A Journey to *Brown*:
American Jewish Organizations' Fight Against Segregated Education

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Introduction

In 1896, a decision was made in the United States Supreme Court. It was *Plessy v. Ferguson* tried over the constitutionality of the Louisiana State Law, which stated that blacks and whites must ride on separate coaches of a train. According to this decision, when services and facilities were equally provided, racial segregation itself was constitutionally permissible and should not be regarded unconstitutional. Thus the "separate but equal" doctrine was established, and since then this principle regulated the whole life of black people for more than half a century.

However, right from the beginning, black civil rights activists recognized that "separate but equal" was only a sophistry that disguised the reality of the subordination of black to white. In actuality, when public utilities like schools, transportation, theaters, restaurants, hotels and parks were segregated, those for blacks were always inferior in quality and quantity compared to those provided for whites. Indeed, "separation meant unequal," not "separate but equal."

As for education, black schools and white schools were not evenly established. Black schools were disadvantaged in facilities such as

classrooms and libraries, and there was a big difference in salaries between white teachers and black teachers. At times, there were no facilities at all for some types of graduate and professional educational institutions in which the number of Negro applicants in the state was so small that it made the maintenance of a standard department or school financially impracticable or incongruously expensive. Therefore the National Association for the Advancement of Colored People (NAACP), the first civil rights organization for black people in the United States founded in 1909, started the struggle against the racial segregation system from the outset while fighting against lynching and racial riots.[1]

On May 17, 1954, the Federal Supreme Court made an epoch-making decision that ruled racial segregation at public schools unconstitutional. With the assistance of the NAACP, a black man, whose daughter was denied transfer to a neighboring white elementary school, undertook this lawsuit, *Brown v. Board of Education of Topeka*. The Supreme Court pointed out that "[s]egregation of white and colored children in public schools had a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law ....Segregation with the sanction of law, therefore, had a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system." It then concluded "that in the field of public education the doctrine of 'separate but equal' had no place. Separate educational facilities were inherently unequal."[2] By this decision, contrary to the "separate but equal" doctrine that was set by *Plessy v. Ferguson* which justified racism, "segregation in itself is inequality" became a new principle towards the abolition of

racial discrimination.

Not only from the perspective of history but also from various academic standpoints, much has been studied on how the "separate but equal" doctrine that lasted over half a century was overturned. As a background such a decision was made, black soldiers' devout activity during World War II and the State Department's consciousness of critical attitude toward racism and segregation by communist countries has been considered important by historians, as well as the liberal character of the Supreme Court judge members headed by Earl Warren. In this sense, the current of government policy, such as the presidential executive order no.9981 by Harry S. Truman, which banned segregation within the U.S. army, was the most emphasized factor that brought about the *Brown* decision.[3] Meanwhile, some lawsuits undertaken by the NAACP, stating that segregation at graduate schools, especially law schools, were also significant. Since 1938, the U.S. Supreme Court has given rulings that white universities should admit black applicants and that state universities should provide black students with facilities equivalent to those provided for white students. Thus, even though it was within the scope of the "separate but equal" principle, the situation surrounding black people preceded the reconsideration of the justice behind the Jim Crow system.[4]

In this paper, I am going to examine the activism of American Jews to abolish segregated education. As a premise, let me start with the abstract of my previous paper; it examined the Jewish organizations' fight against an anti-Jewish quota system at colleges in the late 1940s. Jewish organizations, especially the American Jewish Congress (AJCongress), gave active support to the passage of the fair educational practices laws,

which forbade schools of higher education to limit or bar enrollment of students because of race, religion or national origin. In 1948, New York became the first state which enacted that law. Jewish agencies also advocated the elimination of questions on application blanks which enabled universities to discriminate against certain groups. For example, the Anti-Defamation League of B'nai B'rith (ADL) started the "Crack the Quota" drive in the late 1940s and urged school administrators to strike out the questions concerning race, religion or national origin from applications. The reason they selected such a strategy was because the quota system allowed invisible discrimination, which informally reduced the number of Jewish students, without college administrators ever having to admit that these practices were pursued. Thus they tried to combat the quota system by promoting racially and religiously neutral admission procedures within the broad context of the expansion of opportunity in higher education after WW II instead of directly attacking anti-Semitism at colleges. I then concluded that the Jewish fight against the quota system had been based upon the idea of "color-blindness." [5]

In this sense, their tendency to act for the equality of all minorities, not only for Jews themselves, is presumed to be seen in other scenes such as desegregation: I am going to examine it in this paper. This could reveal another phase of "color-blind" orientation of Jews who were involved in litigation to desegregate the schools in the South, which had been launched by the NAACP and filed *amicus curiae* briefs against several graduate and law schools on behalf of the black plaintiffs.

Also, in the studies of Black-Jewish relations or the history of the civil rights movement, the fact that quite a number of Jews acted as white

officers and lawyers of the NAACP from the beginning of the 20th century through the civil rights movement in the 1960s has often been pointed out.[6] However, these studies only described the individuals who were Jewish and did not follow the activity of Jewish organizations. In this paper, I am going to look at the movement of Jews as a group by noting the description on discrimination against blacks seen in the pamphlets of the "Crack the Quota" drive distributed by Jewish organizations first, followed by their activity during so-called law school litigations preceding *Brown* such as *Gains, Sweatt* and *McLaurin*. I also will refer to their support of *Brown*.

