An End and a Beginning: 
The Fiftieth Anniversary of Brown v. Board of Education

The landmark case that led to the abolition of school segregation — James H. Landman

On May 17, 2004, the United States will observe the fiftieth anniversary of the Supreme Court's landmark decision in Brown v. Board of Education of Topeka, Kansas. By invalidating the doctrine of "separate but equal" in the field of public education, a doctrine that had been approved by the same court nearly sixty years earlier in Plessy v. Ferguson, the Brown decision removed the legal foundation for the system of official segregation—the infamous "Jim Crow" laws—that dictated the structure of race relations across much of our nation.

Brown has rightly been identified as a watershed event in our constitutional history, setting the stage for the civil rights movement that transformed the landscape of American society and politics. The legacy of the decision and the issues it raised continue to reverberate in our society today. This article offers a brief history of the individuals and events behind the decision. It begins with the Plessy decision's impact and the early efforts to contain that impact which laid the groundwork for Brown v. Board. The article then looks at the individual stories of the cases challenging public school segregation that were eventually consolidated under the name of Brown v. Board of Education. It concludes with a description of the efforts within the Supreme Court to bring nine justices together in a decision that would bring an end to segregation by law in American society.

A Dream Deferred: Plessy v. Ferguson and Its Aftermath

In its 1896 Plessy v. Ferguson decision, the U.S. Supreme Court made clear that any hope for equality for the millions of black Americans emancipated during the Civil War would be a dream deferred. Just thirty years before the Plessy decision, the hope that the United States might put its legacy of slavery and racial inequality behind it did not seem unfounded. Following the Civil War, the United States Congress had passed a series of amendments to the Constitution, collectively known as the "Civil War amendments," that abolished slavery (Thirteenth Amendment); granted all citizens the right to vote, regardless of "race, color, or previous condition of servitude" (Fourteenth Amendment); and, most broadly, provided that no state shall make or enforce laws that would "abridge the privileges or immunities of citizens of the United States ... nor deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws" (Fifteenth Amendment). Congress also passed two civil rights acts, in 1866 and 1875, to protect the rights of black Americans and, under Reconstruction, quashed early attempts by state legislatures in the South to establish laws, known as the "Black Codes," that would restrict the rights of newly freed slaves.

Slavery was never restored, but following the end of Reconstruction, state legislatures quickly went to work to limit the impact of the Fourteenth and Fifteenth Amendments and keep black Americans in a state of legally enforced inferiority. With Plessy v. Ferguson, the Supreme Court demonstrated that it had little will to stop state efforts to subvert the Civil War amendments.

In ruling that the state of Louisiana could segregate railway passenger cars according to race, the Court drew a line between what it described as "legal" or "political" equality, on the one hand, and "social" equality, on the other. The Fourteenth Amendment, wrote Justice Brown for the majority, could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation, in places where they are liable to be brought into contact, do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which have
been held to be a valid exercise of the legislative power even by courts of states where the political rights of the colored race have been longest and most earnestly enforced.¹

Segregation would encounter few constitutional obstacles if the state had "secured to each of its citizens equal rights before the law, and equal opportunities for improvement and progress"—if, in other words, the state provided "separate but equal" opportunities to its citizens. And the majority opinion also made clear its view that, in the field of public education, segregation was a long-established tradition that raised few legal concerns.

The sole dissent in Plessy came from Justice Harlan. Arguing that "our constitution is color-blind, and neither knows nor tolerates classes among citizens," Justice Harlan accurately predicted further "aggressions, more or less brutal and irritating, upon the admitted rights of colored citizens."³ This warning was fully realized in the regime of Jim Crow laws that, with the Supreme Court’s sanction, flourished in the aftermath of Plessy and enforced segregation of blacks and other people of color from many of the facilities enjoyed by white citizens across much of the United States. Public schools, transportation facilities, residential neighborhoods, public and private theaters, restaurants, even public lavatories and drinking fountains were designated for the exclusive use of "whites," while separate—and supposedly equal—facilities were set aside for "coloreds." Any hope of changing these laws through democratic processes was stripped away as states erected legal barriers to the exercise of the vote by black citizens. And in courthouses across the land, blacks were systematically excluded from service on juries.

Segregation was the law across much of the land, but almost immediately it met with resistance. Less than fifteen years after Plessy, a group of individuals committed to fighting against the brutalities of Jim Crow America had formed the National Association for the Advancement of Colored People (the NAACP). And in 1926, Mordecai W. Johnson arrived as the first black president at all-black Howard University and put the institution on a crash course for academic excellence. In 1929, he hired Charles Hamilton Houston as dean of the Howard University Law School. The result of Houston’s arrival and the changes he initiated was a law school curriculum taught by and capable of producing some of the greatest legal talents America has seen. Working individually and through the NAACP’s Legal Defense Fund, these lawyers would change the course of American law and society.

