

Supreme Court of the United States
Washington D. C.

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 17, 1954.

Memorandum for the File
in re Segregation Cases

The above cases which were decided today were twice argued -- once in December 1952 and once in December 1953. At the original conference in December 1952 it was decided that there should be no recorded vote in the cases because of the likelihood that there might be some leaks.

In the original conference there were only four who voted that segregation in the public schools was unconstitutional. Those four were Black, Burton, Minton and myself. Vinson was of the opinion that the Plessy case was right and that segregation was constitutional. Reed followed the view of Vinson and Clark was inclined that way. In the 1952 conference Frankfurter and Jackson viewed the problem with great alarm and thought that the Court should not decide the question if it was possible to avoid it. Both of them expressed the view that segregation in the public schools was probably constitutional. Frankfurter drew a distinction between segregation in the public schools of the District of Columbia and segregation in the public schools in the States. He thought that segregation in the public schools of the District of Columbia violated due process but he thought that history was against the claim of unconstitutionality as applied to the public schools of the States.

So as a result of the informal vote at the 1952 conference, it seemed that if the cases were to be then decided the vote would be five to four in favor of the constitutionality of segregation in the public schools in the States with Frankfurter indicating he would join the four of us when it came to the District of Columbia case.

The matter dragged on during the 1952 Term until as a result of further discussions it was decided to put the cases down for reargument. But it is apparent that if the cases had been decided during the 1952 Term there would probably have been many opinions and a wide divergence of views and a result that would have sustained, so far as the States were concerned, segregation of students.

By the time the cases were reached for argument Vinson had died and Warren had taken his place. At the conference following that argument in December 1953 Black was absent but he sent in his vote indicating that he thought that segregation in the public schools was unconstitutional. His vote, together with Burton's, Minton's and my own made four. Chief Justice Warren was very clearly of the view that segregation in public schools was unconstitutional. That made a bare majority for the reversal of the judgments below. Reed voted the other way. He thought that segregation was constitutional. Clark was inclined that way although doubtful. So was Frankfurter and so was Jackson. The latter two expressed the hope that the Court would not have to decide these cases but somehow avoid these decisions.

It was once more decided to treat the matter informally, not to take a vote and to have the Chief Justice prepare a memorandum.

The matter was brought back to conference for further discussion. During the Term I mentioned it to the Chief Justice and I think Harold Burton did also and each time he said he was working on the matter. He circulated proposed opinions in the two sets of cases on May 7th, bringing them around to our offices by hand. These were in typewritten form. After they were read and suggestions made, the opinions were typed up and they went through one revision between May 7th and May 15th, the date of our conference. Everyone thought that at least Justice Reed was going to write ~~and~~ dissent but he finally agreed to leave his doubts unsaid and to go along. Frankfurter, Jackson and Clark agreed to do the same. It was then decided to get the cases down either May 17th or May 24th. Someone suggested that they be delayed until May 24th because there were still some primaries in the South that the decision might adversely effect. But at the end of the Conference on Saturday, May 15th it was decided, if possible, to get them down on May 17th to prevent any leaks or advance information or tip-offs or rumors about the opinion.

It was decided by a few of us ^{**} who worked closely with Chief Justice Warren on the matter that these opinions should be short and concise and easily understood by everyone in the country, that they should be written for laymen and not for lawyers, that they should be brief, succinct and to the point.

William O. Douglas

* who was in the hospital
 secretary
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** Frank, ...
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