

Justice Redressed

Keeping a Message Alive

By **Gaston Caperton**

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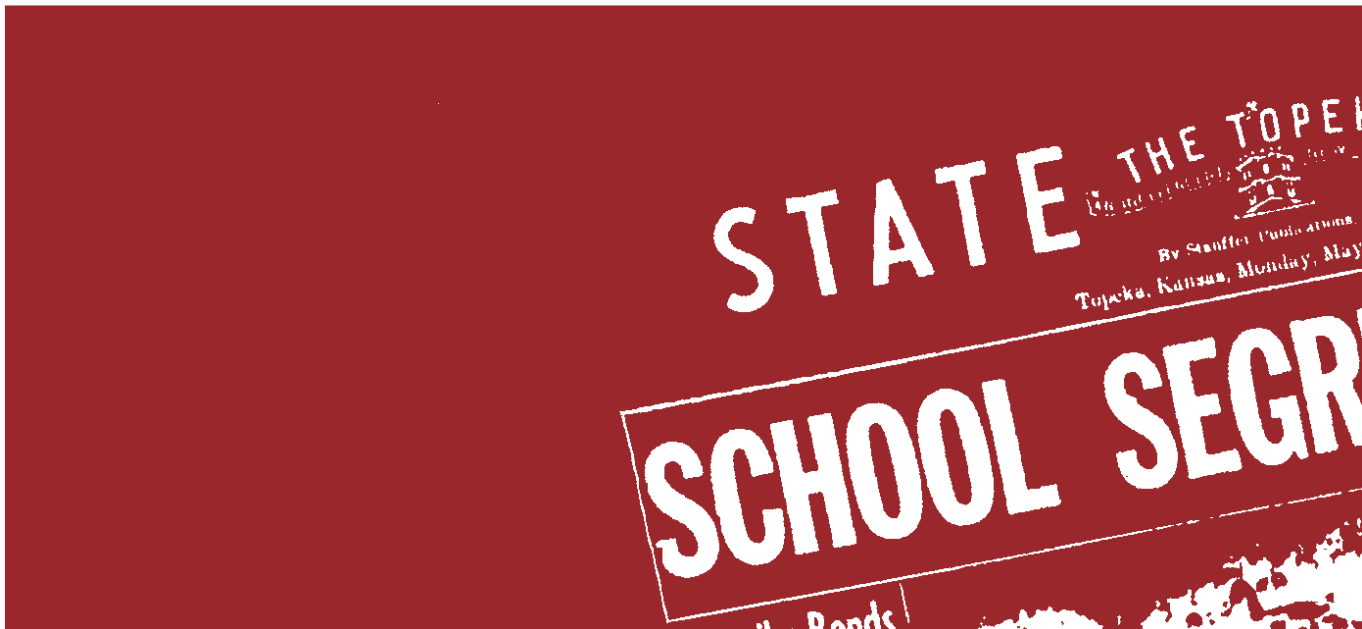
Celebration: Nettie Hunt sits on the steps of the U.S. Supreme Court with a newspaper announcing the justices' decision, explaining to her daughter Nikie the importance of the news.

PHOTO CREDIT: LIBRARY OF CONGRESS

IN MAY 1954, THE SUPREME COURT PROFOUNDLY CHANGED THE WAY THIS COUNTRY APPROACHED CIVIL RIGHTS. WHEN THE JUSTICES RULED UNANIMOUSLY IN *BROWN V. BOARD OF EDUCATION* THAT SEGREGATED SCHOOLS HAD NO PLACE IN EDUCATION, THE UNITED STATES FINALLY EMBARKED ON A COURSE TO EXTEND EQUAL OPPORTUNITY TO AFRICAN AMERICANS—SOMETHING THAT HAD BEEN FORMALLY DENIED THEM SINCE THE NINETEENTH CENTURY.

The coming fiftieth anniversary of *Brown v. Board of Education* should be a time both of celebration and concern. In the past five decades, African Americans endured threats, violence, and other obstacles—subtle and obvious—to win their rightful place in American society. The story of the drawn-out struggle to end segregation leaves us realizing more than ever the courage and endurance of the men and women who

plaintiffs “generally did not suffer dire consequences” from their attempted effort to enroll their children at the all-white school. But this was not true for other plaintiffs from Delaware, the District of Columbia, South Carolina, and Virginia, whose cases had been combined with the Kansas suit. As you will read, the organizer of the South Carolina case had to flee his house in the middle of the night, while another plaintiff was fired from her maid’s



risked everything to make the United States a fairer and better country. The fight for integrated schools, however, continues. Although Jim Crow is dead, minorities in this country are too often condemned to attend badly equipped schools with poor standards, segregated from whites by poverty.