This group of black attorneys included Houston himself, Robert L. Carter, William T. Coleman, William Henry Hastie, George Hayes, Oliver Hill, Constance Baker Motley, James M. Nabrit, Jr., Spottswood W. Robinson, III, and—perhaps most famous of all—Thurgood Marshall. They were joined by others committed to the fight against segregation, including Jack Greenberg of the NAACP Legal Defense Fund. In the decades leading up to Brown, these lawyers progressively chipped away at the legal structure upholding segregation. All-white jury pools, covenants that restricted ownership of property in certain neighborhoods by race, laws disenfranchising black voters, and segregated graduate and professional schools were all challenged as violations of the Fourteenth Amendment’s equal protection and due process guarantees, often successfully. Attention then turned to the politically charged arena of public school segregation.
Building the Record: The Brown Cases at Trial

The decision to confront segregation in public education brought unique challenges. Schools play a special role in our nation’s life. They are variously perceived as incubators of social and civic values, transmitters of culture and traditions, centers of the community, paths to academic and professional opportunities, and laboratories for social change. For these same reasons, they have also played a central role in our nation’s history of race.

As the language from Plessy quoted earlier suggests, segregation in public education was seen as a fact of life by many people in the United States, a training ground for life in a nation divided by race, and this attitude was not limited to the South. The challenge to the lawyers taking on segregated schools was compounded by another Supreme Court decision that, some thirty years after Plessy, had explicitly upheld segregation in public education. In that decision, Gong Lum v. Rice, 275 U.S. 78 (1927), the Supreme Court had upheld the decision of the Mississippi Supreme Court that Martha Lum, a Chinese girl living in Mississippi, had no right to an education in a “whites only” public school if an education in a “colored” public school was available to her.

The NAACP lawyers’ legal strategy thus focused initially on insisting that states take the Plessy standard seriously in providing a “separate but equal” education. “White” and “colored” schools were certainly separate, but in most cases they were far from equal. District by district, legal challenges were brought insisting that black schools be brought up to par with their “whites only” equivalents. This strategy, however, required fighting district by district, and did not directly challenge the doctrine of “separate but equal.” In 1950, the NAACP resolved that nothing other than education of all children on a non-segregated basis would be an acceptable outcome. Work began on laying the final groundwork for what would become Brown v. Board of Education.

The Brown decision embraced legal challenges to segregated public schools from four different states: Delaware, Kansas, South Carolina, and Virginia. The four cases in Brown were eventually argued together at the Supreme Court with a fifth case, Bolling v. Sharpe, which challenged segregated schools in the District of Columbia. All of the cases were based on the same legal premise: that separate can never be equal, and that racial segregation enforced by law in and of itself violates the rights of equal protection, liberty, and the due process of law guaranteed by the Constitution.

The stories of the individual cases illustrate how, in many localities, segregation in practice made a mockery of the doctrine of “separate but equal” that the Supreme Court had endorsed in Plessy v. Ferguson. They also demonstrate how divisive an issue segregation had become in the years preceding the Supreme Court’s decision in Brown. Although none of the state and federal trial courts in which the cases were initially heard were willing to overrule the Supreme Court’s precedent, in three of the four jurisdictions there were clear indications that some or all of the trial judges believed that segregation in public education produced inequality, even if the physical facilities available to students were equal. Finally, they demonstrate the heroism of the students, parents, and lawyers
Student Activity

In commemoration of the 50th anniversary of the Brown decision, the American Bar Association Division for Public Education has published a new “Dialogue on Brown v. Board of Education.” The publication includes a brief history of the Brown decision, a series of hypothetical questions asking students to reflect on the history and legacy of Brown, a collection of conversation starters and focus questions on topics related to the decision, and ground rules for ensuring a civil conversation in the classroom. The publication is available free online in a downloadable PDF format at www.abanet.org/brown.

Reproduced below are the hypothetical questions from the “Starting the Dialogue” section of the “Dialogue on Brown v. Board of Education.” You may find that students respond best to these questions after they have had an opportunity to study the Brown decision and subsequent struggles of the American Civil Rights Movement. In particular, students should understand the complexity of emotions that surrounded and were provoked by the issue of integration.

As in any dialogue on controversial issues, it is helpful to remind students of some ground rules for ensuring a civil conversation. These include
- Showing respect for the views of others, even if you strongly disagree.
- Directing your comments to the group as a whole rather than to any one individual.
- Letting others express their views without interruption.

At the heart of Brown v. Board of Education was the desire to ensure equal protection of the law for all Americans. The following questions ask you to reflect on what has been required—and what has been achieved—in pursuit of this goal in our nation’s schools.

