What Constitutes a Negro*

A Review of Legal Statutes

DAVID B. KARRICK, A.B., LL.B.
Member, Board of Commissioners, District of Columbia

WHEN your able president, Dr. W. Montague Cobb, first approached me months ago with the suggestion that I speak at this important gathering, I was troubled at the inappropriateness of a public official, formerly a business executive, attempting to address a scientific meeting.

Although I said inappropriateness, if I were modest I should have been (to speak more accurately), appalled at my inadequacy for such a task rather than concerned at the impropriety of my attempting it. But, as I am told by my Catholic friends, confession is good for the soul, even, or perhaps especially for an Episcopal soul, I shall have to confess that I was not duly overcome or suitably appalled.

Perhaps in partial extenuation of this lack of becoming modesty I may offer the natural exultation of a Yale man upon being permitted to speak out loud in Cambridge, a privilege much too rare to be anticipated with humility.

And in further extenuation of my audacity I must likewise confess to a considerable degree of perplexity concerning a suitable subject for dissertation by a municipal official to a group of scientists. In general, it is not the tendency of governments to take cognizance of the findings of science. This being the case, the following question presents itself.

What common interest is there between the art of municipal government, if it is an art, and the science of physical anthropology? After reflection over this difficulty I concluded that I could not select an anthropological problem in which municipal officials might be involved. But on the other hand, it was not difficult to recall recent political and current municipal problems with definite physical anthropological bases and background.

On May 17, 1954, the United States Supreme Court held that segregated school systems were thereafter illegal and contrary to the principles on which our nation was founded and continues to exist. In the school cases, even though the opinions expressly allowed a graduated approach, the sociological problem of uniting two racial elements heretofore segregated in many states into one educational system, was brought into sharp national focus.

Several other aspects of related problems had been nullified in part or in whole by other recent decisions of the Supreme Court of the United States holding that restrictive covenants forbidding the ownership of specified real estate by persons of Negro or colored blood were henceforth null and of no effect. Interestingly enough, however, prior to these decisions the Supreme Court of New York held in such a case that a restrictive covenant prohibiting the ownership by Negroes or persons of Negro blood excluded ownership by an octoroon, although such might not have been the decision if the words "of Negro blood" had not been added in that particular covenant.

To return to the schools, in about half of the approximately twenty states where segregation was in effect, it has either been eliminated or gradual steps to that effect have been initiated. On the other hand, in others the decision has been almost entirely ignored with indications that such an attitude will to the fullest extent possible be continued. As a matter of fact, since the decisions of the United States Supreme Court invalidating all racial segregation in public schools, there has been a spate of statutes passed by these states attempting to resist integration with all their legal resources. In addition to statutes covering whole states or applying to problems in special counties, there have been amendments to state constitutions and local ordinances passed by county and city councils or other governing bodies.

For the most part these have had to do with methods of evading and avoiding the mandate of the Supreme Court. And although some incidentally include legal definitions of a Negro, their prin-

* A dinner address at the 27th Annual Meeting of the American Association of Physical Anthropologists, Harvard University, Cambridge, Mass., April 10, 1958.

cipal purport has been to enable the states and their component political entities to continue the educational systems on a segregated basis. And their recent dates reduce their relevancy for our purposes. In fact, in preparing the data following, I wrote to all of the Governors of the eleven secession states to learn the latest in local legislation. All but one answered.

Many long standing traditions and profound convictions were violated by the impact of the decisions and even though in broad areas public opinion approved, the violence of the shock and the tenacity of the opposition have been such that the objective of the Court has not uniformly been achieved. Far from it. Most of the objections, many of them violently expressed, are deeply rooted, based upon folklore and traditions but this is not to say that those who hold them do not believe in them passionately. What is the nature of the objections that are offered in defense of these traditional convictions?

They are often clichés and although reiterated ad infinitum, disregard the basics of modern physical anthropology and all that it has taught. Serving a certain social satisfaction, they nevertheless lack reality, and are founded upon certain assumptions too readily credited in the face of findings of science. Most of them voice alleged inadequacies of Negroes, traditional, but ignore that modern thinking has developed the postulate held by many that race is not essential as a concept affecting sociological capacity.