The College Board is proud to commemorate the fiftieth anniversary of *Brown v. Board of Education* with Cheryl Brown Henderson and the Brown Foundation. Henderson is one of the daughters of the late Oliver Brown, who among 13 plaintiffs was the namesake of the case. In her essay in the *Review*, she explains that the group comprised black parents in Topeka, Kansas, who objected to having to send their children to an all-black elementary school 40 blocks away from their homes. The nearest public school, for whites only, was only several blocks away. What began as a simple call for local justice eventually changed the course of history. In the wake of the judicial victory, Henderson writes, the Kansan

job in a hotel, and her husband was forced off the land he had farmed for decades. The Brown Foundation works to ensure that citizens today can appreciate the extraordinary, generally unheralded courage of the men and women who stood up to injustice.

Other articles in the *Review* help us appreciate the various consequences of the 1954 ruling. Juan Williams, senior correspondent for National Public Radio and the author of a magisterial biography of Thurgood Marshall, reviews the details of the case and explains how Marshall’s argument won over the court. His victory brought the legal end to the principle of “separate but equal,” which the Supreme Court approved in 1896. He goes on to warn that today Marshall’s appeal for integrated schools “as the foundation of social justice for minority children has fallen out of step.” In school districts throughout the country, segregated schools have reappeared. School districts with highly segregated populations of minority students generally have low

scores and few well-qualified teachers. “Simple justice today is getting a child into a good school,” Juan Williams concludes.

Susan Eaton and Gary Orfield, who ran the Harvard Project on School Desegregation, elaborate on Williams’s argument. Examining student enrollment trends in recent decades, they note that African Americans and Latinos

where many high school students had to take classes. The strike led to intervention by NAACP lawyers on behalf of the students, and the ensuing lawsuit against the county was eventually wrapped into *Brown v. Board of Education*. Stokes, now a retired principal in the Baltimore school system, describes the mixture of fear and determination that



CREDIT: BROWN FOUNDATION

today attend segregated, badly funded K–12 schools. They point to the evisceration of legal avenues to end segregation and appeal to college and university officials to keep alive the ideals that we associate with *Brown*—arguing that unless policies in higher education reverse racial inequalities, *Brown* will remain just a dream.

Two essays discuss actions that helped establish the foundation of the Supreme Court case. Vicki Ruiz describes the efforts of Latino families in Orange County, California, to end school segregation in the mid-1940s. The campaign foreshadowed *Brown* by the plaintiffs’ lawyers’ use of social science research to rebut the argument for segregation, the application of the Fourteenth Amendment, and the involvement of Thurgood Marshall, who contributed to an amicus curiae brief filed by the NAACP. Peter McCormick interviews John Stokes, who in 1951 helped organize a student strike in a segregated rural Virginia high school. At issue was the refusal by local authorities to replace tar-paper shacks

existed as a band of teenagers sought to correct a fundamental injustice that no one dared question.

Accompanying the articles in this issue are photographs that remind us forcefully how unjust our society was in the last century. “Separate but equal,” the principle that existed legally until 1954, meant conditions that many people today cannot imagine having existed. The years after 1954 brought tremendous social upheaval as the civil rights movement gathered force, and the violent reaction of many whites to changes produced troubling images of intolerance. Like the articles, the pictures humble us by making us realize how great were the obstacles the *Brown* plaintiffs confronted. After you look at this issue, I hope you will share some of the inspiration I felt, as well as impatience to see continued injustice redressed in our educational system.

I look forward to hearing your comments.

Winston Caperton

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REDEDICATION NOT CELEBRATION

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As a senior in a segregated Virginia high school, John Stokes helped organize a student strike for better classroom conditions. The retired school principal describes how the events in Prince Edward County in 1951 went on to become part of the *Brown v. Board* case.

