

# SEPARATE IS NOT EQUAL: *Brown v. the Board of Education of Topeka, Kansas*

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## Project Essay

### 1. Introduction

The Supreme Court's decision of May 17, 1954, marked a watershed in the history of race relations in the United States. On the one side lay official sanction for a social system based on racial inferiority, and on the other side lay official sanction for a society struggling to realize the ideal of equal opportunity.

This year, popular media, local educational systems, institutions of higher learning, advocacy organizations, and political entities are all participating in a national discourse on the significance of *Brown*, as America ponders the half century since this momentous event. As a central voice in this nationwide discussion of race, ethnicity, and religion, the National Museum of American History will lead our visitors to explore the question of what it means to be an American in the diverse world of the twenty-first century.

Opinions on the impact of the May 17, 1954, decision reflect the diversity and complexity of our society. *Brown* has not produced a perfect solution to the problem of segregation, but the rule of law and democratic institutions have furnished a means for human beings to make efforts to live together in a heterogeneous, pluralistic society. This is an American drama. Its players were talented and intrepid black and white civil rights attorneys, Latino, Asian, and African American parents and children, community activists, and liberal Southerners who resisted local traditions. Also taking part were legal and political figures who attempted to preserve the existing order. Now, more than ever, America and the world needs to hear this story.

We expect that the National Museum of American History will be a major participant in the national commemoration of the 50<sup>th</sup> anniversary of the historic 1954 U.S. Supreme Court decision. This essay develops some of the major themes that are presented in the three major components of **Separate Is Not Equal**: the exhibition, the educational outreach, and the Web site.

The conventional view of the *Brown* decision presents it as the beginning of the southern civil rights movement. In reality, there was a multifaceted movement that led up to the May 17 decision, just as there was a far-reaching ripple of events that flowed from it. At the same time, however, a major portion of this story is that of the African American-led team of attorneys, and the two institutions which sustained them, the NAACP Legal Defense Fund, and the Howard University Law School. The stories of each of the five appellants who brought the cases that collectively became known as *Brown v. Board of Education* are testimonies to the struggles of Americans for justice and a better life. The best way that this program can honor and celebrate the civil rights attorneys and the people whom they represented is by demonstrating the centrality of their struggles in American history, and the ways in which their accomplishments touched the lives of all Americans.

The decision rendered by the United States Supreme Court on May 17, 1954, was one of the defining moments in American history. A multiethnic, grass-roots movement for social change developed into a legal campaign aimed at changing the constitutional basis of government in the United States. This struggle involved people of diverse backgrounds in various regions of the country, and the effects of the court's decision were felt around the world. In the past half century since the 1954 decision issues of race and equal opportunity have assumed a major place in American national consciousness. Regardless of the specific effects of the case on school desegregation at the present time, there is widespread agreement that *Brown v. Board of Education* has become a popular symbol for racial justice in the United States.

The parents of Asian American and Mexican American schoolchildren in California, Arizona, and Texas brought lawsuits to provide equal access to the public schools. Issues of equal educational opportunity have also arisen on American Indian reservations, as well as among urban Native Americans. In time, it became clear that the issue of school desegregation was really a part of a set of much broader questions raised by the changing face of American society in the late twentieth century.

The core of this story is that African American lawyers, civil rights activists, along with many other people came together in a magnificent illustration of the successful functioning of democratic institutions. This concept paper presents a survey of the many cases brought forth in American courts to achieve equal opportunity education.

While the Supreme Court is the highest court in the land, it should be thought of as a symbol of the American legal system. In order to fully understand *Brown*, it is necessary to have a sense of the functioning of this system, as well of the broad-based legal campaign throughout the country for racial justice. Understanding our legal system furnishes us with an opportunity to look at one way that a democratic society approaches the universal questions of racial prejudice and equal citizenship. *Brown v. Board of Education* has significant international dimensions. In 1954, as well as at the beginning of the twenty-first century, people around the world have looked to and continue to regard this decision of the United States Supreme Court as an example of the ways by which the most powerful nation in the world attempts to guarantee equality to all of its citizens. International civil rights and human rights advocates regard the *Brown v. Board of Education* case as one important model for legal protection of ethnic minorities.

This narrative, as well as the exhibition and educational materials, is divided into seven sections: 1) Introduction; 2) Segregated America; 3) The Battleground: Separate and Unequal Education; 4) An Organized Legal Campaign; 5) Five Communities Change a Nation; 6) A Landmark in American Justice; and 7) America Since *Brown*.

## 2. Segregated America

The Supreme Court's 1954 decision was rendered in an environment in which racial segregation was pervasive and deeply rooted in American history and culture. Moreover, racism was not a uniquely American phenomenon; it was closely tied to international historical factors such as the Transatlantic Slave Trade, and later colonialism and imperialism. The notion that some peoples on the planet were less human than others based on perceived physical differences, was a convenient justification

for the nations of Europe that sought to control the land and labor of other peoples of the world. Therefore, as an overseas extension of European civilization, the United States was not alone in this respect. Although in point of time, in the modern world racism as an ideology has most closely been associated with the oppression by peoples of European ancestry of peoples who were not European, the idea of the “other”, particularly in the twentieth century, has often led to the most horrific genocide within a so-called “racial” group.

Racial segregation as a manifestation of white privilege has deep roots that go at least as far back as the founding of the Republic, when America was set up as a self-consciously “white” nation. (Stokes and Melendez, 2001, p. xix). In the nineteenth century, the dream of American democracy was counterbalanced by the reality of inferior status for a number of social groups that included women and people who were not white. White women suffered oppression in many ways that were similar to those of people of color, but in other ways significantly different.

This social order imposed an inferior status not only on people whose origin was in Africa, but also those who were Spanish American, Native American, and Asian American. The idea of whiteness as a specific ethnic identity in America is relatively new in social and historical studies, and it remains controversial, but increasingly less so. So-called “white” people were assigned a specific European identity that was alleged to possess superior moral, intellectual, and physical qualities. This historic construction of “race” has prompted many writers to adopt the term, “Euro-American,” in referring to Americans whose identity is defined as “white”. Use of this term is becoming increasingly frequent in studies on race, and it will be used in this essay interchangeably with the term, “white.”

A system of slavery based on race meant that even African American people who were supposed to be free were in reality linked by their color to the enslaved group, and deemed not worthy of participation in the American dream of democracy. Not only was slavery sanctioned by the Constitution, but also by the Congress and the Supreme Court. Each repeatedly made it plain that free blacks were not to enjoy equal citizenship, an attitude that carried over to the constitutional status of the freed people after the Civil War. (Franklin, 1995: pp.22-51) Thus, in various aspects of public life, as well as in education, Americans of African ancestry were subjected to various practices of physical segregation. Soon, the stage show minstrel character, “Jim Crow,” who was invariably portrayed in a negative manner, came to be associated with the generally disadvantaged status of black Americans.

The Civil War and Reconstruction resulted in the concept of equal citizenship regardless of race being introduced into the American legal system, but this legal principle was only sporadically and inconsistently enforced. Most people in the country agreed that slavery could no longer exist, but beyond that there was wide disagreement over what African American “freedom” was going to mean. After the Civil War, millions of formerly enslaved African Americans hoped to join the larger society as full and equal citizens. Although some white Americans welcomed them, others used popular ignorance, racism, and self-interest to sustain and spread racial divisions. The Fourteenth Amendment, which was ratified in 1867, states that all people born in the United States are citizens of the nation, and of the state where they reside, and that no state shall deny equal protection of the laws. There is general agreement that this equal protection clause of the Fourteenth Amendment is one of the most important parts of the United States Constitution.

The ideals of racial democracy espoused by many Northerners during the Civil War soon gave way to the notion of white privilege as part of a national consensus between the North and the South on race. This reinforcement of the racial hierarchy was influenced by immigration, the expansion of the frontier, extension of U.S. influence overseas, male anxieties about changing gender roles, as well as several other factors. Many writers from W. E. B. Du Bois, to John Hope Franklin, to Ronald T. Takaki have analyzed these interrelationships (Franklin, 1988: chapter XV) The erosion of black civil rights in the South, the Asian immigration exclusion laws and the alien land laws in the West, the land expropriation of native born Latinos and growing discrimination against Mexican immigrants, and the forced deculturalization of Native Americans, and the emerging image of America as a global leader of Western civilization were reflected in the writings of William Graham Sumner, Madison Grant, and Lothrop Stoddard.

As Ronald T. Takaki has noted, “[T]he reality of white America’s experience was dynamically multiracial.” (Takaki, 1979: xiv) In recent years, several historians have emphasized concepts of Eurocentrism and white supremacy as motives for the Spanish American War of 1898. On the other hand, Eric T. L. Love sees racism as playing a more complex role in that war, with some of the white supremacist intellectuals opposing overseas expansion on the grounds that it would bring white Americans into closer contact with allegedly degenerate races. (Love, 2004: Preface)

What is clear is that in late nineteenth century America there was a consensus that so-called “races” of people were essentially different from each other. Even when the right to vote, testify in court, sit on juries, make a fair labor contract, and own land were being advocated by the national government during Reconstruction, most Americans in the North, as well as in the South, African Americans as well as Euro Americans were not enthusiastic about the idea of social interaction. There was particular discomfort among both whites and blacks about private social interaction with members of another race. But Euro-American white supremacists used these social attitudes as an excuse to try to claim that African Americans were attempting to initiate social contacts, especially between the sexes.

As the South industrialized and urbanized in the post-Civil War era, more women began to work outside of the home and outside of the direct control of their husbands. Men of both races tended to feel insecure about this, but southern white men used this insecurity to pose as the chivalrous defenders of the “purity” of Southern white womanhood against rapacious black men. This protector role allowed them to simultaneously assert dominance over white women, as well as over black men. Thus, lynching and other hate crimes were often justified by the alleged sex crimes of African American men. The fact that many Southern women of both races recognized what was going on did not prevent the steady rise of lynching in the late nineteenth and early twentieth centuries.

Many Southern whites were obsessed with the idea that integrated public accommodations and voting rights would inevitably lead to social intermingling and ultimately intermarriage, and racial mixing. Consequently, one of the many questions which the Reconstruction era failed to settle was what really constituted private social interaction, and what public rights were included as part of equal citizenship. In the *Civil Rights Cases* of 1883, the Supreme Court invalidated portions of the Civil Rights Act of 1875, which had attempted to outlaw segregation in public facilities.

Finally, in the case of *Plessy v. Ferguson*, in 1896, the high court explicitly established the principle of separate-but-equal, which claimed that segregated facilities did not violate the Fourteenth Amendment as long as they were equal. Only one

Supreme Court Justice, John Marshall Harlan, disagreed with this opinion, and even he stated his belief that whites were superior in very significant ways, to blacks. The establishment of white privilege through the legal fiction of separate but equal became the basis of race relations in the United States until the Supreme Court struck it down in 1954.

### **3. The Battleground: Separate and Unequal Education**

A major avenue to Americanization and entry into the mainstream of national life was the system of public education that grew up in the northern states in the antebellum period. Racial segregation in many aspects of life was prevalent throughout the antebellum North, and the newly established public schools followed these social patterns. Although some communities did not want blacks to be educated under any circumstances, many local governments established separate public schools for African American children. Robert Purvis in Philadelphia, Frederick Douglass in Rochester, as well as other black leaders, vociferously protested these Jim Crow schools.

