

## The Legacy of *Brown* Forty Six Years Later

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The U.S. Supreme Court decision of May 17, 1954; *Oliver L. Brown et al. v. The Board of Education of Topeka*,<sup>1</sup> is one of the most significant events in the history of this country, yet one of the most misunderstood. Examinations of this case seldom deal with the complex constitutional issues of the history that underscores the sacrifice and self-determination present in the African-American community. Even fewer accounts of the *Brown* decision provide information about the specifics of the Topeka case such as the local National Association for the Advancement of Colored People (NAACP) leadership, attorneys, the thirteen plaintiffs representing their twenty children and those unknown individuals whose lives were changed by these events. History books make little mention that the *Brown* decision was a joining of four cases from the states of Delaware, Kansas, South Carolina and Virginia.<sup>2</sup> It is for these reasons that the Brown Foundation was established to commemorate and document the stories of the true history makers whose memories are not recounted in books.

The thoughts shared in this writing regarding the legacy of *Brown* come from the vantage point of community and familial relationships. The *Brown* decision is named for an African-American man who in 1950 was a young parent, only thirty-two years old. Although his participation was almost coincidental, the fact remains that it is his name that is attached to what is said to be one of the most pivotal events in U.S. history. This unknowing icon was my father. My biography begins simply, "one of the three daughters of the late Reverend Oliver L. Brown, namesake of the historic *Brown* decision."

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1. 347 U.S. 483 (1954).

2. *Id.* at 486.

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Because of my personal relationship to this history, I have the luxury of being more emotional in my remarks and less analytical. Let me begin by clarifying any misnomer that the *Brown* case was dinner time conversation in our home. It was not. My father died in 1961, ten years after this suit was filed, seven year after the U.S. Supreme Court's decision and before the media sophistication of court T.V. He only participated in one televised interview before his death.

My mother, sister and I had to become students of *Brown* just like the rest of the country in order to learn and understand what took place. Having poured over historic documents, photos and published works, the importance of the *Brown* decision is now clearly etched in my mind.

*Brown* is important for four very basic reasons:

- It was the beginning of the end of racial segregation sanctioned by law.
- It overturned laws permitting segregated public schools in Kansas and twenty other states.
- It overturned a previous U.S. Supreme Court decision of 1896, *Plessy v. Ferguson*.<sup>3</sup> The *Plessy* decision gave us the infamous doctrine of "Separate but Equal."<sup>4</sup>
- It defended the sovereign power of the people of the United States to protect their natural rights from arbitrary restrictions and limits imposed by state and local governments. These rights are recognized in the Declaration of Independence and guaranteed by the Constitution of the United States, according to Harry Butowsky, National Park Service Historian.

The legacy of the *Brown* decision can be viewed as the anticipated and unanticipated. The unanticipated legacy has clearly been the most disturbing. Elaboration of this point will come later in this writing. The legacy as I see it is one of: (a) Beginnings; (b) Challenges; (c) Responses; and (d) Myths.

## BEGINNINGS

*Brown* began a series of legal victories in the courts and eventually in the U.S. Congress. This decision ushered in an avalanche of cases and legislation effecting African-Americans and other disenfranchised groups in society. This was a critical juncture because it began a period of social responsibility, equity and justice that this country had not witnessed since the end of the Civil War. With regard to people of African descent, the last national act of conscience came in the form of

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3. 163 U.S. 537 (1896).

4. *Id.*

the Thirteenth, Fourteenth and Fifteenth Amendments to the U.S. Constitution<sup>5</sup> and the Civil Rights Act of 1875.

The Supreme Court's ruling in *Brown* had an impact on: equity in public transportation (1956); 1964 Civil Rights Act;<sup>6</sup> 1965 Voting Rights Act;<sup>7</sup> 1972 Civil Rights Title IX;<sup>8</sup> 1973 Section 504 of the Rehabilitation Act;<sup>9</sup> 1975 Age Discrimination Act;<sup>10</sup> and 1984 Civil Rights Restoration Act,<sup>11</sup> which did not become law until 1988. This litany although not inclusive represents a period of opportunity rarely seen before *Brown* in 1954.