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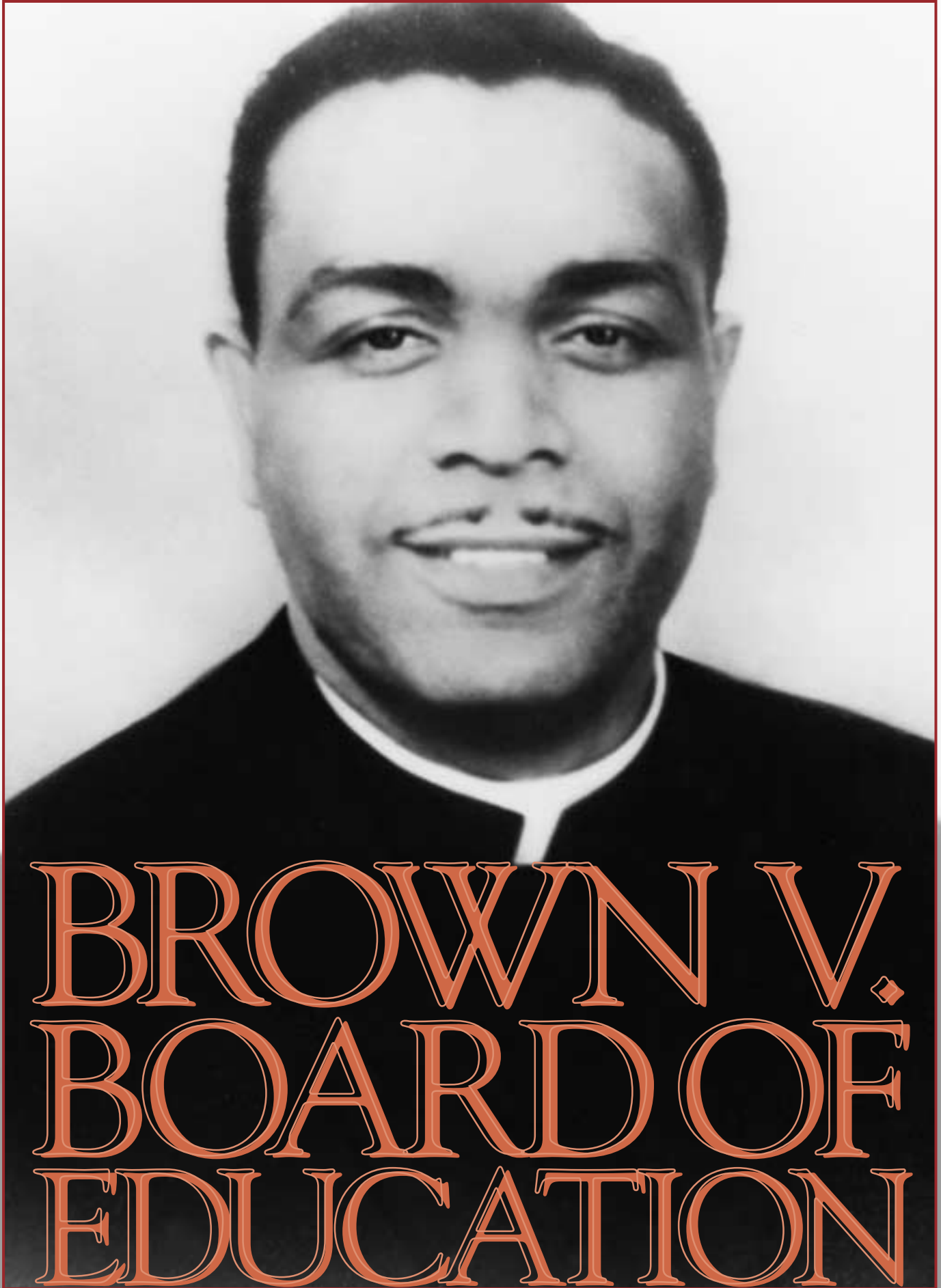
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BOOK REVIEW*Reporting Civil Rights:
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Oliver Brown, lead plaintiff in the eponymous case, welder, and pastor of St. Mark AME Church in Topeka, Kansas.

Brown v. Board of Education at Fifty

A Personal Perspective

By **Cheryl Brown Henderson**

ON MAY 17, 1954, AROUND MIDDAY, MY MOTHER WAS LISTENING TO THE RADIO WHILE SHE DID THE IRONING AT OUR HOME IN TOPEKA, KANSAS. AS SHE WORKED, SHE HEARD THE NEWS REPORT COME ON THE AIR: THE U.S. SUPREME COURT HAD RENDERED A UNANIMOUS DECISION IN THE CASE OF *BROWN V. BOARD OF EDUCATION*, EFFECTIVELY OUTLAWING RACIAL SEGREGATION IN PUBLIC SCHOOLS ACROSS THE NATION.

The words of Chief Justice Earl Warren, words that reverberate to this day, were read aloud for the first time: “We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.”