How many of those voicing such unsupported but long lasting sentiments, such attitudes, such opinions and theories, know what a Negro is?

Do you know?

Now, of course, (to return to my present personal capacity of municipal official), for me to pose such a question to a group of distinguished anthropologists, especially physical anthropologists, would be presumptuous if the question contained a scientific connotation; I hasten to assure you that it does not. On the contrary, I am asking you whether you know what a Negro is politically and legally. As a matter of fact, since the end of the War Between The States, there is, with the exception of the State of Indiana, almost no political standard or legal definition of Negro in that part of our country north of the Mason-Dixon Line and the Ohio River and east of the Mississippi. Quite the contrary, however, in the western and southeastern states.

Interestingly enough, in Latin America he who is not black is white, whereas in Anglo-Saxon North America the popular attitude is that he who is not white is black. And where statutory restrictions exist against Negroes or persons of Negro blood, enforcement has made it necessary to adopt statutory or other specifications of what constitutes a Negro. And in this respect although there is infinite variety in the states to the south, the necessity for legislative or judicial determination of the Negro remains.

For example, in certain states to the south, Georgia, Alabama, Virginia, Tennessee, and Arkansas as examples, by statutory provisions a Negro is any person with any trace whatsoever, no matter how light, of Negro blood. In other states in the south the provisions vary, certain states specifying that anyone with Negro blood to the "fourth generation, inclusive" would be regarded as a Negro, whereas others make this the third generation. Interestingly enough the recent trend has been for the border states to enact the statutes of greater restrictive provisions than some of those in the so-called Deep South, but this is not uniform.

Incidentally, in the absence of any statutory definition the Court of Appeals of the District of Columbia decided in a school case prior to the Supreme Court decisions, that a child was colored within the meaning of the District Code when it had one-eighth or one-sixteenth Negro blood, even though the child had none of the physical characteristics of a full-blooded Negro.

In two of the states there are interesting conflicts between the constitutional provisions and the statutes. For instance, in Tennessee two statutes define a Negro as every person who has any Negro blood in his veins, but the constitutional provisions and the statute forbidding interracial marriage are applicable only to unions of persons who have Negro blood to the third generation. And possibly the general interpretive statute would govern where intermarriage was not the issue.

In many of the states in the southeast, the statutes dealing with the segregated public schools do not specify the same basis of Negro blood as those dealing with intermarriage of the races. And in Virginia an interesting complication exists

in that persons of a certain degree of Negro and Indian blood while living on Indian Reservations may be classified as Indians, whereas upon leaving they immediately become Negroes so that such an individual would be barred from marrying a Negro while on the Reservation but would be permitted to do so outside its boundary.

In Texas the law providing for separate schools specifies all persons of mixed blood who are descended from Negro ancestry and the separate railroad coach law apparently refers to this in the use of the term "Negro." But the statute forbidding intermarriage specifies that any union between a Caucasian and a descendant of an African is null and void, and the applicable penal statute defines a Negro or African as including only those who are of Negro blood to the third generation, inclusive.

In Kentucky there is no statutory definition of the word "Negro" unless there has been some recent enactment. An early decision held that the former Virginia law providing that persons having one-quarter or more Negro blood were to be so classified, remained a part of Kentucky law when the state was carved out of Virginia, but it is not the law of Kentucky today, nor is the more recent and more exacting Virginia statute. For instance, it has been held that a child with one-sixteenth Negro blood could not attend a white school and that a person who looks white, has straight hair, is cooper colored, with other white characteristics, is not a mulatto within the Kentucky statute prohibiting intermarriage of whites and Negroes or mulattoes. Thus, there is no definite rule in this jurisdiction.

The Louisiana court decisions are inconsistent holding in 1910 that "any appreciable amount" of Negro blood established race, and in another case, in the same year, that an octoroon was not a Negro under an Act prohibiting concubinage between the white and Negro races.

In Georgia a 1927 Act required a form of racial registration in which the registrant was required to give all his racial antecedents, any admixture of Negro blood classifying him as a person of color.