Ⅰ. Reference to Racial Discrimination in the "Crack the Quota" Drive

> WHEREAS, It is considered undemocratic, and therefore undesirable in the United States, to deny equal educational opportunity to persons because of a quota or of segregation based on race, creed, color, or national origin; and
> WHEREAS, It is both uneconomic and undemocratic to attempt to operate so-called "separate but equal" graduate and professional schools for Negroes and whites,
> *Be it resolved* that beginning *now* these unjustifiable practices be discontinued and that students be selected for admission to all graduate and professional schools throughout the United States in terms of the common good and evaluation of the applicant as an individual.[7]

In November 1949, the above resolution on discrimination in higher education was adopted at a conference held in Chicago. The conference was a part of the "Crack the Quota" drive developed by the ADL, one of the biggest American Jewish organizations. As this resolution shows, the ADL not only targeted to eliminate the quota system, but also aimed to desegregate education.

Quota systems, in which colleges limit the number of minority students they accept by setting up the percentages, were a device of discrimination quite different from the segregated school system. It was a limitation where small numbers of minority students were still allowed to attend, whereas segregation was total exclusion from schools. Furthermore, the concrete quota figure was always strictly confidential within the admission office of schools and never publicly announced. Therefore ostensibly there should not have been any discriminatory practice against applicants based on race, religion and national origin in northern colleges. Also, there was no racial or religious restriction on the qualification to apply, meaning that colleges were open to everyone and that minority applicants were free to apply.

Therefore, theoretically, the college quota system did not always discriminate against Jewish students. In fact, there was a reported example whereby the quota system disadvantaged Italian applicants compared to others of same grades in Connecticut in 1946－47.[8] In most colleges and medical schools, however, Jews were practically the only group whose number was too many and subject to be reduced.[9]

Because of this nature of discrimination, the "Crack the Quota" drive was not aimed to crack the Jewish quota; it was a movement that claimed colleges to remove the questions on race and religion from application blanks. It tried to prevent the colleges from considering applicants' race and religion by eliminating the questions that could be used discriminatorily. Thus, even though almost all the victims of discrimination were Jewish and Jewish organizations started on the "Crack the Quota" drive, it appealed to both Jews and non-Jews as a campaign to eliminate all

the discrimination in higher education.

This tendency could also be observed in the pamphlets the ADL published. For example, in a leaflet issued in 1950 entitled "Crack the Quota System!" the quota system was explained as below:

> The quota system is a device set up to limit the entrance of minority group students into our colleges and universities. It bars American youth from an equal chance to education because of their race, religion or national origin, by setting up a percentage of Jews, Catholics, Negroes, Italians, Poles, etc., who may be admitted to educational institutions. [10]

Thus blacks and other minorities were included.

For black students, however, the quota system was not a big problem. Naturally, there was discrimination and bigotry against blacks at unsegregated northern colleges. It was not the case, however, that the number of fully qualified black students were restricted by quota system. Rather, the number of black applicants in itself was small because of their economic condition; black parents just could not afford to send their children to colleges. The 1940 census figures showed that only 1.3 per cent of Negroes had a four-year college education, in contrast with 5.4 per cent of native-born whites and 2.4 per cent of foreign-born whites. Moreover, blacks tended to choose southern black colleges in fear that they would meet discrimination at dominantly white colleges in the North. Of the estimated 75,000 blacks in college in 1947, 85 percent of them were attending 105 segregated schools.[11] Thus the most serious problem for black college students was segregation and not the quota system.

As reflected by these circumstances, a pamphlet on the discrimination in higher education published by the ADL referred to segregated school system directly and advocated its abolition:

> In spite of recent progress, Negro education in the South is still Jim Crow. Segregation inevitably takes a toll in psychic distress, if nothing else. But in most instances the handicap is material. Although segregation legally involves the obligation to provide "separate but equal" facilities, the equality is usually a fiction. The Negro college nearly always has less money, poorer teachers, poorer laboratories and libraries than the white college.
>
> Financing dual school system is a substantial drain on their slender resources — the result being that the white student, like the Negro, receives a poorer education than would otherwise be the case.
>
> Bad as the situation is, it represents a vast improvement in higher education for Negroes over the past decade. An increasing number of institutions, formerly limited to white students, have admitted Negroes. There is the hope that the Southern Regional Educational Commission will stimulate developments to assure equality and, in time, the end of segregation — the only assurance of real equality of opportunity.[12]

As we have seen above, in the "Crack the Quota" drive, where Jews appealed for the achievement of equality in higher education in general, segregation, though quite different from the quota system, was also the target of elimination. Not only did the "Crack the Quota" pamphlets emphasize the universal aspect of quota system, such as the possibility that non-Jewish minority students could be its victim, but they also mentioned the segregated school system in the southern states or substantial inequality of facilities under the "separate but equal" doctrine. How this Jewish concern on the inequality blacks have suffered is going to be examined in the next chapter.

Ⅱ. Toward Desegregation in Higher Education

(1) The NAACP's Approach to Jim Crow

In this section, I am going to make a survey of the situation of segregated education prior to *Brown* in 1954 and the NAACP's movement

against it.

In the antebellum South, school education was usually private and there was no public education system. For this reason, black education barely existed, which in turn eliminated the need for segregation. Then, when public school system was built in southern states during the Reconstruction, it was considered to be for all children under the Fourteenth Amendment in 1968. However, whether or not segregation was practiced differed in each state. While state constitutions of South Carolina and Louisiana prohibited racial segregation in the public schools, those of Alabama, Arkansas, Florida, Georgia, and North Carolina carried more general provisions directed toward equality in education without specially guaranteeing mixed schools as such.[13]

