no longer win elections in Boston. But despite many imaginative programs [particularly 'magnet' schools] Boston's schools are not much better than they were in 1973. Students in Boston schools, regardless of race, score far below average for their grade level on national tests. Attention for the past few years has focused on improving the Boston Schools rather than integrating them.

In 1999, the Boston School Committee decided to end all racially based assignments to schools, ending a 25 year long attempt to achieve racial balance in the Boston Schools. Whether the attempt should have been made in the first place, and how it might have been made to work will remain subjects for debate among historians and citizens for years to come. •

88888• A report issued in the summer of 2001 by Harvard University's Civil Rights Project, which has been monitoring racial concentration of schools throughout the U.S., has found that the numbers have been increasing. The percent of African-American and Hispanic students in racially isolated schools (defined as 90% minority) has risen from 63 to 70 between 1981 and 1999. Ironically, the report found that minority students were most likely to attend schools with whites in the South, and least likely in northern industrial states such as New York, Michigan, Illinois, and California.

Chapter 4

Discrimination in Public Accommodations

On his way home from an overseas assignment an American GI was refused a cup of coffee at a segregated lunch counter because he was an African-American.

An American family traveling on a federal highway drove nearly 100 extra miles to find a motel that would rent them a room, because they were African-Americans.

On his way from New York City to Washington, D.C., a foreign diplomat could not buy a meal at a roadside restaurant because he was thought to be an African-American.

A college professor was unable to attend the theater in her home town because she was an African-American.

These four incidents, and hundreds like them, were commonplace as recently as the 1960's, and even today people of color are subjected to similar indignities. But in the South such occurrences formed a pervasive pattern of racial segregation practiced openly in the South and subtly in the North.

This pattern was extended to almost every aspect of race relations. African-Americans working in a southern factory used rest rooms separate from those used by their white co-workers. African-Americans also entered factories by separate doors or at separate times if they were hired at all. In grocery stores and department stores, where African-Americans were allowed to spend their money in the presence of whites, they could not use the same rest rooms, drinking fountains, or lunch counters. When traveling, African-Americans sat in separate taxis, trains, buses, or in separate sections of those facilities. Special waiting rooms were built for African-Americans, and they could not sit in the rooms reserved for whites. African-Americans had to stand before the ticket booths labeled "colored" while agents first sold fares to white customers.

Justice, too, was not color-blind. Courtrooms contained Bibles marked "white^ or ^colored;" African-Americans were seated in back of the courtroom. If found guilty by a jury, which was usually all white, the black defendant would be sentenced by a white judge to a segregated prison.

Restaurants, hotels, motels, soda fountains, lunch counters, barbershops, beauty parlors, etc. were designated for one race or the other. Woe to the African-American who broke the color line and asked for service in a store catering to whites only. The only African-Americans in white restaurants entered by the back door and worked in the kitchen or waited on tables.

Segregation extended also to places of amusement; African-Americans were barred from theaters, movie houses, amusement parks, swimming pools, pool halls, bowling alleys, parks, and zoos. Even when these facilities were supported by black as well as white tax money, African-Americans could be barred. In one town, officials removed park benches when African-Americans began sitting on them.

The segregation described above was frequently required by laws, or state and local ordinances that demanded that African-Americans and Americans of European descent be separated in public facilities. These Jim Crow laws covered everything from railroad trains to zoos. But much of the racial segregation was a matter of private choice. White property-owners chose to exclude black people in deference to their white customers, in deference to local custom, or in deference to their own prejudices.

The Pattern of Segregation

Segregation in public accommodations was part and parcel of private discrimination practiced by a society that considered African-Americans inferior and kept them in a place separate from and usually below that assigned to whites.

Such discrimination was practiced by the white gentleman who called his 40-year-old African-American porter "boy" while tipping him 25 cents for carrying his bags to the train; by the white matron who called her Negro servant "auntie" but never "Mrs."; by the white child who called black adults by their first name; and by the Southerner who angrily asked his Northern friend whether he wanted his sister to marry a "Nigra." The pattern of discrimination is seen again in the practice of paying African-Americans less money for doing the same type of work performed by their white counterparts and of not promoting African-Americans to positions of authority over whites regardless of their level of skill. This pattern is also reflected in the North by whites who worry when African-Americans move into their neighborhood; by the raised eyebrow at interracial dating; and by those who object to interracial marriages. Segregation in public accommodations covers only one aspect of a discriminatory pattern that has downgraded and humiliated African-Americans for centuries. So pervasive has this pattern been that for centuries some African-Americans accepted the inferiority it implied.

Sit-ins in Jackson, Mississippi



In late May 1963, three black college students walked quietly down Capital Street in Jackson, Mississippi and entered a Woolworth store. Once inside, they made their way to the all-white lunch counter, sat down and asked to be served. All but one of the white customers got up and left. The waitress closed down the counter. As store detectives watched the scene, whites began crowding around the area. The three demonstrators remained at the counter. For an hour, while tension built up, there was no

incident. Then whites moved in back of the African-American 'sit-ins' and someone in the gathering crowd shouted, "Go back to Russia, you black bastards!" A blonde snatched a mustard dispenser from the counter, tugged on the dress of a Negro sit-in, and squirted a thick stream of mustard down the back of her neck. Other whites grabbed catsup bottles and cups of coffee and emptied their contents on the demonstrators.

A burley ex-cop pushed his way through the crowd and knocked Memphis Norman, one of the demonstrators, to the ground. As Norman lay on the floor, the former policeman repeatedly kicked him in the face and the crowd roared its approval. Norman, doing nothing to defend himself, began bleeding profusely from the mouth. Store detectives finally arrested him on a charge of disturbing the peace, and arrested the former policeman on an assault charge. Norman later was sentenced to six months in jail and fined \$500, while his assailant was jailed for 30 days and fined \$100.

Meanwhile, more sit-ins arrived and took seats at the lunch counter. A white college professor was punched to the floor, but regained his seat. Whites crowded in and poured salt and pepper on his

wounds. Outside, policemen refused to enter the store unless asked to do so by the store's managers. The crowd, becoming more unruly, began picking up odds and ends from other sections of the store and hurling them at the demonstrators. Within fifteen minutes, the managers turned off the lights and cleared the store. The sit-in had lasted for two hours."

A History of the Sit-ins

The African-Americans protesting segregated lunch counters in Jackson, Mississippi followed the lead of their brothers in Greensboro, North Carolina. But the North Carolinians were not the first members of their race to challenge racial segregation in the South. Indeed, the first organized assault on the walls of separate facilities was made in 1947 when sixteen African-Americans and whites rode in buses through Virginia and North Carolina to test a Supreme Court decision banning racial segregation in interstate busing. Members of the group were arrested several times for violating local segregation laws, but there was no violence. Two years later, Blacks challenged the segregation practices that prevented members of their race from using Palisades Amusement Park in New Jersey. The publicity gained by their demonstrations was largely responsible for New Jersey joining several other states in banning racial segregation in public accommodations. By 1964, thirty-two states had such laws on their books, but none of these states were in the South where discrimination was so blatant.



