

BROWN v. BOARD



50 YEARS LATER:

A High School Curriculum on the History, Meaning, and Legacy of
Brown v. Board of Education

A Cooperative Project of
The Illinois Humanities Council, The Constitutional Rights Foundation Chicago, and
The Chicago Historical Society
Supported by a Grant from the Polk Bros. Foundation

Brown at 50: A High School Curriculum on the History, Meaning, and Legacy of *Brown v. Board of Education*

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About This Curriculum

In 1947, in Clarendon County, South Carolina, a small group of African American parents sued their local (white) school board alleging a violation of their rights under the Equal Protection Clause of the Fourteenth Amendment. They wanted one bus to take their children to the “colored” school, just as the school board provided some 30 buses to white children traveling to their schools. Their suit failed, but with help from the NAACP they tried again. The story of their efforts culminated on May 17, 1954, in one of the most awaited, significant, and controversial Supreme Court decisions in American history: *Brown v. Board of Education of Topeka, Kansas*.

In a unanimous decision, written by Chief Justice Earl Warren, the Supreme Court held that state-sanctioned segregation of public schools violated the 14th Amendment of the Constitution. This decision reversed the doctrine of “separate but equal” and was a pivotal event in the history of civil rights in America and of the United States in the 20th Century.

The purpose of this curriculum is to help high school students and their teachers address some key questions about *Brown v. Board of Education* on the 50th anniversary of the decision. What was Brown all about? What did the decision say and not say about schools, segregation, and the doctrine of “separate but equal”? Why was the United States, which had fought a civil war over slavery and passed the Reconstruction Amendments, still dealing with the question of racial equality in 1954? And how much closer is the United States to a society which provides “equal protection of the laws” to all its citizens?

To look at these questions, this curriculum is organized around three broad frames of reference:

- **Race and Equality in America before *Brown*** offers a brief account of some of the significant ideas and events that helped set the stage for *Brown*. It outlines the constitutional issues raised by slavery before the Civil War and the Fourteenth Amendment during Reconstruction after it. There is information about *Plessy v. Ferguson* and the establishment of a Jim Crow society of legally enforced segregation in the South and larger patterns of segregation throughout American society before *Brown*. And it details the work of the NAACP—the National Association for the Advancement of Colored People—who worked tirelessly in the first half of the 20th Century to legally challenge segregation.
- ***Brown v. Board of Education*** addresses the basic facts and arguments of the *Brown v. Board of Education* and the four other cases decided with it. The unit introduces the participants in the Brown cases and highlights their courage and struggles. The unit also focuses on the arguments presented in defense of and in opposition to segregation in the public schools. And it provides a guide to the decisions themselves.
- **After *Brown*** looks at what has happened in schools since Brown and what equal protection means in a society where “separate but equal is inherently unequal.” This unit looks briefly at how the law changed and what happened when those changes were challenged. It also presents some of the major interpretations of what *Brown* has come to mean in the United States today.

By promoting a discussion of these questions, the Constitutional Rights Foundation Chicago and the Illinois Humanities Council believe that the history and meaning of Brown are still very relevant to today’s high school students. Segregation was more than just separate drinking fountains and sitting in the back of the bus; it represented the legal subordination of an entire class of people simply because of their race. That history echoes through events today. The work of making an America with liberty and justice for all is not complete. The meaning of *Brown* remains more urgent than ever before.

Introducing *Brown*: Does Equal Mean the Same?

Carved above the door of the Supreme Court of the United States are the words, "Equal Justice Under Law." America has always thought of itself as a place where everyone has a fair shot—that the government does not, or at least ought not, play favorites.

The story of *Brown v. Board of Education* is about how a group of African Americans citizens, many of them poor and many of them students, tried to convince the most powerful democracy in the world to make this vision of America a reality. They were fighting a way of life – racial segregation – and the patterns of customary and legal discrimination that had developed to support segregation.

Discrimination means treating some people differently from other people. Different treatment of two groups is not automatically a constitutional violation, notes law professor Thomas E. Baker, because "the Equal Protection Clause does not require government to treat everyone or every group the same. For example, states treat persons convicted of crime differently from law-abiding citizens." Rather, the Equal Protection Clause requires that "similarly situated persons be treated similarly" (Thomas E. Baker, "Can Voters Exclude Homosexuals and Their Interests from the Legislative Process?" *ABA Preview*, 1995).

The story of *Brown* revolves around the answer to a question: When is it ever fair for the government to treat people differently because of their race? Sometimes there is a good reason for discrimination. Sometimes there isn't.

Look at the examples below. Mark "F" for the ones you think are **fair**, and "U" for the ones you think are **unfair**.

_____ Men under 25 years old have more car accidents than other people. They must pay more for car insurance.

_____ A state law says that people of different races cannot marry each other.

_____ Jones Candy Telemarketing will not hire anyone with a foreign accent.

_____ The fire department will not hire women as firefighters.

_____ Acme Construction will not hire anyone with a foreign accent.

_____ Alta Airlines will not hire a pilot who is blind.

_____ Tracy wants to rent an apartment owned by Ms. Jones. Ms. Jones will not rent to Tracy because Tracy has no job and no money.

_____ A city ordinance says that families with certain religious beliefs can only live in certain parts of town.

Race and Equality in America: From Revolution to Reconstruction

In 1776, the thirteen American colonies declared their independence from Great Britain. Their justification included the following famous words:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.

The American colonists successfully fought a war of independence on these terms. Yet when they submitted a Constitution of the United States for ratification in 1787, their justifications for government were quite different:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

What had changed? As Constitutional historian John P. Kaminski has written, “The principles for which Americans were willing to die—*freedom, equality, and unalienable rights*—had given way to the Constitution’s call for *justice, tranquility, defense, general welfare, and liberty*. Americans qualified their earlier expression of universal equality by applying it only to certain groups of people. They also wrote a constitution that strongly protected personal property. In the eighteenth century that meant condoning, sanctioning, and even rewarding the institution of slavery” (*A Necessary Evil? Slavery and the Debate Over the Constitution*, 1995).

The story of *Brown v. Board of Education* is one chapter in America’s long history of responding to the legal enslavement of Africans and their descendents.

Slavery and the Constitution

At the time of the Declaration of Independence, one-fifth of all Americans were enslaved blacks. Despite the rhetoric of liberty, most of these slaves were not freed during the Revolution, nor were their rights as persons acknowledged under the new Constitution.

From its very beginnings, the federal government was entangled with the institution of slavery. The framers of the Constitution debated slavery throughout the summer of 1787, and the balance between slave and free states was one of the great controversies of the convention in Philadelphia. When they were finished, the Framers had carefully built the Constitution around the “peculiar institution” of treating human beings as property without ever using the words “slavery” or “slave.” Specifically:

- In Article I, Section 2, the “three-fifths clause” counted every five slaves as three persons for the purpose of representation in the House of Representatives and direct taxation;
- Article I, Section 9 and Article V permitted the forced importation of human slaves from Africa and protected the slave trade until 1808
- Finally, Article IV, Section 1 provided for the return of “fugitive” slaves to their owners by the federal government

This legal sanction for slavery would be a foundation for the great debates leading up to the Civil War about what kind of nation America would become.

Slavery and Citizenship: The Case of Dred Scott

Perhaps no single event before the Civil War captured so many of the ideas and debates about slavery than the case of Dred Scott. Scott was held as a slave by a doctor named Emerson who lived in Missouri, a slave state. As a physician for the U.S. Army, Dr. Emerson traveled to the free territory of Minnesota. Scott later lived in Illinois, a free state, with Mrs. Emerson after Emerson's death.

Mrs. Emerson eventually returned to Missouri, where in 1847 Scott sued for his freedom and the freedom of his wife and family. Although a slave state, Missouri had a doctrine of "once free, always free," meaning a slave taken to a free state became free. Dozens of similar cases had been decided under this doctrine in Missouri before Scott's case was filed.

Scott's case ended in a mistrial due to poor legal counsel. He filed suit again and won his freedom, but only briefly, as the decision was appealed by Mrs. Emerson. The Missouri Supreme Court eventually decided in her favor, and the Scotts were again in bondage. In 1853, Scott filed a third case, this time in federal courts. Because Mrs. Emerson's brother, John Sanford ["Sandford" was a clerical error in the court records], was responsible for her financial affairs and lived in New York, the case was one of "diversity of citizenship" [involving citizens of different states] and thus a matter for the federal courts.

Scott lost his case in trial court, but the appeal worked its way up to the Supreme Court of the United States in late 1854. Like *Brown v. Board of Education* nearly a century later, *Scott v. Sandford* was argued twice on two sets of issues, with second arguments in December 1856. By the spring of 1857, the entire nation was waiting for the Court's decision.

There were six concurring decisions in *Scott v. Sandford* and two dissents. Chief Justice Roger B. Taney wrote the decision for the Court. He began by defining the meaning of U.S. Citizenship, something the Constitution never made clear.

"The words 'people of the United States' and 'citizens' are synonymous terms, and mean the same thing.... The question before us is, whether the class of persons described in the plea in abatement [people of African ancestry] compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word 'citizens' in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States...." (*Scott v. Sandford*, 60 U.S. 393)

Taney wrote that Scott therefore lacked standing to bring his case in federal court.

But Taney went further. He said that slaves were property and that the federal government had obligations when it came to property. He invoked the Fifth Amendment to the U.S. Constitution, saying the federal government could not "take" a slaveholder's "property" without due process of law. He argued that the Congress had overstepped its authority in prohibiting slavery under the Missouri Compromise of 1820 and that law was therefore unconstitutional.

Finally, Taney wrote that each **state** defined the status of persons under its jurisdiction. Since the Missouri Supreme Court acted lawfully, the Scotts remained slaves.

Chief Justice Taney drafted his opinion in *Scott v. Sandford* out of the sincere desire to resolve the question of slavery once and for all. Instead, the opinion has come to be considered perhaps the worst opinion ever issued by the Supreme Court and one that led directly to the Civil War.

The impact of *Scott v. Sandford* on black Americans, both free and enslaved, was acute. No rights of citizenship, no recourse in federal courts, no sanctuary from the cruelties of the fugitive slave laws, and the specter of new slave states anywhere in the Union.

As for Dred Scott, by the time of the decision his "master" had become a Republican Congressman named Chaffee, who promptly transferred Scott and his family to a Missouri citizen, Taylor Blow. Blow freed Scott in 1857, his wife, and their two daughters. By the end of the Civil War, only their daughter Lizzie survived.

Emancipation after the Civil War

Following the Civil War, the governments of the Southern States sought to return African Americans to a state of slavery in all but name. The notorious Black Codes limited rights to travel, to labor, to contract, and to residence. Courts were closed to blacks. The Republican Congress, furious at what they considered a reversal of the Civil War by other means, worked for the passage of three amendments to the Constitution in order to confirm their understanding of the meaning behind the victory of the North.

Called the Reconstruction Amendments, these amendments:

- made slavery illegal in the United States [13th Amendment, 1865]
- defined national citizenship as belonging to anyone born in the United States, and said that all states, not just the national government, must give "equal protection of the laws" to people. "Equal protection" means the law is the same for everyone; it should be applied in the same way to all people. [14th Amendment, 1868]
- said that no state can stop a person from voting because of that person's race or color. [15th Amendment, 1870]

Perhaps most significantly, the Thirteenth and Fourteenth Amendments "overruled" *Scott v. Sandford* and thus ended that decision's brief but disastrous definition by exclusion of African Americans.

