The Justice Department calls for an end to the dining-car curtain

"Separate But Equal" In Court

December 1949

TODAY the "separate but equal" doctrine is under heavy attack. Court suits in the fields of education, transportation, and various public services are challenging the view that equality is possible within a segregated system.

In this legal controversy, no more important document has appeared than the brief recently filed by the Justice Department in the case of *Henderson* vs. *Interstate Commerce Commission.* This is only one of several briefs filed by "friends of the court" on both sides, but it is uniquely significant; for it is a request from the U. S. Department of Justice that the *Plessy* vs. *Ferguson* decision be overruled by the Supreme Court.

The original incident out of which the Henderson case grew took place on May 17, 1942. On that date, Elmer W. Henderson, a Negro representative of the Fair Employment Practices Committee, was traveling by train between Washington, D. C., and Birmingham, Ala. On three occasions he visited the dining car and asked to be served. On all three occasions he was refused service, since the table ordinarily set aside for Negro passengers was occupied by white persons.

Following is a short summary of the Justice Department brief:

SUMMARY OF THE BRIEF

The ruling of the lower Federal court upheld the ICC on the grounds that the railroad's dining car regulations provided equal facilities for Negroes proportionate to the demand by Negroes for those facilities. But it is the *individual,* not merely a *group* of individuals, who is entitled to equality.

When a Negro passenger seeks service at a time when the table reserved for members of his race is fully occupied, but there are vacant seats elsewhere in the dining car, service which is available to other passengers is denied to him solely because of his race. Such legally-enforced racial segregation in and of itself constitutes a discrimination and inequality of treatment prohibited by the Constitution and the Interstate Commerce Act. This case does not involve segregation by private individuals, but a system of racial segregation enforced by and having the sanction of law. Under the regulations here involved, persons traveling together, if they are of different color, cannot eat together regardless of their personal desires. With non-segregated service, the individual passenger is free to avoid any "co-mingling" which he considers objectionable. Whatever his personal preferences or code of social behavior, no departure from it is "enforced" by anything except his own will.

Segregation of Negroes, as practiced in this country, is universally understood as imposing on them a badge of inferiority. The curtain or partition which fences Negroes off from all other diners exposes, naked and unadorned, the caste system which segregation manifests and fosters.

In our foreign relations, racial discrimination, as exemplified by segregation, has been a source of serious embarrassment to this country. It has furnished material for hostile propaganda and raised doubts of our sincerity even among friendly nations. Racial segregation enforced by law hardly comports with the high principles to which, in the international field, we have subscribed. Our position and standing before the critical bar of world opinion are weakened if segregation not only is practiced in this country but also is condoned by federal law.

"Separate but equal" is a constitutional anachronism which no longer deserves a place in our law. It is neither reasonable nor right that colored citizens of the United States should be subjected to the humiliation of being segregated by law, on the pretense that they are being treated as equals.