In Boston, a center of the public school movement, the few African Americans who managed to gain entry to the schools suffered harassment and ridicule. When African American community leaders, led by Revolutionary War veteran Prince Hall, failed in 1787 to gain the establishment of a separate black public school, they organized a private African School in 1798. Classes were held in the African Meeting House, a local community institution and now a historic landmark. Financial support for the institution was provided by African American parents and other community people, and later the city of Boston began to subsidize this facility. Then in 1820 and 1831, the city established two public black primary schools. Not only were these schools inferior in facilities, but they were forbidden to offer education equal to that of the white children. African American petitions to city officials to integrate the schools were ignored. (Horton and Horton, 1979: pp. 70-72)

In 1849 Benjamin Roberts, an African American who was a printer by trade, took his five-year-old daughter Sarah to be enrolled in an all-white Boston neighborhood school, and when she was rejected because of her race, he filed suit. At the time, Sarah Roberts was attending the Smith school, located in the African Meeting House, now a Boston historical landmark. In the local court Benjamin Roberts was represented by Robert Morris Sr., the second African American admitted to the bar in the United States, in 1847, and the first to file a discrimination suit in court. The first case of his career, argued against a white attorney, had resulted in a victory, but his advocacy for Sarah Roberts was not successful. (NPS 2000, 8-9; Smith, 96-97; Horton and Horton, 1979: 70-74; Horton and Moresi, 2001, 35)

After his case failed in the local court, it was taken to the Supreme Judicial Council of Massachusetts. Morris was joined by the noted abolitionist attorney Charles Sumner, and their appellate brief became the first in United States history that was cosigned by a white and a black lawyer. The appellants argued on the basis of the constitution of Massachusetts, and the principles of liberty and justice, and asserted that racial segregation was emotionally and socially damaging to both white and black students. But Chief Justice Lemuel Shaw was unmoved. He decided on narrow legal grounds, claiming that it was within the purview of the Boston School Committee to establish whatever educational arrangements it deemed appropriate. This case was a

landmark in the history of race and education in America, because the arguments of Justice Shaw anticipated those of the Supreme Court in *Plessy v. Ferguson* forty-seven years later. At the same time, the arguments of Morris and Sumner anticipated those of that same Court in *Brown v. Board of Education* one hundred and six years later.

Although the two attorneys lost their case, the Massachusetts legislature abolished segregated public education a year later. However, some members of Boston's African American population continued to advocate for black community-based education. Robert Morris and Charles Sumner were both American heroes who championed equal citizenship throughout their careers, Morris on the local level in Massachusetts politics, and Sumner on the national level in the United States Senate.

After the Civil War, segregation in American public education became a widespread practice. But, as the civil rights attorneys were to point out eighty years later, although local laws frequently sustained racial separation, it never became a part of the national constitutional framework. Moreover it was frequently resisted as parents of color throughout the United fought for their children in a variety of ways. Sometimes they formed community organizations to put pressure on local school authorities, and sometimes they brought suits in court. Although this legal action took place at the state and local level, and most of the cases were not carried to the Supreme Court, these efforts had national significance as a reflection of resistance to the prevailing pattern of race relations. African Americans in several northern and western cities challenged segregated education. By 1870 the state of California had devised a formula of ten; whenever African Americans, Asian Americans, or American Indians numbered ten students, a school district was empowered to create separate schools for white and nonwhite children. When Daniel Scott, an African American, opened up a small school for black children, local school authorities paid him to accept Mexican American children. (National Park Service, *Racial Desegregation in Public Education*, hereinafter cited as NPS, 2000, 17.) In 1872 Harriet Ward sued after her daughter, Mary Frances, was denied admission to an all-white school in San Francisco. In *Ward v. Flood* (1873) the California Supreme Court foreshadowed the U.S. Supreme Court in sustaining Jim Crow education.

Then, in 1880 the California state school law provided for the open admission of all children, except for those “. . . of filthy or vicious habits, or children suffering from contagious diseases.” Although this did not specifically mention race, it did allow local school authorities to use their discretion as to which students were acceptable, and they often used racialized categories.

In California, Asian Americans and Mexican Americans were often targeted more frequently for state regulated school segregation than African Americans. In 1884, Joseph and Mary Tape, both immigrants from China, sued after their daughter was denied admission to an all-white school in San Francisco. In *Tape v. Hurley* (1885), the state Superior Court confirmed the right of Mamie Tape to attend the neighborhood school, based on the equal protection clause of the Fourteenth Amendment. (NPS, 2000, 19) But the San Francisco school board persisted, and based on alleged “infectious diseases,” established separate schools for children of “Chinese or Mongolian descent”. Mary Tape wrote an impassioned, outraged letter to the school board, affirming her American identity, and condemning them for their racism and hypocrisy. This letter stands as one of the most inspiring documents in the history of the struggle for equal opportunity education, and in the words of historian Judy Yung, it “shines as an early example of an emancipated Chinese American woman.” (Ibid.)

Most of the Chinese American children in the San Francisco area were forced to attend the Chinese Primary School. Since he lived outside of Chinatown, Dr. Wong Him enrolled his daughter in a non-Chinese school. A year later he was told that she must attend the segregated school. Dr. Him filed suit, but in *Wong Him v. Callahan* (1903), the U.S. District Court upheld the principle of separate but equal. Not surprisingly, as L. Lowe, a Chinese American community leader pointed out, the schools were anything but equal; “. . . the highest grade is the sixth and with it a scholar’s education, as far as the public schools go, is at an end.” At the time of the lawsuit, only children of Chinese ancestry were segregated, but after the earthquake of 1906 a new school, designated as the Oriental Public School was built, and all children of Japanese and Korean, as well as Chinese descent, were required to attend. During the 1920s and 1930s, due mainly to organized Chinese community pressure, Chinese American children in San Francisco began to attend integrated schools.(NPS 2000, 45)

The segregation of Japanese American children in the western states varied from one community to another. In 1921 the California state legislature enacted a law that permitted local school authorities to set up separate schools for “Indian children and for children of Chinese, Japanese, or Mongolian parentage.” In addition to Native Americans, the term “Indian” also referred to people from the Indian subcontinent, who were usually of the Sikh religion, while the term “Mongolian” could mean any other Asians or Pacific Islanders. But only in four California towns, where Nisei represented a majority of the population, was this mandate actually enforced. In other areas, Japanese American children were grouped with Latino or other nonwhite children, again by decision of local authorities. In 1925 Arizona passed a similar local option law that applied to “colored” youth, which included Asian American, Mexican American, African American, and Native American children.

In Hawaii the state legislature created English Standard schools, to which a student seeking admittance had to take a qualifying examination. This effectively barred most Nisei children from schools attended by Euro-Americans. Although local authorities wanted children of Japanese ancestry to be segregated, they did not want them to preserve their cultural heritage. When Hawaii’s Japanese American community organized Japanese language schools, the state attempted to limit them through a series of regulations. In *Farrington v. Tokushige* (1926), the U.S. Ninth Circuit Court ruled in favor of the community language schools. The court ruled that “The protection of the Constitution extends to all, to those who speak other languages, as well as those born with English on the tongue.”(NPS 2000, 47)

Spanish was also a language that was used to racialize and stigmatize children in the public schools. As migration from Mexico increased, separate schools for children with Spanish surnames became increasingly prevalent in the Southwest. Official explanations followed the contradictory line of reasoning that they should be Americanized and taught the English language, but this could only be accomplished in segregated schools. For many school administrators and white parents, however, the reason given was that children of Mexican descent were racially and culturally inferior. Although social, political, and economic discrimination against people of Mexican ancestry began immediately following the Mexican American War of 1848, segregated education did not become widespread until the twentieth century, when between 1910 and 1930 over one million Mexicanos (one-eighth to one-tenth of Mexico’s population) migrated northward.(NPS 2000, 50)

These schools were prevalent in Texas, Arizona, Nevada, and California. In rural New Mexico and Colorado, with their native-born Hispanic populations, the social and

cultural environment was somewhat different, but in the large urban areas like Albuquerque and Denver, segregation was the norm. At first separate “Mexican” rooms were set up, but as the numbers of schoolchildren increased, entire schools became segregated. In many respects, these institutions bore a striking resemblance to the Jim Crow schools of the South. The physical facilities were inferior to the Anglo schools, and in one instance, the school board records of Ventura County, California, reveal that during the 1930s the board deliberately assigned Mexican American children to unused chicken coops. The “Mexican” teachers were almost always Anglos, but paid at a lower rate, and they very frequently requested reassignment. As in the southern states, the educational program reflected the interests of white landowners who needed an available labor force.

The philosophy of “industrial” education prevailed. Boys were taught manual trades that suited them to field work, and girls were taught domestic arts such as cooking and sewing. School hours and the academic year were geared to the agricultural season so that the children could help their parents in the fields. Under the assimilationist policies of the “Mexican” schools, a systematic effort was made to eradicate the Spanish language, and Mexican culture. In the name of “Americanization,” the goal was to produce a docile labor force. So-called “intelligence” tests defined intelligence in such a way as to produce results that purported to show that Mexican children had inherent racial deficiencies, which led to a special curriculum that emphasized vocational and industrial education, similar in philosophy to the southern black schools that followed Booker T. Washington’s Hampton-Tuskegee model. (Gonzalez, 1990, Chapters 3 and 4)

From the very beginning Mexican American parents protested this treatment, but usually without redress. As early as 1919, the Mexican consul in San Francisco lodged an official protest against the segregation of Mexican American children, only to be met by a flat denial from the state superintendent of education that such a policy existed. One early example of successful resistance occurred in Lemon Grove, California, in San Diego County. In 1931 the local school board decided to take the Mexican American children out of an integrated elementary school and reassign them to a separate and inferior facility across the tracks in the barrio. Aroused parents formed El Comité de Vecinos de Lemon Grove (the Neighbors’ Committee of Lemon Grove) and voted to boycott the new school and go to court. The Mexican consul at San Diego played an active role in this community campaign, putting the parents in touch with two attorneys, assisting the organizing efforts, and offering to mediate between the parents and the school board. Several students testified in court to prove their English proficiency. *Alvarez v. Lemon Grove School District* resulted in the children remaining in their old school, and may represent the first successful court action in favor of school desegregation in the United States. (NPS 2000, 54; Balderrama, 1982, 60)

One Carpenteria resident stated that if the segregationists lost the Lemon Grove case, “. . . we will slip a bill through the legislature so we can segregate these greasers.” In 1931 Assemblyman George Bliss of Carpenteria introduced a bill in the state legislature that would add to the existing law that permitted segregation of Chinese, Japanese, “Mongolian,” and Indian children, the category of Indians who were born outside of the United States. He and his supporters acknowledged that this was designed to permit legalized school segregation for Mexican Americans. Again the Mexican consuls in Los Angeles and San Diego worked behind the scenes to block this measure. Several southern California newspapers and civic associations, including the Los Angeles *Examiner*, the Los Angeles Conference of Civic Societies, and the Inter-Racial Council of San Diego, voiced their protest, and the Bliss bill was eventually killed. However,



local school authorities continued to find ways of providing separate and unequal education to Mexican American children

As with African Americans, World War II stimulated Mexican American militancy, and by the mid-1940s, Mexican American consciousness was rising throughout the Southwest. During the Zoot Suit Riots of 1943, Anglo soldiers and sailors attacked Chicano youth in Los Angeles who wore a style of clothing popularized by Harlem jazz musicians. In the Sleepy Lagoon Murder Case of 1944, a group of Chicano youths were coerced into a murder confession by Los Angeles police, and later cleared. These events constituted landmarks in the mobilization of *la raza Chicana*. By the late 1940s, there were two major Chicano advocacy organizations in the Southwest, LULAC (League of United Latin American Citizens), a more middle-class group formed in 1928, and the American GI Forum, a more socially progressive group of veterans formed after the Second World War.