Amendment XIV to the Constitution of the United States

1 **Section. 1.** All persons born or naturalized in the United States and subject to
2 the jurisdiction thereof, are citizens of the United States and of the State wherein
3 they reside. No State shall make or enforce any law which shall abridge the
4 privileges or immunities of citizens of the United States; nor shall any State
5 deprive any person of life, liberty, or property, without due process of law; nor
6 deny to any person within its jurisdiction the equal protection of the laws.

The Fourteenth Amendment was ratified July 9, 1868.

Civil Conversation on the 14th Amendment to the U.S. Constitution

Rules for Civil Conversations

- (1) Read the text as if it were written by someone you really respected.
- (2) Everyone in the conversation group should participate in the conversation.
- (3) Listen carefully to what others are saying.
- (4) Ask clarifying questions if you do not understand a point raised.
- (5) Be respectful of what others are saying.
- (6) Refer to the text to support your ideas.
- (7) Focus on ideas, not personalities.

Civil Conversation Reading Guide

Reading: _____ Section 1 of the Fourteenth Amendment to the U.S. Constitution _____

Read through the entire selection without stopping to think about any particular section. Pay attention to your first impression as to what the reading is about. Look for the main points, and then go back and re-read it. Briefly answer the following questions.

- 1) This selection is about _____
- 2) The main points are:
 - a) _____
 - b) _____
 - c) _____
- 3) In the reading, I agree with _____

- 4) I disagree with _____

- 5) What are two questions about this reading that you think need to be discussed? (The best questions are have no simple answers and use materials in the text as evidence.)

The next two questions should be answered after you hold your civil conversation.

- 6) What did you learn from the civil conversation? _____

- 7) What common ground did you find with other members of the group? _____

Race and Equality in America: From Reconstruction to *Brown*

In the aftermath of the Civil War, federal troops from the Union remained stationed in the South, and newly freed African Americans began to make the most of their freedom. They created their own churches, schools, and universities. They started businesses and purchased land. And they voted and represented themselves in local, state, and national office. By 1870, African Americans were represented in state legislatures across the South, and 22 African American representatives had been sent to Congress. (Constitutional Rights Foundation, *The Challenge of Diversity*, 1999).

Throughout the years of Reconstruction, however, a segment of the white community in the South sought to return blacks to as close to a condition of slavery as possible. This faction of white society worked to intimidate freed blacks from voting and running for public office. They forced blacks into humiliating labor agreements and damaging credit arrangements. They attempted to limit where blacks could live and how they traveled. They tried to keep them separate and subordinate to whites.

With the end of Reconstruction and the withdrawal of federal troops from the South, this segment of southern white society grew to power and dominance in local and state government. Southern state and local governments used a variety of legal strategies to block Black voters. They introduced the poll [literally "head"] tax on Blacks who wanted to vote, as well as literacy tests. They passed "grandfather clauses" that permitted any white who was allowed to vote before the Civil War or their descendents to vote without paying the poll tax or passing the literacy tests. They used white only primaries to help ensure that no African American candidates were available for election. Many of these practices were in use into the 1960s.

Southern whites also used violence to gain supremacy over blacks and keep them in check. The Riders of the Ku Klux Klan terrorized blacks across the South. Lynching became a common form of white terrorism directed against African Americans, often with the tacit support of local law enforcement. The peak for lynching came in 1892, when 71 whites and 155 blacks were lynched in the United States. Between 1882 and 1968, there were 4,743 persons lynched in the United States; over 70 percent of the victims were African-Americans (Constitutional Rights Foundation, "At The Hands Of Persons Unknown' -- Lynching In America," http://www.crf-usa.org/brown50th/lynching_america.htm).

By the end of the nineteenth century, almost all of the African American representatives and senators sent to Congress from southern states were gone, and black participation in elections had plummeted. It would not be until 1928, and this time from the North, that another African American would serve in Congress.

***Plessy v. Ferguson* 163 U.S. 537 (1896) and "Separate But Equal"**

Among the many disturbing signs of this new white power were the humiliations of segregation laws. Many states passed laws that said black people and white people could not use the same facilities, such as schools, restaurants, parks, and public bathrooms. This new type of law often divided blacks and whites in ways they had not been separated before the Civil War.

In 1890 the Louisiana legislature passed the Separate Car Act which required "equal, but separate" accommodations for blacks and whites on all passenger railways except street railroads and included the following language: "No persons or persons shall be permitted to occupy seats in coaches other than the ones assigned to them on account of the race they belong to." Train officers were required to assign passengers to proper cars and were faced, if convicted of incorrectly assigning passengers, with a maximum \$25 fine or 20 days in jail. African Americans in Louisiana sought unsuccessfully to block the legislation, and it became law in June of that year.

On September 1, 1891, a group of African Americans in New Orleans organized a "Citizens' Committee to Test the Constitutionality of the Separate Car Law." After securing a legal team, developing a strategy, raising funds and securing the cooperation of the railroads (which also opposed the new law "owing to the expense entailed"), the Committee arranged for a test case. Due to a variety of factors, the first test case, Daniel Desdunes, was unsuccessful and charges against him were eventually dismissed.

On June 7, 1892, Homer A. Plessy, 34 years old and, like Desdunes, a man of "seven eighths Caucasian and one eighth African blood," purchased a ticket to travel from New Orleans to Covington, Louisiana, on the East Louisiana Railway, which operated wholly within the state. He was arrested in what was clearly an arranged proceeding (as "the mixture of colored blood was not discernible in him") and was charged with criminal violation of the Separate Car Act. Eventually, Plessy's counsel was able to invoke the jurisdiction of United States Supreme Court. *Plessy v. Ferguson* was argued before the U.S. Supreme Court in the spring of 1896.

Five weeks later, on May 18, 1896, the Supreme Court upheld the Separate Car Law. Writing for the majority, Justice Henry Billings Brown wrote:

A statute which implies merely a legal distinction between the white and colored races -- a distinction which is founded in the color of the two races and which must always exist so long as white men are distinguished from the other race by color -- has no tendency to destroy the legal equality of the two races, or reestablish a state of involuntary servitude....

We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it.

In sole dissent, Justice John Marshall Harlan voted to reverse the decision:

I deny that any legislative body or judicial tribunal may have regard to the race of citizens when the civil rights of those citizens are involved. Indeed, such legislation as that here in question is inconsistent not only with that equality of rights which pertains to citizenship, National and State, but with the personal liberty enjoyed by everyone within the United States....

Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law.... In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the *Dred Scott Case*.

Despite Justice Harlan's powerful prophecy, the decision of the Supreme Court permitted states to have segregation laws if the facilities for blacks were as good as those for whites. Southern states saw this sanction as a "green light" for what became known as the "separate but equal" rule.

Segregation in 20th Century America: Jim Crow

To understand *Brown*, one must first understand segregation. More than just separate drinking fountains and sitting in the back of the bus, American segregation represented a system of legal subordination of an entire class of people simply because of their race.

For the next 60 years after *Plessy*, segregation continued under what were called "Jim Crow" laws. Consistently, the facilities for African-Americans were not as good as those for whites. Blacks had to sit at the back of the bus. They had to use the back doors to public buildings. Schools for black students usually didn't have enough books or equipment and were often grossly under-funded than schools for whites. Black farmers were subject to the near-slavery of sharecropping. Through the South, the great majority of African Americans were denied the right to vote.

And whenever African Americans or sympathetic whites made efforts to challenge or change this system, the use of violence—by the state, mob action, or a combination of both—reminded people of the cost of such change. “By the late 1920s, 95 percent of all lynchings in the nation took place in the South. The victims were almost always African-Americans, and few lynch mob participants ever went to jail. Police and other eye-witnesses refused to identify lynch mob members, and Southern all-white juries rarely convicted them.” (Constitutional Rights Foundation, “At The Hands Of Persons Unknown’ -- Lynching In America.”)

Moreover, in the first four decades of the 20th Century segregation extended well beyond the South. Black soldiers fought in “colored” units in France during the First World War; veterans then returned home to a system of segregation undisturbed by the convulsions of the war. Blacks were often excluded from unions in the North during the 1920s and 1930s. When the United States declared war against the Nazis and their ideas of Aryan “supremacy,” Americans went to fight in a segregated Army, and the American Red Cross “refused to mix blood from blacks and whites in its blood banks” (Eric Foner, *Story of American Freedom*, 1998). Major league baseball was restricted to whites. Racial covenant agreements and *de facto* housing segregation in Chicago and virtually every major city in the North limited where African Americans could live. Jobs for African Americans were largely restricted to working within the “Negro” community or to tightly limited professions such as sleeping car porters on the railroads, maids, and low-paying menial jobs or dangerous manual labor. While distinguished African Americans rose to achievement in white America, their lives were limned by both *de jure* and *de facto* racial segregation and discrimination.

Despite these great obstacles, African Americans continued to work toward full equality. They contributed to the arts, science, and letters. They voted in the North and sent black representatives to Congress and to state and local governments. They developed powerful institutions in the Black Church and in non-governmental organizations such as the Urban League and the National Association of the Advancement of Colored People for responding to social and legal deprivations under segregation. In particular, the NAACP—with chapters across the nation and a team of dedicated lawyers—developed a strategy that would soon challenge directly the status quo of Jim Crow. Working by themselves and in partnership with sympathetic whites, African Americans never stopped struggling for their rights as equal Americans.

With the end of World War II in 1945, the emerging Cold War with the Soviet Union, and the conflict with Communism in Korea and elsewhere, the United States increasingly came to reexamine its identity as a free people. The confluence of world of events, the experiences of white Americans fighting inequality overseas, and the fight of black Americans against discrimination in this country, set the stage for *Brown*.

The Fight Against Legal Segregation in Historical Context: 1896-1954

Individually or with a partner, select **five U.S./World historical events** (left column) that, in your view, had a **significant influence** on the struggle against legal segregation in the United States. Be prepared to explain your answers.