On December 1, 1955, Mrs. Rosa Parks, an African-American and a member of the local chapter of the NAACP, was just too proud to get up and stand in the back of the bus so a white passenger could take her seat. The driver stopped the bus and a policeman arrested Mrs. Parks. Led by Martin Luther King, 50,000 African-Americans in Mrs. Parks' Montgomery, Alabama, refused to use the city's buses, preferring to walk up to five or ten miles rather than accept the humiliation of more discrimination. The boycott lasted for more than a year and ended with the bus company, on the verge of bankruptcy, surrendering to the demands of the boycott's leader. Montgomery's African-Americans had finally won the right to sit in any part of the bus they chose, and

no longer needed to surrender their seats when the bus became crowded. With the Supreme Court's ruling that the Montgomery bus segregation law had been unconstitutional, the victory in Montgomery was won, but the battle for equal rights was hardly complete.

The bus boycott demonstrated what organization and determination could accomplish. Black protest movements here became more frequent, and in the 1960's were almost commonplace. While sit-in demonstrators like those in Jackson, Mississippi

challenged segregation in restaurants, freedom riders challenged interstate bus discrimination and discrimination in terminal facilities. Wade-ins challenged segregation in pools, and pray-ins challenged discrimination in churches. Hardly a week went by without African Americans protesting segregation in some kind of public facility, and many of these protests were met by mass arrests, and some with violence. While the demonstrators, as a rule, practiced nonviolence, indignant whites did not. African-American leaders like Martin Luther King, Jr., began to openly advocate the disobeying of all laws

designed to perpetuate segregation, and some leaders began wondering whether Americans were losing their respect for law and order. As the crisis deepened/ it became apparent that the nation must take action.

When challenged on the morality of breaking any law and the chances of increasing lawlessness, Martin Luther King in his *Letter From Birmingham Jail* replied, "One who breaks an unjust law must do so openly, lovingly (he might have added 'non-violently') and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust, and who will-ingly accepts the penalty and imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law." As well as any other words by King, this statement expressed the underlying philosophy non-violent resistance to injustice.

A Plea from President Kennedy

On June 11,1963, just two weeks after the Jackson incident. President John F. Kennedy addressed his countrymen in both the North and the South:

I hope that every American, regardless of where he lives, will stop and examine his conscience about this and other related incidents.

This nation was founded by men of many nations and backgrounds. It was founded on the principle that all men are created equal, and that the rights of every man arc diminished when the rights of one man are threatened.

Today we are committed to a worldwide struggle to promote and protect the rights of all who wish to be free. And when Americans are sent to Vietnam or West Berlin, we do not ask for whites only.

It ought to be possible for American consumers of any color to receive equal service in places of public accommodations, such as hotels and restaurants, and theaters and retail stores without being forced to resort to demonstrations in the street.

It ought to be possible, in short, for every American to enjoy the privileges of being American without regard to his race or his color.⁷

The Request for Public Accommodations

President Kennedy's speech contained more than a plea for equal treatment; it called for congressional action on, among other things, opening public accommodations to all Americans.

I am, therefore, asking the Congress to enact legislation giving all Americans the right to be served in facilities which are open to the public – hotels, restaurants and theaters, retail stores and similar establishments. This seems to be an elementary right.

The Public Accommodations Act

The evening the President spoke, Medgar Evers, an African-American leader of the Jackson demonstration, was assassinated on his front doorstep as he was returning home from an NAACP meeting. The shock of this event coupled with the impact of the demonstration/ hastened Congress's response to the President's call for action. Within days, bills were introduced in both the House and the Senate to end segregation of public facilities. The proposals underwent many modifications. In its final

form, the law covered hotels, motels, lunch counters, restaurants, gasoline stations, theaters and stadiums – it specifically did not include bowling alleys and other places of recreation, barbershops, and other service establishments. A person who suffered discrimination could file suit in a federal court; the federal government would then ask a newly created community relations service to investigate the complaint and to seek voluntary compliance with the law. If the negotiations failed to bring compliance, the suit would proceed. The federal government could supply lawyers, but the individual claiming discrimination would pay court costs and his lawyer's fees. If the government could prove the existence of a pattern of discrimination in an area, it could file suits against offenders. A separate section prohibited segregation in publicly owned facilities. The law did not go as far as some civil rights demonstrators had hoped, but it went a long way toward the complete elimination of discrimination in public accommodations.

The 1964 law did not stop with prohibiting discrimination in public accommodations. It also prohibited discrimination in public schools, in programs partially financed by the Federal government, and in employment (including hiring, firing, promoting, and demoting) and it prohibited discrimination not only against African-Americans, but against any ethnic or national group. Finally, the law included the word "sex"; i.e. discrimination on the basis of gender was also prohibited.

Congress Debates Public Accommodations

The final version of the Public Accommodations bill was the product of nearly thirteen months of Congressional debate, filibustering, and compromise, and it provided a hotly contested issue for the 1964 Presidential election. While it is impossible to sum up all the arguments for and against this bill, it is possible to reproduce some of the strongest arguments against it and a short debate on its merits. The arguments for the bill have already been presented in the speech by President Kennedy.

Farris Bryant, governor of Florida, presented an argument against the Public Accommodations provisions before the Senate in 1963. Governor Bryant believed the bill threatened the right of property owners to choose their customers and thus deprived them of the right to use their own property as they saw fit:

The debate in which we are now engaged is over the assertion of a new right: the right of non-owners of property to appropriate it from the owners. The new right is asserted in the name of equality. Differently stated, this is a debate between those who seek to preserve.

May freedom in the use of property by its owners and those who would appropriate a part of the bundle of rights which make up that ownership, without compensation, to the public, in the name of equality.

I suggest, gentlemen, that the proper goal for the Congress to seek is not a transfer of property rights, but freedom. We would all agree that the traveler is free and should be free not to buy. He can pass a hotel or a motel he does not like because he does not like the town, he does not like the color of the hotel, or he does not like the name.

Why not? He ought to be able to do these things. He is a free man. So is the owner of the property. And if the traveler is free not to buy because he does not like the owner's mustache, accent, prices, race, other customers, or for any or no reason, the owner of the property ought to have the same freedom. That, it seems to me, is simple justice. The wonder is really that it can be questioned.

Strom Thurmond and Franklin D. Roosevelt, Jr., on Public Accommodations

Strom Thurmond, a senator from South Carolina, known for his pro-segregationist views, and Franklin D. Roosevelt, Jr., a son of the former President, argued passionately at the Senate Commerce Committee hearings on the Public Accommodations bill. Thurmond/ like Bryant, claimed to be championing

property rights. Roosevelt, like President Kennedy, claimed to be championing human rights. Excerpts of their debate quoted below should help the reader determine whether a person's right to discriminate on his own property is more important than another man's right to be served without discrimination.