The ramifications of the international struggle against fascism, the horrors of the Holocaust, and the increased tempo of anticolonial and social justice movements in Africa, Asia, and Latin America, also heightened the sensitivity of many Euro-Americans to the global significance of race. Fears of communist and fascist influence in Latin America heightened the concerns of government officials in the United States regarding discrimination against Spanish-speaking people. Franklin Roosevelt's Good Neighbor Policy toward Latin America was replicated on the state level by the formation of a new governmental agency, the Good Neighbor Commission of Texas. (San Miguel, 1987, pp.91-95) Although many of these local race relations agencies in the Southwest did little beyond official rhetoric, they signaled a departure from the former attempts to explicitly justify racism against peoples of color. The one glaring exception to this, of course, was the wartime internment of Japanese Americans.

Gonzalo and Felicitas Mendez leased a farm in Santa Ana, in Orange County, California that employed about 40 workers. Gonzalo was of Mexican ancestry, and Felicitas was from Puerto Rico, and they had moved up from picking crops to operating a prosperous farm. When they unsuccessfully attempted to enroll their three children, Sylvia, Gonzalo Jr., and Geronimo, in the local Anglo elementary school in 1945, they decided to organize a legal campaign, and thereby became prominent community leaders.

With Los Angeles attorney David Marcus as their representative, they headed a parent group of plaintiffs who sued along with several others. Gonzalo Mendez took time off from the farm to drive Marcus around the county to gather information for the suit, and in the interim, Felicitas took his place and managed the enterprise very successfully, at the same that she organized a support group of parents. The out-of-pocket expenses for the Mendez couple amounted to over \$1,000, a considerable sum for a middle-class Latino family of that time. In defense of segregation, the Garden Grove school superintendent remarked that "Mexicans are inferior in personal hygiene, ability, and in their economic outlook," and another school official claimed that Mexican American children "were handicapped in interpreting English words because their 'cultural background' prevented them from learning Mother Goose rhymes." As in the Lemon Grove case, eight-year-old Sylvia took the stand to refute these kinds of assertions. (Gonzales, 1990, pp150-152)

The case of *Mendez v. Westminster* (1946) had national repercussions. Amicus curiae briefs were filed by the American Jewish Congress, the American Civil Liberties Union, the National Lawyers Guild, the Japanese American Citizens League, the NAACP, and the California attorney general. David Marcus directly confronted the separate-but-equal doctrine by arguing that the equal protection clause of the Fourteenth

Amendment clearly forbade school segregation. When Judge Paul McCormick ruled in the plaintiff's favor, the school district appealed his decision to the U.S. Ninth Circuit Court. It was upheld, and at this point the Garden Grove school authorities decided to give in. Many observers had hoped that the case would go to the U.S. Supreme Court, so that *Plessy v. Ferguson* could finally be overruled. At the same time, however, the use of social science data by the plaintiffs to deny the principle of separate-but-equal anticipated a similar strategy in *Brown*. One direct result of *Mendez* was the passage of a measure by the California state legislature, and signed into law by then Governor Earl Warren, repealing all school codes providing for segregated education. (NPS 2000, 65-67) And finally, in Texas the following year, in *Delgado v. Bastrop Independent School District* (1947), a U.S. District Court judge cited *Mendez* in striking down the segregation of Mexican American children in separate classrooms. (NPS 2000, 65-67)

#### **4. An Organized Legal Campaign: Howard University Law School and the NAACP Legal Defense Fund**

Lawyers, probably more than any other black professional group, who faced the steepest uphill battle to establish their professional existence. Unlike black schoolteachers, clergymen, and physicians in southern hospitals, they did not have much control over the environment in which they practiced their profession. Not only were they excluded from the American Bar Association, but also they encountered widespread disrespect and frequent outright rejection in southern courts. In some cases they were subjected to physical violence. Their stature among their fellow African Americans was not much better. People in their own communities would often use black attorneys for lesser legal issues, but turn to Caucasians for major problems. In the words of one; "I hear tell the only way you kin win is to git some white lawyers. . . . Colored lawyers is all right for crap games. . . ." (Smith: 1993, p. 11)

It is a tremendous testimony to their moral courage and professionalism that the Black attorneys achieved, in the face of these daunting constraints, a fundamental revision of constitutional jurisprudence by the highest court of the land, the rescue of countless black defendants from long prison terms and sometimes capital punishment, and counsel for civil demonstrators who took their grievances to the streets. In addition to the nationally known figures like Thurgood Marshall, Charles Hamilton Houston, William Henry Hastie, and James Nabrit, there were numerous individuals at the local level whose courage and expertise advanced the cause of civil rights for all Americans. Occasionally, Euro Americans joined the ever-growing cadre of African American civil rights lawyers. (Smith, 1998: Introduction, Chapter One; Hine, 1995: p.51)

During the decades following the First World War, a new generation of African American leaders emerged onto the national scene. As a group, they tended to have more formal academic training and more of them were professional writers, artists and social scientists. They often held academic positions that were directly related to their training, and they produced works for major national publications. In addition to W. E. B. Du Bois, who had begun his career in the late nineteenth century, this group included historian Carter G. Woodson, the writers and artists of the Harlem Renaissance, and social scientists Ralph Bunche, Abraham Harris, E. Franklin Frazier, and Kenneth Clarke. Their experiences and their writings made a powerful contribution to American

intellectual and cultural life, as they confronted the realities of the American racial system, and issues of race on the international level during the Great Depression, the Second World War, and the Cold War.

One of those individuals was a central but little-known figure in African American intellectual history, as well as American legal history named Charles Hamilton Houston. His views on race and the American legal system were framed in terms of the vital national and international issues of his day, and they had a major effect on the civil rights movement of his time. Born to a family in Washington, D.C., who were themselves the children of slaves, Houston grew up in a middle class environment in a city whose African American community was one of the most influential in the United States. His secondary education was completed at the "M Street School," later known as Dunbar High School, which was the first institution of its kind for African Americans in the United States. Many of the institution's faculty had earned advanced degrees. Had they been white would have been considered qualified to teach at major institutions of higher learning. And so they insisted on the highest standards of excellence from their students.

Houston's high school academic performance enabled him to win a scholarship to Amherst College. His four years were spent focusing on his studies, and avoiding extracurricular activities. For the rest of his life he displayed a similar commitment to serious intellectual productivity. Right after graduation, he was one of a select group of young African Americans who were trained as officers to lead companies of black American artillery men in the First World War. His military experience was extremely distasteful, and in addition to his men not being assigned to the task for which they were trained, he experienced insults and mistreatment from the whites who were supposed to be his fellow officers. These wartime ordeals solidified his determination to utilize the legal system to advance the cause of his people.

As a student at Harvard Law School Charles Houston was the first African American to serve on the staff of the law review, and his professors included some of the foremost legal minds of the day, including Roscoe Pound, and Felix Frankfurter, who was later to preside as a Supreme Court judge over the *Brown* case. He was strongly influenced by the theories of legal realism, which was opposed to the theories of legal formalism. The former held that the law is a reflection of basic social, economic, and political relationships, while the latter saw the law as a system of principles which existed independently of the vagaries of social and political currents. Many of the lawyers of the Progressive period, including Clarence Darrow, were influenced by legal realism. In recent years, an outgrowth of this approach is found in critical race theory, and critical legal theory.

Upon graduation, Houston worked for a time in his father's Washington, D.C. law firm, but in 1927 he was called by Howard University president Mordecai Johnson to head the Law School. As the first African American to head Howard, Johnson was engaged in refashioning the entire structure of the university, with the announced goal of establishing it more firmly as a major academic institution. To attain this goal he recruited African Americans who had displayed achievement in their academic fields to head the major departments. Like the Harlem Renaissance in New York City, the changes at Howard University and the rest of the Washington, D.C. African American community, reflected a major black intellectual and cultural ferment during the interwar period. When Houston assumed the deanship of the Law School, the institution was a night school that lacked accreditation by either the American Association of Law Schools, or the American Bar Association. Despite this lack of accreditation, however,

Howard Law School had already produced a major proportion of the practicing Black attorneys in the country, because from its inception in 1868, it saw itself as having a special mission to produce black lawyers. (Smith: 1993)

Houston transformed the law school within a few years into a fully accredited institution that featured a complete daytime curriculum and a distinguished faculty of national reputation. His hard-driving, exacting style led some people to accuse him of being an arrogant elitist who was trying to “Harvardize” Howard’s law school. Nevertheless, although Houston was intolerant of what he regarded as substandard performance by Black attorneys, he was throughout his career generous with praise and encouragement for those whom he judged were conscientious and well prepared.

Johnson, along with most of the faculty, and a good portion of the students, supported him as he trained a whole cadre of attorneys with expertise in the field of civil rights law, the most illustrious of whom was Thurgood Marshall. Many of the faculty whom he attracted to the school later became major civil rights figures, like James Nabrit, who had received his legal education at Northwestern University. Nabrit developed the first course on civil rights law in the United States, and was later one of the lawyers who argued the *Brown* case before the Supreme Court. Later he became president of Howard University. William Henry Hastie, like Houston, was a product of Amherst College and Harvard Law School, and was later a member of the wartime Fair Employment Practices Committee, and governor of the Virgin Islands.

In 1934 Houston was asked by the NAACP to come to New York to head its legal office. At that time the Association was laying the intellectual groundwork for its long-term strategy against Jim Crow. Nathan Margold, who was commissioned by the Garland Fund, a philanthropic foundation set up to foster racial justice, articulated a major perspective in a report prepared for the NAACP, and released in 1930. Instead of a frontal assault on segregation to immediately overturn the principle of separate-but-equal, which had been handed down by the Supreme Court in the *Plessy v. Ferguson* decision of 1896, the Margold Report recommended an indirect strategy. This involved seeking equalization of segregated facilities on a case-by-case basis, with an assurance of victory in each case because nowhere were educational facilities equal. Eventually, there would be a sufficient body of case law accumulated to directly challenge the principle of separate-but-equal.

The Margold Report was the strategy that Houston adopted for the NAACP legal office. However, recognizing southern white fears of racial mixing, he altered it significantly by concentrating on graduate and professional schools in the Upper South, instead of primary and secondary schools in the Deep South. Segregated education was to be attacked case by case, to show in each instance that the facilities provided did not conform to the equal protection of the laws clause of the Fourteenth Amendment. The goal in the short run would be to force southern states to move toward equalizing the gross disparities that existed between black and white schools. As soon as he graduated from Howard Law School, Thurgood Marshall began to pursue this strategy in a series of equalization lawsuits against various public school districts in Maryland beginning in 1933.

The first major case based on this strategy, *Missouri v. Gaines*, was brought before the Supreme Court in 1937 and resulted in a victory for the civil rights lawyers. Throughout the 1940s they continued to score a series of victories based on this strategy. Houston became a publicist for the NAACP, speaking around the country, energizing civil rights activists, and producing a film on conditions in the South, which is still available. Later, Houston moved back to Washington, D.C., where he continued his

work in the field of civil rights. When he died in 1950, he was assisting Gardiner Bishop, president of a Washington, D.C. civil rights organization called the Consolidated Parents Group, to mount a legal challenge to segregation in the local public schools, which eventually became one of the 1954 school desegregation cases, *Bolling v. Sharpe*. During this period the law school, which he had refashioned, played a major role in the legal challenges to segregation. It furnished its graduates and faculty members opportunities to work on the cases, and it served as the site for the moot court exercises that prepared the civil rights lawyers for their appearances before the Supreme Court. (McNeil: 1983)

Thurgood Marshall became the principal leader in the legal campaign against Jim Crow education. Born into a middle class family in Baltimore, he had firsthand experience with Maryland's patterns of racism. After graduating from Lincoln University in Pennsylvania, a historically black institution, he attended Howard University. In 1933 he became one of the first students to graduate from the new law school, at the time that Houston was reorganizing it.