In 1877, the federal government withdrew from the South and the southern whites reactionary movement started. Later, in *Plessy* (1896), the constitutionality of segregation was approved and the "separate but equal" principle was established. After *Plessy*, many southern states amended their state constitutions or state laws, such that children of different races should be placed in separate schools. In Louisiana, for example, the state constitution was amended three times during this period. In 1868, mixed schools were requested as "[t]here shall be no separate schools or institutions of learning established exclusively for any race (Art.135)." However, the 1879 amendment made no reference on race or color of the children at public schools (Art.224). Then in 1898, it was regulated that "There shall be free public schools for the white and colored races, separately established by the General Assembly, throughout the State (Art.248)."[14] Also in Alabama, the 1901 constitution made segregated

education obligatory instead of it being optional; it said "[s]eparate schools shall be provided for white and colored children, and no child of either race shall be permitted to attend a school of the other race (Art.256)."[15]

Thus around the turn of the century, segregated education widely prevailed in the southern states. In seventeen southern states and Washington D.C., this was enforced by state constitutions or state laws. Also, in several other states, it was permitted or tolerated as discretion of each school district though there was no provision on it. In contrast, at the point of the *Brown* decision in 1954, it was only sixteen states in the North and the Middle West out of 48 that definitely prohibited segregated education by law.[16]

A crucial turning point for establishing the unconstitutionality of segregation occurred in the late 1930s. The NAACP started its lawsuit strategy making segregation in higher education an issue, especially at law schools and graduate schools. The plaintiff lead by the lawyers of the NAACP took legal action against several substitute systems of integrated education where black students were considered as not enough to be given equal educational opportunity as with white students. They were, for example, state tuition aid systems for out-of-state institutions in cases where there was no in-state black graduate school, abrupt establishment of schools just for one black student, or seat segregation in classrooms and libraries.

Since the issue of the *Brown* case was primary education, so-called law school cases were bordering attacks against the segregated education with respect to the number of students because the number of black students pursuing law education was small. For the NAACP, however,

inequality in higher education could be proved with ease and therefore was easy to fight against. There were virtually no public graduate and professional schools open to Negro students in the South, and judges would readily understand the shortcomings of separate legal education, which concerned some of the cases. Since it would be financially impossible to furnish true equality, it was expected that desegregation would be the only practicable way to fulfill the constitutional obligation of equal protection. In addition, the NAACP anticipated that since the number of students at issue was extremely small, the courts would be more likely to order their integration into law schools, as compared with primary or secondary schools. Plaintiffs thought that they were first going to fight for truly equal education for black and white students, then later challenge the "separate but equal" principle itself.[17]

Gains v. Canada in 1938 became the first case appealed against the Federal Supreme Court concerning black admission to law school. Lloyd Gains, who graduated from Lincoln University in 1935, had hoped to go on to law school and applied to the School of Law of University of Missouri because Lincoln did not have a law school, but was rejected because he was black. Conventionally, several states would have paid the tuition and cost of living to learn at out-of-state institutions for black students in case there were no in-state black universities or graduate schools. Also in Missouri, when a black student hoped to take courses that were offered at University of Missouri but not at Lincoln, he or she could learn at colleges and graduate schools in neighboring states by the scholarship the Missouri state government supplied. Gains, however, insisted on the inequality of out-of-state education. He emphasized that it was easier for a Missouri

lawyer to win clients' confidence when he or she graduated from a Missouri law school and that coming and going to Missouri state courts for hearing while attending an out-of-state law school was inconvenient. The Supreme Court of Missouri, however, turned down Gains' claim because the out-of-state education system was appropriate and Lincoln was going to have its own law school soon.

The Federal Supreme Court reversed the decision of the Supreme Court of Missouri. It argued that even if black demand for legal education was numerically very small, it could not be the right reason to give whites preferential treatment and discriminate against blacks unfairly, and that Missouri should give equal opportunity for legal training. It then concluded "that petitioner was entitled to be admitted to the law school of the State University in the absence of other and proper provision for his legal training within the State." [18]

In that sense, the conclusion in *Gains*, was drawing up to the *Brown* decision because it regarded that out-of-state education system was against equality under the law even though the curriculum and teaching method of nearby law schools were almost equivalent with those of the Law School of the University of Missouri. However, when Gains brought another case against the inferiority of Lincoln Law School to Missouri Law, he went missing and the trial was terminated even though it was still in the process of examination.[19] That is why the practice of providing black students with out-of-state education has lasted thereafter. In 1948, a committee named Board of Control for Southern Regional Education was established to provide graduate and professional education in 13 southern states on a regional basis. Under the terms of this plan, black students

from 13 member states were allowed to attend out-of-state institutions by paying the same tuition fees required of the state universities in his or her own states.[20]

Similarly, two Supreme Court decisions of 1950 were decisively important in defeating segregation in higher education. The first is *Sweatt v. Painter*, in which Heman Sweatt, petitioner, demanded the admission to the state-supported University of Texas Law School, which had been only for whites. When the petitioner applied and was rejected admission into that Law School, he was in turn offered enrollment in a separate law school newly established by the State for blacks, which used part of the white law school as its temporary school building, to which he refused. The Court found that the legal education offered at a newly-established state law school for blacks was not substantially equal to that which Sweatt would receive if admitted to the University of Texas Law School in terms not only of the physical facilities such as number of the faculty, variety of courses and opportunity for specialization, size of the student body, scope of the library, availability of law review and similar activities, but also of the intangible qualities such as reputation of the faculty, experience of the administration, position and influence of the alumni, standing in the community, traditions and prestige.[21]

The other case that was decided on the same day with the *Sweatt* decision was *McLaurin v. Oklahoma State Regents*. George W. McLaurin, appellant, was admitted to the Graduate School of the state-supported University of Oklahoma as a candidate for a doctorate in education and was permitted to use the same classroom, library and cafeteria as white students. Pursuant to a requirement of state law that the instruction of