Mr. Roosevelt: Senator, I don't believe in scarecrows, and I think I have made my position clear, that I think that human rights come before property rights in the case of public Senator Thurmond: ...I think every citizen ought to have equal rights. But as to whether they want to serve people on their private property is a matter for them. That is a freedom, isn't it? Isn't that freedom, to handle your own private property as you see fit?

Mr. Roosevelt: I look upon this from a different point of view. I believe that if a man goes into a business which holds itself out as rendering service to the general public, he has an obligation to serve the general public regardless of whether the individual be a Jew, a Catholic, a Puerto Rican, a Negro, a white, Protestant, or anything else. I think that as long as he is a citizen and comes under the constitutional rights of our country, then in my opinion – this is obviously a difference between us – I believe property rights are secondary to human rights.

Senator Thurmond: Mr. Secretary, don't you feel, down in your heart, if you really believe in the Constitution, that a man has a right to operate his business in a way that he sees fit, to close it any hour he wants to, and under your theory that you have enunciated here today, if he is forced to take anybody... will not that lead eventually to the Government fixing the price that he can charge, the other accommodations he will have to provide in such facility, and various other items that could arise in connection with the operation of such a business?

Senator Thwmond: Can you have any human rights when you destroy property rights?

Mr. Roosevelt: This does not deprive the individual property owner of his property. It simply requires that if he is going to hold himself out as giving service to the general public, that he give it to all the public, all citizens equally. That is all.. 8.

Suggested Student Exercises:

1. Give examples of the pattern of discrimination as practiced in the South – both the discrimination embedded in the laws and in private practices.
2. Review actions taken by African-Americans to protest against restriction in public accommodations.
3. Review the property vs. human rights argument and state the strength and weakness of each position in light of the racial history reviewed in this chapter.
4. If teacher directs, prepare to act out the scene and the argument stemming from the sit-in demonstration. You will need 3 demonstrators; 3 segregationist counter-demonstrators; and 1 store owner/manager

Demonstrators should be able to articulate reasons for protesting against local segregation laws, violating laws against integration, and trespassing. Their arguments ought to incorporate ideas from Martin Luther King on non-violent protest, as well as John f. Kennedy and Franklin Roosevelt, Jr.

Counter-demonstrators and store manager ought to argue that demonstrators are going where they are not wanted, violating the law and the rights of property owners to use their own belongings as they see fit. They should use arguments made by Farris Bryant and Strom Thurmond.

Epilogue:

In July 1964, Congress passed the Public Accommodations bill into law when it approved the Civil Rights Act of 1964. Hours later, President Johnson signed the historic measure, making it illegal to bar anyone from public facilities because of race, religion, or sex. It was widely hailed as a major step forward in advancing human rights. Within seven months, the Supreme Court ratified this step by unanimously upholding the constitutionality of this section. The Court decreed that the commerce clause in the Constitution granted Congress the power to ban racial discrimination in facilities that catered to -people traveling between states or received a substantial portion of its supplies from out of state. This decision came as no surprise to lawyers and constitutional experts who found ample precedent in Congress's regulation of wages and hours of employment in facilities similar to those covered by the Public Accommodations bill.

The bill was held to be entirely in keeping with the ancient English common-law tradition that any man abroad on the highway may stop at any inn and make use of its accommodations. The African-American GI, family, and college professor as well as the African diplomat, can no longer legally be denied service in restaurants, hotels, theaters, or similar establishments. The right to use public facilities has been guaranteed to all Americans.

Chapter 5

Watts: the Ghetto Erupts⁹

Mob violence is not new to the American story; the first strides toward independence in the 1760's were accompanied by the tarring and feathering of British officials and destruction of their property. Nor is racial violence a new phenomenon. White mobs have on many occasions roamed our major cities burning, looting, and killing African-Americans. But during the 1960's, Americans saw black citizens riot in New York City, Philadelphia, Detroit, Chicago, Newark, Jersey City, and Watts. And there are few experts on race relations who dare predict there will be no more such incidents.

All of the violent outbursts of the 1960's took place in the ghettos of our cities. Although they were generally sparked by an incident involving white policemen arresting or manhandling young African-Americans, their underlying causes were rooted in the unemployment, anger, and despair so common to the ghetto community. This chapter examines one of the most fearful of these riots and provides the reader with an opportunity to understand its causes and to prescribe remedies.

Watts Before the Riots

To the casual observer Watts was a drab section of south Los Angeles, California. Its clapboard houses and stucco buildings were plagued by peeling paint, but were located behind green lawns on palm-lined streets. When compared to the decaying tenements and garbage-littered sidewalks of some parts of Harlem or South Side Chicago, Watts did not look like a slum.

But closer investigation would have revealed some pertinent information about Watts. Its population was ninety percent African-American. Many of its pleasant, one- or two-bedroom houses were shared by two and even three families. About one out of three adults in Watts were unemployed. Because so many received some kind of welfare, grocers would raise the price of food the day welfare checks arrived. Nearly one-half of the men had police records; in 1964, 17,000 offenses were reported in the police precinct containing Watts. Watts had become a stopping place for African-Americans migrating from Southern farms and towns. About 2,000 came to Los Angeles every month to escape the poverty, boredom, and oppression of Southern life. But, unprepared for urban life, they were unable to get jobs and unable to get out. As these Southern migrants crowded into Los Angeles the least successful drifted into Watts and were trapped as in a huge wall-less prison.

The city's public transportation system (one of the worst in the nation) created the biggest barrier to the Watts resident. The bus trip to the General Motors plant, one of the largest employers, was 22 miles from downtown Watts; it took 4 hours and 45 minutes, and the round-trip fare was \$1.76. Other places of employment were almost as far away and frequently more expensive to reach. Since few of Watts's families (14 percent) owned cars, too many found it easier to live on welfare than to spend their earnings and their time traveling to and from work.

An inferior education and the lack of job skills also conspired to keep Watts's residents penned in their ghetto, for few were equipped to meet the demands of that day's job market. Two out of every three

⁹ Source: Thomas Ladenburg, *Civil Rights in the Land of Equality*, Arlington Dissemination Center

adults had not completed high school; many teenagers dropped out of school while in junior high; one out of eight could neither read nor write; and when an employment agency was finally opened in Watts, only 400 applicants out of 4000 were hired.

As automation eliminated jobs once performed by unskilled laborers, unemployment increased and conditions worsened. This was particularly true for African-Americans. National income had soared in the United States since 1959. But African-Americans in Watts had not shared in this prosperity; income there had actually decreased by 8 percent between 1959 and 1965.