It was one of the most important Supreme Court decisions of the twentieth century, one that would change the course of American history. The case bore my father’s name, and one day it would have a profound effect on me, my family, and the entire country. But on that day in Topeka, strange as it may seem, it was not big news. My mother simply returned to her ironing. And my father, Oliver Brown, the lead plaintiff in the case and a welder for the Santa Fe Railroad and pastor of St. Mark AME Church, didn’t even hear the news until my mother told him when he returned home from work that evening. How could it be that such a momentous decision was not greeted with raucous celebration?

The answer lies in the difficult and complicated history that led up to the court case and some of the myths that have emerged since the court’s decision. As head of a foundation whose mission is to educate the public about the significance of the *Brown* decision, inevitably this has meant addressing some of these myths. As we approach the fiftieth anniversary of the *Brown* decision, it therefore is fitting that I take stock of this history and offer a few thoughts about the decision’s importance for our times. These observations are from someone who carries with her not only the name of this famous decision but part of its personal legacy, too.

A CRUCIAL TURNING POINT

The truth is that it took years before the full effect of the *Brown* decision was felt by the nation—and my family. From the perspective of 2003, it is astonishing to see how far-reaching it really was. First, as hard as it is to imagine today, there was a

time in this country—and in my lifetime—when racial segregation was sanctioned by law. The *Brown* decision was the beginning of the end of that shameful period. In addition to overturning laws that allowed segregated schools in Kansas and 20 other states, it also struck down the *Plessy v. Ferguson* Supreme Court decision, which had given us the infamous doctrine of “separate but equal.” But perhaps most important of all, it reaffirmed that all of the citizens of this country were entitled to the fundamental rights guaranteed by the Declaration of Independence and the U.S. Constitution.

Scholars and historians also mark the case as a crucial turning point in our country, opening up a period of social conscience, equity, and justice that had not been seen since the political underpinnings of the Civil War. *Brown* served as a catalyst for the civil rights movement and set the precedent for landmark legislation of that era and beyond, extraordinary legislative milestones such as the

Cheryl Brown Henderson is executive director of the Brown Foundation in Topeka, Kansas, and daughter of Oliver Brown, the lead plaintiff and namesake of the *Brown v. Board of Education* decision.





Oliver Brown and his family. From left: Terry, Cheryl, Leslie (their mother), and Linda.

1964 Civil Rights Act, the 1965 Voting Rights Act, and the 1972 Education Amendments Act giving us Title IX, among others. Ultimately, the decision paved the way to equal rights for Americans of every color, for women, for the disabled, and for older Americans.

Sadly, my father died in 1961 and he never lived to see any of this. Had he lived, I am sure he would have been amazed to see what the case ultimately accomplished and how history had made him an icon, albeit an accidental one. For contrary to some of the myths surrounding the decision, my father was not the promulgator of the *Brown v. Board* case. He and parents from 12 other families had been recruited by the local chapter of the NAACP to challenge the law that upheld segregation in the Topeka Elementary schools. In all probability, his name

came first on the list of plaintiffs—and therefore secured for him a lasting place in history—because he was the only man among the plaintiffs, perhaps a reflection of the gender politics of the day.

What all 13 plaintiffs shared, however, was a basic fact of life. Although they lived four or five blocks away from the nearest public elementary school, the school was for white children only. Therefore, some children had to be bused 30 or 40 blocks to a segregated black school. Although Kansas had a relatively progressive history in terms of race relations, the state was dragging its feet in integrating the elementary schools (all other schools were integrated at that time). To these 13 parents it made not only “civil rights sense” but common sense to end the practice.

A STORY OF PERSONAL SACRIFICE

Of course the case ultimately went to the U.S. Supreme Court, but what many people don’t know is that it was combined with four other school segregation cases from Delaware, the District of Columbia, South Carolina, and Virginia. It is also important to remember that although the participants in Kansas generally did not suffer dire consequences as a result of their school enrollment attempts, the same could not be said about the plaintiffs in the other cases. For many of them, their willingness to take a stand cost them dearly.

For example, Reverend J. A. Delaine, who organized *Briggs v. Elliott*, the South Carolina case, had to flee his house in the middle of the night in fear for his life. His home was later burned to the ground.



The source of protest. Monroe Elementary School, Topeka, Kansas, when it was a segregated school. To commemorate the fiftieth anniversary of the Supreme Court ruling, it will be declared the *Brown v. Board of Education* National Historic Site in 2004, under the auspices of the National Parks Service.