Negroes in institutions of higher education be "upon a segregated basis," he was however, assigned to a seat in the classroom in a row specified for Negro students, a special table in the library, and although permitted to eat in the cafeteria at the same time as other students, was assigned to a special table there. The Supreme Court passed for the appellant finding that even if McLaurin was admitted to the University of Oklahoma he did not enjoy equality as long as he received different treatment from other students solely because of his race. It was held that the restrictions imposed upon the appellant as it were in-school segregation, impaired and inhibited his ability to study, to engage in discussions and exchange views with other students, and in general, to learn his profession.[22]

Thus the adoption of social value of schools in *Sweatt* and equality in comfort in *McLaurin* as criteria of equality was more and ever approaching the *Brown* decision, where separate educational facilities were held inherently unequal. Beyond these two decisions, *Sipuel v. Board of Regents of University of Oklahoma* decided in 1948 over the admission to the School of Law of the University of Oklahoma found for the black female plaintiff. Thus the NAACP, counsel of a series of lawsuits concerning the black admission to higher education, began putting up the scaffolding to win the unconstitutionality of segregated education by the early 1950s.

(2) Jewish Organizations and Law School Cases

Just as the Spingarn brothers, Joel E. & Arthur B., who served as presidents from its founding to 1966, many Jews have been involved in the activity of the NAACP. Some were also committed to liberation and

advancement of black people as its lawyers. For example, when nine black youths were falsely accused of assaulting two white women in Alabama in 1931, it was Samuel Liebowitz, a Jewish lawyer from New York, who made great effort to defend them from being sentenced to death. Liebowitz finally won their innocence, and this "Scottsboro case" became one of the landmark lawsuits that tied the interest of blacks and Jews and built the basis of their alliance and friendship during the civil rights movement. Likewise, it should be noted that the ADL was established in 1913 as a consequence of Leo Frank case in Atlanta, Georgia. The fact that Frank, a New York Jew, was killed by an angry mob, during an outrage of violence customarily aimed at blacks, made Jews seriously recognize that they would become the victim of discrimination and bigotry. That is why the ADL, a Jewish self-defense organization, has directed its energies to eradicate lynching since its founding.[23]

As with the above examples, previous studies unanimously agree that during the former half of the twentieth century Jews had been highly conscious of racial discrimination and black achievement of civil rights.[24] By the late 1940s, Jewish organizations such as the American Jewish Committee (AJC) and the ADL came to support the crusade against segregation in accordance with the NAACP.

On May 24, 1949 and March 31, 1950, these two organizations submitted the *amicus curiae* briefs on the *Sweatt* case to the Federal Supreme Court.[25] Originally, Jewish organizations, like the American Civil Liberties Union (ACLU) and the National Lawyers' Guild, had been frequent *amicus curiae* in cases politically and socially significant. The *Sweatt* case then became the first education case the ADL filed amicus brief, which showed

how important this case was to the Jews. [26]

The argument of these Jewish organizations in *amicus* briefs was not typically Jewish. They were, such as, "the validity of racial segregation in public educational facilities has never before been decided by this Court [=U.S. Supreme Court]," "the 'separate but equal' doctrine originated by this Court in *Plessy v. Ferguson* had no basis in then-existing legal precedent, and is an anachronism in the light of present-day legal and sociological knowledge," and "a decision on the issue of racial segregation in public educational facilities presented for review by this Court is of paramount significance to the welfare of the Nation"[27] ; they did not particularly state that they were written and submitted by "Jewish" groups. This inclination also applied to the Conclusion. It urged the Supreme Court to go over segregated education by referring to the international situation at the primary stage of the Cold War, saying "a continuation of segregation gives the lie to our democratic protestations at a time when our leadership in world affairs is challenged."[28]

However, it did not mean that *amicus* briefs submitted by Jewish groups were carelessly prepared. On the contrary, it contained some considerable points for Sweatt and the NAACP to win the case. The brief submitted in March 1950 argued that the university's discriminatory admissions policy violated the Fourteenth Amendment and was as follows:

> .....Yet the Negro relegated to a jim-crow law school finds that there is an insufficient number of students to furnish the broad cross-section of intellectual interests and proficiencies which are essential ingredients of successful law school training....Even were there a large enrollment at the Negro law school, the facilities for discussion among students would be limited and the Negro student deprived of needed intellectual challenges from white fellow students.

> .....Furthermore, the Negro lacks the prestige which comes from being a graduate from accredited and well-known educational institutions. This prestige carries though in later life, especially in professional life, and has a substantial pecuniary value. It is common knowledge that in the eyes of the community, the Negro school has substantially less professional standing than has the "equivalent" white school. [29]

The Supreme Court saw "qualities which are incapable of objective measurement but which make for greatness in a law school" [30] as a vital reason as to why black law school could not offer educational opportunity equivalent to integrated ones. Four other groups also submitted *amicus* curiae briefs to the Supreme Court on behalf of the plaintiff, but the adoption of the argument presented by Jewish groups was inevitably a Jewish exploit in defeating segregated education.