Although almost cut off from the white world, Watts residents were constantly reminded of it. The TV screen was a window into the world where “whitey” enjoyed the luxuries of life that were denied to the Watts residents. The white policemen were always on the beat or cruising by car, watching out for minority crime. The white landlords collected the rent; the white welfare workers came by to eliminate cheating on welfare; the white politicians made decisions and pronouncements that determined the destiny of Watts residents. And somewhere in the background were the concessions won from the white world by the followers of Martin Luther King, Jr. and other civil rights leaders, but they did not improve the standard of living or the quality of life in Watts.

The Spark that Ignited the Powder Keg

Marquette Frye, possibly a little drunk, was speeding home when he was stopped by a police car on the corner just two blocks from his home in Watts. Shortly before 7 P.M., Wednesday, August 11, 1965, one officer subjected Frye to a “field” test for drunkenness, which he failed, and told him he would be arrested and the car impounded. A crowd of twenty-five to fifty gathered. Frye smiled and tried to joke with the officer to avoid arrest. Suddenly, Frye’s mother appeared, berated her son, and cursed the policeman, whereupon Frye became furious and called the policeman names, screaming that he wasn’t going to jail. The arresting officer unholstered his pistol. “Go ahead, kill me,” Frye shouted. A second officer pulled out a shotgun and pointed it menacingly at the crowd. Frye was finally handcuffed and hustled into the police car. He continued to struggle, twice tried to escape, and was finally clubbed while in full view of the gathering crowd.

By this time the police had called for reinforcements and nearly fifty officers had arrived. The crowd, too, had grown in size, and although still under control, was insulting and taunting the police. An order came for the police to retreat to avoid further trouble. But at this crucial moment, two policemen darted into the crowd and dragged out a woman who, they claimed, had spit on them. At this point, the crowd began scuffling with the police to free the new prisoner. Word spread like wildfire that the police had manhandled a pregnant woman (she wasn’t, though a loose garment she wore made her appear pregnant), and stones were thrown at the retreating officers. The last policemen left under a hail of rocks and debris.

When the police returned to the scene, the crowd numbered more than 1500, and bricks, rocks, and bottles flew in all directions. The police tried containing the mob in a two-block area. Their attempts were futile, and their efforts to arrest the ringleaders, or the most violent, only succeeded in stirring the crowd to more violence. Before the evening ended, fifty vehicles, including two fire trucks, were overturned, burned, or damaged; nineteen policemen and sixteen civilians were injured; and thirty-four people, including Marquette Frye, were arrested.

The Revolution Spreads

The next afternoon, the late, outspoken Los Angeles police chief, William Parker, commented on the causes of the riots with this inflammatory remark:

One person threw a rock, and then, like monkeys in a zoo, others started throwing rocks.¹⁰

That night (Thursday), the rioting was much worse. An African-American salesman, pressed into service by the *Los Angeles Times*, gave an account that ran something like this: [time™ and a ssed\) decompressor see this picture.](#)

Every time a car with whites in it came down the street word spread like lightning. "Here comes whitey – get him." As the older people stood in the background urging them on, boys and girls in their teens and men and women in their twenties, would rush into the streets and pull whites from their autos, beat them, and set fire to their cars. A white couple in their sixties were stopped and beaten as the crowds in the background chanted, "Kill! Kill!" Flying rocks knocked a car driven by whites off course and it plowed into a parked vehicle. The mob swarmed over the whites and beat them so badly that one man's eye was left hanging out of its socket while the crowd in the background screamed, "Kill! Kill!" Several black ministers intervoened and carried the men into an apartment, then called an ambulance and the crowd turned its venom on them: "hypocrites, traitors to your race." As the crowd was spitting on the ministers, black policemen interfered to rescue them, and drew the mob's uncontrolled wrath.¹¹

When "whitey" could no longer be found, the crowd began to turn on cars driven by African-Americans. Meanwhile, fires were being set, and rocks and gunfire prevented fire engines from dousing the flames. The crowd had the upper hand and they knew it. The rioters knew that the white police were terrified by their onslaught; they knew that whites were afraid. Whites in other neighborhoods, fearful of the Watts uprising, were running to stores to buy guns. That evening, realizing the mob could not be controlled by the Los Angeles police, Police Chief Parker called for the National Guard.

From Rioting to Looting

Even the National Guard could not put down the civil disturbance immediately. Jeeps rolled down the streets of Watts, soldiers sat alert with machine guns ready. But no sooner was the mob pacified in one area than rioting and looting broke out again. A *New York Times* correspondent reported that on Sunday morning he could see a "smattering of people" emerge from side streets as daylight broke. "As the sun rose in the smoke-filled skyline" looting began at "full pace." The police stayed out of the area except to set roadblocks for firemen. The streets filled with traffic as daylight brought out the curious, the sightseer, and the looter. Looters rushed past one another, from stores to homes, glancing around to see

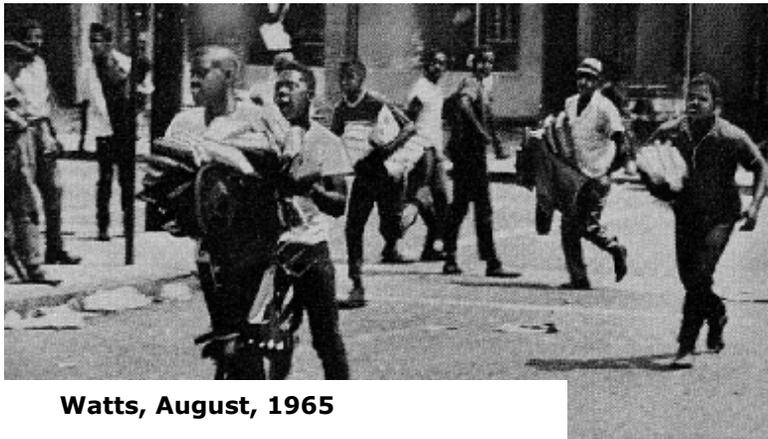
¹⁰New York Times, August 14, 1965, p. 8.

¹¹Quoted in Thomas J. Ladenburg and William S. McFeely, *The Black Man in the Land of Equality*, (New York: Hayden Book Company, 1969, pp. 157-58.

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what others had taken. The more bold backed their cars right up to stores and loaded furniture, appliances, etc., while their vehicles were blocking traffic. Some ran home with stolen clothes and



Watts, August, 1965

reappeared in the streets moments later wearing them. Three and four-year-old children trailed after parents laden with stolen merchandise. The streets were littered with glass, and the splinters from shattering windows cut into arms and feet, drawing blood from the looters who barely took notice. One woman scarcely paused as she walked through a plate-glass window she assumed was already broken. In the background, smoke rose from buildings still on fire; water from fire-fighting equipment ran down the

gutters; and the streets were strewn with bricks, bottles, and rocks from the night's melee. Stores everywhere stood bare.

