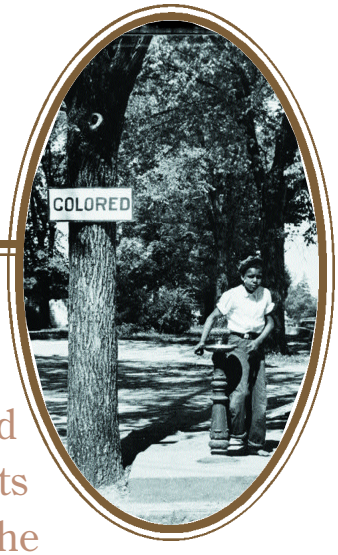
Brown Revisited

By Professor Ronald C. Griffin

In the 1950s, there was no solution regarding what ordinary men, average politicians, and the government could do to put bigotry and hatred against a whole people to rest. The struggle to find the answer became a war fought on the battleground of public schools. It was a grim time in America. Blacks were often pushed to the fringes of society. This could be seen in stark relief in the black public schools: teachers were underpaid, schools were underfunded, facilities were spartan, books were out of date, and curriculums were skimpy and antiquated. School districts had fallen into the habit of cutting salaries for black teachers to subsidize other programs. For too many black children, high school and college training were far-fetched goals. *Plessy v. Ferguson* was society's mantra. The separate-but-equal doctrine governed race relations in the United States.



The justices were unable to reach a decision and asked to rehear arguments in all five cases the following term.

There had been some breakthroughs in higher education: *Murray v. Maryland* in 1936, in which a black man denied admittance to the University of Maryland Law School successfully secured a space; and *Carter v. School Board of Arlington County* out of the Fourth Circuit in 1950, in which a black student successfully brought an action to have the opportunity to take a class that was not offered in a segregated school. Though *Plessy v. Ferguson* held sway, courts were beginning to decide that the states could not make learning an ordeal. Some were beginning to realize the inequity in furnishing students with bargain-basement, poorly thought-out, noncredentialed, and untested facilities.

Public Schools in the Courts

Despite some progress, racism continued to embarrass the United States. It was a blot on the conscience of the nation. Racial segregation perpetuated ignorance and fueled antisocial attitudes among blacks.

It stunted the personalities of children, enhanced the chance of self-rejection, slowed the development of democratic sentiments, and (last but not least) built dams in the minds of youngsters, so that some blacks gathered less formal education than others in similar situations.

In Clarendon County, South Carolina, white schools were brick and mortar. Black schools were shacks. Though blacks out-numbered whites in the county, less money was spent educating blacks than whites. Experts claimed that there was a correlation between the quality of one's education, a child's personality development, and the amount of money a school district spent on children. Because less money was spent on Clarendon County blacks, white children had both healthy minds and countless educational advantages.

McKinley Burnett

Outsiders and knowledgeable people in South Carolina could see it. A nominal minority (whites) capitalized upon their economic clout to impose their educational views on everybody. White students went to schools that had running water. Blacks went to schools that did not. White students had indoor toilets. Black students had none. Whites went to schools with serviceable desks, chairs, blackboards, and new books. Black students went to schools with scarred desks, wobbly chairs, and old books. Could local officials use a South Carolina law to perpetuate the misery dogging blacks? In *Briggs v. Elliott* (1951) the court rejected this possibility. Abandoning the psychological evidence for the statistical evidence substantiating physical differences between facilities for blacks and whites, the federal district court ordered Clarendon County to build equal schools for blacks.

In many ways, the Kansas School situation was like the South Carolina mess. In other ways, it was different. Kansas was admitted to the union as a free state. The U.S. government accepted the territorial government's petition for admission on the condition that "Negroes be denied the vote." By Kansas state law, first-class cities could segregate their elementary schools. By law blacks and whites attended integrated high schools. By law universities and colleges were open to everybody.

Even so, many white Kansans were hostile to blacks. By law, custom, and practice blacks and whites lived in separate social and economic arenas. White banks starved black businesses. In Topeka, black teachers were financially dependent and socially beholden to white folk. The police kept tabs on some people. School officials gave blacks of all ages guff and grief. In the 1950s people of color in the capital city lived on tenterhooks.

In 1950, McKinley Burnett petitioned the Topeka School Board to integrate its elementary schools. When the Board tabled the request,

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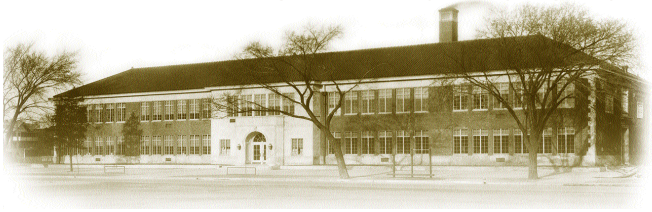

Burnett recruited Oliver Brown to file a lawsuit in 1951 in the federal district court of Kansas. This suit was *Brown v. Board of Education* of Topeka. The suit posited that state-sponsored segregation dulled a student's ambition, poisoned the learning process, and damaged the psyches of students. The court agreed, but on technical grounds (e.g., more to do with the physical facilities in Topeka) it denied the petitioner's request for a remedy. *Plessy v. Ferguson* was still the law of the land. The Supreme Court had not reversed itself. Because the Topeka schools were equal, there was nothing the court could do for the petitioner.