Annie Gibson lost her job as a maid in a motel and her husband was forced off the land he had farmed for over 50 years. In an interview for an oral history project conducted for the *Brown v. Board of Education* National Historic Site, she said that if the black schools had desks, she never would have signed the petition that demanded better educational facilities.¹ These ordinary people made extraordinary sacrifices and were the true foot soldiers in the revolution.

There are many other people who should be recognized for their valiant efforts in the cause of school desegregation and the *Brown v. Board* story in particular, although I don't have the space to do them justice here. Thurgood Marshall, the lead attorney for the NAACP in *Brown v. Board*, who would one day distinguish himself as a U.S. Supreme

Court Justice, is perhaps the most famous name associated with the case. It is also worth remembering another man, Charles Hamilton Houston, whose role in the fight for school desegregation is less well known but in many ways is just as important.

Houston was a man of remarkable conviction and accomplishment, including becoming the first African American editor of the *Harvard Law Review*. He served as dean of Howard University Law School, making it a training ground for generations of African American civil rights lawyers. As the special counsel to the NAACP from the 1930s through 1950, Houston was instrumental in crafting the legal strategy that targeted inequality in education, a strategy that resulted in several successful legal precedents that eventually led to the *Brown*

decision. Although he had to step down from his position for health reasons, Houston remained an important adviser to his successor, Thurgood Marshall.

LEARNING THE LESSONS OF HISTORY

Observing the Brown Foundation's activities over the years—whether it was the lawyers handling the cases, community activists organizing petitions, or the many families who participated as plaintiffs—I have learned that what we do to remember and recognize the many actors in the school desegregation drama is an important part of the effort to recover the true history and meaning of the events leading up to the *Brown* decision. Uncovering the truth of the past is also to discover its genuine lessons. But what are those lessons for our times?

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20 West 40th Street, New York 18, N. Y.

LONGACRE 3-6804

August 20, 1952

Charles S. Scott, Esq.
410 Kansas Avenue
Topeka, Kansas

Dear Charles:

I have just recently returned from vacation and I see your letters of July 28 and August 1.

There is nothing wrong with a mandamus action if it is permissible under state law. We sought suit for an injunction in our cases because we had gone in the federal court. However, we are not opposed to going into state courts, but if you decide to go in the state court and mandamus is the proper remedy, I see nothing wrong with it.

With regard to the argument, as Mr. Marshall advised you, we are now working on the brief in the case. They have to be filed by the 23rd of September--that is, Clarendon County as well as Topeka. As soon as we have finished them we will then think in terms of the organization of the argument. Although October 14 has been the date set for the argument, I am not sure that it will be heard at that time as our Virginia case is pending and the State of Virginia is seeking to have its case argued along with Topeka and South Carolina. However, I will keep you advised.

Sincerely yours,

Robert L. Carter
Robert L. Carter
Assistant Counsel

RIC:plh

Contributions are deductible for U. S. Income Tax Purposes

Attorneys from the NAACP Legal Defense and Educational Fund filed their challenge to segregation in Topeka, Kansas, in 1951. In this letter of 1952, Robert Carter, assistant counsel at the Fund, refers to deadlines for briefs in Clarendon County, South Carolina, and in Topeka, and to the uncertain status of the related case in Virginia.

I am a teacher by training; I believe deeply in the value of education and providing all of our children with a high-quality education. I believe that making good schools available to all our children is essential to create an educated citizenry, and an educated citizenry is a prerequisite for a healthy democracy. At the very least, this is what the school desegregation fight was all about. The parents and children who participated in these cases believed just as deeply in the value of education and the justice of their cause. They had the courage of their convictions and were willing to stand up for their rights and the rights of future generations.

Unfortunately, although the legal battle was won many years ago, the goal of equal educational opportunity for our children remains elusive. A system of de facto segregation still exists in many cities and towns across the country, and great inequities still exist in the financing of our schools and in the availability of qualified teachers to teach in those schools. So the educational agenda of the civil rights movement remains unfinished. Changing this will require nothing short of a sustained national commitment and the hard work of many people who are willing to stand up and make their voices heard.

Despite what some people may think, our system of government

works exactly the way it was explained to us in civics class so many years ago: The structure is there, but as citizens, we have to make it work. That is one of the other important lessons I learned from researching the history of the *Brown* decision and from our foundation's work with the U.S. Congress and the National Parks Service to create a national historic site in Topeka to commemorate the decision.