The atmosphere was one of gaiety. Jazz music blared from the nightclubs that had not been damaged because signs like "Soul brother owns this" or "Our Blood" had warned rioters that the establishment was African-American owned. The people laughed and joked; they were thoroughly enjoying themselves; taking what they felt was rightfully theirs anyway, and pleased to have thrown a scare into "whitey" the night before.

Assessing Damages

By the time it was all over, the five days of rioting had cost thirty-four lives (twenty-nine of them African-American) and left more than 1000 people injured. Property damages have been variously estimated from between 40 to 60 million dollars. About two-thirds of the near 4,000 arrested during the riots either never had police records or had been charged only for petty crimes. This was the aftermath of one of the most destructive riots in our nation's history. And even before it was over, people had started asking what caused it.

The Cause of the Riot

Police Chief Parker thought the riot was caused by disrespect for the law. This he blamed on the civil rights movement, which had often preached disobedience to unjust laws:

*You can't keep telling them that the Liberty Bell isn't ringing for them and not expect them to believe it. You can not tell people to disobey the law and not expect them to have a disrespect for the law. You can not keep telling them that they are being abused and mistreated without expecting them to react.*¹²

Former President Eisenhower also blamed street violence in Watts on the civil rights movement, which he claimed told *African-Americans*:

If we like a law we obey it. If we don't we are told 'You can disobey it.'

¹²"Races", Time Magazine, LXXXVI (August 20, 1965), p. 19.

The result, the former President said, is disrespect for all laws, which encouraged the people of Watts to do what they wanted: to loot, to burn, or to destroy.

African-American leader Bayard Rustin thought the causes of the Watts riot went far deeper than the effects of the civil rights movement:

I think the real cause is that Black youth – jobless, hopeless – do not feel a part of American society. The major job we have is to find them work, decent housing, education, training, so they feel a part of the structure [of society]. People who feel a part of the structure do not attack it. The job of the Negro leadership is to prevent riots before they start.’¹³

President Johnson echoed this argument in a speech delivered before a Southern audience on August 15, 1965.

As I have said time and time again, aimless violence finds fertile ground among men imprisoned by the shadowed walls of hatred, coming of age in the poverty of slums, facing their future without education or skills and with little hope of rewarding work.¹⁴

The Aftermath of the Riot

California’s governor at the time of the riot was Edmund (Pat) Brown. Brown was in Europe when the violence started, and he arrived in the United States only shortly before Watts quieted down. He ordered an immediate investigation of conditions in Watts and the report issued after 100 days of deliberations advocated:

...“revolutionary” programs: massive ‘emergency literacy’ drives, a large scale job-training and placement center, new mechanisms for processing complaints against police, and vastly expanded mass transit facilities to permit African Americans to get to jobs around sprawling Los Angeles¹⁵

An aid to Los Angeles’s Mayor Yorty advocated even more help:

What we need is something like the old WPA to provide 5,000 to 10,000 jobs for a year. This would take off some of the pressure and give us time to work toward more permanent solutions.¹⁶

Governor Brown asked the California State Legislature to appropriate \$61.5 million to enact his program. By March 1966, the money appropriations had not yet been passed. By June, only one of the 232 buildings destroyed in the riot was rebuilt and fewer than ten percent of those damaged had been repaired. Less than \$10 million out of the \$29 million of antipoverty money promised by President Johnson had filtered down into Watts, and the total assistance provided by the Spring of 1966 consisted of

¹³“Negro leaders on Violence”, Time Magazine, LXXXVI, August 20, 1965, p. 17

¹⁴New York Times, August 16, 1965, p. 17.

¹⁵ New York Times, March 20, 1966, Section 4, p. 2. 5

¹⁶New York Times, November 7, 1965, p. 72

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only four teen-age canteens, a legal assistance office, a state employment referral office, and aid to a group known as the Westminster Neighborhood Association. Unfortunately, the same conditions that caused that city to explode in August 1965 continued to exist. Indeed, riots again broke out in Watts in March 1966, and again more than twenty years later in response to the verdict following the beating of Rodney King by four policemen after a videotape confirmed many people's belief that police violence against blacks was commonplace.

Suggested Student Exercises:

1. Do you think the police should be blamed for mishandling the incident that exploded Watts?
2. The report of the President's Commission on Urban Unrest blames outbreaks such as those that occurred in Watts on white racism. To what extent is this a more or less accurate interpretation of the causes of the riot than Chief Parker's or President Eisenhower's explanations?
3. What do you think is the important lesson to be learned from incidents of civil unrest such as the one that occurred in Watts in 1965?

Chapter 6

Martin Luther King & Malcolm X on Violence and Integration

Martin Luther King, Jr. and Malcolm X are probably the two best known African-American leaders of the last century. Since their deaths in the 1960's no one has replaced them. Both men were ministers and victims of assassination. They became famous about the same time. But they represented very different philosophies. King "looked forward to the time when blacks and whites would sit down together at the table of brotherhood." Malcolm X was interested "first in African-Americans gaining control of their own lives." They differed on the use of violence to achieve their goals, and they differed on the roles of whites in the Civil Rights movement. King was a Baptist minister; Malcolm X rejected Christianity and became a Black Muslim. In this chapter you will learn more about the backgrounds and careers of these two great leaders, and you will have a chance to examine the differences in their philosophies.

Malcolm X: Born Malcolm Little

Malcolm X was born Malcolm Little in Omaha, Nebraska in 1925. Shortly before his birth, Klansmen tried to bum his parents' house to the ground. His father, a Baptist minister, moved the family to Lansing, Michigan, but, his problems with whites continued and the family home was actually burned down to the ground by a white-supremacist organization. Whites in the area did not like the fact that Malcolm's father was an organizer for Marcus Garvey's back to Africa movement. Whites killed Malcolm's father a few years later, and his body left to be cut in two on trolley tacks in Lansing. The death was officially ruled a suicide and as a result Mrs. Little was unable to collect on an insurance claim.

QuickTime™ and a
TIFF (Uncompressed) decompressor
are needed to see this picture.

Malcolm Becomes a Muslim

Malcolm X

After 8th grade, Malcolm went to live with a half-sister in Boston, Massachusetts. Here his education came from the streets where he was a petty criminal. He was involved in everything from running numbers to peddling dope and breaking and entry. His life of crime ended with a ten-year jail sentence. While in prison Malcolm came under the influence of Black Muslims who taught him that whites were devils that had robbed African-Americans of their true homeland, names, and religion. They told Malcolm that his name, "Little," had been given his ancestors by their slave masters. Under the tutelage of the Muslims, Malcolm changed his name to "X," gave up vices which whites had "forced" on African-Americans, including the use of tobacco, alcohol and other drugs, excessive sexual activity, lusting after white women, crime, gambling, hustling, etc. The Muslims also taught Malcolm to be proud of his African heritage and his black skin and to stop trying to act white by straightening his hair and worshipping a white-skinned, blond-haired, blue-eyed Jesus that did not look at all like African-Americans.