By many accounts Virginia was dignified and a bucolic place. Virginia society, by contrast, was taut and rife with feuds between white folks. Many public schools were shoddy. Public funding was sparse. Poverty and, in too many cases, hopelessness perpetuated inequality between black and white students. In 1952 Barbara Johns brought an action in equity to overturn this situation in the federal district court of Virginia. Oliver Hill and Spotswood Robinson were plaintiff's counsel. The three issues raised in John's case were whether the Prince Edward County School System met the standard under *Plessy v. Ferguson*; whether state-sponsored segregation wrecked the minds of black students; and last, but not least, whether state-sponsored segregation was per se unconstitutional.

In 1952, it was a forgone conclusion that the three-judge district court would uphold state-sponsored segregation. Deciding against making a finding of fact on the second issue, to avoid an appealable record like the one made in Kansas, the federal district court of Virginia ruled that the County did not meet the standard under *Plessy v. Ferguson.*

On September 11, 1950, Gardner Bishop led a group of black students to John Phillip Sousa Junior High School, a spacious glass-and-brick structure located across the street from a golf course in a residential section of southeast Washington, D.C. It had 42 bright classrooms, a 600 seat auditorium, a double gymnasium, a playground with seven basketball courts, a softball field, and no blacks. Some of the classrooms were empty, and Bishop asked that the black youngsters (that he had with him) be admitted to them. He was refused, and his group of students began the year, as they had in the past, at all-Negro schools. One of the children was 12 old Spottswood Thomas Bolling. Young Bolling attended Shaw Junior High School. It was 48 years old, dingy, ill-equipped, and located across the street from a pawn broker. Its science lab consisted of one Bunsen burner and a bowl of goldfish. Bolling's name led the list of plaintiffs for whom James Nabrit brought suit in the federal district court of the District of Columbia (*Bolling v. Sharpe*).

Nowhere in the pleadings was any claim made that Bolling and the others attended schools that were unequal. Their plainly inferior facilities were beside the point. The petitioners had launched a frontal assault against state-sponsored segregation. The burden of proof was on the District of Columbia to show a reasonable basis for, or a public purpose in, racial restriction on school admissions.

In his submission to the court, Nabrit dwelt on the Supreme Court's wartime decisions on the relocation of Japanese-Americans as an emergency measure – that is, the temporary deprivations of civil rights and liberties that the justices excused in the face of threats to national security. "Pressing public necessity may justify the existence of such restriction, [but] racial antagonism never can," he argued. Because the nation's security wasn't threatened, and no evidence had been adduced by the government that race mixing threatened law, order, and safety, the District of Columbia had to integrate its schools.

There was another argument proffered by Nabrit. The educational rights asserted by the petitioners, he said, were fundamental rights embedded in the due process clause of the Fifth Amendment. They were liberty interests protected against arbitrary and unreasonable restrictions. Because the Civil War Amendments stripped the federal government of its power to impose racial distinctions upon citizens, Congress couldn't make legislation separating whites and blacks in schools.

The Courts Decide

In *Brown*, the Court said that state-sponsored segregation was unconstitutional per se. It considered the Civil War Amendments, but decided that the legislative history didn't cast enough light on the topic to answer the question before it. It turned instead to the psychological evidence tendered by experts to help make its decision.

Because state-sponsored segregation furnished some students with smaller packages of formal knowledge to cope with the outside world, dulled a youngster's ambition, killed a student's motivation, stunted personality development, and engendered feelings of inferiority, segregation had no place in public education. Maintenance of the practice deprived students of the equal protection under the law.

The District of Columbia *Bolling* case was different. In that case the issue before the court was whether Congress could interfere with the liberty of black students. Though liberty had not been defined with great precision, the Supreme Court concluded that list did include the full range of conduct that individuals were free to pursue. Generally speaking, liberty could not be restricted except in the case of a proper governmental objective. Because segregation was not related to a proper governmental objective, the practice had to end. The maintenance of school segregation constituted an arbitrary deprivation of a student's liberty under the due process clause of the Fifth Amendment.

The *Brown* case and the *Bolling* case outlined and described a new perspective on the civil rights of all Americans and declared that race could not be a basis for precluding or diminishing those rights.

Social Fallout

Fifty years have cooled people's passions about *Brown* and, in some cases, dulled memories. Some scholars would have us believe that *Brown* was a minor footnote in American

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history. In North Carolina, for example, just 0.026 percent of black children attended desegregated schools in 1961. During the same period, in Virginia, a grand total of 208 blacks out of a statewide population of 211,000 attended desegregated schools. In the Deep South not a single black child attended an integrated public elementary school in Alabama, Mississippi, or South Carolina, during the 1962-1963 school year.

Although change was slow, *Brown* affected the laws and practices for many areas other than schools, including common carriers, golf courses, municipal airports, hospitals, city libraries, public beaches, municipal pools, athletic events, parks, amusement parks, and public accommodations in the North, South, Midwest, and Far West. Common carriers (that is, company owners) couldn't use *Plessy v. Ferguson* and the local constabulary to reseat its black patrons. City fathers couldn't use leases with private management companies to circumvent their duty to make public facilities available to everybody. Entrepreneurs couldn't use business concerns, economic consideration, the First Amendment right of free association, trespass laws, employment contracts, and the patina of the state (e.g., off-duty cops moonlighting for private concerns) to denigrate contract rights bestowed upon people by Congress. The nation was changing, and *Brown* had sparked the change.

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