

Brown v. Board of Education

The Supreme Court Decision that Changed a Nation

By David Pitts

In May 1954 — in a landmark decision, *Brown v. Board of Education* — the U.S. Supreme Court ruled that segregated public schools were unconstitutional. The case name, Brown, refers to Oliver Brown, an African American, who sought legal redress when his seven-year-old daughter, Linda, was refused admission to an all-white elementary school in the small, mid-western city of Topeka, Kansas, where they lived. Contributing editor David Pitts traces the origins of one of the most important decisions in the history of U.S. constitutional law that changed not only Topeka, but the entire nation.

IN THE SPRING of 1954, Oliver Brown was the most famous father in America. But he was not the only plaintiff in the *Brown v. Board of Education* case, which originally was filed in 1951. Twelve other plaintiffs in Topeka joined with Brown to represent their children — 20 in all — who were required by law to attend segregated elementary schools. The initial lawsuit was championed by the Topeka chapter of the National Association for the Advancement of Colored People (NAACP), the nation's oldest civil rights organization.

The Brown case, however, was not the first challenge to legally mandated, segregated education in the United States. As early as 1849, a lawsuit had been filed in Boston, Massachusetts. In Kansas alone, between 1881 and 1949, there were 11 suits filed against segregated school systems. By the time the Topeka suit reached the Supreme Court, racial segregation in public schools was the norm across much of the nation and was permitted or legal-



Courtesy Marita Davis

Left, Walter White, executive vice president of the NAACP. Right, McKinley Burnett, president of the Topeka Chapter, NAACP, in the early 1950s.

ly required in 24 states. The Brown case stands out because it was the first successful one of its kind, because of the scope of the Supreme Court ruling and because of its radical effect on American society in the mid-20th century.

An Unsung Hero

“The unsung hero of the lawsuit in Topeka is McKinley Burnett,” who was then president of the local chapter of the NAACP, says C.E. (Sonny) Scroggins, head of the Kansas Committee to Commemorate Brown v. Board of Education. “It was Burnett who recruited Oliver Brown and the other parents and pushed the legal challenge with the help of the local attorneys,” Scroggins adds, a viewpoint con-

firmed by other sources in Topeka. In effect, Burnett — with the help of NAACP secretary Lucinda Todd and attorneys Charles Scott, John Scott, Elisha Scott and Charles Bledsoe — devised a strategy to win the case.

Burnett died in 1970. His son, Marcus, who was 13 at the time of the initial suit and who still lives in Topeka, says challenging segregation “was a life-long struggle for my father. He was an ordinary working man who believed segregation could be crushed through the courts. He was always convinced we would win.” Marcus Burnett’s sister, Marita Davis, who now lives in Kansas City, Kansas, concurs. “My father was always fighting for his rights,” she says. “I remember that, even as a very young girl. He was always writing letters and holding meetings. Fighting school segregation became very important to him.”

The Plaintiffs

According to some sources in Topeka, Oliver Brown was the lead plaintiff in the case principally because he was the only man among them. But Charles Scott, Jr., son of the lead local attorney, says Oliver Brown “was made the lead plaintiff because his name came first alphabetically. This case was driven by my father and the other local attorneys in cooperation with Mr. Burnett and the NAACP”

Linda Brown Thompson, now 55 and still living in Topeka, is reluctant to discuss her experience and her father’s role in challenging the system, partly because she feels too much emphasis has been placed by the media on her, to the exclusion of the other 12 plaintiffs in Topeka. Her sister, Cheryl Brown Henderson, executive director of the Brown Foundation for



David Pitts

Zelma Henderson, one of the plaintiffs in the Brown case.

Educational Equity, Excellence and Research, agrees with Charles Scott, Jr.'s assessment. "We are very proud of what our father did," Henderson says. "But it is important not to oversimplify the Brown case — not to forget the attorneys, the other plaintiffs in Topeka and the plaintiffs in the other states who eventually were included in the Brown case."

Zelma Henderson and Vivian Scales, two of the Topeka plaintiffs who also still live there, were young mothers in the early 1950s. Both women were eager to be part of the suit. And they both pay tribute to McKinley Burnett and the local lawyers, saying it was their leadership that made the fight for integration possible.

"I had to drive my two children right

across town, past two all-white schools, to an all-black school," says Henderson. "My children always were proud of our role in making history," she continues. "Donald Andrew is still here in Topeka. He's 55 now. But I lost my daughter, Vicki Ann, to cancer in 1984."