#### CHALLENGES

The move to end racial segregation in public schools presented and continues to present challenges in the form of policy and implementation. Historically, many well meaning law abiding school districts moved to end segregated schools immediately. From 1954 to 1958 they numbered nearly 800. From 1958 through 1960, less than 100 joined their ranks. In my opinion the reason for this slow down was confusion on the part of decision makers relative to just how serious the federal government was. Where was the Executive Order or the Congressional mandate to end this practice?

Locally, muddled policies were adopted, some even before the *Brown* decision. One example surfaced in the form of a letter from the Superintendent of Schools in Topeka, Kansas. The year was 1953 and the letter was intended for newly hired (three years or less) African-American teachers. Its content, in short, explained that if the U.S. Supreme Court should end racially segregated public schools, there would not be enough teaching positions for African-American teachers due to the certainty of whites not wanting to employ them to teach their children.

Up until 1954, Kansas and numerous other states, permitted variations on the theme of segregated public schools. Kansas used population as the means of determining how segregated public schools would be established. For example, first class cities of 15,000 or larger could choose segregated public schools only at the elementary level. Smaller cities in the regard were not protected by state law.

Immediately following the *Brown* decision in May of 1954, public school officials acted on their concern with what they viewed as an

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5. U.S. CONST amend. XIII, XIV, XV.

6. See generally 21 U.S.C.A. § 1981 (1994).

7. See generally 21 U.S.C.A. § 1971 (1994).

8. See generally 42 U.S.C.A. § 2000c (1994).

9. See generally 21 U.S.C.A. § 504 1(1999).

10. See generally 42 U.S.C.A. § 6101 (1995).

11. See generally 20 U.S.C.A. §1687 (1995).

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abundance of African-American teachers. Teaching contracts for some were simply not renewed. In addition, as the remaining African-American educators were integrated into previously segregated white schools, administrators would phone parents of white students seeking their permission regarding their children being assigned to an African-American teacher.

Policy and implementation continue to present challenges as neighborhoods divide along racial lines and public resources dwindle.

## RESPONSES

The *Brown* decision created a storm of responses in the way society in general and some whites in particular reacted. Those responses brought us the infamous "Southern Manifesto," what I refer to as the document of non-compliance. This manifesto was orchestrated by some U.S. Congressional Representatives from Southern states. The existence of such formal dissent gave power to local officials in Southern communities to stand against what they saw as unwelcome government interference.

Without the Southern Manifesto it may not have been so simple for the Governor of Arkansas, Orval Fabous, to close public schools for a year. This same support led public officials in Prince Edwards County, Virginia to close public schools for four years. The same sentiment was present when the Governor of Alabama, George Wallace, took his stand in the school house door to figuratively and symbolically block integrated public schools. In the 1970s that misplaced sense of right resulted in angry mobs of whites in Boston, Massachusetts, meeting school buses filled with African-American children, to halt the integration of public schools.

It is my contention that the country is still in a response mode. As a society, we spend little time looking for solutions and an enormous amount of time identifying scapegoats.

These aspects of a *Brown* legacy come from the peculiar position of the U.S. Supreme Court and its limited enforcement authority. In some ways the struggle to interpret and implement the *Brown* decision may be attributed to the Court's early attempt to give direction to its intent, i.e., "with all deliberate speed."<sup>12</sup> How much difference would it have made had the court not offered this statement as an approach to integrating the nation's public schools? Deliberate, after all means slowly.

As my family has come to understand *Brown*, it is easy to see that the legacy on a personal level is much more profound for African-

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12. *Brown v. Bd. of Educ.*, 349 U.S. 294, 301 (1955).

Americans. It is profoundly based on what it meant for African-Americans, living in a country they were expected to support economically and whose wars they were expected to fight without benefit of the basic right to enjoy the fruits of their labor. Having to watch the spirits of their children broken repeatedly in order to come of age in America. Let it not be forgotten that unlike any other racial or ethnic group in this country, historically, it was against the law for people of African descent to obtain an education.

*Brown* is also profound because it is thought to be the culmination of a legal battle waged by African-Americans for more than a century. *Brown* was not a culminating point, it has proven rather to be a midpoint in school integration and race relations.

