

*Brown* Conference Notes

**From Justice Douglas's conference notes in *Bolling v. Sharpe***  
(the segregation case from the District of Columbia)

Dec. 13, 1952

*Chief Justice Vinson:* Congress has not declared there should be no segregation--hard for Chief Justice to get away from that construction of the Amendments--schools here have long been segregated--Harlan in his dissent in *Plessy* does not refer to schools--that is significant to Chief Justice and he can't get away from that construction by those who wrote the amendments and those who followed--Congress has the power to act in the District and in the states--it may act in the District either directly through the Board of Education or by a new statute.

**From Douglas's conference notes in *Brown v. Board of Education***

Dec. 13, 1952

Chief Justice recites some of the long history of segregation in schools--Chief Justice believes segregation not required--doubts if it can be banned.

*Black:* there may be violence if Court holds segregation unlawful--states would probably take evasive measures which ?? to obey--the courts would then be in the firing line for enforcement through injunctions and contempt--can't draw a rational distinction between this case and other cases under the 14th amendment as respects the self-executing argument--he is compelled to belief that reason for segregation is the opinion the colored people are inferior--the Amendments have as their basic purpose protection of the negro against discrimination--southerners say it is to prevent the mixture of the races--purpose of the law is to discriminate because of color--the Amendments were designed to stop that--he concludes that segregation per se is bad *unless* the long line of decisions bars that construction of the amendment.

*Reed:* takes different view from Black--the state legislatures have informed views on this matter--minority here has not been assimilated--states are authorized to make up their minds on this question--there is a reasonable body of opinion in the various states for segregation. He points to the constant progress in this field and in the advancement of the interests of the negroes--states should be left to work out the problem for themselves--segregation is gradually disappearing; optional in Kansas, Kentucky, and others. Segregation in the border states will disappear in 15 or 20 years. In the deep south separate but equal schools must be allowed.

*Frankfurter:* these are equity suits--they involve imagination in shaping decrees--he would ask counsel on reargument to address themselves to problems of enforcement--he favors reargument in the state as well as the District cases--few things more dangerous than the unfamiliar--how does Black know the purpose of the fourteenth amendment?--he (Frankfurter) says he has read all of its history and he can't say it meant to abolish segregation-- . . . --on Kansas alone he would reverse on the finding of the trial court--equal protection does not mean what *was* equal but what *is* equal--he wants to know why what has gone before is wrong--he can't say it's

unconstitutional to treat a negro differently than a white--but he would put all the cases down for reargument.

*Jackson:* nothing in the text that says this is unconstitutional--nothing in the opinions of the courts that says it's unconstitutional--nothing in the history of the 14th amendment--on basis of precedent he would have to say segregation is OK--refers to segregation in New York in the 1860s and in 1890. Says it will be bad for the negroes to be put into white schools--he won't say it is unconstitutional to practice segregation tomorrow--but segregation is nearing an end--we should perhaps give them time to get rid of it and he would go along on that basis--. . .

*Douglas:* segregation is an easy problem--no classifications on the basis of race can be made--14th Amendment prohibits racial classifications, so does due process clause of the 5th--a negro can't be put by the state in one room because he's black and another put in the other room because he's white--the answer is simple though the application of it may present great difficulties.

*Burton:* *Sipuel* crossed the threshold of these cases--education is more than buildings and faculties--it's a habit of mind--with 14th Amendment states do not have the choice--segregation violates equal protection--total effect is that separate education is not sufficient for today's problems--not reasonable to educate separately for a joint life--he refers to his policies as Mayor of Cleveland in putting colored nurses, etc. in white hospitals--. . . 5th amendment bars segregation--he would give plenty of time in this decree.

*Clark:* result must be the same in all the cases--refers to Texas where the problem is as acute as anywhere--Texas also has the Mexican problem--Mexican boy of 15 is in a class with a negro girl of 12. Some negro girls get in trouble--if we can delay action it will help--opinion should give lower courts the right to withhold relief in light of troubles--he would go along on that--otherwise he would say we had led the states on to think segregation is OK and we should let them work it out.

*Minton:* body of law has laid down separate but equal doctrine--that however has been whittled away in these cases--classification on the basis of race does not add up--it's invidious and can't be maintained.