Likewise, the AJC introduced itself at the appendix of amicus brief as follows:

> During the forty-three years of our existence it has been one of the fundamental tenets of our organization that the welfare and security of Jews in America depend upon the preservation of constitutional guarantees. An invasion of the civil rights of any group is a threat to the safety of all groups.
> For this reason we have on many occasions fought in defense of civil liberties even though Jewish interests did not appear to be specifically involved. The present case, involving segregation in state-supported educational institutions, is one with which we are deeply concerned because such discrmination deprives millions of persons of rights that are freely enjoyed by others and adversely affects the entire democratic structure of our society. A question of transcendent public importance is thus presented to this Court.[31]

The ADL was also described as a group fighting against discrimination not only for Jews but also non-Jews because "the program developed by the League is designed to achieve....to eliminate and counteract defamation

and discrimination against the various racial, religious and ethnic groups which comprise our American people." [32]

There are other examples that these Jewish organizations were pleased to be involved in the cause to desegregate education. When the first *amicus* brief was submitted by the delegates of the AJC and the ADL in May 1949, the press release manuscript they prepared contended that the "separate but equal" principle of providing segregated educational facilities for Negroes in the Southern states constituted a clear violation of the guarantee of "equal protection of the laws" in the Fourteenth Amendment.[33] Also, these two organizations issued a joint memorandum entitled "Recent Decisions and Statutes Affecting Discrimination In Education" after *Sweatt* and *McLaurin* were decided and distributed it to their branches and divisions. In it they claimed "that segregation in and of itself imported inequality and discrimination" while pointing out the existence of quota systems and dealing segregation and quota system as two major problems or challenges of discrimination in education.[34] As these descriptions show, Jews were already eager to break the "separate but equal" principle itself as soon as possible when they heard news that *Sweatt* and *McLaurin* were decided.

It is impossible to measure how much priority Jewish organizations gave to the desegregation of education among their all activities only because they submitted the *amicus curiae* briefs, their content, and other materials that showed their concern regarding the matter. However, at the point when *Sweatt* and *McLaurin* were decided, that is, before the *Brown* case filed in February 1951, their agenda was already not just the elimination of discrimination in higher education in a series of actions to

"crack the quota" system, but the defeat of segregated education itself. From this fact, we could guess that Jews were substantially motivated and canalized their energies into desegregation.

As for the AJCongress, it issued its annual report, *Civil Rights in the United States: A Balance Sheet of Group Relations*, from 1948 to 1953 in cooperation with the NAACP. Each year progress and regress in the field of equality in education, along with the problem of citizenship, voting rights or discrimination in employment, etc. were described in it. For example, on August 24, 1948, the University of Arkansas admitted a black student into its medical school on a non-segregated basis and in September it admitted another black student into its law school. This desegregation case at the University of Arkansas was recorded in that report as one of the most important steps towards progress that year.[35] As shown in these activities, the AJCongress also had a passionate concern for the elimination of discrimination in education in general, including segregated education, though it did not become *amicus curiae* for the cases preceding *Brown*.

Thus the litigations lead by the NAACP on the admissions into law schools and graduate schools from the late 1940s through the early 1950s claimed that equality could never be achieved within the system of segregated education, and they had significant meaning as a preliminary stage of the *Brown* decision. Jewish organizations, while working on the elimination of quota system as discrimination at northern colleges by calling for the enactment of the Fair Educational Practices Laws and by urging the college officials to self-check their admission policies, took no small part in desegregating education in the South.

Ⅲ. The Brown Decision and the Jewish Organizations

The *Brown* case, which was the final assault on *Plessy*, was brought in February 1951 by Oliver Brown, father of Linda Brown, a black girl, asking for his daughter's transfer to the nearby white only elementary school, against the School Board of Topeka when it denied the application of Linda's transfer. The district court of Kansas decided that the black school children at Topeka elementary schools did not suffer a loss of unconstitutionality because both at black schools and white schools, school building, facilities and teachers were almost equivalent. Certainly there was a visible difference between them – the distance to schools. It was found, however, that it was no problem though black children were forced to commute longer distance than white children because the city ran free school buses for them. When Brown appealed to the Federal Supreme Court, his appeal was to be examined with three other cases that were also taking the issue over the constitutionality of segregation at public schools in Virginia, South Carolina and Delaware. The so-called *Brown* decision was that of Federal Supreme Court on May 17, 1954, examined and decided these four cases put together.

In the *Brown* case, the AJC, the ADL and the AJCongress all supported the plaintiff. The former two groups jointly as well as the *Sweatt* case, and the AJCongress on its own submitted *amicus curiae* briefs.[36] The AJCongress argued that segregated public grade schools "perpetuated inequality between the races and discriminated against the Negro race in violation of the 'equal protection' clause of the Fourteenth Amendment." It also argued that they submitted the brief because they believed "Jewish interests are inseparable from the interests of justice"

and "the struggle for human dignity and liberty is of the very substance of the Jewish tradition."[37] As for the brief of the AJC and the ADL, however, because other groups such as the ACLU and the Japanese American Citizens League (JACL) joined them, it is uncertain how much initiative these two Jewish groups took in writing their brief. Still it strongly challenged the validity of the *Plessy* decision as resting on "fallacious" concepts of racial distinctions.[38]

The most striking exploit of Jewish organizations in *Brown* was giving the Supreme Court concrete data on how segregated education damaged the mind of black children in reality rather than to urge the judges to reconsider logically what the Fourteenth Amendment and the "separate but equal" principle should be. Test results of the social psychological experiment Jewish organizations suggested and supported financially was cited by Chief Justice Earl Warren in the judgment as evidence that "segregation of children in public schools solely on the basis of race deprives children of the minority group of equal educational opportunities."[39]

This psychological test was the "doll test" developed by Kenneth B. and Mamie Clark, black psychologists, to demonstrate the impact of prejudice and discrimination on young children. The Clarks found that black children who were asked to express a preference between a brown-skinned doll and a white-skinned doll tended to favor the white one. This result was taken to suggest that the children had already internalized a negative evaluation of blackness as the result of racial prejudice and segregation. Kenneth Clark presented these findings and the results of related psychological studies in a paper at the 1950 Midcentury White

House Conference on Children and Youth, which was later cited by Earl Warren.[40]