U.S./WORLD EVENT	DATE	BROWN EVENT
	1896	<i>Plessy v. Ferguson</i>
Spanish-American War; American imperial ideas formally include white supremacy at home and abroad	1898	
	1909	National Association for the Advancement of Colored People founded
World War I; African American troops serve in segregated units	1914-1918	
<i>Birth of a Nation</i> shown in the White House	1915	
	1938	<i>State of Missouri ex. rel. Gaines v. Canada</i>
	1939	Thurgood Marshall named special counsel of NAACP
World War II; African American troops serve in segregated units in the War against Nazi racism	1939-1945	
United States enters the Cold War era; Communist propaganda mocks American equality under segregation	1945	
Branch Rickey fields Jackie Robinson for the Brooklyn Dodgers, breaking the color line in major league baseball	1947	
President Truman ends racial segregation and discrimination in the Armed Forces	1948	NAACP Board of Directors formally endorsed Thurgood Marshall's segregation strategy.
	1949-1952	The five <i>Brown</i> cases are filed.
Korean War; African American troops serve in integrated combat units	1950-1953	
	1950	<i>Sweatt v. Painter</i>
Eisenhower elected U.S. President.	1952	Bundling of the <i>Brown</i> Cases. U.S. Supreme Court holds first round of arguments on the <i>Brown</i> cases.
	1953	September—U.S. Supreme Court Chief Justice Vinson dies. Eisenhower appoints California Governor Earl Warren as Interim Chief Justice
		December—U.S. Supreme Court holds second round of arguments on the <i>Brown</i> cases.
	1954	<i>Brown v. Board of Education</i> ; <i>Bolling v. Sharpe</i>

Adapted from: "Timeline of Events Leading to the *Brown v. Board of Education* Decision, 1954," National Archives and Records Administration <http://www.archives.gov>

The NAACP's Assault on Legal Segregation: 1908-1950*

The history of the NAACP's efforts through the courts to overturn legal segregation has many important chapters in the first half of the 20th Century. This activity focuses on the organization's early work leading up to *Brown*.

Using a strategy called **Each One, Teach One**, divide up the following facts among the class. Students are responsible for teaching their fact to as many other students as possible.

After five minutes, those who have been taught will be responsible for explaining what they have learned to the rest of the class.

[* Information is drawn from: "Timeline of Events Leading to the *Brown v. Board of Education* Decision, 1954," U.S. National Archives and Records Administration, <http://www.archives.gov>]

1908 *Berea College v. Commonwealth of Kentucky*

The Supreme Court upheld a Kentucky state law forbidding interracial instruction at all schools and colleges in the state.

Significance: The NAACP became the primary tool for the legal attack on segregation, eventually trying the *Brown v. Board of Education* case.

1909 National Association for the Advancement of Colored People founded

W.E.B. DuBois, Ida Wells-Barnett, Mary White Ovington, and others founded the **National Association for the Advancement of Colored People (NAACP)**. Their mission was to eliminate lynching, and to fight racial and social injustice, primarily through legal action.

Significance: The NAACP became the primary tool for the legal attack on segregation, eventually trying the *Brown v. Board of Education* case.

1927 *Gong Lum v. Rice*

In *Gong Lum v. Rice* the Supreme Court held that a Mississippi school district may require a Chinese-American girl to attend a segregated Black school rather than a White school.

Significance: Not an NAACP case, but the decision is important because the Court applied the "separate but equal" formulation of *Plessy v. Ferguson* to the public schools.

1935 NAACP begins challenging segregation in graduate and secondary schools.

Assisted by his protege Thurgood Marshall, Charles Hamilton Houston, of the NAACP, began his strategy of challenging segregation in graduate and professional schools.

Significance: Houston developed a legal strategy that would eventually lead to victory over segregation in the nation's schools through the *Brown v. Board* case. Houston's rationale for attacking segregated law schools was largely two-pronged. First, the establishment of separate but equal law school facilities for black and white students would become too costly for the states. Second, white judges who graduated from some of the nation's finest law schools could not, in good conscience, suggest that black lawyers in segregated schools received "equal" legal training.

1938 *State of Missouri ex rel. Gaines v. Canada*

The Supreme Court decided in favor of Lloyd Gaines, a Black student who had been refused admission to the University of Missouri Law School.

Significance: This case set a precedent for other states to attempt to "equalize" Black school facilities, rather than integrate them. The Court held that the state must furnish Gaines "within its borders facilities for legal education substantially equal to those which the State there offered for the persons of the white race, whether or not other Negroes sought the same opportunity."

1939 **Thurgood Marshall named special counsel of the NAACP**

Marshall succeeded his mentor, Charles Hamilton Houston.

Significance: Thurgood Marshall would eventually become lead counsel in the *Brown v. Board of Education* case.

1948 **The NAACP board of directors formally endorsed Thurgood Marshall's view on segregation strategy.**

By adopting Marshall's view, the NAACP decided to devote its efforts solely to an all-out attack on segregation in education, rather than pressing for the equalization of segregated facilities.

Significance: The NAACP defense team attacked the "equal" standard so that the "separate" standard would, in turn, become vulnerable.

1948 *Sipuel v. Board of Regents of University of Oklahoma*

A unanimous Supreme Court held that Lois Ada Sipuel could not be denied entrance to a state law school solely because of her race.

Significance: The Court ruled denial of entrance to a state law school solely on the basis of race unconstitutional.

1950 *Sweatt v. Painter*

The Supreme Court held that the University of Texas Law School must admit a Black student, Herman Sweatt. The University of Texas Law School was far superior in its offerings and resources to the separate Black law school, which had been hastily established in a downtown basement.

Significance: The Supreme Court held that Texas failed to provide separate but equal education, prefiguring the future opinion in *Brown* that "separate but equal is inherently unequal."

1950 *McLaurin v. Oklahoma State Regents*

The Supreme Court invalidated the University of Oklahoma's requirement that a Black student, admitted to a graduate program unavailable to him at the state's Black school, sit in separate sections of or in spaces adjacent to the classroom, library, and cafeteria.

Significance: The Supreme Court held that these restrictions were unconstitutional because it interfered with his "ability to study, to engage in discussions, and exchange views with other students, and, in general, to learn his profession."

The Stories of *Brown v. Board of Education**

The case we know as *Brown v. Board of Education of Topeka, Kansas* was the result of years of legal battles in school districts across the country, motivated by the bravery of children, their parents, and a determined team of lawyers willing to challenge the notion that schools segregated by race could provide equal educational opportunities to all.

The *Brown* decision embraced legal challenges to segregated public schools from four different states: Delaware, Kansas, South Carolina, and Virginia. The four cases in *Brown* were argued together with a fifth case, *Bolling v. Sharpe*, which challenged segregated schools in the District of Columbia. All of the cases were based on the same legal premise: that separate can never be equal and that racial segregation enforced by law in and of itself violates the rights of equal protection, liberty, and the due process of law guaranteed by the Constitution.

The stories of the individual cases illustrate how the practice of segregation in communities throughout the United States made mockery of the doctrine of “separate but equal” that the Supreme Court had endorsed in its 1896 decision, *Plessy v. Ferguson*. They also demonstrate how divisive an issue segregation had become in the years preceding the Supreme Court’s decision in *Brown*. Most of all, they confirm the heroism of the individual plaintiffs and lawyers who risked their education, homes, and careers in their quest to remedy a nation’s conscience and its laws.

Instructions

- (1) Divide into five small groups. Assign each group one of the *Brown* cases.
- (2) Ask each group to address the following questions using the “Stories of Brown Case Worksheet”:
 - Where—state and city—was the case? Was this area part of the region known as “the South”? Was it part of the Confederacy during the Civil War?
 - Who brought the case? How many people were involved? Who were they (parents, teachers, community groups)? Were they Black? White? Both?
 - Why did they decide to go to court? Did they decide on their own? At what point, if at all, did they receive outside support? If they received outside support, who provided it and when?
 - When did the case begin? When did it go to court?
 - How was the case decided in the lower courts? What was their finding? Was it a unanimous decision?
 - Who won in the lower court, and who appealed the decision to the Supreme Court of the United States?
 - What is the constitutional issue on which the case was decided?
- (3) Ask them to be prepared to share their answers with the entire class.
- (4) Have each small group report in the following order: *Briggs v. Elliott* [South Carolina], *Brown v. Board of Education of Topeka* [Kansas], *Gebhart v. Belton* [Delaware]; *Davis v. School Board of Prince Edward County* [Virginia]; *Bolling v. Sharpe* [District of Columbia].
- (5) Compare the answers to the above questions for each case. What are significant differences among the cases? What are common features?

* Text from the American Bar Association Division for Public Education's 2004 Law Day Planning Guide, available online at www.abanet.org/publiced/lawday/storiesofbrown.pdf. Used with permission.

South Carolina: *Briggs v. Elliott**

Clarendon County, South Carolina, offered a stark example of the failures of “separate but equal.” Thirty school buses were available to transport white students to their schools in the largely rural county; none were available to black students. Per pupil spending for black students in the county was less than one-fourth the spending for white students. And white teachers in the county received, on average, two-thirds more in salary than their black peers.

An initial attempt by farmer Levi Pearson to obtain the same free school-bus transportation for his children that white children enjoyed was defeated in 1948. Pearson found himself cut off from credit at all white-owned businesses in Clarendon County as punishment for bringing his suit.

The following year, a full-scale attack was mounted on the many inequalities that persisted between white and black schools in Clarendon County. The NAACP lent its support to a group of 20 plaintiffs recruited by local organizers, and the case known as *Briggs v. Elliott* was filed in federal district court. Again, retribution by the white community was swift. Harry Briggs, whose name appeared first on the list of plaintiffs, was fired from his job, as were his wife and several other plaintiffs.

The *Briggs* trial was remarkable in several ways, including the NAACP legal team’s introduction of the expert testimony of social scientists on the detrimental effects legally enforced segregation had on black children. Most famous was the testimony of Dr. Kenneth Clark, who used tests involving white- and black-skinned dolls to evaluate the extent to which segregation bred feelings of inferiority in black children.

The case was notable for the dissent of Judge Julius Waties Waring. His two colleagues on the three-judge panel held that the state must equalize the segregated black facilities in Clarendon County, but found nothing invalid in segregation itself. Judge Waring disagreed. “I am of the opinion,” he wrote, “that all of the legal guideposts, expert testimony, common sense and reason point unerringly to the conclusion that the system of segregation in education adopted and practiced in the State of South Carolina must go and must go now. *Segregation is per se inequality.*”

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Kansas: *Brown v. Board of Education of Topeka*

Kansas, situated in the American heartland, has played a central role in this nation's struggles with race relations. In the years preceding the Civil War, "Bleeding Kansas" was a battleground in the debate over slavery, as pro-slavery and abolitionist forces fought to determine whether Kansas would enter the Union as a free state or a slave state. Nearly one hundred years later, Kansas was again in the national spotlight as a group of parents in Topeka challenged racially segregated schools in the state's capital city.

Kansas law gave cities with a population of 15,000 or more the right to segregate schools below the high school level according to race. Topeka High School was integrated, as the law required, although most extracurricular activities, such as athletic teams and student advisory councils, were segregated by race.

In 1941, the junior high schools had been integrated as well by order of the Kansas Supreme Court in *Graham v. Board of Education of Topeka*. Topeka had tried to establish segregated junior high schools, which offered white students in grades 7 through 9 departmentalized courses taught by subject specialists.

Black students would have stayed in a grade school system through grade 8, in which a single classroom teacher was asked to teach all course offerings. Not until grade 9 would black students have had the opportunity to join white students for a single year in junior high. The Kansas court held that this system denied black students equal educational advantages in the seventh and eighth grades, and the Topeka junior high schools were integrated, but the victory came at a cost. Eight black teachers lost their jobs.

Ten years later, the case of *Brown v. Board of Education* was filed in the United States District Court for Kansas. Encouraged by McKinley Burnett, head of the Topeka NAACP chapter, 13 parents of black elementary-age students had tried to enroll their children in one of Topeka's eighteen "whites only" elementary schools when school began in September of 1950. One of those parents was Oliver Brown, father of Linda Brown, whose name led the list of plaintiffs.