As the legal counsel for the Baltimore branch of the NAACP, he helped organize and lead a picketing campaign against merchants who refused to employ black people along Pennsylvania Avenue, in the heart of Baltimore's African American community. He also began to travel around the state to persuade Maryland schoolteachers to file equalization suits. Then, on behalf of Donald Murray, he sued the law school of the University of Maryland, which had already rejected his own application for admission. *Murray v. Maryland*, decided in the Baltimore City Court, and reaffirmed by the Maryland Court of Appeals, was Marshall's first major victory.

In 1936 Marshall came to New York as Houston's assistant, thrived under the tutelage of his mentor. Marshall absorbed Houston's intellectual rigor, while preserving his own informal, folksy style, and soon the combination of his intellect and his personality marked him as a major civil rights leader. When Houston returned to private practice in 1938, Marshall assumed leadership of the NAACP's legal team, and in 1940, the NAACP Legal Defense Fund was formally established. His mastery of civil rights law, along with his engaging and powerful personality, propelled him not only into leadership of the NAACP-LDF, but made him one of the major African American leaders of his time. He was frequently referred to in the black press as "Mr. Civil Rights."

On the many occasions when he appeared in Southern courts, Marshall had to be not only well-prepared, but also in command of his emotions. The judges would frequently address him on a first-name basis, and speak to him in a condescending, patronizing manner. On a few occasion, his physical safety was actually threatened. But Marshall and the NAACP legal team, which eventually included white attorney Jack Greenberg, made their way through these courts to present a number of cases before the highest court in the land.

Another reflection of the diversity of the NAACP-LDF was the presence of Constance Baker Motley. A 1946 graduate of Columbia University Law School, she joined the group without even interviewing with any other firm, because, as she later recalled, "But for this fortuitous event, I do not think that I would have gotten very far as a lawyer. Women were simply not hired in those days." The insulting treatment from southern judges encountered by the black male attorneys was compounded by her gender. (Hine,2000: pp.490-491)

From the *Missouri v. Gaines* case in 1937 down to the cases of the late 1940s, Marshall was the lead attorney in this legal campaign waged by Howard University Law School and the NAACP Legal Defense Fund. In each of these cases, the NAACP

attorneys were able to demonstrate that segregation produced inequality. These U.S. Supreme Court cases, along with contemporary lower court decisions in Texas and California striking down the segregation of Mexican American pupils, led Marshall to announce in 1950, “We are going to insist on non-segregation in American public education from top to bottom – from law school to kindergarten.” (NPS 2000, 70)

## 5. Five Communities Change a Nation

The cases that collectively came to be known as *Brown v. Board of Education of Topeka, Kansas*, actually emanated from five regions; Topeka, Kansas, Clarendon County South Carolina, Prince Edward County, Virginia, Wilmington, Delaware, and Washington, D.C. Each one of these cases represented a different regional culture and history, and hence different patterns of segregation, but they were all united by the fact that children of African ancestry were excluded from attending classes with children of European ancestry, based on alleged characteristics of inferiority.

***Brown v. Board of Education of Topeka.*** In point of time, this case was actually filed after the one in South Carolina, but because of procedural technicalities it moved to the head of the line. Thus it has become known in history as the term for all of the five public school cases that the NAACP lawyers brought before the high court. Of all of the regions where African American schoolchildren were subjected to a Jim Crow education, Kansas was unique in that it had never had a history of slavery, and the patterns of school segregation in the early 1950s, which bore a striking similarity to those against Mexican American children in the Southwest, reflected the ambivalent attitudes of many white Kansans.

During the antebellum period, the conflict between pro and antislavery settlers in “Bleeding Kansas” turned the territory into what many historians have referred to as a dress rehearsal for the Civil War. While the antislavery “Free Soilers” eventually won out, most of them were not advocates of racial equality, and one of the first acts of the territorial legislature was to exclude both slavery and African American immigrants. After the Civil War, a law was passed that permitted school segregation by local option. After the arrival of the “Exodusters” of 1879, the increased visibility of Black people resulted in the passage by the state legislature of a bill that specifically permitted cities with populations of 15,000 or more to operate separate primary schools. Only in Wyandotte County (the location of Kansas City, Kansas) was the high school segregated. But in several of the “integrated” high schools, most extracurricular activities were separated by school policy.

Besides patterns of segregation another factor that made Kansas unique was the number of lawsuits filed by African American parents. Between 1881 and 1946, eleven cases were brought before Kansas courts in which segregated conditions ranged from separate classrooms to separate buildings. In some instances the plaintiffs were successful, while in others, they met with failure. Three of the eleven cases came from the capitol city, Topeka. By 1951, when the Supreme Court case was first filed, Topeka was a city of about 100,000 with a population of about 7.5 percent Black. Although African Americans were not forced to ride in the back of the buses, most of the downtown public facilities were segregated by practice, if not by law. African

Americans were the only ethnic group of color who were subjected to legal school segregation, and this applied only to the grade schools. In the high schools, although students attended the same classes, extracurricular activities were segregated by school policy, and teachers saw to it that little interracial socializing took place. (Kluger, pp. 372-375)

By the late 1940s, the Topeka branch of the NAACP began to challenge the status quo. McKinley Burnett, president of the chapter, and other members attended the meetings of the school board and berated the members for their bigotry. One board member became so incensed that he challenged Burnett to step outside for a physical confrontation, to which the latter replied, "I don't settle matters that way. I settle them by legal means."

Other Topekans who joined the struggle for equal opportunity education were Lucinda Todd, an African American former schoolteacher who eventually became one of the plaintiffs, and Esther Brown, a Euro American homemaker whose conversion to the cause of desegregation came after she faced a crowd of hostile pro-segregation white parents at a school board meeting, and Elisha Scott, a charismatic black Topeka attorney who became a central figure in the Kansas civil rights movement. Neither black nor white Kansans were particularly anxious to challenge the existing patterns of race relations, and, as elsewhere in the country, some of the African American teachers felt that it was a reflection on their professionalism to insist that all-Black schools were inferior. Thus, it was left to a few activists to make history.

After Scott won a desegregation case in Kansas City, Kansas, the desegregation advocates focused on Topeka. On February 28, 1951, Elisha Scott Jr., and Charles Scott, partners in their father's law firm, filed *Brown v. Board of Education of Topeka* in the U.S. District Court of Kansas. The LDF office in New York sent Robert Carter and Jack Greenberg to assist them. Locally, the strategy was developed by McKinley Burnett, Lucinda Todd, and attorneys Charles Scott Sr., John Scott, and Charles Bledsoe, and they enlisted the support of other NAACP members along with some of the other people they knew from the Black community.

Twelve parents, among whom was Oliver Brown, joined Lucinda Todd in a class action suit against the Topeka school board. Although the facilities in the black and white schools of the city were more or less equal, the African children as a group had much farther distances to travel. One of the cruel ironies of the case was that Linda Brown had to reach an African American school in bypassing a Euro American school named for the famed abolitionist Charles Sumner, who had argued against segregation in Boston over a century before.

Neither the Topeka school board nor the attorney general of Kansas were eager to defend segregation. The primary task fell to Paul Wilson, the assistant attorney general, who was told by his superior to "see what you can do with this damned thing." The judge of the U.S. District Court stated that the education received by African American children in Topeka was unequal because segregation created a stigma, but at the same time the laws of Kansas had to be upheld. The Board of Education of Topeka announced that it planned to desegregate the schools, but the Supreme Court announced that unless Kansas was willing to declare its segregation system illegal, that the case would have to continue on to the Supreme Court. Thus Paul Wilson, a young assistant attorney general of 28 years, became the unwilling defender of Kansas in the Supreme Court. Years later, he recalled his discomfort at being allied with the attorneys from Virginia and South Carolina.

***Briggs v. Elliott.*** The defense of segregation in South Carolina was quite different, and this case stands in marked contrast to the others in the intensity with which racism was defended. Clarendon County, South Carolina was in the heart of the Black Belt, where African American children outnumbered whites, and where white opposition to Black advancement was always determined and not infrequently violent.

South Carolina had been the only one of the Southern colonies with a black majority. Rice, joined in the late eighteenth century by cotton, ensured that slave-grown crops dominated the state's economy. Of all the states in the Union, South Carolina was among the most vociferous defenders of the South's "peculiar institution." The state was represented in the Senate by John C. Calhoun, a leading national political figure, who used the U.S. Constitution to defend slavery, based on the theory of states rights. When Abraham Lincoln won the Presidential Election of 1860, South Carolina became the first state to repudiate the nation founded by the revolutionaries of 1776.

Reconstruction-era South Carolina saw the most extensive African American political presence in the South, and the restoration of white supremacy was especially bitter and violent. During the era of segregation, South Carolina's large African American population made it one of the South's most impassioned defenders of white supremacy. In 1948 the States Rights Party, a group of Southern Democrats dissatisfied with the pro-integration policies of Harry Truman, promoted South Carolinian Strom Thurmond as their candidate for president.

Summerton, in Clarendon County, was in the heart of the "Black Belt." It had received the name during the antebellum period, when its relatively less oppressive climate, as compared to the Low Country, made it a summer haven for the planters and their families who named it "Summer Town." In 1949, two years after the *Briggs* case was originally filed, there were sixty-one schools attended by African American children, whose total value was \$194,575, and twelve schools for white children, whose total value was listed at \$673,850. In that same year, Clarendon County spent an average of \$43 per black child, and an average of \$179 for each white child. (Kluger, p.8) The typical argument of the white school officials was that since blacks didn't pay as much taxes, that whites shouldn't be forced to finance education for black children.

In every respect the black schools were far inferior to those for the whites. As with Mexican American children in the Southwest, the school year tended to be geared to the planting and harvesting seasons. During what little school year there was, truancy officers rarely bothered about black children. The school superintendent, L. B. McCord, also doubled as the pastor of the local Presbyterian church, and he was fond of quoting the Bible to justify segregation. It was the will of God, he insisted, and "the buzzards don't mingle with the crows, and dogs don't mingle with cats." But the chairman of the school board was less pious. When R. W. Elliott, who became the defendant named in the case, was asked why most of the Euro American children used school buses to while none of the African American children did, he allegedly responded, "We ain't got no money to buy a bus for your nigger children." (Kluger, pp. 4,8)

The South Carolina chapter of the NAACP was formed during the 1930s. The first major campaign of the chapter was for equalization of teachers' salaries in the 1940s, and it resulted in many African American teachers receiving substantial salary increases. The next victory was against the white primary that had been decided by the Supreme Court in *Smith v. Allwright* in 1944, but which necessitated further local court action in South Carolina. Even in the face of court decisions, however, white supremacist resistance was strong. Some whites, such as federal judge J. Waities Waring, expressed open support. One scholar has noted the spectacular rise of the South



Carolina NAACP during the 1940s; “The team of [Modjeska] Simpkins, [James M.] Hinton, McCray and [Osceola] McKaine inspired organization of branches of the NAACP in many black communities. NAACP membership and support in South Carolina increased as the number of branches of the organization doubled, tripled, and quadrupled.”(Woods, 1978, 211-212)

In 1948 a branch was quietly formed in Clarendon County, and farmer Levi Pearson was selected as president, with the Rev. J. A. Delaine as the branch secretary. Pearson had filed a lawsuit against the County school board to provide a school bus, but when it was discovered that his farm straddled the line between the school district where he paid his taxes and the district where he attended school, his suit was thrown out of court. Evidence suggests that county authorities manipulated the school district boundaries in order to block this African American civil rights lawsuit.