This success and fulfillment of the Clarks' experiment was due to the right-about-face of Jewish organizations' approach to intercultural education, which had tried to eliminate discrimination by enlightening people's consciousness. In the late 1940s and the 1950s, Jewish organizations, especially the AJC and the ADL, reformulated their educational efforts in accordance with the socio-psychological model of prejudice. According to the studies of social science, mass educational techniques, such as those sponsored by Jewish organizations, were too superficial to influence intergroup attitudes. In addition, the work of social psychologists suggested that adults and adolescents were less susceptible to anti-prejudice propaganda than had previously been imagined, because their attitudes had already hardened into more or less permanent parts of their personalities. As AJC executive vice president John Slawson told a gathering of Jewish intergroup relations workers in March 1947, in Atlantic City, New Jersey, "Our studies reveal that by the age of nine, patterns of prejudice are well established in children." According to these studies, young children, especially those in their "formative years," were more appropriate targets for educational programs designed to prevent the development of prejudice in the first place.[41] Thus Jewish organizations came to support these programs and the Clarks' "doll test" was the most influential study among them.

Less well known but also cited in the Supreme Court judgment was a survey conducted by Isidor Chein and Max Deutscher, two members of the Commission on Community Interrelations of the AJCongress. Chein

and Deutscher had sent out a questionnaire to 849 social scientists, including the entire membership of the American Ethnological Society, all the members of the Division of the Personality and Social Psychology of the American Psychological Association, and all the members of the American Sociological Society who concentrated on social psychology or race relations. An overwhelming majority of the social scientists who responded to the survey, namely 90 percent of 517 respondents, said yes for the question, "Does enforced segregation have detrimental psychological effects on members of racial and religious groups which are segregated, even if equal facilities are provided?" This was same among the Southern respondents that accounted for 8.4 percent of all: 91 percent said yes.[42] The AJCongress used the result of this survey in its *amicus curiae* brief for *Brown* and argued that because segregated public grade schools did adopt a pre-existing inequality and place a badge of inferiority on the Negro race, he or she suffered psychic injury in the segregated school system regardless of the physical facilities apportioned to the Negro and white children.[43]

Chein-Deutscher survey also helped the argument by the plaintiff at the level of the lower court. The professional opinions expressed in their study were reiterated in the expert testimony given in the case at bar which formed the basis of the trial court's conclusion that "segregation has a detrimental effect upon the colored children." For example, Dr. Hugh W. Speer, chairman of the Department of Education at the University of Kansas, testified that the colored child always received an inferior education in a segregated school since he lacked the opportunity "to learn his personal adjustments, his social adjustments and his citizenship skills

in the presence of a cross-section of the population." [44]

Jewish workers did not tend to advertise that their activities were supported by Jewish organizations nor push the egalitarianism based on Judaism. These facts, however, do not mean that Jews were not enthusiastic about the civil rights movement. Their behavior and stance just reflected their desire to avoid creating the impression that these activities were "Jewish" enterprises. They were worried that this impression would undermine popular acceptance of these anti-prejudice efforts. In addition, they thought of themselves as non-educational organizations inappropriate vehicle for "technical" activities such as training teachers, producing curricular materials, and developing new educational methods.[45] That is why Jewish agencies provided support for these activities mostly financially.

Thus, Jewish organizations' support played a great role in winning *Brown* and defeating the "separate but equal" principle though it was the one issuing segregation in public elementary education, not higher education. Both the Clark study and the Chein-Deutscher survey contributed to strengthen the plaintiff's argument that segregation in itself involved inequality. This means that Jews were highly motivated in the achievement of equality for all the people and black civil rights.

Conclusion

In the 1940s and the 1950s, Jewish organizations had a passionate concern for the desegregation of education in the South as well as in eliminating the quota system in northern higher educational institutions. This can be seen in their fight against the quota system; in the pamphlet

advocating the elimination of the quota system, Jews also referred to the discrimination against blacks and segregation in the South. Also, Jews supported the lawsuits to defeat the segregated education initiated by the NAACP. In the late 1940s, by sympathizing with the litigation that demanded the admission of black students to graduate and law schools and by proving that there should be no equality at segregated educational institutions, Jews contributed to draw out the *Brown* decision from the Supreme Court that separate educational facilities are by their very nature unequal, in violation of the equal protection clause of the Fourteenth Amendment. Not only in the litigation concerning higher education, Jews also supported the blacks in *Brown* itself by submitting *amicus curiae* briefs or conducting the socio-psychological tests and surveys. It was, of course, the NAACP that played a major role in these causes and Jews did not take the initiative; they just supported. However, seen in their fight to overcome the quota system, the tendency to look for the equality in higher education not only for Jews but also for all the people appeared as their support of the cause to defeat segregated education. From this standpoint, Jews made a great contribution in the cause for the equality of education as a whole in the late 1940s and the 1950s.

Here we consider the logic of equality seen in the "Crack the Quota" drive and the cause for desegregating education. Although the quota system and segregation were quite different because the former was of the North and the latter was of the South, there was a lot in common between the former partial exclusion and the latter complete separate school system, and the former invisible discrimination and the latter

publicly or legally declared policy. In combating both the quota system and segregation, Jews asked for the treatment of applicants as an individual regardless of his/her race or religion and "color-blind" admission policy.

In reality, from the end of the Civil War through the mid 20th century, blacks did not always prefer integrated education to segregated one for the sake of the employment of black teachers and for fear that black children felt isolation as minority in white dominant schools. The black people's desire was often the improvement of black schools in quantity and quality within the framework of segregation. In this context, Jews insisted on racially integrated education, i.e. the situation that everyone could go to the nearest public school or college that he/she likes regardless of his/her skin color. These Jewish behaviors were not just for the benefit of blacks; rather they were concerned about the achievement of equality based on color-blindness advocated by the NAACP. It could be further judged that the quest for color-blindness was their motive power and dynamics to be eagerly engaged in the abolishment of segregated education though it did not directly discriminate against Jews.