Over the years, the story of *Brown v. Board of Education* is for my family and me where the personal intersects with the public in strange and complicated ways. Because the case was named for my father, our family was often the first stop for people searching for information and answers about the *Brown* decision. Eventually this prompted my mother and sisters and me to become students of the decision and spurred us to help maintain its legacy. In the end, I discovered how fitting it was that my father became the accidental icon of the school desegregation story. For me, he came to represent the quiet action of hundreds of ordinary people who heard and answered the call of history.

So as I think about the fiftieth anniversary of *Brown*, this is what I would wish for all of us: that as those who went before us, when we hear history's call, we too will have the courage to stand up and answer. ■

ENDNOTE

1. Jean Van Defender, "Capturing Forgotten Moments in Civil Rights History," *The Brown Quarterly*, Vol. 3, No. 1 (Spring 1999).

***Brown v. Board of Education:* A Local Habitation and a Name**

Timed to coincide with the fiftieth anniversary of the *Brown* decision, the National Park Service plans next year to open the new *Brown v. Board of Education* National Historic Site. It will be a new unit of the national park system, to be housed at the old Monroe Elementary School in Topeka, Kansas. Monroe was one of four segregated schools serving the African American community in Topeka. My mother attended this school, as did my sisters and their children, and I began my teaching career there in 1972. Soon after, the school closed because of declining enrollment.

Working with the U.S. Congress and the Department of the Interior to establish this historic site has been a labor of love for my family and other Topeka residents. It is our hope that the halls of the old school will once again be filled with the sound of teachers and children as they learn about the history and impact of the *Brown* decision. It will be a welcome addition to our system of National Historic Landmarks and National Historic Sites, less than 5 percent of which currently relate to the role of African American citizens in U.S. history.

On September 18, 2001, President Bush signed legislation establishing a commission to ensure a national presence in the commemoration of the fiftieth anniversary of *Brown* next year. The 24-member commission comprises individuals from the five case sites involved in *Brown*; appointees from the U.S. Supreme Court and the U.S. Departments of Education and Justice; and representatives of the NAACP, the NAACP Legal Defense Fund, the National Park Service, and the Brown Foundation. I proudly serve on it as it creates a full schedule of educational activities and events leading up to the anniversary event in Topeka on May 17, 2004. Go to www.brown50commission.org for more information.

—CBH



Triumph: Thurgood Marshall, accompanied by George E. C. Hayes on the left and James M. Nabritt, poses in delight after the Supreme Court declared segregation unconstitutional. Hayes and Nabritt had argued the Washington, D.C., case before it and others were wrapped into the *Brown* case.

Thurgood Marshall

The Man and His Enduring but Endangered Legacy

By Juan Williams

FIFTY YEARS AGO IN *BROWN V. BOARD OF EDUCATION*, THURGOOD MARSHALL ARGUED BEFORE THE U.S. SUPREME COURT FOR AN END TO SEGREGATED SCHOOLS. HE MADE A SIMPLE CASE FOR SIMPLE JUSTICE.

At 6 feet 3 inches, Marshall was a big, chain-smoking man who smiled even as he presented a case before the Supreme Court. Speaking with the slight southern drawl of a Baltimore native, Marshall told the court that when Congress approved the Fourteenth Amendment to the Constitution—guaranteeing all citizens equal rights—it outlawed segregation. That meant, he argued, that Congress opened the doors to the nation's public schools for America's children, black and white.

Marshall's simple argument brought a simple rebuttal from the lawyer on the other side. He was a man with a childhood full of segregationist memories from his South Carolina birthplace. John W. Davis was the dean of American lawyers in the middle of the twentieth century. At the time, he had argued more cases before the Supreme Court than any other living lawyer. Davis had been solicitor

general, the federal government's top lawyer before the high court, and once reigned as president of the American Bar Association. Davis had also been the Democrats' presidential candidate in 1924. His stature and friendship with many of the justices on the high court led James Byrnes, the segregationist governor of South Carolina and former U.S. Supreme Court Justice, to ask Davis personally to argue the case before the high court.

The aristocratic Davis, approaching 80 at the time of the *Brown* case, confidently told the court that the historical record showed Congress never intended to end school segregation when it passed the Fourteenth Amendment in 1868. The proof, he said, was that the Congress never acted to end segregated schools even after it passed the law. In fact, Congress had created a segregated public school system in the capital, Washington, D.C., in 1871, three years after the Fourteenth

PHOTO CREDIT: LIBRARY OF CONGRESS

Juan Williams is senior correspondent for National Public Radio and a political analyst for Fox News. He is the author of *Thurgood Marshall: American Revolutionary* and *Eyes on the Prize: America's Civil Rights Years, 1954–1965*.