The District Court found that the facilities provided for black elementary students in Topeka were substantially equal to those provided to white students. It noted that existing U.S. Supreme Court precedent bound it to deny the plaintiffs' claims that segregation itself violated their equal protection rights. But attached to the court's decision was a finding of fact that "segregation of white and colored children in public schools has a detrimental effect upon the colored children," and that "the impact is greater when it has the sanction of law."

Delaware: *Gebhart v. Belton*

In Delaware, the NAACP got a taste of the victory that would come in *Brown* when Chancellor Collins Seitz of the Delaware Court of Chancery ruled that two "whites only" schools in the state, one high school and one elementary school, had to admit black students who proved that the education they were offered at "colored" schools was substantially unequal to the opportunities available to white students.

In Claymont, Delaware, white children attended a local high school situated in town on a 14-acre site, and were given state-funded transportation to school if they lived more than two miles from campus. Black students, including Ethel Belton, had to travel nine miles on public transportation to Howard High School, a segregated black school in urban Wilmington.

The facilities at Howard were clearly unequal to those in Claymont. The Howard auditorium, for example, was inadequate for the student population, and many physical education classes had to be conducted at a YMCA some four blocks away. Some of the physical education classes contained more than 80 students, making a satisfactory education virtually impossible.

In the nearby village of Hockessin, eight-year-old Shirley Bulah had to be driven two miles by her mother to a one-room segregated schoolhouse, while white students enjoyed state-funded transportation to their school. The white school had received funding of \$178 per pupil, while the black school received only \$137 per pupil. As a result, the physical plant at the black school was run down, and both the salaries and formal qualifications of the teachers lagged behind those at the white school. The mothers of these two girls approached Wilmington NAACP leader and local attorney Louis Redding, who filed suit against the school districts in early 1951.

Before deciding upon his ruling, Chancellor Seitz personally visited the schools at issue. Based on these visits and the testimony presented at trial, on April 1, 1952, Chancellor Seitz denied the state of Delaware the right to refuse admission to black students who sought an education at the Claymont and Hockessin white schools. Explicitly rejected was the argument, accepted in other states, that school officials be given an opportunity to "equalize" the segregated facilities. "To postpone relief is to deny relief," Chancellor Seitz wrote, "and to say that the protective provisions of the Constitution offer no immediate protection."

The Delaware Supreme Court affirmed Chancellor Seitz's orders. It also noted, as had the Chancellor, that a decision declaring that segregation *per se* violated the Fourteenth Amendment's equal protection rights would have to come from the United States Supreme Court. Nonetheless, the victory in *Gebhart* was such that it was the only one of the consolidated cases in *Brown v. Board* that was brought on appeal to the U.S. Supreme Court by the defendants, not the plaintiffs.

Virginia: *Davis v. County School Board of Prince Edward County*

On April 23, 1951, Barbara Johns led a student strike at the segregated Robert R. Moton High School in Prince Edward County, Virginia. Four hundred and fifty students joined Johns, all protesting the education they were receiving in an eight-room facility designed to accommodate 180 students. Lacking at the black high school, but part of the facilities at the school for white students, were a gymnasium, locker room facilities, cafeteria, teachers' break room, and infirmary. White students could take courses in physics, world history, Latin, advanced typing and stenography, drawing, wood, metal, and machine shop work that were not offered to black students.

On the same day that the student strike began, Barbara Johns and Carrie Stokes, a classmate, sent a letter to the NAACP's office in the state capital of Richmond requesting the NAACP's assistance in the students' quest to improve their school. Impressed by the commitment of the students, and assured of their parents' support, the NAACP decided to bring suit against the Prince Edward County school board. The suit asked that the court declare invalid the provision of Virginia's state constitution that required segregation of schools by race. In the alternative, the complaint sought a decree ordering the correction of the inequalities between the white and black schools.

The student strike and ensuing lawsuit shocked the county school board and state officials into action. Before the trial began, the school board sought, and the state approved, \$600,000 in additional money to build a new school for black students in an effort to "equalize"—and preserve—the segregated schools.

At trial, the three-member panel of federal judges found pronounced inequalities between the facilities and curricula at the white and black high schools and ordered that the school board and state continue the work it had commenced to equalize the educational opportunities available to white students. Arguments that segregation itself was harmful to black students found little support among these judges, however. "Separation of white and colored 'children' in the public schools of Virginia has for generations been a part of the mores of her people," wrote Judge Bryan for a unanimous, three-judge panel. "To have separate schools has been their use and wont."

Indeed, the Supreme Court's 1954 decision in *Brown v. Board of Education* met a strategy of "massive resistance" by Virginia segregationists, particularly in Prince Edward County. Rather than integrate the schools, the county simply closed its public education system in 1959. The public schools stayed closed until 1964, when the county was forced to reopen them by order of the United States Supreme Court in *Griffin v. County School Board of Prince Edward County*.

District of Columbia: *Bolling v. Sharpe*

The legal issues involved in *Bolling v. Sharpe* differed somewhat from the four state cases. The state cases claimed that state laws allowing racial segregation of the schools violated the Fourteenth Amendment's guarantee that no state could "deny to any person within its jurisdiction the equal protection of the laws." Because the District of Columbia is a federal district, not a state, the Fourteenth Amendment could not be invoked as the legal basis for a challenge to segregation within the District.

Bolling v. Sharpe arose from the efforts of a committed group of parents, led by barber turned activist Gardner Bishop, to end the practice of racial segregation in the nation's capital. The initial legal strategy, led by the pioneering civil rights lawyer Charles Hamilton Houston, was to demand equalization of facilities for black students—as elsewhere in the country, the doctrine of "separate but equal" in the District of Columbia had produced a reality of "separate and unequal" in the schools. But when the dying Charles Houston referred the parents' group to Howard University Law Professor James Nabrit, a decision was made to challenge segregation head on.

In September of 1950, Gardner Bishop appeared at "whites only" John Philip Sousa Junior High School with a group of eleven black students requesting their admission to the school. They were turned down, and a lawsuit was filed in the federal district court.

The plaintiffs maintained that segregation was an unconstitutional deprivation, without due process of law, of black students' liberty to pursue their education, a violation of the Fifth Amendment to the Constitution (unlike the Fourteenth Amendment's equal protection guarantees, the Fifth Amendment is not limited to the states). The district court dismissed the case on the grounds that the constitutionality of segregation was a settled legal issue.

The lawyers for the *Bolling* plaintiffs were waiting to argue the case on appeal to the federal Court of Appeals when they received word from the Supreme Court that they should be prepared to argue their case along with the cases from the four states that would be consolidated under the name of *Brown v. Board of Education*. On December 9, 1952, arguments before the Supreme Court began in all five cases.

The Stories of *Brown v. Board of Education* Case Worksheet

What is the name of the case?	
Where—state and city—was the case? Was this area part of the region known as “the South”? Was it part of the Confederacy during the Civil War?	
Who brought the case? How many people were involved? Who were they (parents, teachers, community groups)? Were they Black? White? Both?	
Why did they decide to go to court? Did they decide on their own? At what point, if at all, did they receive outside support? If they received outside support, who provided it?	
When did the case begin? When was it decided?	
How was the case decided in the lower courts? What was their finding? Was it a unanimous decision?	
Who won in the lower court, and who appealed the decision to the Supreme Court of the United States?	
What is the constitutional issue on which the case was decided?	

Examining the Arguments in *Brown v. Board of Education* (1954)

As with many historical decisions, perhaps the greatest challenge of *Brown v. Board of Education* is understanding the arguments for each side of the case, particularly the arguments of those who argued in favor of “separate but equal.”

Below are nine arguments that were presented as part of *Brown*.

- (1) With a partner, read through each argument and decide whether it supports Brown’s side against segregation (Brown), the Board of Education of Topeka’s position in favor of segregation (Topeka), both sides (Both), or neither side (Neither). Fill in the blank with your response.
- (2) Working in a foursome [you, your partner, and another pair], reach consensus on which argument you feel is the most persuasive in favor of the Topeka Board of Education’s position. Be prepared to explain your choice to the entire group.

Arguments from *Brown v. Board of Education*

1. _____ The Equal Protection Clause of the Fourteenth Amendment of the Constitution states: *“No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”* The Fourteenth Amendment precludes a state from imposing distinctions based upon race. Racial segregation in public schools reduces the benefits of public education to one group solely on the basis of race and is unconstitutional.
2. _____ The Fourteenth Amendment states that people should be treated equally; it does not state that people should be treated the same. Treating people equally means giving them what they need. This could include providing an educational environment in which they are most comfortable learning. White students are probably more comfortable learning with other white students; black students are probably more comfortable learning with other black students. These students do not have to attend the same schools to be treated equally under the law; they must simply be given an equal environment for learning. The U.S. District Court found that the facilities provided for black children in Topeka were equal to those of white children.
3. _____ Psychological studies have shown that segregation has negative effects on black children. By segregating white students from black students, a badge of inferiority is placed on the black students, a system of separation beyond school is perpetuated, and the unequal benefits accorded to white students as a result of their informal contacts with one another is reinforced. The U.S. District court found that segregation did have negative effects on black children.
4. _____ No psychological studies have been done on children in the Topeka, Kansas school district. The findings of the psychological studies that demonstrate the negative effects of segregation cannot be stretched to the Topeka school district. There is no indication of personal harm to the appellants.

5. ____ In 1896 the Supreme Court of the United States decided the case of *Plessy v. Ferguson*. In this case, Homer Plessy sued, alleging that his Fourteenth Amendment rights were violated by a Louisiana law requiring the railroad companies to provide equal, but separate, facilities for white and black passengers. The Court declared that segregation was legal as long as facilities provided to each race were equal. The Court declared that the legal separation of the races did not automatically imply that the black race was inferior. Legislation and court rulings could not overcome social prejudices, according to Justice Brown. "If one race be inferior to the other socially, the constitution of the United States cannot put them on the same plane."
6. ____ In 1950 the Supreme Court of the United States decided the case of *Sweatt v. Painter*. In this case Heman Sweatt was rejected from the University of Texas Law School because he was black. He sued school officials alleging a violation of the Fourteenth Amendment rights. The Court examined the educational opportunities at the University of Texas Law School and a new law school at the Texas State University for Negroes and determined that the facilities, curricula, faculty and other tangible factors were not equal. Furthermore, the justices argued that other factors such as the reputation of the faculty and position and influence of the alumni could not be equalized. They therefore ruled in favor of Sweatt.
7. ____ The United States has a federal system of government that leaves educational decision making to state and local legislatures.
8. ____ At the time the Fourteenth Amendment of the Constitution was drafted, widespread public education had not yet taken hold. Education was usually in the hands of private organizations. Most black children received no education at all. It is unlikely that those involved with passing the Fourteenth Amendment thought about its implications for education.
9. ____ Housing and schooling have become interdependent. The segregation of schools has reinforced segregation in housing, making it likely that a change in school admission policies will have a dramatic effect on neighborhoods, placing a heavy burden on local government to deal with the changes. The local conditions of an area must be taken into consideration.