It is also well known that Jews were incomparably active in the black people's cause to achieve the full civil rights after *Brown*, when the civil rights movement changed its character from the legal strife mainly carried by elites to street-level movement, after people experienced the bus boycott in Montgomery, Alabama, from December 1955. It is said that about the half or two thirds of the white volunteers in the civil rights movement were Jewish. Martin Luther King, Jr.'s most trusted white friend, Stanley Levison, was a Jewish lawyer.[46] Also, the news that two

Jewish activists, Michael Schwerner and Andrew Goodman, along with a black volunteer, James Chaney, went missing and were found to be killed by racists when they went out together to investigate a burning at a black church in Mississippi in June 1964 not only aroused public interest of the whole United States but also created a sensational response internationally.[47] This Jewish devotion to the civil rights movement from the late 1950s is beyond the scope of this paper. Considering their policy of color-blindness observed in the fight against discrimination in education, however, we could at least point out that the basis of Jewish activeness during the civil rights movement was already established by the late 1940s.

NOTES

1 The Mark V. Tushnet, *The NAACP's Legal Strategy against Segregated Education, 1925-1950,* Chapel Hill, NC: The Univ. of North Carolina Press, 1987, p.xi.

2 Brown v. Board of Education, 347 U.S. 483（1954）.

3 C. Vann Woodward, *The Strange Career of Jim Crow*, New York: Oxford University Press, 2002 [1955], pp.128-139.

4 *Ibid*., pp.139-146.

5 Miyuki Kita, "Amerika Gasshukoku no Koto Kyoiku Kikan ni Okeru 'Wariatesei' Haishi Undou to Yudaya Jin Dantai: 1948 nen Nyu Yoku Shu Kousei Kyouiku Jisshi Hou wo Chushin ni [Jewish Organizations' Fight against the Quota System at U.S. Colleges: With Special Reference to the New York Fair Educational Practices Act of 1948]," *Rekishigaku Kenkyu* [Journal of Historical Studies], no.800, Apr. 2005, pp.19-35.

6 Murray Friedman, *What Went Wrong?: The Creation & Collapse of the Black-Jewish Alliance,* New York: Free Press, 1995, pp.148-153. For example, Jack Greenberg, attorney of the NAACP Legal Defense and Educational Fund, and Felix Frankfurter, judge of the United States Supreme Court, are known that they were active enthusiastic about Blacks' acquisition of civil rights. On their activity, see below. Jack Greenberg, *Crusaders in the Courts:How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution,* New York: Basic Books, 1994; Jonathan Kaufman, *Broken Alliance: The Turbulent Times Between Blacks and Jews in America*, New York: Simon & Schster, 1995; Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality,* New York: Vintage Books, 1977 [1975] .

7 Francis J. Brown, ed., *Discriminations in College Admissions: A Report of a Conference Held under the Auspices of the American Council on Education in Cooperation with the Anti-Defamation League of B'nai B'rith, Chicago, Illinois, November 4-5, 1949*, American Council on Education Studies, Reports of Committee and Conferences, no.41, Washington, D.C., Apr. 1950, pp.6-7.

8 State of Connecticut Inter-Racial Commission, *College Admission Practices with Respect to Race, Religion and National Origin of Connecticut High School Graduates*, by Henry G. Stetler, Ph.D., Research Associate, Connecticut Inter-Racial Commission, Hartford, 1949.

9 In June 1922, Harvard College announced a plan for reducing the number of Jewish students and the news made "quota" notorious. On this "Harvard affair," see Stephen Steinberg, *The Ethnic Myth: Race, Ethnicity and Class in America*, 3rd ed., Boston: Beacon Press, 2001 [1981], pp.222-252; Marcia Graham Synnott, *The Half-Opened Door: Discrimination and Admissions at Harvard, Yale, and Princeton*, 1900-1970, Westport, CT: Greenwood Press, 1979, pp.58-124;

Oliver B. Pollak, "Anti-Semitism, the Harvard Plan, and the Roots of Reverse Discrimination," *Jewish Social Studies* 45, Spring 1983, pp. 113-122.

10 Crack the Quota System, Anti-Defamation League of B'nai B'rith, Program Division, 1950, p.2, Discrimination-Education/ ADL file, American Jewish Committee Blaustein Library (hereafter, BL).

11 A. C. Ivy and Irwin Ross, *Religion and Race: Barriers to College?* Public Affairs Pamphlet No.153, published in cooperation with the Anti-Defamation League of B'nai B'rith, 1949, p.18.

12 *Ibid.*, pp.19-21.

13 Alfred H. Kelly "The Congressional Controversy over School Segregation, 1867-1875," *The American Historical Review*, vol.64, no.3, Apr. 1959, p.540.

14 Francis Newton Thorpe ed., *The Federal and State Constitutions. Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*, vol.3, Washington D.C.: Government Printing Office, 1909, pp.1465, 1508, 1575.

15 Francis Newton Thorpe ed., *The Federal and State Constitutions. Colonial Charters, and Other Organic Laws of the States. Territories, and Colonies Now or Heretofore Forming the United States of America*, vol.1, Washington D.C.: Government Printing Office, 1909, p.227.

16 Jack Greenberg, *Race Relations and American Law*, New York: Columbia Univ. Press, 1959, pp.245, 388-389.

17 Greenberg, *Race Relations and American Law*, p.37; Henry Allen Bullock, *A History of Negro Education in the South:From 1619 to the Present,* Cambridge, MA: Harvard University Press, 1967, p.226.