It took African-Americans 105 years just to get as far as *Brown*. The first law suit challenging the system of racially segregated public education was in 1849, the *Robert's*<sup>13</sup> case in Boston, Massachusetts. This is a battle that followed people of African descent leaving the South after the Civil War, many of whom chose Kansas to start a new life. Kansas was considered a "promise land" of sorts, because it did not allow the enslavement of people and offered the hope of education, land and liberty.

Even in this land of promise, African-Americans found it necessary to take up the banner of integrated schooling to achieve equal opportunity. In Kansas, twelve law suits were filed regarding school integration. These cases span from 1881 with the *Ottawa Board of Education v. Tinnon*<sup>14</sup> case to the 1949 *Webb v. School District No. 90*<sup>15</sup> case. The twelfth case in Kansas was *Brown*, filed in 1951.

#### MYTHS

The legacy for my family has been filled with ambivalence in the matter of the telling of the *Brown* story. We, the children and widow of Oliver Brown, have been left a legacy not of our making. As Jack Greenberg points out, "because the U.S. Supreme Court chose the *Brown* case to head the school cases it gave immortality to a family who had little to do with this struggle."<sup>16</sup>

It is our family's considered opinion that the legacy we shoulder is a story created by a lazy myopic press.

Their creation was sold to the public and taken as fact, so much so that it is a tale repeatedly printed in articles and textbooks throughout these forty-six years. The press, by creating a story of a young girl who

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13. *Roberts v. City of Boston*, 59 Mass. 198 (1849).

14. 26 Kan, 1 (1881).

15. 206 P.2d 1066 (Kan. 1949).

16. JACK GREENBERG, CRUSADERS IN THE COURTS: HOW A DEDICATED BAND OF LAWYERS FOUGHT FOR THE CIVIL RIGHTS REVOLUTION (1994).

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wanted to attend her neighborhood school, but was forced to attend another school far from her home because she was African-American, whose father was so angered that he sued the local school board—keeps us from the truth and the real issues involved. The press story negates the psychological harshness of segregation for both African-Americans and white Americans. This telling relegates, to the back burner, those who had the vision, persistence and knowledge to see this legal challenge to its conclusion.

Examine the facts and give them a real hard look, then think back to the story the press would prefer we believe. First, remember that the pursuit of legal recourse to end segregated public schools began in 1849. Second, remember that the U.S. Supreme Court's decision in *Brown* combined similar cases from Delaware, South Carolina and Virginia. These cases were part of a sweeping strategy devised by the NAACP. Third, remember that African-Americans in Kansas initiated eleven school cases prior to *Brown* (the twelfth case).

The events in Topeka, Kansas that led to *Brown* are as follows:

In the late 1940s the local chapter of the NAACP and its leadership had considered what should be done regarding the situation with their public schools. The chapter president McKinley Burnett attempted a reasoned approach by asking for time on the agenda of local school board meetings. His efforts resulted in a school board equivalence of a filibuster. The meetings would extend beyond a tolerable hour, adjourning because of the time, without getting to Mr. Burnett's agenda item. It was obvious that another tact was needed. This led to talk of a court case. At that point, Mr. Burnett, together with local NAACP legal counsel Elisha Scott, sons Charles and John Scott, associate Charles Bledsoe and chapter secretary Lucinda Todd, laid out a framework for what would become the *Brown* case. Their plan would be simple once they rallied the support of local parents needed as plaintiffs.

The summer of 1950 saw the gathering of fourteen families who stepped forward to become litigants. By the fall, only thirteen families remained, including Oliver Brown. They were asked to note enrollment dates, locate the segregated white school closest to their homes and together with another adult as a witness, attempt to enroll their children. Once denied the right to enroll their children they were to share the details of that experience with NAACP legal counsel. This information would provide the basis for a class action suit against the Topeka Board of Education.

When the case was filed in Federal District Court in February of 1951 a peculiar event occurred. Oliver Brown was designated as the lead plaintiff, although he had little else to do with their plan, other than

to participate. As we (family) have reviewed this development, one conclusion has surfaced. Among the list of plaintiffs, Oliver was the only man. We had been told over the years that the Brown name was selected to head the list because of the alphabetical placement. Were this true, one of the female plaintiffs would have been the lead because of the name, Mrs. Darlene Brown. This points to the role sexism may have played in the naming of this historic case.

