law school in "any adjacent state." In 1938 the Court, speaking through Chief Justice Hughes, held that such a program did not satisfy the federal right of a black to have the "equal opportunity for legal training" in Missouri, and the denial of the right meant he must be admitted to the white law school in Missouri (*Missouri* ex rel. *Gaines* v. *Canada,* 305 U.S. 337, 352). Only Mr. Justice McReynolds and Mr. Justice Butler dissented.

By the forties, cases of racial discrimination were mounting. We held in *Mitchell* v. *United States* (313 U.S. 80) that a black with a first-class ticket who demanded Pullman accommodations on an interstate train could not constitutionally be relegated to second-class accommodations. In *Sipuel* v. *Board of Regents* (332 U.S. 631) we ordered that a black be admitted to Oklahoma's white law school, there being no other legal education offered by the state.

Texas established a separate law school for blacks, but in 1950 we held in *Sweatt* v. *Painter* (339 U.S. 629) that it was not equal to the white law school and that the black who applied must, therefore, be admitted to the white institution. Vinson wrote feelingly in rejecting the claim of Texas that it would constitutionally take care of black law students in a new school recently opened: "Whether the University of Texas Law School is compared with the original or the new law school for Negroes, we cannot find substantial equality in the educational opportunities offered white and Negro law students by the State" (*Id.* 633).

In *McLaurin* v. *Oklahoma State Regents* (339 U.S. 637), a black seeking a doctorate in education was, under compulsion of our decisions, admitted to Oklahoma's white graduate school but was required "to sit apart at a designated desk in an anteroom adjoining the class room." He was not allowed to use the desks in the "regular reading room" of the library, and was to eat separately and at a different time from other students in the school cafeteria" (*Id.* 640). We held that the imposition of these conditions deprived the black of "his personal and present right to the equal protection of the laws" (*Id.* 642).

The presence of blacks in white schools began to appear in geographical areas that had been completely segregated. In the North and in the West a different pattern had developed and, at least legally, blacks enjoyed full equality in public educational facilities, in parks, on railroads, and the like.

And so the parade of separate but unequal cases mounted in the

Courts. After McReynolds and Butler were gone from the Court, it was quite unanimous in agreeing on what treatment of blacks was not "equal" by the test of *Plessy* v. *Ferguson.* There was some discussion as to whether the "separate but equal" doctrine should not be reconsidered and overruled. Some briefs were urging it but the Court did not move in that direction until 1952. At that time *Brown* v. *Board of Education* (344 U.S. 1) was set for argument with four other cases, each of which seemed, on the records before us, to present dual school systems where the facilities and curricula and teachers were "equal." Thus the continued validity of *Plessy* v. *Ferguson* was presented.

The cases were argued on December 9, 1952. On June 8, 1953, we set them down for reargument and suggested that five questions be argued (345 U.S. 972). When the cases had been argued in December of 1952, only four of us—Minton, Burton, Black and myself—felt that segregation was unconstitutional. Vinson was Chief Justice and he seemed to be firm that *Plessy* v. *Ferguson* should stand, and that the states should be allowed to deal with segregation in their own way and should be given time to make the black schools equal to those of the whites. Justice Reed held that segregation was on its way out and over the years would disappear, and that meanwhile the states should be allowed to handle it in their own way.

Frankfurter's view was that it was not unconstitutional to treat a Negro differently from a white but that the cases should be reargued. Jackson felt that nothing in the Fourteenth Amendment barred segregation and that it "would be bad for the Negroes" to be put in white schools, while Justice Clark said that since we had led the states to believe segregation was lawful, we should let them work out the problem by themselves.

It was clear that if a decision had been reached in the 1952 Term, we would have had five saying that separate but equal schools were constitutional, that separate but unequal schools were not constitutional, and that the remedy was to give the states time to make the two systems of schools equal.

The cases were ordered reargued, and Black and I were greatly relieved when that vote carried. By that time Vinson had died and Earl Warren had taken his place. The new Chief, sensing the deep division in the Court, did not press for a decision but made it clear he thought segregation was unconstitutional.