Martin Luther King

There were stark differences in the lives, philosophies, and achievements of Martin Luther King and Malcolm X. The son of a respected Baptist minister, King was born in Georgia, raised in Atlanta, and

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lived in a prosperous but segregated neighborhood. His stern but loving father taught Martin Jr., as well as his brother and sister, the value of hard work, and he instilled in them a strong faith in God. With a few notable exceptions, Martin was spared exposure to the pains of racial discrimination. He sang in the church choir at the age of four, skipped two years of high school, enrolled in an all-black college when he was only fifteen years old, and preached his first sermon at seventeen. He was one of only six African-American students in his theology school, but he was elected class president and earned the admiration of his white classmates with his eloquent oratory, exemplary scholarship and sound judgments. After graduation he attended Boston University where he earned his PhD and met and later married Coretta Scott, a music major.

King's first ministry was at the Ebenezer Church in Montgomery, Alabama in 1954, the same year as the famous *Brown v. Board of Education* decision banning racial segregation in public education. When, in December of 1955, Mrs. Rosa Parks was arrested for refusing to surrender her seat at the front of a bus to a white man, King helped organize and lead the Montgomery Bus Boycott. His inspired leadership sparked the Civil Rights Movement nationwide and in August 1963, was demonstrated for all the world to hear in his famous "I Have a Dream" speech. Martin Luther King's speeches and personal contacts with the nation's leaders were responsible for successful nationwide sit-in campaigns and the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. His non-violent leadership in the name of justice for African-Americans and his staunch opposition to the war in Vietnam earned him the Nobel Peace Prize. Following his assassination on April 4, 1968, King's birthday has been declared a national holiday. He is honored to this day as the man who reminded all Americans that the unjust system of racial segregation violated the principles on which their nation was founded.

Different Philosophies of Martin Luther King and Malcolm X

On the Role of Whites in the Civil Rights Movement	
Martin Luther King	Malcolm X
<p>Another group with a vital role to play in the present crisis is the white Northern liberals. The racial issue which we confront in America is not a sectional but a national problem. The citizenship rights of Negroes cannot be flouted anywhere without impairing the rights of every American.</p> <p>Injustice anywhere is a threat to injustice everywhere. A breakdown of law in Alabama weakens the very foundations of lawful government in the other 47 states. The mere fact that we live in the United States means that we are caught in a network of inescapable mutuality. Therefore, no American can afford to be apathetic about the problem that meets every man in his front door.¹⁷</p> <p>The racial problem will be solved in America to the degree that every American considers himself personally confronted with it. Whether one lives in the heart of the Deep South, or in the North, the problem of injustice is his problem; it is his problem because it is America's problem.¹⁸</p>	<p>Brothers, the white man can't give you the solution. You will never get the solution from any white liberal. Don't let them come in and tell you what we should do to solve the problem. Those days are over. They can't do it and they won't do it.</p> <p>That's like asking the fox to help you solve the problem confronting the wolf. ... He'll give you a solution that will put you right in his clutches and this is what the white liberal does.</p> <p>Very seldom, you will notice you will find whites who can in any way put up with black nationalists. Haven't you ever wondered why? I mean even the most liberal whites can't get along with black nationalist.</p> <p>He can't just stomach it. But he can go along with anything that is integrated, because he knows he can get in there and finagle it, and have you walking backwards thinking you'll be waking forwards, No, we don't want that.¹⁹</p>

On Integration	
Martin Luther King	Malcolm X
<p>I say to you today, even though we face the difficulties of today and tomorrow, I still have a dream. It is a dream deeply rooted in the American dream. I have a dream that one day this nation will rise up, live out of the true meaning of its creed: 'We hold these truths to be self-evident, that all men are created equal.'</p> <p>I have a dream that one day on the red hills of Georgia, sons of former slaves and the sons of former slave owners will be able to sit down together at the table of brotherhood. I have a dream that one day even in the state of Mississippi, a state weltering with the heat of injustice, weltering with the heat of oppression will be transformed into</p>	<p>[American society] is already divided on racial lines. Gpo to Harlem. All we're saying now is since we're already divided, the least the government can do is let us control the areas where we live. Let the white people control theirs, let us control ours—that's all we're saying. If the white man can control his, and actually what he is using to control it is with white nationalism in the white communities whether they are Jews, whether they are Protestants — they still practice white nationalism. O all we're saying to our people is to forget our religious differences. Forget all the differences that have been artificially created by the whites who have been over us, and try and work together in unity and harmony with the philosophy of black nationalism, which only means that we should control our own</p>

17 Martin Luther King, Jr. *Stride Toward Freedom*, New York: Harper and Row, 1958, p. 199.

18 Martin Luther King, Jr. Letter from Birmingham Jail. Quoted in Lynne Inniello, ed., *Milestones Along the March*, 1966, pp. 71-72.

19 Quoted in Betty Shaazz, ed. *Malcolm X on Afro-American History*, New York: Pathfinder Press, Inc., 1970, pp. 48-49.

20 Martin Luther King, *I Have A Dream*, speech

<p>an oasis of freedom and justice.</p> <p>I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin, but by the content of their character. This will be the day when all of God's children will be able to sing with new meaning, let freedom ring,," So let freedom ring from the mighty hilltops of New Hampshire. Let freedom ring from the mighty mountains of New York. But not only that. Let freedom ring from Stone Mountain of Georgia. Let freedom ring from every hill and molehill of Mississippi, from every mountainside.²⁰</p>	<p>economy, our own politics, and our own society. Nothing is wrong with that.</p> <p>And then, after we control our society, we'll work with any segment of the white community towards building a better civilization. But we think they should control theirs and we should control ours. Don't let us try and mix with each other because every time that mixture takes place we always find that the low man is low man on the totem pole.²¹</p>
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On Violence	
Martin Luther King	Malcolm X
<p>It is dangerous to organize a movement around self-defense. The line separating defensive violence and aggressive violence is very thin. The minute a program of violence is enunciated, even for self-defense, the atmosphere is filled with talk of violence, and the words falling on many ears may be interpreted as an invitation to aggression.</p> <p>In violent warfare, one must be prepared to face the fact that there will be casualties in the thousands. Anyone leading a violent rebellion must be willing to make an honest assessment regarding the possibility of casualties to a minority population confronting a well-armed, wealthy majority with a fanatical right wing that would delight in killing thousands of black men, women, and children.</p> <p>Fewer people have been killed in ten years of non-violent demonstrations across the South (1955-65) than were killed in one night of rioting in Watts.</p> <p>The ultimate weakness of violence is that it is a descending spiral, begetting the very thing it seeks to destroy. Instead of diminishing evil, it multiplies it. Through violence you may murder the liar, but you cannot murder the lie, nor establish the truth. Through violence you may murder the hater, but you do not murder hate. In fact, violence merely increases hate. So it goes. Returning violence for violence multiplies violence, adding deeper darkness to a night already devoid of stars. Darkness cannot drive out darkness: only light can do that. Hate cannot drive out hate: only love can do that.</p>	<p>Since self-preservation is the first law of nature, we assert the Afro-American's right of self-defense. The Constitution of the USA clearly affirms the right of every American citizen to bear arms. And as Americans we will not give up a single right guaranteed under the Constitution.</p> <p>The history of unpublished violence against our people clearly indicates that we must be prepared to defend ourselves or we will continue to be a defenseless people at the mercy of a ruthless and violent racist mob.</p> <p>We assert in those areas where the government is either unable or unwilling to protect the lives and property of our people, that our people are within their rights to protect themselves by whatever means necessary. A man with a rifle or a club can only be stopped by a person who defends himself with a rifle or club.</p> <p>Tactics based solely on morality can only succeed when you are dealing with basically moral people or a moral system. A man or system which opposes a man because of his color is not moral. It is the duty of every African-American community throughout this country to protect its people against mass murderers, bombers, lynchers, floggers, brutalizers and exploiters.</p>