Scales says she also had to take her child, Ruth Ann, "past an all-white school which was right across from where we lived. My daughter, who still lives here and is 57 now, feels very good about what happened. I feel we accomplished something very important."

The First Ruling

Burnett and the plaintiffs got their day in court in Topeka on February 28, 1951, before the U.S. District Court for the District of Kansas. Raymond Carter, now a federal judge in New York, was then an attorney with the NAACP Legal Defense Fund. With the assistance of the local attorneys, he argued the case and requested an injunction that would forbid the segregation of Topeka's public elementary schools.

The judges were sympathetic to the plaintiffs' case, saying in their decision, "Segregation of white and colored children in public schools has a detrimental effect upon the colored children." But ultimately, the judges ruled against the plaintiffs because the Supreme Court had decreed in an 1896 decision — *Plessy v. Ferguson* — that "separate but equal" school systems for blacks and whites were, in fact, constitutional, a decision that had not been overturned. The Kansas court thus felt compelled to rule in favor of the Topeka

Board of Education and against the plaintiffs because of the Plessy precedent.

“In one sense, my father, the other local attorneys and Mr. Burnett were not disappointed,” says Charles Scott, Jr. “They knew that the only way for segregation to be overturned throughout the nation and not just in Topeka was for the case to be lost and then appealed to the Supreme Court.”

The Supreme Court Decision

On October 1, 1951, in preparation for it to go to the nation’s highest court, the Brown case was combined with other lawsuits that challenged school segregation in South Carolina, Virginia, Delaware and the District of Columbia. The combined cases officially became *Oliver L. Brown et al. v. The Board of Education of Topeka, et al.* Thurgood Marshall, who later became the first African American to sit on the Supreme Court, was the national NAACP legal counsel who successfully argued the case for the plaintiffs.

The unanimous decision declaring segregated schools unconstitutional was read on May 17, 1954, by Supreme Court Chief Justice Earl Warren. “We conclude,” he said, “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 14th Amendment.”

A Great Legal Triumph

The outcome of *Brown v. Board of Education* was hailed as a great legal triumph, a landmark case evidencing that, in America, the courts exist not just to prosecute crimes but to affirm rights. “The ruling ranks high among all Supreme Court decisions,” says Robert Barker, a law professor and expert on constitutional law at Duquesne University School of Law in Pittsburgh, Pennsylvania.

It is important, he adds, that the Supreme Court relied on the equal protection clause of the 14th Amendment to the U.S. Constitution in rendering its decision. “The Court applied the equal protection clause in the manner it was intended — to provide protection for African Americans in particular.” But there is a broader significance, Barker says. “The 1954 decision led to a great deal of other litigation in which the equal protection clause was referenced, benefiting women and other groups who felt they were denied equal rights.”

Asked how the Court could rule one way — for segregation in *Plessy v. Ferguson* and against it in the Brown case — Barker responds that the Court “had more than 50 years of evidence that racial segregation as practiced, was in fact, a method of oppressing one racial group, and not ‘separate but equal.’”

Mark Tushnet seconds Barker’s pronouncement in his definitive book, *Brown v. Board of Education: The Battle for Integration*. “Even today,” he writes, “Brown stands as the Court’s deepest statement on the central issue in American history — how Americans of all races should treat one another. In that sense, it is a triumph of American constitutionalism.”

Paul Wilson, the Kansas state assistant attorney general, who argued the case in court for segregation, agrees. The Supreme Court ruling, he says, “enlarged the definition of basic justice in intercommunity relations.” Wilson, who details the story of the lawsuit in *A Time To Lose: Representing Kansas in Brown v. Board of Education*, writes that the decision also “gave new dimension to the constitutional concept of equal protection and due process of law.”

Aftermath of the Ruling

The Topeka Board of Education did not wait for the Court to rule before amalgamating its black and white elementary schools. Before the Brown case, Kansas law had provided for the segregation of elementary schools in communities with populations larger than 15,000. Its junior and senior high schools never had been segregated.

But over much of the nation, the task would prove more difficult. That’s one reason why the Supreme Court, in a lesser known follow-up decision in 1955, issued an implementation ruling ordering a “prompt and reasonable start toward full compliance” and the achievement of school integration “with all deliberate speed.”