Meanwhile, local whites began to retaliate. They mounted a boycott against Pearson, denying him credit for farm supplies, and refusing to purchase his crops and timber. When it was suspected that he had encouraged the lawsuit, the principal of Scott’s Branch High School was fired and replaced by a black man who had no college degree, was arrogant to black students and parents, and mishandled funds, but who satisfied the white school board. In a public hearing in the fall of 1949 the incumbent African American principal was ousted, but he later took his revenge by mounting a successful slander lawsuit against Rev. De Laine.

But De Laine and the other residents of Clarendon County were undeterred by white retaliation, and they worked with state and national NAACP attorneys to press for equal education. Pursuant to Thurgood Marshall’s instructions they secured the signatures of twenty parents in Clarendon County. The first to sign the petition were Mr. and Mrs. Harry Briggs, and their target was Roderick W. Elliott, the sawmill owner who was also chairman of the local school board. In the words of one historian, “Getting twenty black persons, in poverty-stricken Clarendon County, who were willing to suffer the inevitable intimidation and economic sacrifices of plaintiffs in an NAACP-sponsored case was not an easy assignment.” (Woods, 1978, 229-230) In addition to her work in drafting the statement, Simpkins also provided material support to the African American victims of white supremacist economic persecution. Under Marshall’s insistence, the plaintiffs agreed that they would ask for integration, not just equalization. Harold Boulware, an African American attorney from Charleston, also played a key role in the legal campaign.

The case came before a three-judge panel in Charleston on May 28, 1951. Robert Figg, the lead counsel for South Carolina, attempted to circumvent the NAACP lawyers by admitting that inequality in the Clarendon County schools did in fact exist, but that local authorities were making a good-faith effort to equalize the two systems, and that they should be given time to accomplish this instead of forcing them to integrate. Marshall replied that the only relevant issue was what was actually in existence, not what was promised in the future, and the arguments proceeded. Kenneth Clark and an NAACP research team had surveyed the Clarendon County schools, and they presented their findings in court. Among the three-judge panel only J. Waities Waring ruled in favor of integration. The other two judges, Timmerman and Parker, denied the plaintiff’s suit, and said that the school district should report on the progress of equalization in six months. The NAACP LDF then appealed this decision to the U.S. Supreme Court.

In 1949, Reverend De Laine was fired from his teaching job, and in 1951 a local court convicted him of slander against the black principal who had been removed. On the night of October 10, 1951, his house was burned to the ground, after he and his family

had relocated to a parsonage in nearby Lake City. Threats and intimidating actions against him continued, and they mounted especially after the *Brown v. Board of Education* decision of May 1954.

After the lead counsel for South Carolina in that case, John Davis, visited Summerton and spoke before a segregationist audience, De Laine became the principal target of the newly-formed local chapter of the White Citizens' Council, and the persecution reached a new level. During the latter months of 1955, the parsonage in Lake City was the target of various acts of vandalism and gunshots. Finally, on October 7 he received a letter directly threatening him with death, and three days later, guns were again fired at the parsonage. Shortly thereafter, a local African American attorney drove the minister and his wife out of the state, with De Laine hidden under blankets in the back seat of the car, to Charlotte, North Carolina. Soon after he escaped, his church was burned down. J. A. De Laine never returned to the state of South Carolina as a resident. (Lochbaum: 1993, Chapters 7-8)

***Davis et. al. v. School Board of Prince Edward County, Virginia.*** In this instance, white segregationist opposition was less violent and more restrained, but no less entrenched. Located in the region south of the James River in Virginia known as the "Southside," Prince Edward County had an African American population that slightly outnumbered the Euro American population. It was the northernmost end of a string of counties throughout the south that had historically been dominated by plantations, and where blacks were equal to, or outnumbered whites. But unlike the "Black Belt" county of Summerton, South Carolina, the number of black-owned farms in Prince Edward County in 1950 almost equaled that of the whites. White supremacy in Virginia had always had a somewhat more genteel face, and black resistance did not bring down the same intensity of repression as in other parts of the South.

But as in all of the regions where separate school systems were maintained, black education was never equal, and schools for Virginian children of African ancestry were systematically underfunded. In 1939 local authorities finally got around to constructing a high school for the black children. Named after Clarendon County native Robert Russa Moton, Booker T. Washington's assistant and later director of Tuskegee Institute, it was planned to hold 180 students. A year after its construction, it had an enrollment of 219. Unlike the nearby white high school, the assembly hall had folding chairs that were removed so it could also double as a gymnasium. There was no cafeteria, infirmary, or locker rooms. By 1947 a school originally built for 180 children housed over 400.

One of the local African American leaders who were dissatisfied with this situation was Reverend L. Francis Griffin, who had served with the all-black tank corps under General Patton in Europe. In the fall of 1949 he formed a local chapter of the NAACP, and contacted Association attorneys Spottswood Robinson and Oliver Hill in Richmond. Not all local members of the African American community supported Griffin's militant approach, and Willie Redd, a local contractor, was one of those who advocated a slower strategy. But one of Griffin's allies was M. Boyd Jones, the principal of Moton High. The white county superintendent, while praising his administrative ability, accused him of having "an undying hatred of whites." (Kluger, 1975: 461-464)

Reverend Griffin and others members of the Moton PTA appeared regularly before the school board in 1950 and 1951 to press their case for upgrading of facilities. Although Jones was optimistic about their ability to extract concessions from the white power structure, Griffin was more skeptical. The only response by the school board to the overcrowded conditions was the construction of a group of outbuildings valued at

\$17,000, which had tar paper roofs, leaked when it rained, and were cold in the winter and hot in the summer. The students referred to them as “tar paper shacks.”

The Moton students also closely followed the concerns of their elders, and one who was especially concerned was Barbara Rose Johns, who was in the eleventh grade in the fall of 1950. As she and the other students attended PTA meetings and discussed the situation a plan began to evolve. By February of 1951 the school board made vague promises to the black PTA members and students that a new black high school was coming. After several months went by with no action, Barbara Johns and several other students decided to implement the plan they had devised.

On the morning of April 23, Principal Jones was lured off campus by students impersonating white officials from Farmville, who told him that some of his students were in trouble at the bus station. When he left to investigate the problem, the students gathered in the auditorium/gymnasium. There Barbara Johns asked them to go out on strike. She exhorted the students to stay out until they had a firm commitment to build a new school, and she declared that eventually, segregation should be dismantled. She also said that they would not be punished, and that in any event, the Farmville jail was not big enough to hold them all. At this point Boyd Jones reappeared, and gently advised the students to return to class. Barbara Johns asked him to return to his office, a request with which he complied. The students then agreed to remain in their classrooms for the remainder of the day, but not to do any schoolwork. They began to post the protest signs that they had been making and hiding in the school shop. A few days later, they marched en masse to the office of the superintendent, who refused to see them.

The students voted not to ask for their parent’s blessings, but they did invite Reverend Griffin to attend their meetings. They obtained the names and addresses of the NAACP attorneys in Richmond, and they invited them to come to Farmville. On the morning of April 25 Hill and Robinson met with the student strikers at Reverend Griffin’s First Baptist Church. The NAACP lawyers were not optimistic about the possibilities of a lawsuit in Prince Edward County, and they had intended to tell the students to return to class, and to pursue their grievances through other means. But it was the students who swayed the civil rights attorneys, who then agreed to take the case on two conditions; one that the students demand integration not equalization, and two that they got the strong backing of their parents. A mass meeting the following evening at the school led by NAACP official Lester Banks from Richmond confirmed the latter condition.

At another mass meeting on May 3 at Reverend Griffin’s church, the Farmville black community again endorsed the desegregation plan. At this point opposition was voiced. J. B. Pervall, the former Moton principal, rose to speak out against the plan, and to rebuke the NAACP lawyers. Barbara Johns gave her response; “Don’t let Mr. Charlie, Mr. Tommy, or Mr. Pervall stop you from backing us. We are depending upon you.” Reverend Griffin closed the meeting with the admonition: “Anybody who would not back these children after they stepped out on a limb is not a man. Anybody who won’t fight against racial prejudice is not a man. And to those of you are here to take the news back to Mr. Charlie, take it – only take it straight.”

There were indeed several reporters who were there to take the news back to the outside world, and as flashbulbs popped, Farmville became a nationally known center of the African American freedom struggle. The first on the list of plaintiffs in the case was Dorothy Davis, a fourteen-year-old ninth grader and daughter of a local farmer. Over six months later, *Davis v. County School Board* came to trial in Richmond. (Kluger, 1975: 476-479)

At the trial, the Farmville students were represented by Robert Carter, Oliver Hill, and Spottswood Bolling. Also presenting evidence on their behalf was Kenneth Clark. Testifying for the segregationists was University of Columbia social psychologist Henry Garrett, one of Clark's former professors, and who, as he had in the South Carolina case, voiced his belief in the innate inferiority of black people. The three-judge panel took less than a week to come to a decision, and in citing a recently announced equalization plan by the Prince Edward County school board, said that black students were not being denied their rights by segregation.

*Bolling v. Sharpe.* This was referred to in the *Brown* decision as a companion case. Because the other four cases were litigated under the Fourteenth Amendment, which says that no state can deny equal protection of the laws, and the District of Columbia is not a state, this case was argued under the due process clause of the Fifth Amendment.

As we have noted, Washington had a large African American middle class, which made it one of the cultural and intellectual centers of the country. Jim Crow in the District was sporadic and inconsistent. Public transit facilities were not segregated by law, and the city had an ordinance mandating open access to public facilities. But in fact, this law was usually not enforced, and by the late 1940s it became known as Washington's "lost" civil rights law. Howard students began picketing for integrated seating and equal opportunity employment in the drugstores and department stores of downtown Washington. One of the leaders of these campaigns was Mary Church Terrell, who was by this time in her 90s.

The racial demographics of the city were changing rapidly, and from 1940 to 1950, the proportion of children of African ancestry in the public schools rose from 34 percent to 50 percent. Black teachers earned the same as whites, and the physical plant in the black schools was more or less equal. But the white and black schools were treated as separate administrative units, and apportioned funds according to the racial makeup of the school population. In a rapidly changing racial environment, this meant that the black schools were constantly short-changed. Moreover, while many of the white schools were at a little over half-capacity enrollment, many of the black schools had two or even three shifts per day.

African American parents at Brown Junior High School picketed in protest of the segregated conditions. A local organization, the Consolidated Parents Group, was formed, composed of African American parents from a cross-section of black Washington. While many of the rank-and-file members came from working class backgrounds, many of the leaders were the wives of Howard University faculty members, and some were Howard faculty themselves. One example was Dorothy B. Porter, the celebrated African American librarian and bibliophile.

But the president of the group was Gardner Bishop, a plain-spoken black man who ran a barber shop near the intersection of Fifteenth and U Streets, in the heart of Washington's black business section. Leaving his native North Carolina in 1930, Bishop came to Washington where he began to learn the hair-cutting trade in a white barber shop. When a joke told by whites made blacks the butt of the humor, Bishop responded with a joke in which the roles were reversed. The young man lost his job.

Gardner Bishop came to know the gritty side of life in Washington's low-income neighborhoods, and his dislike of white racism was almost matched by his suspicion of middle-class African Americans who, he felt, had no interest in protecting the welfare of

what he constantly referred to as the “little people.” Dismayed by the crowding conditions endured by his daughter at Brown Junior High School, and exasperated with the overly cautious litigious methods of the NAACP, “Bish” staged a protest of his own. Transporting about fifty black students to a school board meeting, he informed the white officials that there would be a strike, beginning the next day. Unprepared for this kind of tactic, they sat stunned, not knowing what to do, but the next day, as Bishop promised, almost all of the 1800 students walked out of Brown. But he was shrewd enough to realize that this would not be enough to accomplish his goals.