21 . Quoted in George Breitman, ed. *The last Year of Malcolm: The Evolution of a Revolutionary*, New York: Pathfinder Press, Inc., 1970, pp. 106-107.

Student Exercises:

1. Explain how you think Martin Luther King's and Malcolm X's philosophies were influenced by their experiences when they were children and young men.
2. Select three phases from King's or X's the speeches and writings, and come to class prepared to explain in your own words why they are meaningful to you.

Chapter 7

Affirmative Action and the Case of Allan Bakke

If you were an African-American in the 1960's/ you would be three times as likely to live in poverty than if you were white; you would be two times more likely to be unemployed; far less likely to be a doctor, lawyer, or architect, and three times more likely to be a nurses' aid, maid, or bus driver. You'd be five times more likely to be arrested for robbery and three times more likely to be robbed. You would likely be living with just one parent in the center of a city and not enjoying the same quality of services, education, hospital, parks, or recreation, as your suburban white counterpart.

History Plays a Role

There are of course historic reasons that African-Americans are not as well off as white Americans. Unlike whites and other immigrants, African-Americans did not choose to come to the United States. They were kidnapped from their homes, marched in chains for hundreds of miles to the coast, packed like sardines into slave ships, separated from family, sold at auctions, and forced to work for whites who, at least in theory, had total power over their lives. In the process they lost most attributes of their culture, including their names, language, tribal identification, religion, relatives, clothing, customs, and almost everything that defined their existence. As slaves, they were subject to brutal discipline. They were taught a doctrine of racial inferiority, which was an item of faith among those who enslaved them. After emancipation, African-Americans were made second class citizens, denied the right to vote or hold office, and in most cases, the opportunity to own property. In the segregated South they were provided with a meager education in separate and inferior schools and prevented from using facilities ranging from water fountains and bathrooms to hospitals and city parks provided for whites. They were forced to sit in the back of buses and denied entrance into colleges or universities. They were denied employment in occupations preferred by whites. They were lynched, jailed without trials, and cruelly put to death for the slightest violations of the white man's racial code of justice.

Beginning with World War I, African-Americans began migrating from the segregated South to the North, but their troubles did not end upon entering the "promised land" where they were crowded into center cities, occupying neighborhoods abandoned by whites, and taking lower paying, dead-end jobs. They were generally denied the opportunity of owning their own homes, moving to the suburbs, and attending good schools. It was not until the 1960's when the Civil Rights Act of 1964 and Voting Rights Act of 1965 helped African-Americans make substantial progress, that the walls of segregation began tumbling down. But, it was easier to remove the offending Jim Crow laws from the books than change the racial attitudes of whites or undo the damage that had been done during 300 years of state-sponsored discrimination.

Birth of Affirmative Action

Recognizing that equality in fact could not be achieved merely by removing the chains of those who had been shackled for centuries, thoughtful Americans began to ask for more than just equal rights. President Kennedy started the ball rolling by coining the phrase 'affirmative action,' and directing companies that did business with the Federal government to take positive steps to assure that they had a 'racially representative' work force. The 1964 Civil Rights Act provided for class action suits against firms that showed a "pattern of discrimination" on the basis of race, national, religion or gender. President Richard Nixon called for companies with Federal contracts to set numerical goals for hiring minorities.

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During the 1970's and 1980's, more and more institutions took steps to assure they would have a more representative work force. Many businesses and schools did this to meet real or anticipated Federal and State guidelines, in response to court orders, or because individuals thought it was time to assure there would be equality in fact as well as in theory. Cities and towns made attempts to hire and promote more racial minorities (Asian, Native Americans, Hispanics, and women included.) Police and fire departments as well as schools and city agencies set goals or made attempts to hire qualified African-Americans. Colleges began taking minority students with lower College Board scores than those of whites with similar or higher grades. Law firms began looking for minority lawyers businesses tried to hire people whom they might have overlooked a few years before; and unions began accepting minorities.

Not surprisingly, the idea of giving minorities, especially African-Americans, Hispanics, and women, a *special* rather than an *equal* opportunity, was opposed by a great number of whites. Many (though certainly not all) whites were ready to admit that discrimination on the basis of race had been wrong and should be stopped, but they were not prepared to take these steps to correct the effects of past discrimination.

As a result, affirmative action (called "reverse discrimination" by those who opposition) has become one of the hottest topics of political debate in America. It has and will continue to play a role in state as well as presidential politics. It has been the subject of numerous talk shows; it is debated in the classroom and law courts; at factory assembly lines as well as police and fire stations; on construction jobs and in almost every type of public forum. But before you join this debate, take a look at some of the statistics on this and the next two page, and then comment on the arguments for affirmative action and whether you think special steps should be taken to make up for the results of past discrimination.

Suggested Student Exercises:

1. Cite examples that show there has been "affirmative action" for whites over much of the last 300 years.
2. Do you think that the statistics on this and the next page can be explained as the examples of past and current discrimination? ²²

²²<http://images.google.com/images?hl=en&q=Unemployment+by+race&btnG=Search+Images&gbv=2>

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The Bakke Case: A Simulation

The most famous decision involving affirmative action was made by the US Supreme Court in 1978. It involved a 38-year-old ex-marine by the name of Allan Bakke. Bakke had two engineering degrees and had served a seven-month hitch in Vietnam. At age 33, he had applied to 12 medical schools and was turned down by all of them. He sued one of the 12 schools, the University of California at Davis, because it had admitted minorities with medical board scores one-third as high as his. Bakke thought he was a victim of discrimination because of his color. Bakke is white.