Even so, resistance was widespread and the willingness of executive branch officials to use force to implement the Court decision was required in some places. The most famous instance was in 1957 when President Dwight Eisenhower sent federal troops to Little Rock, Arkansas, after the governor of the state, Orville Faubus, failed to obey a federal court order to integrate the schools there — the first time federal troops had entered the South to protect African Americans since the early years after the Civil War.

Elsewhere in the South, the picture was mixed. In most places, school desegregation proceeded smoothly, if not always quickly. By the 1956-1957 school year, “desegregation affecting 300,000 black children was underway in 723 school districts,” according to David Goldfield, who details the story of school desegregation in *Black, White and Southern*.

On the other hand, Goldfield says, Southern lawmakers passed 450 laws “designed to circumvent the Supreme Court ruling,” and as late as 1960 “less than one percent of the South’s students attended integrated schools.” Progress was much faster in Topeka, and in the Midwest generally, with the South finally catching up in the late 1960s and early 1970s. Although the battle against legally mandated segregation was won long ago, the federal courts today are still dealing with school district segregation issues that result from voluntary residential patterns.

The Courts Change Entrenched Views

The struggle against segregation shows how difficult it is to change entrenched views and customs in any society, particularly those deeply rooted in tradition and history, says John Paul Jones, a law professor and constitutional expert at the University of Richmond in Virginia. “It is significant that the change, when it did come, mostly was a result of court action to enforce inalienable rights enshrined in the U.S. Constitution, rather than as a result of measures passed by popularly elected legislatures and executives.” Without an independent judiciary and the Constitution’s guarantees for minority rights, he adds, the desegregation fight would have been much more difficult.



Marcus Burnett, left, son of Topeka NAACP leader McKinley Burnett, and political activist Sonny Scroggins, at the entrance to Monroe Elementary School.

Gary Orfield and Susan Eaton agree. The courts, including the Supreme Court, played a key role compared with the other branches of government, they write in *Dismantling Segregation*. They add: “With the exception of the years 1964 to 1968, courts — not the legislative or executive branches — have been the dominant policy-setters in desegregation.”

Although the Supreme Court struck down segregation only in public schools, its impact was much broader. It helped trigger an all-out offensive against segregation in all spheres of American life, including public services and employment. Just a year and a half after the ruling, in December 1955, Dr. Martin Luther King, Jr. led a successful bus boycott in

Montgomery, Alabama, to protest segregation in public transport there.

In the years that followed, court orders against segregation were issued against a backdrop of mass action undertaken by a myriad of nongovernmental organizations that together formed the civil rights movement. With the passage of the Civil Rights Act in 1964 and the Voting Rights Act in 1965, segregation was all but vanquished.

“We Did the Right Thing”

Civil rights historians, in particular, stress the importance of the Brown decision in forging progress in race relations in general. “It pro-

vided a yardstick of color-blind justice against which Americans could measure their progress toward the ideal of equal opportunity,” writes Robert Wiesbrot in *Freedom Bound: A History of America’s Civil Rights Movement*.

It is still a source of immense pride to the surviving plaintiffs almost a half century later. “I can remember it as though it were yesterday,” says Zelma Henderson. “I first learned about it from the newspaper, the *Topeka State Journal*. I can see the massive headline now, ‘School Segregation Banned.’ I was just elated. I felt then and I feel now that we did the right thing.” Vivian Scales adds, “It’s all so long ago now, but it’s something you never forget, that always stays with you.”

Marcus Burnett doesn’t remember his father’s specific reaction on the day the Supreme Court struck down segregation. “But he always believed that justice would come, so I’m sure he was very happy,” Burnett says. “My father believed the courts were the right way to challenge segregation. He never lost faith that the courts would ultimately uphold the Constitution and the Bill of Rights and end segregation.”

On October 26, 1992, President George Bush signed Public Law 12-525 establishing the Brown v. Board of Education National Historic Site to commemorate the 1954 Supreme Court decision. The site is located in Topeka at the Monroe Elementary School, the same school attended by Linda Brown almost a half century ago before it was desegregated. The memorial — the work of the Brown Foundation and the Kansas Committee to Commemorate Brown v. Board of Education, among others — will house audio-visual mate-

rials and a research library and is due to open to the public in 2002. “We hope people will visit to gain a greater understanding of the scope and complexity of the Brown decision,” says Qefiri Colbert, a spokesman for the National Park Service, which will maintain the memorial.