At least in part because of the NAACP’s lukewarm approach to direct action, membership in the Consolidated Parents Group rose to 300, and in February 1948 Gardner Bishop attended another NAACP meeting where he met Charles Houston. The two men became immediate friends despite their different backgrounds. The former trusted the latter, because although he was another lawyer, he made it clear exactly what could and could not be achieved by the law.

After Houston tragically succumbed to a heart attack in 1950 his place was taken by James Nabrit, who told the U Street barber that this time, the strategy was to press for a direct challenge to Jim Crow, instead of equalization lawsuits, and the goal was to carry the case to the U.S. Supreme Court. Bishop agreed, and on September 11, 1950, he led a group of eleven African American children to the brand-new John Philip Sousa Junior High School to enroll them. As he anticipated, they were rejected.

One of the African American pupils was Spottswood Bolling, and the defendant in the case was the president of the D.C. Board of Education, C. Melvin Sharpe. Nabrit stated emphatically that existing inequalities between white and black D.C. schools, while damaging, were essentially beside the point, and that the real issue was racial separation. He declared that whatever conditions had obtained when the Fifth Amendment or the Fourteenth Amendment were passed, they were quite different from the conditions of the mid-twentieth century, when racial segregation was no longer just a quaint regional custom. But U.S. District Court Judge Walter M. Bastian agreed with the Board of Education, and reaffirmed *Plessy*. The civil rights attorneys then appealed to the Supreme Court.

***Gebhart et. al. v. Belton et. al.*** As one of the Border States that maintained slavery while fighting for the Union, Delaware, like Kansas and Washington, D.C., had a mixed pattern of race relations. The second smallest state in the Union, Delaware has only three counties, arranged in a line from north to south. The northernmost county, New Castle, contains the city of Wilmington, and is only about twenty miles south of Philadelphia. The next in line is Kent, with the state capital of Dover, and the southernmost, both geographically as well as in cultural and social orientation, is the largely rural county of Sussex. In the state legislature, the two southern counties have always exercised an influence over New Castle out of proportion to their populations. During Reconstruction, the state legislature refused to ratify all three of the amendments to the Constitution that were adopted during this period.

Although Jim Crow was part of life in Delaware, it was not passionately defended. Busses and trains were not Jim Crowed, but public accommodations and the public schools were. There was only one high school for African Americans in the state, in Wilmington. Howard High School had been founded by the same ex-Civil War Union general who had given his name to the university in Washington, and also with funds from the Freedmen’s Bureau. In the words of one historian, Wilmington in the 1950s

was a Jim Crow town that was “very much like Topeka, Kansas, but a bit worse.” (Kluger, 1975: 428)

The family of attorney Louis Redding was well known among Black Delawareans. Lewis Alfred Redding was born in Kent County, and graduated from Howard University in 1896. He had a long career in the Post Office as a mail carrier and later as a clerk. A prominent community leader, he was the founder of the local African American YMCA, a trustee of Bethel AME Church, and president of the Wilmington NAACP. Both of his daughters became schoolteachers, and his younger son, Jay Saunders, taught English at Howard University and wrote two major works on black life and culture, *The Lonesome Road*, and *They Came in Chains*. His elder son, Louis, completed his undergraduate degree at Brown University, and then earned his law degree from Harvard Law School. When he was admitted to the Delaware Bar in 1929, the event received considerable coverage in the local newspapers. (Kluger, 1975: 429)

In 1950, in *Parker v. the University of Delaware*, Redding won admission to the university for thirty African American students. In the following year, five major movie theaters in downtown Wilmington, along with the Delaware National Guard, desegregated. But the public schools proved less tractable. Under the sponsorship of Louis Redding, two residents in New Castle County sued to get their children into all-white schools. Ethel Belton sought entry for her child into a high school, and Sarah Bulah sought to desegregate a local primary school.

Although Mrs. Belton’s child was attending Howard High School, and alumni of the institution have the highest regard for the dedication and professionalism of the faculty, it did not provide exactly the same facilities as the white high schools. In Hockessin, where Mrs. Bulah lived, many people in the African American community did not support integration, and accused her of believing that her child was too special to attend school with the other black children. The two parents were represented by attorney Redding, and since the first of the members of the Wilmington Board of Education listed in alphabetical order was Francis Gebhart, the two cases became known as *Belton v. Gebhart*, and *Bulah v. Gebhart*.

Judge Collins Seitz of the Chancery Court of Delaware ruled that racial segregation was by its nature a denial of the equal protection clause. This was one of the few times, and the only one of the five case areas, where the civil rights attorneys had successfully challenged the separate-but-equal principal in a local court. But the attorney general of the state of Delaware stepped in and asked the U.S. Supreme Court to review Judge Seitz’s ruling. While this case was making its way through the federal courts, the public school officials of Wilmington went ahead on their own and began to desegregate.

## 6. A Landmark in American Justice

When the first arguments in the school desegregation cases were presented in December 1952, Fred Vinson of Texas was the chief justice of the Supreme Court, and most court watchers counted on him to rule in favor of segregation. But Vinson was not the only one of the Justices who has serious doubts about whether there was sufficient legal precedent to overturn *Plessy*. Even among those who believed in the fundamental morality of integrated education, there were those, most notably Felix Frankfurter, who were not sure that it was time for the Court to strike down the principle of separate but equal. Added to this was the fact, that the justices were frequently divided on many other

issues besides school segregation, and Chief Justice Vinson was not regarded as a particularly effective leader of his brethren.

Another round of arguments came in the spring of 1953, and the justices then gave both the civil rights and the segregationist attorneys a series of six questions to which they were charged to provide detailed answers. These revolved around the intentions of the framers of the Fourteenth Amendment, and specifically whether they meant to provide for integrated public schools when they said that no state shall deny equal protection of the laws. Other questions involved whether the courts or the Congress should deal with this question, and what the reaction of the white South would be to a desegregation decision.

A team of historians that included C. Vann Woodward and John Hope Franklin spent the summer of 1953 exploring the question of the intent of the Reconstruction-era Congress that enacted the Fourteenth Amendment. The team of scholars concluded that it was not clear what the intentions of Congress were regarding public education, because their primary concern was voting rights and civil liberties, and the right to own land and make labor contracts, which were the primary contested issues of the day. Their research found that most children attended segregated schools at that time, but it was not an issue of major concern. Hence, it was necessary to look elsewhere to find answers to the question of whether school segregation violated the equal protection clause of the Fourteenth Amendment.

In addition to the historians, *Brown v. Board of Education* relied heavily on the work of social scientists, and it was the judgment of social psychologist Otto Kleinberg that this court decision was “the greatest compliment ever paid to psychology by the powers-that-be in our own or any other country.” (Keppell: 1995, 98) The central figure in the presentation of this kind of evidence was Kenneth B. Clark. Clark began his academic career as an undergraduate at Howard University, where he led protests against Jim Crow facilities in Washington, and it was also at Howard where he met his wife, Mamie Phipps, who also became a social psychologist, and a crucial, if less vocal, collaborator in the research work on the effects of segregation.

After graduating from Howard, where they first met, both Kenneth and Mamie Clark began graduate studies at Columbia University, which during the late 1930s was the center of a newly formed organization known as the Society for the Psychological Study of Social Issues (SPSSI). The SPSSI, which included such luminaries as Franz Boas, Ruth Benedict, Margaret Mead, and Otto Kleinberg, was dedicated to employing the social sciences to promote a progressive social and political agenda. Among this group, Jewish émigré scholars fleeing the Holocaust played a key role. At Columbia, the Clarks were strongly influenced by, and eventually made major contributions to, this movement. Both of their doctoral dissertations dealt with the social psychology of race. (Keppell: 1995, 102-105)

Mamie Phipps Clark played a key, if not the central, role in the development of the doll tests. One of the first social psychologists to develop a systematic study of racial attitudes was Ruth Horowitz, who developed tests using line drawings that depicted black and white children, as well as animals and other figures. Mamie Clark’s master’s thesis at Howard had discussed Horowitz’s approach. Working closely together, Kenneth and Mamie Clark administered a series of tests using dolls, the results of which were published in 1947 in an SPSSI-sponsored textbook, *Readings in Social Psychology*. These tests measured both racial and complexional attitudes among groups of African American and Euro American children. Regarding complexional attitudes among African Americans, the studies found that the shade of the respondent’s skin color had

only a slight impact on racial identification among the black children, and this variable virtually disappeared by age five. In other words, the major dichotomy in racial attitudes was not among African American children of different complexions, but between those who were white and those who were black. In the sample of about 250 children, about half came from Mamie Phipps Clark's native Arkansas, and the rest from a public school in Springfield, Massachusetts. (Keppell, 1995: 106-107).

Each child was shown the dolls and then asked eight questions, ranging from "Give me the doll you like to play with," to "Give me the doll that has a nice color," to the final question, "Give me the doll that looks like you." The Clarks found that this last question provoked negative responses in many of the children, and that a few burst out into tears. In general, they found that the Black children in the integrated school in Springfield had a better self-perception. (Keppell: 1995, 107) These "doll tests" were also portrayed in two television programs, *Black History: Lost, Stolen or Strayed?*, narrated by Bill Cosby in 1973, and likewise in *Simple Justice*, a 1991 Emmy Award-winning PBS film.

By the late 1950s, the national news media regularly discussed segregation in terms of its effects on personality. No longer was Jim Crow viewed as simply a quaint regional relic of the "Old South," but rather a malignant, destructive phenomenon that resulted in an "inferiority complex" among the subordinate groups, and an "authoritarian personality" among white people. Central to the struggle for racial justice in society was the public school, and intellectual historian Ben Keppell has noted that, "In the long run, one of the greatest contributions of *Brown* to the American discourse on race was that it made the public school its primary emphasis: . . . the public school would come to be seen as the place where fidelity to the American creed would be measured and therefore most vigorously contested. Before *Brown* the school had been one of several important fronts in the national mobilization against prejudice; after *Brown*, the public school was, institutionally and symbolically, first among equals." (Keppell: 1995, 115-131)

In September 1953, Fred Vinson of Texas died, and President Dwight Eisenhower appointed Earl Warren, the governor of California, as chief justice of the Supreme Court. Pro-integration Justice Frankfurter later is reported to have quipped, "It was the first tangible indication that I ever had that there is a God." Warren's reputation as governor of California was based on an image of political and emotional moderation, and some African American Californians expressed skepticism over the appointment. However, under his leadership, the Court moved in a clearly positive direction regarding civil rights, civil liberties, and equal opportunity. Additional arguments were delivered by both sides during the Fall of 1953.

The chief segregationist advocate was John W. Davis, one of the most distinguished attorneys in the United States. He had been a U.S. congressman from West Virginia, solicitor general for the United States, the Democratic candidate for president in 1924, and the United States ambassador to Great Britain. At the age of 83, having argued almost 150 cases before the high court, this would be his last case. In appearance and style, he represented an America of a previous era, and he was so dedicated to the cause of Jim Crow that he took the case for South Carolina without accepting a fee. Symbolically, he died less than a year after the Court rendered its decision. South Carolina, along with the other segregated localities, was also represented by state attorney generals and top legal officers, so that Thurgood Marshall and the other members of the NAACP-LDF encountered a formidable set of adversaries in court.

During the winter of 1953 and the spring of 1954 the Justices met to review the arguments and come to a decision. By this time, the cases from Washington, D.C., and



Delaware had been added to those from South Carolina, Kansas, and Virginia. Although there were no official transcripts of these meetings, historians have attempted to piece together some of the justices' conversations from some of their fragmentary notes that have survived. Although it seemed that many of them were leaning towards a pro-integration decision, Warren believed that on an issue of this gravity there should be unanimity. Many court writers have averred that the way that he achieved this was by assuring those of his colleagues who were least enthusiastic about desegregation that it would not be implemented too rapidly.