18 State of Missouri ex rel. Gains v. Canada, 305 U.S. 337 (1938).

19 Tashnet, pp.153, 199; Lucile H. Bluford, "The Lloyd Gains Story," *The Journal of Educational Sociology* 22, 1958, p.246. There were rumors that Gains had been killed or paid off to go to Mexico and nobody knows whether he is dead or alive nearly twenty years after his disappearance.

20 M. M. Chambers, "State Constitutional and Statutory Limitations on College Admission Policies," *The Educational Forum* 13, Mar. 1949, p.339; Virgil A. Clift, "Pattern of Discrimination in Public Higher Education," *School and Society*, Oct. 7, 1950, p.226.

21 Sweatt v. Painter, 339 U.S. 629 (1950).

22 McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950).

23 Friedman, pp.63-66, 99-100. According to Friedman, while the lynching of Leo Frank caused blacks and Jews to identify more closely with one another, it set the two groups against each other because Frank was convicted by a black man's false testimony.

24 As a study focusing on the former half of the twentieth century, see below. Hasia Diner, *In the*

Almost Promised Land: American Jews and Blacks, 1915-1935, Baltimore: Johns Hopkins University Press, 1995 [1977].

25 *Brief on Behalf of American Jewish Committee and B'nai B'rith (Anti-Defamation League) and National Citizens' Council on Civil Rights as Amici Curiae*, in the Supreme Court of the United States, October Term, 1948, no.667, *Heman Marion Sweatt, Petitioner, v. Theophilis Shickel Painter et al., Respondents; Brief on Behalf of American Jewish Committee and B'nai B'rith (Anti-Defamation League) as Amici Curiae*, in the Supreme Court of the United States, October Term, 1949, no.44, *Heman Marion Sweatt, Petitioner, v. Theophilis Shickel Painter et al., Respondents*. *Hereafter*, the former (submitted on May 24, 1949) is called *brief* 1, the latter (March 31, 1950) *brief* 2 .

26 Jill Donnie Snyder and Eric K. Goodman, *Friend of the Court, 1947-1982,* New York: Anti-Defamation League, 1983, p.18.

27 *Brief* 1, pp.23-29; *Brief* 2, pp.8-12, 17-28.

28 *Brief* 2, p.39.

29 *Brief* 2, pp.35-36.

30 Sweatt v. Painter, 339 U.S. 629 (1950).

31 *Brief* 1, p.30; *Brief* 2, p.40.

32 *Brief* 1, p.30; *Brief* 2, p.41.

33 American Jewish Committee, Anti-Defamation League and National Citizens' Council on Civil Rights ask Ruling on Segregation in Education as Violation of 14th amendment "Constitu[t]ionality of Separate but Equal' doctrine in Southern States Challenged in Certiorari Brief Submitted to United States Supreme Court," For Release after 10 a.m. Tuesday, May 24, 1949, p.1, Discrimination-Education/ AJC file, BL.

34 Recent Decisions and Statutes Affecting Discrimination In Education, Dec. 1950. Joint Memorandum, The American Jewish Committee, The Anti-Defamation League, p.1, Discrimination-Education/ AJC file, BL.

35 *Civil Rights in the United States in 1948: A Balance Sheet of Group Relations*, National Association for the Advancement of Colored People, American Jewish Congress, [1949?], p.24.

36 *Brief on Behalf of American Civil Liberties Union, American Ethical Union. American Jewish Committee, Anti-Defamation League of B'nai B'rith, Japanese American Citizens League and Unitarian Fellowship for Social Justice as Amici Curiae*, in the Supreme Court of the United States, October Term, 1952, no.8, *Oliver Brown, Mrs. Richard Lawton. Mrs. Sadie Emmanuel, et al., Appellants, vs. Board of Education of Topeka, Shawnee County, Kansas, et al.; Brief of American Jewish Congress as Amicus Curiae,* in the Supreme Court of the United States, October Term, 1952, no.8, *Oliver Brown, Mrs. Richard Lawton, Mrs. Sadie Emmanuel, et al., Appellants, vs. Board of Education of Topeka, Shawnee County Kansas, et al. On Appeal from*

the United States District Court for the District of Kansas.

37 Brief of AJCongress, pp.2,4.

38 Brief of ADL, p.20; Donnie and Goodman, p.19.

39 Brown v. Board of Education, 347 U.S. 483 (1954).

40 Stuart Svonkin, *Jews Against Prejudice: American Jews and the Fight for Civil Liberties*, New York: Columbia Univ. Press, 1997, pp.66-67.

41 *Ibid*., p.66.

42 Kluger, p.492.

43 *Brief of American Jewish Congress as Amicus Curiae*, in the Supreme Court of the United States, October Term, 1952, no.8, *Oliver Brown vs. Board of Education of Topeka,* pp.4-5, 17-18. Shad Polier and Will Maslow, who made great contribution to the enactment of 1948 New York Fair Educational Practices Law, were the writers of the brief as attorneys for the American Jewish Congress.

44 *Ibid*., p.18.

45 Svonkin, p.65.

46 Hedda Garza, *African Americans and Jewish Americans: A History of Struggle*, New York: Franklin Watts, 1995, p.149; Rabbi Marc Schneier, *Shared Dreams: Martin Luther King, Jr. and the Jewish Community* Woodstock, VT: Jewish Lights Publishing, 1999, pp.44, 49-56. Levison served the American Jewish Congress as unsalaried official. (Murray Friedman, "The Civil Rights Movement and the Reemergence of the Left," in V. P. Franklin, Nancy L. Grant, Harold M. Kletnick, and Genna Rae McNeil eds., *African Americans and Jews in the Twentieth Century: Studies Convergence and Conflict,* Columbia, MO: Univ. of Missouri Press, 1998, p.108.)

47 Kaufman, pp.15-17.