Dismayed by the lack of minority students, the faculty at UC Davis had established a special program setting aside places for the admission of minority students who did not meet the otherwise stringent requirements that other students needed to meet. Bakke was not accepted partly because he did not qualify for any of the 16 places reserved for racial minorities and his case against the University threatened to end their attempt to increase the number of minority doctors in the US.

Before you learn the outcome of this famous dispute, use the following information to participate in a mock trial of the case in which Allan Bakke sued the University of California for denying his Civil Rights in the name of *Affirmative Action*.

Suggested Student Exercises:

1. What do you think of the purposes of establishing the UC Davis Affirmative Action program?

24 <http://www.rri.wvu.edu/WebBook/Albrecht/table3.jpg>

2. What is the 14th amendment issue in the Bakke case?

3. As your teacher assigns you, prepare to role-play the Bakke case. (At least two students, Bakke and his lawyer can present the case against UC Davis, and the same number can present the opposing side.) Students who do not represent either Bakke or the University will play the role of Supreme Court justices or reporters. After Bakke and Cox make their presentations and answer questions from the Supreme Court, members of the court should spend at least 15 minutes deliberating among themselves before announcing their verdict and reasons for it. Reporters should listen to me deliberations, and be prepared to report on the proceedings.

Allan Bakke

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are needed to see this picture.

Allan Bakke

You are 38 years old and the father of two. Your father was a mailman and your mother a teacher. They could not afford to pay for your college education, so you joined the Naval Reserve Officers Training Corps at the University of Minnesota where you majored in engineering and had an A average. Later you served four years in the Marine Corps, including seven months in Vietnam. While in 'Nam', you were so impressed by the work of doctors that you decided to study medicine. Upon returning to the US, you attended evening classes in order to qualify for medical school and you did volunteer work at a local hospital. You applied to 12 different medical schools. Even though you were described by one admissions officer as strongly committed to healing the sick as any candidate he had interviewed, all 12 schools rejected you.²⁵

With the encouragement of an ex-admissions officer from UC Davis, you decided to sue this school after learning that minority group members were admitted with far lower scores than you had earned on the medical board exam.

You believe that doctors *must* be highly skilled and dedicated people and that only the top applicants should be accepted to medical school. You think that competence and not color is the most important attribute of a doctor. The 14th amendment, you have learned guarantees everyone the "equal protection under the law/' and you don't think you should be deprived of this protection on the basis of color. You see yourself as a victim of reverse discrimination.

Archibald Cox

You are Archibald Cox, the former Solicitor General of the US and a **Watergate** prosecutor fired by Nixon. You represent the University of California in defending against Allan Bakke's attempt to end UC Davis's affirmative action program. You have taken the case because you believe affirmative action is a necessary method in the effort to make up for 300 years of racial preferences for whites, and you are keenly aware of the extent and pervasiveness of racial discrimination in the US. Specifically, you see four good reasons for the racial set-asides for minority students:

25

http://images.google.com/imgres?imgurl=http://www.pbs.org/wgbh/amex/eyesontheprize/story/imagenes/22_bakke_01.jpg&imgrefurl=http://www.pbs.org/wgbh/amex/eyesontheprize/story/img_22_bakke_01.html

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- It will increase the number of minorities, particularly African-Americans (at that time about 1 in 50 medical practitioners), who become doctors.
- It will counter the effects of discrimination in society responsible for the shortage of minority doctors.
- It will increase the number of doctors serving in minority communities.
- It will make for a more racially diverse student body at UC Davis.
- It will encourage other African-Americans to work hard in school so they can become professionals and serve their community, be role models for their children and neighbors.

You see no reason why colleges can't discriminate among qualified candidates on the basis of color. Schools for centuries have accepted applicants because they were sons or daughters of alumni, were from other parts of the country, ²⁶attended prestigious private schools, or were good athletes or musicians. Why couldn't a school accept certain candidates to make sure there would be more minority doctors in the US?

The Supreme Court

You are a Supreme Court Justice who will be asked to make one of the most important civil rights decisions in 25 years. You are thoroughly acquainted with the law. You know that the 14th amendment guarantee of "equal protection" had for years been subverted by the Plessy decision of 1896 as "separate but equal." You also know that the 'separate but equal' doctrine had been overturned in 1954 in *Brown v. School Board of Topeka, Kansas*. But you are not so sure whether, to get beyond racism, it might first be necessary to take race into account.

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Archibold Cox

Every Supreme Court decision sets a precedent that future court decisions and lawmakers must follow. Thus in making your decision, you will be deciding whether:

- Bakke and others like him (whites with higher admission scores than minorities) be admitted to UC Davis, regardless of the University's attempts to train minority doctors, **or**
- Bakke should not be admitted to UC Davis, and the affirmative act program shall remain, **or**
- Some other solution that goes to neither extreme (a. or b) should be offered.

Let the Simulation Begin !!!!!!!

²⁶ http://www.law.harvard.edu/alumni/bulletin/2004/fall/memoriain_side.php

Epilogue: The Decision and Two Dissents

The Bakke Decision: Justice Powell (for the majority of the Court)

...the purpose of helping certain groups whom the faculty of the Davis Medical School

perceived as victims of "societal discrimination" does not justify a classification that imposes disadvantages upon persons like respondent, (Bakke) who bear no responsibility for whatever harm the beneficiaries of the special admissions program are thought to have suffered....

Ethnic diversity, however, is only one element in a range of factors a university properly may consider in a goal of a heterogeneous student body.

The file of a particular black applicant may be examined for his potential contribution to diversity without the factor of race being decisive when compared, for example, with what an applicant identified as an Italian-American if the latter is thought to exhibit qualities more likely to promote beneficial educational pluralism.

This kind of program treats each applicant as an individual in the admissions process. The applicant who loses out on the last available seat to another candidate receiving a plus on the basis of ethnic background will not have been foreclosed from all consideration for that seat simply because he was not the right color or had the wrong surname. ... His qualifications would have been weighed fairly and competitively and he would have no basis to complain.

Dissenting Opinion by Justices Burger, Rehnquist, Stewart, and Stevens:

Race cannot be the basis for excluding anyone from participation in a federally funded program.

As succinctly phrased during the Senate debate, under Title VI (Of the Civil Rights Act of 1964) it is not "permissible to say 'yes' to one person, but to say, 'no' to another person, only because of the color of his skin."

Dissenting Opinion by Justice Marshall

I do not agree that the petitioner's (UC of Davis) admissions program violates the Constitution because...! do not believe that anyone can truly look into America's past and still find that a remedy for the effects of the past is impermissible.²⁷

Final Exercise:

1. State the main point of the decision reached by the Supreme Court, summarize the two dissenting decisions, and explain with which of the three you agree and the reasons why.

27 quotes from the decision were in New York Times, July 29,1978-40-