The U.S. Supreme Court's decision of Monday, May 17, 1954, was recognized at the time as a major turning point in American history in newspaper headlines and cartoons, both in this country and around the world. And yet, even at the time, there were indications that the road to freedom and equality for all Americans was not unencumbered.

So much has been written regarding Warren's decision of May 17 that we do not have space to adequately review it here. Suffice it say that the shortness of the opinion has helped to make it clearly the most widely read and quoted Supreme Court opinion of all time. But in striking down legalized school segregation, the Supreme Court declined to say just when school desegregation should take place, and instead promised to render a judgment on this within a year.

One indication of the problems which the civil rights leaders would face came a year after the famous decision with the high court's ruling in *Brown II*. Here the Court specified how the decision would be complied with, and, using the phrase, "all deliberate speed," said that timetables for desegregation should be set by each school district where segregation had been established. There were over 1200 individual school districts in question, and the unstated assumption of this ruling was that public school officials in each one would make a decision in good faith as to when local conditions were optimal for beginning desegregation. The reality was that in many places, instead of the thoughtful policies of professional educators, school desegregation became the football of ambitious politicians.

## **7. America since *Brown* : Measuring the Gains**

The impact of *Brown* is not a simple story with simple answers. In some respects it has been like the ripples in a pond after a stone has been tossed in, while in other respects, it has been more like the ebb and flow of a tide. The Supreme Court decision initially raised national issues that centered on the desegregation of public schools, but eventually the entire subject of race in American life became a center for vigorous public discourse. In the field of education, which was central to the race question, community control, quality education, and educational philosophy all became matters of public debate. Today, half a century later, education remains a hotly contested ground for different visions of the meaning of democracy and the promise of American life. But although the legacy of the *Brown v. Board of Education* decision has been decidedly mixed, the end result fifty years later is a heightened awareness that equal opportunity does not just evolve with changes in people's hearts, but must be achieved through direct,

affirmative efforts by social and political institutions. The course of race and public education in the past century can perhaps be divided into three phases; from 1955 to 1964, from 1965 to 1974, and since 1974.

### ***1955 – 1964***

Southern opposition to school and other forms of desegregation was bitter and entrenched. Demagogic leaders exploited the latent bitterness which had resided in the region since the Civil War, and integration was portrayed as a brutal assault by outsiders on “the Southern way of life.” In 1955 the White Citizens Councils were formed as an allegedly more respectable alternative to the Ku Klux Klan, and Southern state governments supported unofficial activities with a host of new agencies and legislation that collectively became known as Massive Resistance.

But the Emmett Till murder case, as well as several other brutal killings of black people, revealed the extent to which some white supremacists were willing to go in order to preserve the Old South. In the face of this resistance, the movement for equal opportunity among peoples of color was even more determined and unified. The African American freedom struggle overcame Jim Crow because it drew on a historic tradition of resistance to oppression and a set of spiritual and cultural values that were far more powerful and resilient.

For a time, however, massive resistance prevailed in the South, sometimes through the policies of state governments, and sometimes through unofficial actions that not infrequently included violence. U.S. Congressional delegations from the southern states even got into the act by issuing the Southern Manifesto, a statement of congressmen and senators that claimed that the Supreme Court’s desegregation decision was unconstitutional. They were encouraged by the reluctance of the national leadership of both the Republican and Democratic parties to enforce equal protection of the laws. National political leaders of both parties acquiesced in this because they were both seeking southern support. In the wake of Strom Thurmond’s presidential candidacy on the States Rights Party ticket in 1948, the Republican Party began a steady growth in the states of the former Confederacy. Neither the president, Dwight Eisenhower, nor his two-time Democratic challenger, Adlai Stevenson, were eager to endorse the Supreme Court’s decision and the necessity for vigorous enforcement.

Latino Americans in the Southwest drew on their mestizo and Spanish heritage from Mexico with a reawakened sense of cultural and racial identity. Native Americans reached into their tribal spiritual traditions, and found allies in the Euro American counterculture and environmentalist movements, to challenge the technological, rationalist materialist culture of mainstream America.

The African American freedom struggle came as a reaction to organized white resistance in the South, and timidity and indifference in the North. The songs of the movement were carried by the electronic mass media not only across the nation but around the world as millions of people were inspired by freedom songs that were rooted in African American musical traditions. From Montgomery, Alabama, to Little Rock, Arkansas, to Greensboro, North Carolina, to Selma Alabama, prominent figures like Martin Luther King, as well as lesser-known but equally significant community leaders – a disproportionate number of whom were black women braved psychological intimidation – psychological reprisals, and murderous violence to force the federal government to intervene and try to live up to the principles it espoused to the world during the Cold War. During this time, the white South underwent significant changes.

Popular culture in the South during the 1950s reflected the inner tensions and complex transformations in the culture of that region. In stock car racing and music, the lifestyles and aspirations of working-class people were grappling with the task of living with the technologies and social forces of twentieth-century America. World War II brought far-reaching technological and economic transformations to the region, greatly accelerating the processes of urbanization and industrialization. Despite brief actual physical encounters in some public places of entertainment, social life in the South during the 1950s remained rigidly segregated at the same time that powerful African American cultural influences were seeping into the music that white teenagers listened to, much to the dismay of segregationists. (Daniel, 2000: Chapters 5-7)

Southern white reaction to the civil rights movement varied from the militant integrationism of Lillian Smith, to the gradualistic integrationism of Ralph McGill and Harry Ashmore, to the paternalistic segregationism of William Faulkner, to the militant segregationism of Ross Barnett.

New white leaders came to the fore, motivated by a variety of factors. There were some who simply recognized that massive resistance was a futile gesture that only provoked social discord, disrespect for the law, and a lessening of business opportunities. Others had a change of heart, as they recognized the basic humanity of African Americans who demonstrated overwhelmingly that they were no longer willing to endure the “southern way of life.” Many fair-minded people who had previously been intimidated into silence stood up and voiced their support of racial equality. And finally, there were those who sought to circumvent the black liberation struggle by devising new forms of racial subordination. (Daniel, 2000: Chapters 8-13)

Prodded by the black freedom struggle, the federal government finally began to take a stand. The Civil Rights Acts of 1957 and 1960 were the first civil rights legislation since Reconstruction, and they set up the U.S. Commission on Civil Rights and the Civil Rights Division of the Justice Department.

But the real landmark piece of legislation during this period was the Civil Rights Act of 1964. In addition to creating the Office of Equal Employment Opportunity, Title VI of the Act provided for the withdrawal of federal funds from any school district that refused to submit a voluntary desegregation plan that could be measured by the Office of Education of the Department of Health, Education, and Welfare. In the following year, the Voting Rights Act led to the addition of thousands of new black voters to the political process.

The tempo of the African American freedom struggle increased, signaled by the emergence of the black power movement, in competition with the civil rights movement. New leaders like Malcolm X expressed growing discontent and anger over the continuation of racial inequality, and militant nationalist groups demanded social, economic, political, and cultural self-determination.

### **1965 -- 1974**

By the late 1960s, the impetus for social change that had begun in the segregated schools of the South had helped to stimulate a series of broad social movement that included the antiwar movement, the counterculture, the feminist movement, and movements for other disadvantaged groups based on age, physical handicap and sexual preference.

The states of the former Confederacy were not the only places where Title VI was an issue. There was overwhelming evidence that the public schools of Chicago were in violation of *Brown* and the Civil Rights Act of 1964. Moreover, housing segregation and

job discrimination were widespread practices. Martin Luther King's efforts to carry his struggle for equal citizenship into the North in 1966 faltered in the face of Mayor Richard Daley's manipulative maneuvers, but the reactions of white mobs to the black civil rights demonstrators clearly exposed the reality that violent reaction to the freedom struggle was not confined to the South. As the movement spread to the North, racial issues were increasingly viewed as a national concern, affecting minorities of color throughout the country.

As Mexican American ethnic consciousness heightened, there arose the feeling that the federal antipoverty and civil rights programs were focusing exclusively on African Americans to the detriment of their own group. As historian Guadalupe San Miguel Jr., has noted, ". . . the majority of federal programs were directed at the black community, to the exclusion of Mexican Americans." (San Miguel, 1987, 165) This black-white bifurcation in official perspectives was also reflected in the report of the National Advisory Commission on Civil Disorders (Kerner Commission), issued in 1968, which stated, "This is our basic conclusion: our nation is moving toward two societies, one black and one white – separate and unequal." (Lawson, 1998, 95)

In the late 1960s LULAC and the American GI Forum were joined by two new Mexican American organizations, La Raza Unida and MALDEF. After Mexican Americans were excluded from the White House Conference on Civil Rights of 1966, Mexican American leaders pressured the government into creating the U.S. Interagency on Mexican American Affairs, but this body failed to include more militant leaders like Cesar Chavez from California, Reis Tijerina from New Mexico, and Rodolfo "Corky" Gonzalez from Colorado. In the words of one Chicano activist, "The absence of Chavez and Tijerina was held equivalent to considering the Negro problem without consulting Martin Luther King Jr., or Roy Wilkins." (San Miguel, 1987, 167) Several of the invitees to the meeting of the new agency walked out and held meetings in the barrio of El Paso, at which they formed a new group, the La Raza Unida. This group acted as a political organization, and fielded candidates in local elections.

In 1968, Pete Tijerina, a Mexican American lawyer from New Mexico, along with three Tejano leaders, and with the assistance of Jack Greenberg of the NAACP-LDF, formed MALDEF, the Mexican American Legal Defense Fund. Like the African American legal organization, MALDEF was assisted in its inception by a substantial grant from the Ford Foundation. The organization's announced goal was not only to wage a "sustained legal attack against racism in the Southwest," but likewise to "spearhead a struggle for social and economic change. . ." (San Miguel, 1987, 171) MALDEF's early legal efforts were mainly reactive in nature, but by 1970 there was a new strategy that reflected the "changing complexion" of the Chicano desegregation struggle. Previous litigation by LULAC and the American GI Forum had been based on the argument that Mexican Americans were another white ethnic group, and therefore not subject to the laws that enforced racial discrimination. This meant that once the *Brown* decision was handed down, Mexican Americans were not able to utilize its principle in order to promote their cause.

Many of the early busing court orders in the Southwest required that African Americans be bused to predominantly Hispanic schools, thus taking the burden of integration off the Anglo schools. In *Cisneros v. Corpus Christi Independent School District*, a suit brought by MALDEF and a predominantly Chicano local steelworkers union, a U.S. District Court in Texas did not say that Mexican Americans were a people of color, but it did establish that they were an identifiable and historically disadvantaged ethnic group, and subject to the desegregation principles of *Brown*. This principle was

reaffirmed by a decision of the U.S. Supreme Court in *Keyes v. School District Number One, Denver, Colorado*, in 1973.

Asian Americans and Native Americans were also very active in the movements for equal opportunity education. Chinese students in San Francisco brought a case to the U.S. Supreme Court for the establishment of community-based bilingual and bicultural education, and in *Lau v. Nichols* (1974) the court agreed. AIM (the American Indian Movement) was founded by a group of activists headed by Russell Means. The NAACP LDF played a supportive role in issuing a document, "An Even Chance," (1971), that called for greater Indian community control. This perspective was also reflected in the Indian Education Act of 1972, which provided for "parental and community participation in the establishment and direction of impact-aid programs," and it authorized a series of grant programs to stress culturally relevant and bilingual curriculum materials."