In Florida two statutes specify one-eighth or more Negro blood which is in conflict with the State Constitution which prohibits interracial marriages to the fourth generation, inclusive, whatever might be the interpretation of such language. And in addition to the above-mentioned provision, the Florida Act penalizing cohabitation of members of the two races, includes persons of one-eighth or more Negro blood in defining the term "mulatto." The one-eighth provision was reaffirmed in a 1957 statute.

In Maryland a statute prohibits marriage between whites and persons of Negro descent to the third generation, and in Missouri intermarriage of whites and those of one-eighth or more Negro blood is prohibited, which is likewise the case in Mississippi and South Carolina. But the courts of the two last-mentioned states have rendered opposite decisions on whether these definitions would apply to the segregated school laws. South Carolina has held that the marriage law would govern and that therefore a child with less than one-eighth Negro blood could not be forced to attend a Negro school, but the Mississippi Court refused to make this definition effective in a similar case.

In North Carolina any degree of Negro blood prohibits attendance at white schools but the intermarriage statute applies to unions of whites with persons of Negro descent to the third generation. Thus even in the same state there is a lack of uniformity.

I have analyzed the factual and statutory bases of the definition of a Negro in the several states where that definition formerly applied and in the opinion of the states' governments still applies in the judicial determination on entry into schools or intermarriage selectively and by no means comprehensively. I have specifically avoided any opinion pro or con on integration versus segregation as it remains controversial in these jurisdictions. While I have dealt specifically only with states in the southeast, it must be recognized that many of the states west of the Mississippi have various laws against intermarriage of the races, although probably this stems from the prejudice which exists west of the Mississippi against marriage of whites and Indians. But time will not permit any elaboration on the various states' statutes in the west on interracial marriage, nor are such statutes necessarily relevant.

The greatest absurdity from statutes specifying that any degree whatsoever of Negro blood makes the individual a Negro politically and legally,

arises from the fact that the absence of early records makes it impossible to make such a determination conclusive. No matter what may be said, after three centuries the actuality of Negro blood is, of course, much more prevalent than is either known or admitted. And the tendency of Negroes of light color to pass over to the white community in other parts of the country is said to have amounted now to several millions.

Some interesting mathematical permutations present themselves. Slavery began in the southeastern part of the United States approximately three and one-half centuries ago. This would make twelve generations possible. In eleven generations, the descendants of a mulatto consistently marrying with a white would have 1/4096th of Negro blood, or something like that. In addition to this fractionalization process, in these many generations octoroons have married quadroons, and quadroons have married blacks and whites, and people with 1/128th of white blood have married people with 3/128ths of Negro blood, and people with 5/128ths blood of one race have married people with 3/16ths blood of the other race, with results that would tax the higher mathematical minds even of Harvard University, to tell who or what or when is a Negro in the light of the varied and conflicting state statutes.

But to return to my first question: Legally and politically do you know what a Negro is? And now having asked you my question again, with a variance, I shall leave it to you to answer, but, then, how am I going to end, and retire from the podium? Well, I shall rely upon an authority on rhetoric, a late professor of Harvard University, probably the greatest rhetorician ever to live on this side of the Atlantic. He is reputed to have laid down three rules for speaking; 1st, stand up so they can see you, 2nd, speak out so they can hear you, and 3rd, sit down when you are through.

Having made a modest effort toward the first two requirements, I shall now, after thanking you for listening to me, definitely achieve the third, by sitting down.

DUSK

Again tonight I am tired but I am tranquil
For this tiredness is the reward of being full alive
And I rejoice in the everydayness of living
Joy-sorrow, hope-despair, tears-laughter, life-death
All but a part of the whole not fully comprehended

THURSDAY IN APRIL

The terrible sweetness of birdsong, the moist earth,
the greenness and the sky over all—
Out of the endless time of yesterday
I have come again to live another April day
Can this happiness be mine alone.

SUNRISE

Waking to a life with no color and without hope
Despair not sad heart—You share the lot of all who live

FREDERICK R. RANDALL, M.D.