Questions for Discussion

- What were the strongest arguments for segregation—sociological, legal, or constitutional? Why?
- Can the arguments for segregation really be understood outside the historical context in which they were presented? How does that history affect your reading of the case?
- What light do the arguments about Brown shed on issues of equality today?
- When is it ever fair for the government to treat people differently because of their race?

Adapted from: *Brown v. Board of Education*. <http://www.landmarkcases.org/brown/home.html>. Copyright © Street Law Inc., and The Supreme Court Historical Society, 2000.

The Decisions of *Brown v. Board of Education**

The arguments in the four *Brown* cases and *Bolling v. Sharpe* were spread over two of the Supreme Court's terms. The initial oral arguments were held in December 1952. The following June, lawyers for the various parties were told to prepare for a second round of arguments on a list of five questions that focused on the history of the Fourteenth Amendment and the Court's powers and options in fashioning a remedy in the event that segregated schools were found to be unconstitutional. These arguments were held in December 1953.

The following year, on May 17, 1954, the Court issued a unanimous decision in *Brown* declaring that segregated schools are inherently unequal, violating the equal protection guarantees of the Fourteenth Amendment. A companion decision in *Bolling v. Sharpe* declared that segregation also violated the Fifth Amendment's due process guarantees. In 1955, the Court ordered that the schools in *Brown* be integrated under supervision of the district courts "with all deliberate speed."

The Court's decision in 1954 was both an end and a beginning. The doctrine of "separate but equal" was officially refuted, but a new round of battles was about to begin over the necessity, extent, and pace of integration in schools around the country. The decision in *Brown* certainly represented a monumental shift in the law; no longer could segregationists claim support for their practices in the United States Constitution. As we commemorate this decision, however, it is also appropriate to reflect on whether its promise of equal educational opportunities for all Americans has been fulfilled.

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After *Brown*: The First Fifty Years

Brown I* to *Brown II

The response to the *Brown* decision in 1954 was immediate, and white newspaper editorials across the South reflected the range of emotions. The *Atlanta Constitution* correctly noted that “the court decision does not mean that Negro and white children will go to school together this fall.... Not until next autumn will it even begin to hear arguments from the attorneys general of the 17 states involved on how to implement the ruling.” The *Cavalier Daily* (University of Virginia) wrote that “we feel that the people of the South are justified in their bitterness concerning this decision. To many people this decision is contrary to a way of life and violates the way in which they have thought since 1619.” The *Daily News* (Jackson, Mississippi) was more blunt: “Human blood may stain Southern soil in many places because of this decision but the dark red stains of that blood will be on the marble steps of the United States Supreme Court building” (landmarkcases.org, 2000).

In truth, the Supreme Court had not desegregated any school in *Brown*. Rather, it had requested arguments about how to implement desegregation. A year later, in May 1955, they announced their remedy: instead of calling for immediate desegregation of all schools, the Court called for the admission to public schools “on a racially nondiscriminatory basis with all deliberate speed.” As federal judge and former NAACP lawyer Robert L. Carter notes, this was the first time the Court “ever deferred immediate vindication of a successful litigant’s entitlement to a constitutional right” (“The Long Road to Equality,” *The Nation*, May 3, 2004). This delay would be the first of many in the effort to eliminate segregation in public schools.

“Equal Protection of the Laws” after *Brown*

Ever since the Fourteenth Amendment was ratified, there has been a tension in the courts regarding how the Equal Protection Clause should be interpreted. This tension affects how the U.S. Supreme Court interprets questions of discrimination in school and other public settings.

According to Ohio State University law professor Ruth Colker, there are two broad and slightly different principles in anti-discrimination law:

- In **Anti-classification** theory, the Constitution means what it says – “no person shall be denied the equal protection of the laws” and applies to all persons, and everyone should be treated the same.”
- **Anti-subordination** theory, by contrast, looks at historical origins of the Reconstruction Amendments, particularly slavery. “Here the law is remedial in order to counter a history of subordination directed against a particular class of persons, and the law should be interpreted to remedy that subordination.” University of Chicago law professor Jill Hasday describes it this way: “The real harm that the law is designed to remedy is that caused by the legalized history of subordination. The law was part of the process of discrimination, so it must also be part of the solution” (*Odyssey*, WBEZ-FM, May 25, 2004).

These two theories sometimes are in conflict and sometimes not. Legal scholars have interpreted *Brown* as an anti-classification case, an anti-subordination case, or both. For Colker, *Brown* is “a classic anti-classification decision—separate is never equal.” By contrast, Hasday sees *Brown* as “much more of a mixed opinion. Here the Court clearly pre-supposes [assumes] a harm to African Americans due to segregation and in no wise [way] can imagine white children ever bringing such a claim” (*Odyssey*, *supra*). Stanford law professor Kathleen Sullivan

suggests two additional interpretations of the *Brown* opinion itself that have been adopted by the Court: "that racial classifications are invalid when they psychologically stigmatize minorities; and that racial integration is a useful and desirable social outcome" (Sullivan, "What Happened to 'Brown'?" *New York Review of Books*, September 23, 2004). Each of these different understandings of *Brown* has found expression in the effort to desegregate public education.

Applying *Brown* in K-12 Public Schools

The primary response to *Brown* among Southern White leadership was non-compliance. Not only state governments, but even judges on the federal courts sought to frustrate the decision:

[W]hen the Clarendon County case returned to South Carolina, [U.S.] Circuit Judge John Parker shrewdly... said, "a state may not deny to any person on account of race the right to attend any school that it maintains." However, so long as schools are "open to children of all races, no violation of the Constitution is involved even though the children of different races voluntarily attend different schools." Pursuant to *Brown*, Parker explained, the Constitution "does not require integration. It merely forbids discrimination" and "forbids the use of governmental power to enforce segregation." (David J. Garrow, "Why Brown Still Matters," *The Nation*, May 3, 2004).

Moreover, Congress and the President—not the Supreme Court—had to take the political steps to make *Brown* a reality. Yet in 1956, the so-called "Southern Manifesto" was signed by 19 Senators and 81 Representatives from 11 states in the old Confederacy:

We regard the decision of the Supreme Court in the school cases as a clear abuse of judicial power.... It is destroying the amicable relations between the white and Negro races that have been created through 90 years of patient effort by the good people of both races. It has planted hatred and suspicion where there has been heretofore friendship and understanding.... We decry the Supreme Court's encroachments on rights reserved to the States and to the people.... We commend the motives of those States which have declared the intention to resist forced integration by any lawful means.... We pledge ourselves to use all lawful means to bring about a reversal of this decision which is contrary to the Constitution and to prevent the use of force in its implementation" (102 Cong. Rec. 4515-16 (1956), at <http://www.cviog.uga.edu/Projects/gainfo/manifesto.htm>).

With significant opposition in Congress and no explicit endorsement of *Brown* by President Eisenhower, "the South interpreted 'all deliberate speed' to mean 'any conceivable delay'" (Richard Kluger, *Simple Justice*, 1975), and the effort to integrate the nation's schools moved very little in the first years after *Brown*. By 1960, only 1 percent of Black students were in majority White schools in the South, and only 2.3% were a decade after the decision (Gary Orfield and Chungmei Lee, "Brown At 50: King's Dream or Plessy's Nightmare?" The Civil Rights Project, Harvard University, 2004). Southern white retaliation against black teachers, either for urging school integration, supporting the emerging civil rights movement, or both, was also severe: over 30,000 were fired in the decade after *Brown*. Not until Congress passed the Civil Rights Act of 1964, which tied federal school funding to desegregation, did integration begin to significantly increase across the country, reaching a highpoint in 1988.

The Supreme Court continued to rule on public school desegregation cases, but its decisions followed different understandings of *Brown*. On the one hand, the Court struck down many of the Jim Crow barriers in the South and the de facto segregation policies throughout the nation. In *Green v. County School Board of New Kent County* (1968) the Court held that segregated "dual" school systems had to be dismantled "root and branch" and that desegregation had to be achieved in all educational activities, including faculty, facilities, staff, sports and other extracurricular activities, and transportation resources. In *Swann v. Charlotte-Mecklenberg*

Board of Education (1971) the Court ruled that “racially neutral” student assignment plans that were based on where people lived and resulted in segregated schools were unconstitutional. While not saying that a specific racial balance had to be achieved, the Court nevertheless held that desegregation had to be achieved in each of a district’s schools to the greatest extent possible, and it approved busing as a way to meet that end. Despite often fierce local opposition in many cities, busing plans were adopted and used across the country.

In *Keyes v. School District No. 1, Denver, Colorado* (1973), the Court extended *Brown* to cases of *de facto* segregation on the North and West. A school district without an explicit segregation policy could still be found responsible for a deliberate plan of segregating specific schools, and once such a policy had been proved, the burden was on the district to show that their actions were not motivated by a desire to segregate. (*Keyes* also recognized that Hispanic students could experience segregation and suffer the same educational inequities as Black students.)

Nevertheless, the Court still continued to respect traditional local control over education, with important results for school desegregation. In *San Antonio Independent School District v. Rodriguez* (1973), the Court held that since education was not a “fundamental right or liberty,” the issue of equalizing education funding was held to be an issue for the states and not the federal Constitution. As a result, the effort to provide equal funding for schools now had to be pursued using state constitutions and in state courts. In *Milliken v. Bradley* (1974), the Court held that federal courts could not order busing across jurisdictional lines—between a city and its suburbs or between neighboring school districts—without specifically showing that “racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of inter-district segregation.” This decision effectively ended the possibility of court-ordered integration of mostly nonwhite urban areas with mostly white suburbs.

***Brown* Today**

What did *Brown* achieve and what does it mean in 2004? Looked at one way, the successes are very great. Three of the four school districts in the *Brown* decision (the exception is Clarendon County, South Carolina) “show considerable long-term success in realizing desegregated education” (Orfield and Lee, *supra*). Many more African Americans, Latinos, and other nonwhite students are enrolled in American colleges and universities. Yet there is still an uncertain feeling about how far America has come. Linda Brown, who visited Topeka, Kansas on Brown’s 40th anniversary in 1994, told a reporter,

“Sometimes I wonder if we really did the children and the nation a favor by taking this case to the Supreme Court.... I knew it was the right thing for my father and other to do then. But after nearly 40 years, we find the court’s ruling remains unfulfilled” (Jeremy Irons, *Jim Crow’s Children: The Broken Promise of the Brown Decision*, 2002).

In 2004, some people see *Brown* as a great achievement of American democracy and a critical moment in the Civil Rights Movement in the effort to make America a more fair and equal society. Other people, looking at continuing disparities in school funding, facilities, and opportunity, are frustrated with the lack of progress since *Brown*. Still other people wonder whether *Brown* really changed much in public education. The way people understand *Brown* leads to important differences in how they seek to apply its lessons to today’s challenges.

Applying *Brown: Parents v. School District* [A Hypothetical Case]

Educators around the country have recognized the special needs of certain inner-city African-American and Latino male students and of certain female students of all races. Growing up in severely distressed economic environments marked by gangs and drugs, and often the product of fatherless households, boys in these circumstances often fall well below their educational potential and the average progress for their grade. Faced with the intense sexual pressures of a co-educational environment and the documented learning challenges in mathematics and the sciences, certain girls are at risk of early pregnancy and falling well below their educational and workforce potential.

