

50th Anniversary

BROWN V. TOPEKA BOARD OF EDUCATION: The *Washburn Connection*



Charles Scott '48

On May 17, 1984, Washburn Law dedicated the statue “Common Justice” to commemorate the 30th anniversary of the Supreme Court’s 1954 decision in *Brown v. Topeka Board of Education*.

The distinctive statue, located in the law school’s main lobby, serves as a reminder of the vital roles played by Washburn Law graduates in the landmark civil rights case, from filing to final arguments. Today, as the nation commemorates the 50th anniversary of *Brown*, we look back on the Washburn Law graduates who participated in what many describe as the most important legal decision of the twentieth century.

THE INITIAL FILING

On February 28, 1951, three African-American graduates of Washburn Law, Charles Scott '48, John Scott '47 and Charles Bledsoe, filed the case of *Brown v. Topeka Board of Education* in the U. S. District Court of Kansas. They had worked tirelessly with McKinley Burnett, president of the Topeka Chapter of the NAACP, to recruit a group of thirteen families willing to challenge the school board’s maintenance of segregated elementary schools in Topeka. They also recruited psychologists and social scientists as expert witnesses to testify about the psychological harm of segregation to school children. This testimony would play an important role in the Supreme Court’s 1954 decision because the Kansas case was the only case to focus on the psychological harm of segregation to school children.

Charles Scott, age 30, and his brother John, age 32, were young lawyers when they filed the “case of the century,” but they had been around the legal profession all their lives. Their father, well-known Topeka lawyer Elisha Scott '16,



Elisha Scott '16

was the third African-American to graduate from Washburn Law. Both brothers had suspended their law studies when they were called for duty in World War II, but returned to Washburn Law after the war. After graduation, they joined their father and formed the law firm of Scott, Scott and Scott.

The senior Scott, who represented



John Scott '47

minorities and poor whites in the Topeka area, had championed the cause of integrating the public schools long before *Brown*. But by the time of the *Brown* trial, Elisha's prime years were behind him, and his role in the case was limited. His sons and Bledsoe carried most of the load in preparing the case for trial.

Charles Bledsoe, who attended Washburn Law a decade earlier, brought the Scott brothers into the case as co-counsel. Bledsoe had attended law school part-time while employed as a Topeka fireman. He joined Elisha Scott's law firm after passing the bar in 1937. Bledsoe was active in the NAACP, and for a time he chaired the legal committee of the association's Topeka branch. He is credited with contacting the national NAACP Legal Defense Fund for assistance in the case. At trial, the Scott brothers and Bledsoe were joined by NAACP lawyers Robert Carter and Jack Greenberg.



Charles Bledsoe



Harold Fatzer '33

Counsel for the Topeka School Board were also Washburn Law graduates. Lester Goodell '25 served as chief trial counsel with George Brewster '29. Both men were partners in the firm Wheeler, Brewster, Hunt and Goodell.

Kansas Attorney General Harold Fatzer '33, another Washburn Law graduate, filed the brief on behalf of the state.

The Washburn Connection



Lester Goodell '25



George Brewster '29

Within a week after filing the complaint, a three-judge panel was designated and trial was set for June 25. One of the judges, Delmas Hill '29, was also a Washburn Law graduate. Later that summer, on August 3, 1951, the district court upheld the right of the Topeka School Board to maintain segregated elementary schools. In the opinion, however, the judges referred to evidence showing the negative psychological impact of state-sponsored segregation. This would eventually appear in the Supreme Court's 1954 opinion.



Washburn Law Professor Chester J. Antieau wrote an article in the November 1951 issue of the Kansas Bar Association Journal criticizing the courts decision. He wrote, "It is morally wrong to perpetuate the idea that one is different from his brother because of the accident of skin coloring," and concluded by calling upon the United States Supreme Court to afford "greater guidance."

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Delmas Hill '29

THE APPEAL

After losing in the district court, plaintiffs appealed the case to the U.S. Supreme Court. The Court agreed to hear the case in combination with four similar

cases from South Carolina, Virginia, Delaware and the District of Columbia. This group of five cases was consolidated under the name of *Brown*.

The Supreme Court heard the case on Dec. 9, 1952. NAACP attorney Robert Carter presented arguments for the plaintiffs in the Kansas case. Kansas Assistant Attorney General Paul Wilson '40, another Washburn Law graduate, represented the state. The Topeka Board of Education had decided not to file a brief or present oral arguments; however, the Board's attorney, Peter Caldwell '33, assisted the Kansas attorney general's office in its preparations.

The justices were unable to reach a decision and asked to rehear arguments in all five cases the following term. The state of Kansas would once again be represented by Paul Wilson. In preparation for the re-arguments, Fatzner and Wilson asked Washburn Law Professor Jim Ahrens to research the Fourteenth Amendment. Wilson would use Ahrens' exhaustive research in his brief. Wilson was also assisted by a recent Washburn Law graduate, Charles McCarter '53 who had joined the attorney general's office shortly after graduation.

He is the only surviving law school alumni to participate in the original *Brown* litigation.

On May 17, 1954, Chief Justice Earl Warren read the Court's unanimous opinion declaring school segregation by law unconstitutional. The opinion referred to evidence submitted in the Kansas district court that state-sponsored segregation was harmful to children. "Whatever may have been the extent of psychological knowledge at

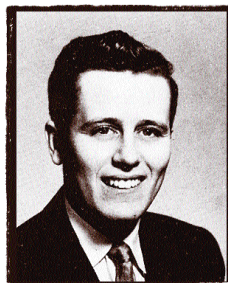
the time of *Plessy v. Ferguson*, this finding is amply supported by modern authority," wrote the Court. "We conclude, unanimously, that in the field of public education, the doctrine of 'separate but equal' has no place."



Paul Wilson '40



Peter Caldwell '33



Charles McCarter '53

The Supreme Court's decision in *Brown* marked a milestone in the nation's long journey toward racial equality, a journey that continues today. We salute those Washburn Law graduates who played such vital roles in this momentous decision.