Oliver Brown, Zelma Henderson, Vivian Scales and the other parents easily could have resigned themselves to disappointment, but they translated their anger into action, says Sonny Scroggins of the Kansas Committee to Commemorate Brown. “The parents showed enormous courage back then,” he adds. The end result was not only an end to segregation, but a fundamental change in the way Americans think about race and equality under the law.

“I’m a very old woman now, but if I had to do it again, I would,” says Vivian Scales. “When you get right down to it, the message of the Brown decision and the memorial is really that all human beings of all races are created equal,” adds Zelma Henderson. “We went to the Supreme Court of the United States to affirm that fact, and we won.”

HOW THE SUPREME COURT SELECTS AND DECIDES CASES

In the last decades of the 19th century, the Supreme Court was in danger of becoming overwhelmed with cases. So in 1891, Congress responded to the Court's plight by creating an intermediate level of federal courts known as circuit courts of appeal, or appellate courts, which heard appeals from lower district courts. Today, the district courts are divided geographically into 11 circuits, each headed by a court of appeals. An additional court of appeals in the District of Columbia hears cases generated by the federal government.

A citizen can press a claim in either set of courts — district or appellate — but if that person feels that the lower court has ruled unfairly or incorrectly, he or she has the option of petitioning the Supreme Court to hear the case. If the Court decides to take the case, its opinion is final. There is no other legal action that the plaintiff may take. If the Supreme Court refuses to hear a case, then the decision of the previous lower court stands. The Court's refusal to review a case, however, in no way implies that the justices agree or disagree with the lower court's ruling.

The Supreme Court only can hear certain types of cases stipulated in the U.S. Constitution. The Court's jurisdiction extends only to controversies between two states; controversies between the United States and an individual state; actions by a state against a citizen of another state or an alien; and cases brought by or against a foreign ambassador or consul.

Out of the thousands upon thousands of requests each year, the Court selects only about 300 cases, and of those, about half are argued before the Court and receive a final opinion.

The justices tend to focus on several types of cases. One of these is called *certiorari*, when several lower courts have ruled and disagreed on opinions, and thus a "higher authority's" opinion is sought. The Court also looks at cases where a lower court has given an opinion on a matter sent to the Court earlier, but that at the time was rejected by it for review, or cases where the Court's views have changed and the justices wish to issue a new opinion.

The Court also has special jurisdiction to answer so-called "certified questions," involving cases in which a lower court of appeals was unable to make a judgment. Either the lower court asks the Supreme Court to provide instructions that the lower court follows, or the lower court asks the Court to take over the case and make the final decision.

In order for a case to receive Supreme Court review, four of the nine justices must agree that the case merits the Court's attention. If the Court agrees to review a case, it may decide the case on the basis of written briefs submitted by each side, or it may schedule a formal oral argument with the Court in session. Formal argument provides a more detailed presentation of the litigation, although no new factual evidence may be introduced. Sometimes the Court invites an *amicus curiae*, or friend of the court, who shows a plausible interest in the dispute and presents arguments other than those of the litigants.

Once the Court decides to hear a case, at least six of the nine Supreme Court justices must be present. When all the arguments

have been heard, the nine justices meet privately. The chief justice begins by summarizing a particular case and giving his views on it. After he has spoken, the other eight justices speak in order of seniority, giving their opinions. The justices may also try to persuade dissenting colleagues or, if undecided, to gather more information. When the chief justice believes that no more discussion is needed, he calls for a vote. As they did when speaking, the justices vote in order of seniority, with the chief justice casting his vote first.

Once a vote has been taken, an opinion is assigned to be written. If the chief justice is in the majority, he can either appoint another majority member to write the opinion, or he can write it himself. If the chief justice is in the minority, the senior associate justice in the majority makes the assignment. He or she can write the opinion or pass it on to another justice in the majority.

Once an opinion is written, the justice who wrote it circulates it to the rest of the Court members, who have the option of adding their own additions or suggestions, which often can be polar opposites. In writing opinions, justices have been known to change their mind, and thus shift from the minority to the majority and vice versa.

Although only one justice writes the Court's final opinion, any other justice is free to write his or her own thoughts on a case. In the end, the final opinion must have the approval of at least five justices before it is released as the opinion of the Court.

— Deborah M.S. Brown