Although my father's role in truth was minimal, the legacy of *Brown* is one that we have grown to bear proudly. The responsibility we have assumed is that of telling the *Brown* story as it truly happened. The reality is much more profound than the press creation. It does make one wonder how many other events in our history were concocted and then repeated as fact.

Finally, let the country not forget that it was Charles Hamilton Houston that laid the ground work and litigated early cases to end segregated public schools and universities. His brilliant work resulted in unparalleled success in the courts for the NAACP. He mentored Thurgood Marshall and a host of young civil rights attorneys.

#### UNANTICIPATED LEGACY

The unanticipated legacy of *Brown* represents the insidious nature of what the school integration pioneers were up against. That legacy has been:

1. School closings.
2. White flight.
3. Barrier creating school boundaries.
4. Municipal decisions to build low income housing in certain areas.
5. Busing suddenly as a tool for integration becomes unacceptable when it had been acceptable as a tool for segregation.
6. Withholding resources of time, attention and money.
7. The scarcity of African-American teachers.
8. The effects of an antiquated system of school finance.
9. The majority of African-American students remaining in segregated schools.
11. A proliferation of private schools
12. The *Regents of the University of California v. Bakke*<sup>17</sup> case.
13. The concept of magnet schools.
14. African-American male academies.

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17. 438 U.S. 265 (1978). (holding that a medical schools special admissions program that reserved 16 of the 100 positions for disadvantaged minority students was illegal).

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The most insidious unanticipated legacy is the continual effort to somehow show that African-Americans simply are not capable of intellectual achievement.

As our national demographics become more diverse, racially divisive attitudes struggle to hold on.

For my family, the unanticipated legacy has been one of continuing to be associated with ongoing litigation against the Topeka Board of Education in what is known as *Brown III*.<sup>18</sup> The fact of the matter is that in the fall of 1979, Topeka Public Schools instituted a policy called "open enrollment" that would permit students to freely transfer from school to school. In response to this policy, a group of young African-American attorneys convened a series of town meetings with African-American parents and educators. The purpose of these meetings was to explain the potential harm of such a policy if left unchallenged.

As the school year progressed, their decision was to call into question the district's policy by petitioning the federal court to re-open the original *Brown* case in Topeka. In order to have a law suit, they needed plaintiffs. As a result, they assembled a group of eight parents whose names were to be submitted as litigants.

Once filed, those parents lending their names to this case were not called on to participate in any other way. The case did not go to trial until 1987. It was not concluded until 1993 when a Federal Appeals Court found that Topeka Public Schools did have vestiges of past school segregation and ordered a remedy.<sup>19</sup> The remedy selected was to close older schools within the district and build three new magnet schools.

## CONCLUSION

The Brown foundation has and continues to engage in activities to effect the myth that is *Brown*. Our organization has produced an historically accurate traveling exhibit and teaching materials for classroom use.

In 1992 after two years of work with the U.S. Congress and the Department of Interior, the Foundation succeeded in realizing the establishment of a National Park to interpret the history of the *Brown* decision and school integration. On October 26, 1992, President George Bush signed the Brown v. Board of Education National Historic Site Act of 1992. This legislation marked the official designation of this new National Park.

This National Park is located in Topeka, Kansas, at the site of one

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18. *Brown v. Bd. of Education*, 503 U.S. 978 (1992) (granting writ of certiorari to remand *Brown* in light of *Freeman v. Pitts*, 503 U.S. 467 (1992) and *Bd. of Educ. of Okl. City Public Sch., v. Dowell*, 498 U.S. 237 (1991)). See also *Brown v. Unified Sch. Dist. No. 501*, 56 F. Supp. 1212 (D. Kan. 1999) (order granting dismissal of plaintiff students' case).

19. *Brown v. Bd. of Educ.*, 978 F.2d. 585 (10th Cir. 1992) (*rehearing denied* Jan. 28, 1993).

of the previously segregated schools for African-American children, Monroe Elementary School. Plans are underway for its eventual opening in 2004.