To address these problems, one city has established special academies offering enriched education programs for these boys and girls. These public schools feature low enrollment, high teacher-student ratios, and courses designed to improve learning skills. They have special programs and coaches to promote self-esteem and discipline, and they feature well-equipped labs, libraries, and computer centers. Each of these special academies also has a policy limiting admission: the boys' schools deny admission to girls, with only African Americans admitted to an all-black academy and only Latinos admitted to an all-Latino academy; the girls' schools exclude any boys from attending.

In general, the academies are better equipped and better funded than regular schools in the city. Several parents file suit in Federal Court, claiming that the academies are much better than the regular public schools and that their admission policies violate the U.S Supreme Court ruling in *Brown v. Board of Education*. The School District claims that the academies have a real chance to improve the education of the targeted students and help solve community problems. They argue that since the academies were not set up to discriminate, they do not violate the *Brown* ruling.

Instructions

You will take part in deciding the case of *Parents v. School District*. Working in groups, you will be assigned the role of a Supreme Court Justice, an attorney representing the Parents, or an attorney representing the School District. You will be arguing the question of whether this policy violates the Equal Protection Clause as understood in the case of *Brown v. Board of Education of Topeka*.

You will prepare your case with the other persons assigned to your role: Attorneys for Parents together, Attorneys for the School District together, and Justices together.

When your teacher gives the signal, everyone will break into a three-person group or triad—one Supreme Court Justice, one Attorney for the Parents, and one Attorney for the School District. Your teacher will be in charge of keeping time.

Moot Court Instructions

Parents Attorney Instructions	Supreme Court Justice Instructions	School District Attorney Instructions
It is your job to represent the Parents by developing and making arguments that the School District's regulations violated the Equal Protection clause of the Fourteenth Amendment of the U.S. Constitution and are different from those in the <i>Brown</i> case.	It is your job to review the case of <i>Brown v. Board of Education</i> and the facts of the case in <i>Parents v. School District</i> . Prepare for hearing the case by trying to think about arguments both sides might raise.	It is your job to represent the School District by developing and making arguments that the regulations are permitted under the Equal Protection clause of the Fourteenth Amendment of the Constitution and by the Court decision in the <i>Brown</i> case.
You will have no more than three minutes to present your case. The Justice may interrupt you to ask one question during that time.	When hearing the case, each attorney has no more than three minutes to give its arguments. The Parents side goes first. You may ask one question to each side during this time.	You will have no more that three minutes to present your case. The Justice may interrupt you to ask one question during that time.
	When both sides have finished, you will have three minutes to decide the case and give the reasons for your decision. Stand up in place after you have given your decision.	

Group Questions for Thinking About Arguments:

1. How are the facts of *Brown* different from the facts in *Parents v. School District*?
2. What are some benefits to society or to education if the decision for the academies are upheld?
3. What harm to society or education might result if the decision for the academies is upheld?

Adapted from: *Foundations of Freedom*, Teacher's Guide, © Constitutional Rights Foundation 1991.

What Does *Brown v. Board of Education* Mean to Me?

Fifty years later, the meaning of the *Brown* decisions remains controversial. What happened as a result of *Brown*? What significance, if any, does it have in the 21st Century? What is *Brown's* legacy and meaning for today?

Below are five statements about the meaning of *Brown*. These statements, while distinct, are not mutually exclusive.

Choose one statement with which you agree. Using this curriculum and other resources, develop the evidence which you believe supports this statement.

Then prepare an essay [500 words maximum] or a poster explaining the meaning of *Brown* as you understand it. Share your poster or essay with two classmates who chose different statements. What did you learn about the meaning of *Brown* from their presentations? Which statements, if any, would you not be able to support?

- (1) *Brown* has been celebrated because it deserves to be. Put another way, the Court did the right thing, at the right time, and for the right reasons.
- (2) *Brown* is significant not so much for what changes it caused at the time but for how it has become a symbol for other rights movements. It set the stage for such developments as the civil rights movement, Martin Luther King, Jr., the women's movement, and the liberation efforts of Latinos, Asians, the elderly, and gays.
- (3) If the goal of *Brown* was to create equal educational opportunities for students of color through desegregation, then even a cursory analysis of education in the United States provides evidence that the goal remains unmet.
- (4) *Brown* was well-intentioned but a mistake. Civil rights advocates had hoped that *Brown* would spark progress toward racial equality, yet 50 years later race-based unequal educational opportunities and outcomes persist. Instead of desegregating schools, for example, perhaps equalizing resources going into segregated schools would have better served the educational needs of African American and other underserved students.
- (5) *Brown* didn't change much of anything at all. Courts in general, and the Supreme Court of the United States in particular, are less powerful than people think. *Brown* failed to cause significant change because there was too little political pressure to enforce the decision and considerable pressure to resist it.

* Adapted from: Diana E. Hess, "Deconstructing the *Brown* Myth," *Rethinking Schools*, Volume 18, No. 3 - Spring 2004.

Selected Bibliography: Print and On-Line Resources for *Brown v. Board of Education of Topeka, Kansas* (1954)

Web Sites

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<http://www.landmarkcases.org/brown/home.html>

Constitutional Rights Foundation – *Brown v. Board of Education: 50th Anniversary*

http://www.crf-usa.org/brown50th/brown_v_board.htm

American Bar Association – 2004 Law Day lessons celebrating the 50th anniversary of *Brown*

<http://www.abanet.org/publiced/lawday/schools/lessons/>

Illinois Humanities Council – *Brown v. Board 50 Years Later: Conversations on Integration, Race, and the Courts*

<http://www.bvb50.org/>

National Archives and Records Administration – Timeline of Events Leading to the *Brown v. Board of Education* Decision, 1954

http://www.archives.gov/digital_classroom/lessons/brown_v_board_documents/timeline.html

National Museum of American History: Separate Is Not Equal, *Brown v. Board of Education*

<http://www.americanhistory.si.edu/brown/>

University of Michigan Library's *Brown v. Board of Education* Digital Archive

<http://www.lib.umich.edu/exhibits/brownarchive/index.html>

***Brown v. Board of Education* National Historic Site**

<http://www.nps.gov/brvb/>

Decisions Of The Supreme Court Of The United States

***Brown v. Board of Education*, 347 U.S. 483 (1954) [Brown I]**

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=347&invol=483>

***Bolling v. Sharpe*, 347 U.S. 497 (1954)**

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=347&invol=497>

***Brown v. Board of Education*, 349 U.S. 294 (1955) [Brown II]**

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The *Brown* Opinions of the Supreme Court of the United States

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

On Appeal from The United States District Court For The District Of Kansas, Argued December 9, 1952, Reargued December 8, 1953; Decided May 17, 1954. Together with No. 2, *Briggs et al. v. Elliott et al.*, on appeal from the United States District Court for the Eastern District of South Carolina, argued December 9-10, 1952, reargued December 7-8, 1953; No. 4, *Davis et al. v. County School Board of Prince Edward County, Virginia, et al.*, on appeal from the United States District Court for the Eastern District of Virginia, argued December 10, 1952, reargued December 7-8, 1953, and No. 10, *Gebhart et al. v. Belton et al.*, on certiorari to the Supreme Court of Delaware, argued December 11, 1952, reargued December 9, 1953.

***Bolling v. Sharpe*, 347 U.S. 497 (1954)**

On Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

***Brown v. Board of Education of Topeka*, 349 U.S. 294 (1955)**

Appeal from the United States District Court for the District of Kansas. Reargued on the question of relief April 11-14, 1955; Opinion and judgments announced May 31, 1955. Together with No. 2, *Briggs et al. v. Elliott et al.*, on appeal from the United States District Court for the Eastern District of South Carolina; No. 3, *Davis et al. v. County School Board of Prince Edward County, Virginia, et al.*, on appeal from the United States District Court for the Eastern District of Virginia; No. 4, *Bolling et al. v. Sharpe et al.*, on certiorari to the United States Court of Appeals for the District of Columbia Circuit, and No. 5, *Gebhart et al. v. Belton et al.*, on certiorari to the Supreme Court of Delaware.

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

No. 1.

SUPREME COURT OF THE UNITED STATES

Argued December 9, 1952
Reargued December 8, 1953
Decided May 17, 1954

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS [*]

Syllabus

Segregation of white and Negro children in the public schools of a State solely on the basis of race, pursuant to state laws permitting or requiring such segregation, denies to Negro children the equal protection of the laws guaranteed by the Fourteenth Amendment -- even though the physical facilities and other "tangible" factors of white and Negro schools may be equal. Pp. 486-496.

(a) The history of the Fourteenth Amendment is inconclusive as to its intended effect on public education. Pp. 489-490.

(b) The question presented in these cases must be determined not on the basis of conditions existing when the Fourteenth Amendment was adopted, but in the light of the full development of public education and its present place in American life throughout the Nation. Pp. 492-493.

(c) Where a State has undertaken to provide an opportunity for an education in its public schools, such an opportunity is a right which must be made available to all on equal terms. P. 493.

(d) Segregation of children in public schools solely on the basis of race deprives children of the minority group of equal educational opportunities, even though the physical facilities and other "tangible" factors may be equal. Pp. 493-494.

(e) The "separate but equal" doctrine adopted in *Plessy v. Ferguson*, 163 U.S. 537, has no place in the field of public education. P. 495.

(f) The cases are restored to the docket for further argument on specified questions relating to the forms of the decrees. Pp. 495-496.

Opinions

WARREN, C.J., Opinion of the Court

[p*486] MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware. They are premised on different facts and different local conditions, but a common legal question justifies their consideration together in this consolidated opinion. [n1] [p*487]

In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis. In each instance, [p*488] they had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. In each of the cases other than the Delaware case, a three-judge federal district court denied relief to the plaintiffs on the so-called "separate but equal" doctrine announced by this Court in *Plessy v. Ferguson*, 163 U.S. 537. Under that doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate. In the Delaware case, the Supreme Court of Delaware adhered to that

doctrine, but ordered that the plaintiffs be admitted to the white schools because of their superiority to the Negro schools.

The plaintiffs contend that segregated public schools are not "equal" and cannot be made "equal," and that hence they are deprived of the equal protection of the laws. Because of the obvious importance of the question presented, the Court took jurisdiction. [n2] Argument was heard in the 1952 Term, and reargument was heard this Term on certain questions propounded by the Court. [n3] [p*489]

Reargument was largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then-existing practices in racial segregation, and the views of proponents and opponents of the Amendment. This discussion and our own investigation convince us that, although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best, they are inconclusive. The most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among "all persons born or naturalized in the United States." Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty.

An additional reason for the inconclusive nature of the Amendment's history with respect to segregated schools is the status of public education at that time. [n4] In the South, the movement toward free common schools, supported [p*490] by general taxation, had not yet taken hold. Education of white children was largely in the hands of private groups. Education of Negroes was almost nonexistent, and practically all of the race were illiterate. In fact, any education of Negroes was forbidden by law in some states. Today, in contrast, many Negroes have achieved outstanding success in the arts and sciences, as well as in the business and professional world. It is true that public school education at the time of the Amendment had advanced further in the North, but the effect of the Amendment on Northern States was generally ignored in the congressional debates. Even in the North, the conditions of public education did not approximate those existing today. The curriculum was usually rudimentary; ungraded schools were common in rural areas; the school term was but three months a year in many states, and compulsory school attendance was virtually unknown. As a consequence, it is not surprising that there should be so little in the history of the Fourteenth Amendment relating to its intended effect on public education.

