

Cumming v. Richmond County Board of Education, 175 U.S. 528 (1899), argued 30 Oct. 1899, decided 18 Dec. 1899 by vote of 9 to 0; Harlan for the Court. Three years after its decision in *Plessy v. Ferguson*, the Supreme Court refused to enforce the "equal" part of the "separate but equal" doctrine. *Cumming*, the Court's first decision on racial discrimination in schools, has never been explicitly overruled, nor has anyone ever satisfactorily explained why the Court, and especially the erstwhile racial egalitarian Justice John Marshall Harlan, concluded that *Cumming* did not present a "case of clear and unmistakable disregard of rights" (p. 545).

Pressured by black voters and facing an explicit "separate but equal" state law, the school board of Augusta, Georgia, in 1879 established the first public high school for African-Americans in the state. Ware High School thrived until 1897, when, reportedly at the suggestion of a black private school principal, the school board closed it, claiming that the money was needed for black primary education. Black parents sued.

Because the state law was so clear, local Judge Enoch Callaway did not reach the constitutional issue. Callaway's injunction was overturned by Georgia Supreme Court Justice Thomas J. Simmons, who hardly bothered to say why. On

further appeal, former Reconstruction Congressman and Senator George F. Edmunds argued that if a school board supported high schools for whites, the Equal Protection Clause of the Fourteenth Amendment at least required it to offer blacks a high school.

Citing no lower court decisions, most of which went against him, Justice Harlan announced that plaintiffs had to prove that the board's decision had been motivated solely by a "hostility to the colored population because of their race" (pp. 544-545), a nearly impossible standard. Fortunately, most judges in subsequent cases ignored the opinion.

(See also EDUCATION; EQUAL PROTECTION; RACE AND RACISM; SEGREGATION, DE JURE.)

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