In addition to the failure of the state of Alaska to provide basic high school education to many rural areas, Native Americans also called for culturally relevant education: "It is not our intent to wage war on Western civilization. We merely want to come to terms with it on our own grounds." (NPS 2000, 99-101)

At the same time, white resistance to the advancement of peoples of color also assumed national proportions, as the "white backlash" against the new directions in which American society was moving was reflected in academic culture, as well as in the political process. The Coleman Report of 1966, and the Moynihan Report of 1968, in the minds of many activists, tended to shift the burden of blame for racial inequality away from the white majority, and onto the subordinated groups. These two documents claimed that family and cultural values were retarding factors in upward social mobility, and they voiced skepticism about the efficacy of integration and equal educational facilities in overcoming social inequality.

### **1974 -- present**

Busing to achieve school integration and school finance reform were major social and political issues during the 1970s and 1980s. Demetrio Rodriguez, a veteran of World War II and Korea, brought suit in San Antonio, Texas, against the use of property taxes as a primary means of funding public education, because the predominantly white Anglo areas of the city had better schools as a result. In 1971 a three-judge federal panel agreed unanimously that the school financing system in Texas violated the equal protection clause of the Fourteenth Amendment, but the U.S. Supreme Court ruled in *San Antonio Independent School District v. Rodriguez*, that "The Equal Protection Clause does not require absolute equality or precisely equal advantages," and, moreover, that the right to equal education was not guaranteed by the Constitution. (Patterson 2001, 178)

In *Morgan v. Hennington* (1974), the U.S. District Court found that the city of Boston was practicing segregation in the public schools. There ensued a chain of events that seemed to harken back to the *Roberts v. the City of Boston* case of 1849. After the school board refused to make an effort to initiate a desegregation plan, the court ordered a pupil transportation plan that included busing students from the Irish-American community of South Boston to the African American community of Roxbury. White residents, led by Louise Day Hicks of ROAR (Restore Our Alienated Rights), stirred up bitter resentment against the busing program, and several widely publicized incidents of violence broke out. Although racism was at the heart of this resistance, many observers felt that more community preparation would have lessened the bitterness of the white response. Some in the black community questioned the value of sending their children

across the city to a hostile environment, instead of upgrading the quality of their own schools.(NPS 2000, 102)

As the automobile industry abandoned Detroit, it became an example of a deteriorated, mostly African American inner city bordered by mostly white suburbs. One reason, in the minds of many Detroiters, that the suburban communities resisted annexation was to prevent school integration. Proponents of integration wanted to merge the outlying areas with Detroit into a single metropolitan school district. The issue wound up in the Supreme Court, and *Millikan v. Bradley* (1974) became one of the milestones in the story of race and education in America. Agreeing that African American and Euro American students in the Detroit area did not receive the same educational opportunities, the Court said that nevertheless there was no evidence of intentional discrimination, and that there was no compelling reason to disregard the local administrative boundaries. Although many integration advocates supported busing to achieve integration, Coleman Young, the black mayor of Detroit, reflected the feelings of many of his constituents when he remarked, “I shed no tears for cross-district busing.” (Patterson: 2001, 180)

During the 1980s and 1990s, many districts that had been under court-ordered busing were found to be in compliance with integration goals, and released from the directives. Other districts achieved racial integration by the creation of magnet and other special schools designed to attract students outside of the neighborhoods. At the same time, in many school districts in both the North and the South evidence appeared that resegregation was taking place. Moreover, many community civil rights activists and educational experts questioned whether physical mixing necessarily improved educational opportunities for minority children.

In Oklahoma City, Oklahoma, the school board attempted to terminate its busing plan in 1991, and the African American community was split over the issue. The Supreme Court said that court-ordered busing plans could be dropped when school districts had become resegregated through private choices, rather than by deliberate intent of the school board. In a case in Atlanta, Georgia, the following year, the high court also supported a similar situation where private choices rather than state action had produced resegregation. But in one instance in Mississippi in 1992, the Court ordered desegregation of higher education. This decision was viewed by many African American educators as an attack on historically black colleges and universities.

In *Missouri v. Jenkins* (1995) the Supreme Court let stand a magnet school program in St. Louis designed to achieve integration, but ruled that the State of Missouri was bearing an unfair share of the cost. Justice Clarence Thomas voiced a particularly strong criticism of the theories of Kenneth Clark that had been used to support *Brown*, because, in his view, it was a theory that “not only relies upon questionable social science research rather than constitutional principle, but it also rests on an assumption of black inferiority.” (Patterson, 2001, 201) Justice Thomas was, to say the least, a rather controversial figure among African Americans, but his views were certainly a part of the general questioning of the value of school integration that arose in the final quarter of the twentieth century. Another magnet program that failed Supreme Court scrutiny was in Montgomery County, Maryland, where a white parent challenged a school district policy preventing a student from transferring out of a school if the transfer would adversely affect racial balance. When a federal court of appeals struck down the school district’s policy, the district appealed, but the Supreme Court sustained the ruling that struck down the policy of requiring a student to remain in a school in order to preserve integration.

In many urban areas, private groups operate schools under a charter from the school district. Many advocates for disadvantaged youth stressed the development of a sense of cultural grounding as an alternative to the mass culture of late twentieth-century America. Native American, Spanish-speaking and Afrocentric education were increasingly viewed as alternatives to the indiscriminate of liberal integrationism. Other advocates stressed high achievement and other motivational programs designed to build self-confidence and character. Another major recent issue has been the use of school vouchers as alternatives to the public schools. Taken together, these developments reflect a growing skepticism toward the value of public schools as the major vehicle for the achievement of equal opportunity

There is today a national debate over how far the country has come since that historic day in 1954. In 1991, in his last decision on the Supreme Court, Justice Marshall remarked; "Power, not reason, is the currency of this Court's decisionmaking." But Marshall and his fellow civil rights attorneys, through their mastery of the law, spoke truth to power, and many would agree with the words of one historian that although power rather than reason might ordinarily be the law's currency, we should always hold as our aspiration the prospect that reason would someday be its currency." (Tushnet, 1994: 315)

As the twentieth century ended and the twenty-first began, ethnic consciousness movements and immigration had significantly altered the national discourse on race and ethnicity. When the Supreme Court rendered its decision in 1954, most of the national discourse about race and ethnicity had been in terms of whites and blacks. But half a century later, many other ethnic and racial groups were claiming attention on the national stage. Both in independent institutions and well as within the public school system, the cultural and religious values of many groups, including fundamentalist Christians, Catholics, Muslims, Jews, Buddhists, and Afrocentrists are being reflected in various forms of organization. At the same time, however, the historical experiences of Americans of African descent remained central to any discussion, national or international, of social justice.

Another indication of the central historical significance of *Brown* is its international dimensions. During the Second World War, the African American slogan "Double V" was an attempt to tie the military campaign against Nazi Germany with the African American quest for equal citizenship in the United States. When Charles Houston left his position on the wartime federal Fair Employment Practices Committee in protest against insufficient governmental support for the mission of the agency, he circulated his letter of protest to several foreign embassies in Washington. Shortly thereafter, he wrote in his syndicated newspaper column that, "A national policy of the United States which permits disfranchisement of colored people in the South is just as much an international issue as the question of free elections in Poland, or the denial of democratic rights in Franco Spain." (McNeil, 1983: p. 198)

With the advent of the Cold War, the attorneys of the NAACP-LDF framed their arguments in terms of the need to for the United States to present a positive front in the struggle against Communism. In at least two cases, *Shelley v. Kramer* and *Brown*, the U.S. State Department submitted friend-of-the-court briefs in support of civil rights, citing the importance of domestic civil rights enforcement in promoting the international security of the United States.

Within hours of the Supreme Court's decision on May 17, 1954, the Voice of America carried the news on many of its stations. Newspapers around the world reported the event, though frequently with optimism that was more guarded than that of the

northern liberal press in the United States, which tended to emphasize its momentous historic significance. For example, the centrist pro-American French newspaper *Le Monde* carried a headline that read “*Echec a la segregation raciale,*” which can be translated “Setback for racial segregation.”

*Brown v. Board of Education* continues to attract international attention. With the end of the Cold War, ethnic and religious conflict became the major sources of international insecurity, and the American experience with race has come to have an even more critical global significance. When ethnic conflict has broken out in recent years, human rights activists have often looked to the United States as one model for a democratic, constitutional approach to the problems of ethnic diversity. The overseas awareness of racial issues within the USA may be more significant than most civil rights scholars in this country recognize.

Recent conferences attest to the keen international interest in *Brown v. Board of Education* as a human rights issue. In a 2001 address at Washburn University Center for Diversity Studies in Topeka and in conjunction with the Brown Foundation for Educational Equity, Excellence, and Research, Zvonimir Radelkovic, a professor of philosophy at the University of Sarajevo, discussed the international significance of *Brown* by comparing ethnic and race relations in the Balkans to those in the United States. He noted that during the twentieth century, while the United States was moving toward school desegregation, the Balkan states were moving in the opposite direction.

In 2003 former civil rights attorney Jack Greenberg attended an international conference in Budapest, Hungary on the school segregation of Roma(Gypsy) children, and in December of 2004 he will attend a similar conference in South Africa in observance of the fiftieth anniversary. A conference was also held in South Africa, this past April at the University of Pretoria. Featuring panelists from the USA, South Africa, Canada, Australia and Europe, it presented issues of racial integration in education in an international context. The Apartheid Museum in Johannesburg in planning an exhibition on *Brown v. Board of Education*. And in August, in Argentina, the law school of the University of Buenos Aires presented a conference entitled, “Fifty years since the decision of *Brown v. Board of Education*: discrimination for reasons of sex, language, race, national origin, religion, and handicap in educational establishments.”

## **Conclusions**

We have come a long way since that landmark of American freedom and justice a half century ago. Power, as Justice Marshall put it, is still the currency of human affairs, both nationally and internationally. But human rights and the rule of law furnish us a framework of ideals with which to measure existing realities. *Brown v. Board of Education of Topeka, Kansas*, like the Magna Carta, the Declaration of Independence, the Declaration of the Rights of Man, and the Universal Declaration of Human Rights, was an effort to fit reality into a set of ideals.

In this commemorative year, there is an intense national debate about the legacy of *Brown v. Board of Education*. On the one hand are those who see it as a watershed, a pivotal moment in American history that forever changed the destiny of this nation. On the other hand are those who could be called the “*Brown* revisionists,” who dispute that the decision had any lasting beneficial effect. Recent titles reflect this thinking, *The Hollow Hope: Can Courts Bring About Social Change?*; *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy*; *Jim Crow’s Children: The Broken*



*Promise of Brown v. Board of Education; and After Brown: the Rise and Retreat of School Desegregation.*

Some writers stress the inherent limitations of the legal system to effect social change, some argue that the court's decision should have been framed in other ways, and some stress the persistent nature of racism of American society. Many African Americans cherish nostalgic memories of caring teachers, nurturing families, and cohesive communities under segregation. They question whether the gains of integration outweigh the losses. An intense controversy was generated when humorist Bill Cosby used the occasion of the fiftieth anniversary of *Brown* to deliver his views on the need to improve the behavior of black adolescents, instead of, by implication, the need to improve civil rights enforcement.

This debate is likely to continue for some time. But whatever its outcome, in times like these, in a world like the one we are currently living in, we need to celebrate some positive things about our country. The civil rights activists, the civil rights attorneys, and the Supreme Court justices were all trying to transform the America of the 1950s to conform to a set of higher legal, constitutional, and humanitarian principles. Even if they did not succeed completely, we are all better off for their effort. *Brown v. Board of Education* is something to celebrate as a shining moment in American history, while recognizing the unfinished work ahead of us.

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