In the first cases in this Court construing the Fourteenth Amendment, decided shortly after its adoption, the Court interpreted it as proscribing all state-imposed discriminations against the Negro race. [n5] The doctrine of [p*491] "separate but equal" did not make its appearance in this Court until 1896 in the case of *Plessy v. Ferguson*, *supra*, involving not education but transportation. [n6] American courts have since labored with the doctrine for over half a century. In this Court, there have been six cases involving the "separate but equal" doctrine in the field of public education. [n7] In *Cumming v. County Board of Education*, 175 U.S. 528, and *Gong Lum v. Rice*, 275 U.S. 78, the validity of the doctrine itself was not challenged. [n8] In more recent cases, all on the graduate school [p*492] level, inequality was found in that specific benefits enjoyed by white students were denied to Negro students of the same educational qualifications. *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337; *Sipuel v. Oklahoma*, 332 U.S. 631; *Sweatt v. Painter*, 339 U.S. 629; *McLaurin v. Oklahoma State Regents*, 339 U.S. 637. In none of these cases was it necessary to reexamine the doctrine to grant relief to the Negro

plaintiff. And in *Sweatt v. Painter*, *supra*, the Court expressly reserved decision on the question whether *Plessy v. Ferguson* should be held inapplicable to public education.

In the instant cases, that question is directly presented. Here, unlike *Sweatt v. Painter*, there are findings below that the Negro and white schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other "tangible" factors. [n9] Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

In approaching this problem, we cannot turn the clock back to 1868, when the Amendment was adopted, or even to 1896, when *Plessy v. Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout [p*493] the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

In *Sweatt v. Painter*, *supra*, in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on "those qualities which are incapable of objective measurement but which make for greatness in a law school." In *McLaurin v. Oklahoma State Regents*, *supra*, the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: ". . . his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." [p*494] Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law, for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system. [n10]

Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson*, this finding is amply supported by modern authority. [n11] Any language [p*495] in *Plessy v. Ferguson* contrary to this finding is rejected.

We conclude that, in the field of public education, the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment. [n12]

Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity. On reargument, the consideration of appropriate relief was necessarily subordinated to the primary question -- the constitutionality of segregation in public education. We have now announced that such segregation is a denial of the equal protection of the laws. In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument on Questions 4 and 5 previously propounded by the Court for the reargument this Term [n13] The Attorney General [p*496] of the United States is again invited to participate. The Attorneys General of the states requiring or permitting segregation in public education will also be permitted to appear as *amici curiae* upon request to do so by September 15, 1954, and submission of briefs by October 1, 1954. [n14]

It is so ordered.

* Together with No. 2, *Briggs et al. v. Elliott et al.*, on appeal from the United States District Court for the Eastern District of South Carolina, argued December 9-10, 1952, reargued December 7-8, 1953; No. 4, *Davis et al. v. County School Board of Prince Edward County, Virginia, et al.*, on appeal from the United States District Court for the Eastern District of Virginia, argued December 10, 1952, reargued December 7-8, 1953, and No. 10, *Gebhart et al. v. Belton et al.*, on certiorari to the Supreme Court of Delaware, argued December 11, 1952, reargued December 9, 1953.

1. In the Kansas case, *Brown v. Board of Education*, the plaintiffs are Negro children of elementary school age residing in Topeka. They brought this action in the United States District Court for the District of Kansas to enjoin enforcement of a Kansas statute which permits, but does not require, cities of more than 15,000 population to maintain separate school facilities for Negro and white students. Kan.Gen.Stat. § 72-1724 (1949). Pursuant to that authority, the Topeka Board of Education elected to establish segregated elementary schools. Other public schools in the community, however, are operated on a nonsegregated basis. The three-judge District Court, convened under 28 U.S.C. §§ 2281 and 2284, found that segregation in public education has a detrimental effect upon Negro children, but denied relief on the ground that the Negro and white schools were substantially equal with respect to buildings, transportation, curricula, and educational qualifications of teachers. 98 F.Supp. 797. The case is here on direct appeal under 28 U.S.C. § 1253.

In the South Carolina case, *Briggs v. Elliott*, the plaintiffs are Negro children of both elementary and high school age residing in Clarendon County. They brought this action in the United States District Court for the Eastern District of South Carolina to enjoin enforcement of provisions in the state constitution and statutory code which require the segregation of Negroes and whites in public schools. S.C.Const., Art. XI, § 7; S.C.Code § 5377 (1942). The three-judge District Court, convened under 28 U.S.C. §§ 2281 and 2284, denied the requested relief. The court found that the Negro schools were inferior to the white schools, and ordered the defendants to begin immediately to equalize the facilities. But the court sustained the validity of the contested provisions and denied the plaintiffs admission to the white schools during the equalization program. 98 F.Supp. 529. This Court vacated the District Court's judgment and remanded the case for the purpose of obtaining the court's views on a report filed by the defendants concerning the progress made in the equalization program. 342 U.S. 350. On remand, the District Court found that substantial equality had been achieved except for buildings and that the defendants were proceeding to rectify this inequality as well. 103 F.Supp. 920. The case is again here on direct appeal under 28 U.S.C. § 1253.

In the Virginia case, *Davis v. County School Board*, the plaintiffs are Negro children of high school age residing in Prince Edward County. They brought this action in the United States District Court for the Eastern District of Virginia to enjoin enforcement of provisions in the state constitution and statutory code which require the segregation of Negroes and whites in public schools. Va.Const., § 140; Va.Code § 22-221 (1950). The three-judge District Court, convened under 28 U.S.C. §§ 2281

and 2284, denied the requested relief. The court found the Negro school inferior in physical plant, curricula, and transportation, and ordered the defendants forthwith to provide substantially equal curricula and transportation and to "proceed with all reasonable diligence and dispatch to remove" the inequality in physical plant. But, as in the South Carolina case, the court sustained the validity of the contested provisions and denied the plaintiffs admission to the white schools during the equalization program. 103 F.Supp. 337. The case is here on direct appeal under 28 U.S.C. § 1253.

In the Delaware case, *Gebhart v. Belton*, the plaintiffs are Negro children of both elementary and high school age residing in New Castle County. They brought this action in the Delaware Court of Chancery to enjoin enforcement of provisions in the state constitution and statutory code which require the segregation of Negroes and whites in public schools. Del.Const., Art. X, § 2; Del.Rev.Code § 2631 (1935). The Chancellor gave judgment for the plaintiffs and ordered their immediate admission to schools previously attended only by white children, on the ground that the Negro schools were inferior with respect to teacher training, pupil-teacher ratio, extracurricular activities, physical plant, and time and distance involved in travel. 87 A.2d 862. The Chancellor also found that segregation itself results in an inferior education for Negro children (*see note 10, infra*), but did not rest his decision on that ground. *Id.* at 865. The Chancellor's decree was affirmed by the Supreme Court of Delaware, which intimated, however, that the defendants might be able to obtain a modification of the decree after equalization of the Negro and white schools had been accomplished. 91 A.2d 137, 152. The defendants, contending only that the Delaware courts had erred in ordering the immediate admission of the Negro plaintiffs to the white schools, applied to this Court for certiorari. The writ was granted, 344 U.S. 891. The plaintiffs, who were successful below, did not submit a cross-petition.

2. 344 U.S. 1, 141, 891.

3. 345 U.S. 972. The Attorney General of the United States participated both Terms as *amicus curiae*.

4. For a general study of the development of public education prior to the Amendment, *see Butts and Cremin, A History of Education in American Culture* (1953), Pts. I, II; Cubberley, *Public Education in the United States* (1934 ed.), cc. II-XII. School practices current at the time of the adoption of the Fourteenth Amendment are described in Butts and Cremin, *supra*, at 269-275; Cubberley, *supra*, at 288-339, 408-431; Knight, *Public Education in the South* (1922), cc. VIII, IX. *See also* H. Ex.Doc. No. 315, 41st Cong., 2d Sess. (1871). Although the demand for free public schools followed substantially the same pattern in both the North and the South, the development in the South did not begin to gain momentum until about 1850, some twenty years after that in the North. The reasons for the somewhat slower development in the South (*e.g.*, the rural character of the South and the different regional attitudes toward state assistance) are well explained in Cubberley, *supra*, at 408-423. In the country as a whole, but particularly in the South, the War virtually stopped all progress in public education. *Id.* at 427-428. The low status of Negro education in all sections of the country, both before and immediately after the War, is described in Beale, *A History of Freedom of Teaching in American Schools* (1941), 112-132, 175-195. Compulsory school attendance laws were not generally adopted until after the ratification of the Fourteenth Amendment, and it was not until 1918 that such laws were in force in all the states. Cubberley, *supra*, at 563-565.

5. *Slaughter-House Cases*, 16 Wall. 36, 67-72 (1873); *Strauder v. West Virginia*, 100 U.S. 303, 307-308 (1880):

It ordains that no State shall deprive any person of life, liberty, or property, without due process of law, or deny to any person within its jurisdiction the equal protection of the laws. What is this but declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color? The words of the amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity, or right, most valuable to the colored race -- the right to exemption from unfriendly legislation against them distinctively as colored -- exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race.

See also Virginia v. Rives, 100 U.S. 313, 318 (1880); *Ex parte Virginia*, 100 U.S. 339, 344-345 (1880).

6. The doctrine apparently originated in *Roberts v. City of Boston*, 59 Mass.198, 206 (1850), upholding school segregation against attack as being violative of a state constitutional guarantee of equality. Segregation in Boston public schools was eliminated in 1855. Mass.Acts 1855, c. 256. But elsewhere in the North, segregation in public education has persisted in some communities until recent years. It is apparent that such segregation has long been a nationwide problem, not merely one of sectional concern.

7. *See also Berea College v. Kentucky*, 211 U.S. 45 (1908).

8. In the *Cummin* case, Negro taxpayers sought an injunction requiring the defendant school board to discontinue the operation of a high school for white children until the board resumed operation of a high school for Negro children. Similarly, in the *Gong Lum* case, the plaintiff, a child of Chinese descent, contended only that state authorities had misapplied the doctrine by classifying him with Negro children and requiring him to attend a Negro school.

9. In the Kansas case, the court below found substantial equality as to all such factors. 98 F.Supp. 797, 798. In the South Carolina case, the court below found that the defendants were proceeding "promptly and in good faith to comply with the court's decree." 103 F.Supp. 920, 921. In the Virginia case, the court below noted that the equalization program was already "afoot and

progressing" (103 F.Supp. 337, 341); since then, we have been advised, in the Virginia Attorney General's brief on reargument, that the program has now been completed. In the Delaware case, the court below similarly noted that the state's equalization program was well under way. 91 A.2d 137, 149.

10. A similar finding was made in the Delaware case:

I conclude from the testimony that, in our Delaware society, State-imposed segregation in education itself results in the Negro children, as a class, receiving educational opportunities which are substantially inferior to those available to white children otherwise similarly situated.

87 A.2d 862, 865.

11. K.B. Clark, Effect of Prejudice and Discrimination on Personality Development (Mid-century White House Conference on Children and Youth, 1950); Witmer and Kotinsky, Personality in the Making (1952), c. VI; Deutscher and Chein, The Psychological Effects of Enforced Segregation A Survey of Social Science Opinion, 26 J.Psychol. 259 (1948); Chein, What are the Psychological Effects of Segregation Under Conditions of Equal Facilities?, 3 Int.J.Opinion and Attitude Res. 229 (1949); Brameld, Educational Costs, in Discrimination and National Welfare (MacIver, ed., 1949), 44-48; Frazier, The Negro in the United States (1949), 674-681. *And see generally* Myrdal, An American Dilemma (1944).

12. *See Bolling v. Sharpe, post*, p. 497, concerning the Due Process Clause of the Fifth Amendment.

13.

4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment

- (a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or
- (b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

5. On the assumption on which questions 4(a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4(b),

- (a) should this Court formulate detailed decrees in these cases;
- (b) if so, what specific issues should the decrees reach;
- (c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;
- (d) should this Court remand to the courts of first instance with directions to frame decrees in these cases and, if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?

14. *See* Rule 42, Revised Rules of this Court (effective July 1, 1954).

***Bolling v. Sharpe*, 347 U.S. 497 (1954)**

No. 8

SUPREME COURT OF THE UNITED STATES

347 U.S. 497

December 10-11, 1952

Reargued December 8-9, 1953

May 17, 1954

CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Syllabus

Racial segregation in the public schools of the District of Columbia is a denial to Negro children of the due process of law guaranteed by the Fifth Amendment. Pp. 498-500.

(a) Though the Fifth Amendment does not contain an equal protection clause, as does the Fourteenth Amendment, which applies only to the States, the concepts of equal protection and due process are not mutually exclusive. P. 499.

(b) Discrimination may be so unjustifiable as to be violative of due process. P. 499.

(c) Segregation in public education is not reasonably related to any proper governmental objective, and thus it imposes on Negro children of the District of Columbia a burden that constitutes an arbitrary deprivation of their liberty in violation of the Due Process Clause. Pp. 499-500.

(d) In view of this Court's decision in *Brown v. Board of Education*, ante p. 483, that the Constitution prohibits the States from maintaining racially segregated public schools, it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government. P. 500.

(e) The case is restored to the docket for further argument on specified questions relating to the form of the decree. P. 500. [p*498]

Opinions

WARREN, C.J., Opinion of the Court

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

This case challenges the validity of segregation in the public schools of the District of Columbia. The petitioners, minors of the Negro race, allege that such segregation deprives them of due process of law under the Fifth Amendment. They were refused admission to a public school attended by white children solely because of their race. They sought the aid of the District Court for the District of Columbia in obtaining admission. That court dismissed their complaint. The Court granted a writ of certiorari before judgment in the Court of Appeals because of the importance of the constitutional question presented. 344 U.S. 873.

We have this day held that the Equal Protection Clause of the Fourteenth Amendment prohibits the states from maintaining racially segregated public schools. [n1] The legal problem in the District of Columbia is somewhat [p*499] different, however. The Fifth Amendment, which is applicable in the District of Columbia, does not contain an equal protection clause, as does the Fourteenth Amendment, which applies only to the states. But the concepts of equal protection

and due process, both stemming from our American ideal of fairness, are not mutually exclusive. The "equal protection of the laws" is a more explicit safeguard of prohibited unfairness than "due process of law," and, therefore, we do not imply that the two are always interchangeable phrases. But, as this Court has recognized, discrimination may be so unjustifiable as to be violative of due process. [n2]

Classifications based solely upon race must be scrutinized with particular care, since they are contrary to our traditions, and hence constitutionally suspect. [n3] As long ago as 1896, this Court declared the principle

that the Constitution of the United States, in its present form, forbids, so far as civil and political rights are concerned, discrimination by the General Government, or by the States, against any citizen because of his race. [n4]

And in *Buchanan v. Warley*, 245 U.S. 60, the Court held that a statute which limited the right of a property owner to convey his property to a person of another race was, as an unreasonable discrimination, a denial of due process of law.

Although the Court has not assumed to define "liberty" with any great precision, that term is not confined to mere freedom from bodily restraint. Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a [p*500] proper governmental objective. Segregation in public education is not reasonably related to any proper governmental objective, and thus it imposes on Negro children of the District of Columbia a burden that constitutes an arbitrary deprivation of their liberty in violation of the Due Process Clause.

In view of our decision that the Constitution prohibits the states from maintaining racially segregated public schools, it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government. [n5] We hold that racial segregation in the public schools of the District of Columbia is a denial of the due process of law guaranteed by the Fifth Amendment to the Constitution.

For the reasons set out in *Brown v. Board of Education*, this case will be restored to the docket for reargument on Questions 4 and 5 previously propounded by the Court. 345 U.S. 972.

It is so ordered.

1. *Brown v. Board of Education*, *ante*, p. 483.

2. *Detroit Bank v. United States*, 317 U.S. 329; *Currin v. Wallace*, 306 U.S. 1, 13-14; *Steward Machine Co. v. Davis*, 301 U.S. 548, 585.

3. *Korematsu v. United States*, 323 U.S. 214, 216; *Hirabayashi v. United States*, 320 U.S. 81, 100.

4. *Gibson v. Mississippi*, 162 U.S. 565, 591. Cf. *Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192, 198-199.

5. Cf. *Hurd v. Hodge*, 334 U.S. 24.

Brown v. Board of Education of Topeka, 349 U.S. 294 (1955)

SUPREME COURT OF THE UNITED STATES

Reargued on the question of relief April 11-14, 1955

Opinion and judgments announced May 31, 1955

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS.

Syllabus

1. Racial discrimination in public education is unconstitutional, 347 U.S. 483, 497, and all provisions of federal, state or local law requiring or permitting such discrimination must yield to this principle. P. 298.

2. The judgments below (except that in the Delaware case) are reversed and the cases are remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit the parties to these cases to public schools on a racially nondiscriminatory basis with all deliberate speed. P. 301.

(a) School authorities have the primary responsibility for elucidating, assessing and solving the varied local school problems which may require solution in fully implementing the governing constitutional principles. P. 299.

(b) Courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. P. 299.

(c) Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. P. 299.

(d) In fashioning and effectuating the decrees, the courts will be guided by equitable principles -- characterized by a practical flexibility in shaping remedies and a facility for adjusting and reconciling public and private needs. P. 300. [p*295]

(e) At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. P. 300.

(f) Courts of equity may properly take into account the public interest in the elimination in a systematic and effective manner of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles enunciated in 347 U.S. 483, 497; but the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them. P. 300.

(g) While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with the ruling of this Court. P. 300.

(h) Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. P. 300.

(i) The burden rests on the defendants to establish that additional time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. P. 300.

(j) The courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. Pp. 300-301.

(k) The courts will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system. P. 301.

(l) During the period of transition, the courts will retain jurisdiction of these cases. P. 301.

3. The judgment in the Delaware case, ordering the immediate admission of the plaintiffs to schools previously attended only by white children, is affirmed on the basis of the principles stated by this Court in its opinion, 347 U.S. 483, but the case is remanded to the Supreme Court of Delaware for such further proceedings as that Court may deem necessary in the light of this opinion. P. 301.

98 F.Supp. 797, 103 F.Supp. 920, 103 F.Supp. 337 and judgment in No. 4, reversed and remanded.

91 A.2d 137, affirmed and remanded. [p*298]

Opinions

WARREN, C.J., Opinion of the Court

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

These cases were decided on May 17, 1954. The opinions of that date, [n1] declaring the fundamental principle that racial discrimination in public education is unconstitutional, are incorporated herein by reference. All provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle. There remains for consideration the manner in which relief is to be accorded.

Because these cases arose under different local conditions and their disposition will involve a variety of local problems, we requested further argument on the question of relief. [n2] In view of the nationwide importance of the decision, we invited the Attorney General of the United [p*299] States and the Attorneys General of all states requiring or permitting racial discrimination in public education to present their views on that question. The parties, the United States, and the States of Florida, North Carolina, Arkansas, Oklahoma, Maryland, and Texas filed briefs and participated in the oral argument.

These presentations were informative and helpful to the Court in its consideration of the complexities arising from the transition to a system of public education freed of racial discrimination. The presentations also demonstrated that substantial steps to eliminate racial discrimination in public schools have already been taken, not only in some of the communities in which these cases arose, but in some of the states appearing as *amici curiae*, and in other states as well. Substantial progress has been made in the District of Columbia and in the communities in Kansas and Delaware involved in this litigation. The defendants in the cases coming to us from South Carolina and Virginia are awaiting the decision of this Court concerning relief.

Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts. [n3] [p*300]

In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies [n4] and by a facility for adjusting and reconciling public and private needs. [n5] These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.

While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17,

1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools [p*301] on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system. During this period of transition, the courts will retain jurisdiction of these cases.

The judgments below, except that, in the Delaware case, are accordingly reversed, and the cases are remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases. The judgment in the Delaware case -- ordering the immediate admission of the plaintiffs to schools previously attended only by white children -- is affirmed on the basis of the principles stated in our May 17, 1954, opinion, but the case is remanded to the Supreme Court of Delaware for such further proceedings as that Court may deem necessary in light of this opinion.

It is so ordered.

* Together with No. 2, *Briggs et al. v. Elliott et al.*, on appeal from the United States District Court for the Eastern District of South Carolina; No. 3, *Davis et al. v. County School Board of Prince Edward County, Virginia*, et al., on appeal from the United States District Court for the Eastern District of Virginia; No. 4, *Bolling et al. v. Sharpe et al.*, on certiorari to the United States Court of Appeals for the District of Columbia Circuit, and No. 5, *Gebhart et al. v. Belton et al.*, on certiorari to the Supreme Court of Delaware.

1. 347 U.S. 483; 347 U.S. 497.

2. Further argument was requested on the following questions, 347 U.S. 483, 495-496, n. 13, previously propounded by the Court:

4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment
(a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or
(b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

5. On the assumption on which questions 4(a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4 (b),
(a) should this Court formulate detailed decrees in these cases;
(b) if so, what specific issues should the decrees reach;
(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;
(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and, if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?

3. The cases coming to us from Kansas, South Carolina, and Virginia were originally heard by three-judge District Courts convened under 28 U.S.C. §§ 2281 and 2284. These cases will accordingly be remanded to those three-judge courts. See *Briggs v. Elliott*, 342 U.S. 350.

4. See *Alexander v. Hillman*, 296 U.S. 222, 239.

5. See *Hecht Co. v. Bowles*, 321 U.S. 321, 329-330.

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The *Brown at 50* high school student project is funded in part by the Polk Bros. Foundation. Sponsors of "Brown v. Board 50 Years Later: Conversations on Integration, Race, and the Courts" are the Boeing Company, Woods Fund of Chicago, Richard H. Driehaus Foundation, Comcast, *Chicago Sun-Times*, Chicago Public Radio, WYCC Wise TV, and WJYS62.