1. You are a classmate of Linda Brown at a segregated school in Topeka, Kansas, in 1951. She and her family have decided to challenge the idea that schools should be separated by race. Gaining admission to the “whites only” school may very well mean that members of your community will harass you and your family and that you will encounter hostility from your classmates and teachers at your new school.
   *Do you join Linda Brown?*

2. The year is 1960. You are one of ten black students who have been admitted into a formerly “whites only” high school. In class, you struggle to get the teacher’s attention to answer a question. At lunch, it is clear that you are not welcome to join most of the other students at their tables. When entering school, you often receive a glare or hear a muttered comment from parents dropping off their children.
   *How do you cope with life at your new school?*

3. Abraham Lincoln High School is located in a community with high unemployment and low family incomes. Robert E. Lee High School is located in a prosperous community in the same state. Both Abraham Lincoln High and Robert E. Lee High receive the same amount of money per pupil from the state government. Robert E. Lee High, however, is able to collect substantially more local tax money from its residents, and thus has significantly more money to spend on each pupil. It can attract the best teachers by offering high salaries, has a state-of-the-art computer center, and offers a wide range of courses in music and art. Abraham Lincoln High has to pay its teachers below the state average and loses many teachers each year when they leave for better paying jobs. It cannot afford even one computer per classroom. Because of budget constraints, courses in music and the arts have been eliminated. The school’s athletic program is at risk of being cut.
   *Has the state met its obligation to provide an equal education to students at Abraham Lincoln High and Robert E. Lee High?*

4. Imagine that you are a student at Robert E. Lee High School. You are told that, as a result of a new state law intended to equalize opportunity among the state’s school districts, part of your school’s funds must be shared with Abraham Lincoln High School. Budget cuts will mean that the school may lose its computer center, and that the number of opportunities for participation in athletic, musical, and artistic events will be sharply reduced.
   *How do you respond?*

5. You are a high school senior trying to decide where to attend college.
   *How important to you would it be to attend a racially diverse college? Should colleges be able to consider the race of applicants in trying to create a diverse student body? What should a racially diverse American college campus look like?*

6. Think about the other students at your school, your circle of friends, and the people who live in your neighborhood.
   *To what extent do you think Brown v. Board of Education’s dream of an integrated America has been made real?*
who risked their education, homes, and careers in their quest to remedy a nation’s conscience and its laws.\(^4\)

**South Carolina: Briggs v. Elliott**
Clarendon County, South Carolina, offered a stark example of the failures of “separate but equal.” Thirty school buses were available to transport white students to their schools in the largely rural county; none were available to black students. Per pupil spending for black students in the county was less than one-fourth the spending for white students. And white teachers in the county received, on average, two-thirds more in salary than their black peers.

An initial attempt by farmer Levi Pearson to obtain the same free school-bus transportation for his children that white children enjoyed was defeated in 1948. Pearson found himself cut off from credit at all white-owned businesses in Clarendon County as punishment for bringing his suit.

The following year, a full-scale attack was mounted on the many inequalities that persisted between white and black schools in Clarendon County. The NAACP lent its support to a group of twenty plaintiffs recruited by local organizers and the case known as *Briggs v. Elliott* was filed in federal district court. Again, retribution by the white community was swift. Harry Briggs, whose name appeared first on the list of plaintiffs, was fired from his job, as were his wife and several of their co-plaintiffs.

The *Briggs* trial was remarkable in several ways, including the NAACP legal team’s introduction of the expert testimony of social scientists on the detrimental effects legally enforced segregation had on black children. Most famous was the testimony of Dr. Kenneth Clark, who used tests involving white and black-skinned dolls to evaluate the extent to which segregation bred feelings of inferiority in black children.

The case was also notable for the dissent of Judge Julius Waties Waring. His two colleagues on the three-judge panel held that the state must equalize the segregated black facilities in Clarendon County, but found nothing invalid in segregation itself. Judge Waring disagreed. “I am of the opinion,” he wrote, “that all of the legal guideposts, expert testimony, common sense and reason point unerringly to the conclusion that the system of segregation in education adopted and practiced in the state of South Carolina must go and must go now. Segregation is per se inequality.”\(^5\)

**Kansas: Brown v. Board of Education of Topeka**
The state of Kansas, situated in the American heartland, has played a central role in this nation’s struggles with race relations. In the years preceding the Civil War, “Bleeding Kansas” was a battleground in the debate over slavery, as pro-slavery and abolitionist forces fought to determine whether Kansas would enter the Union as a free state or a slave state. Nearly one hundred years later, Kansas was again in the national spotlight as a group of parents in Topeka challenged racially segregated schools in the state’s capital city.

Kansas law gave cities with a population of 15,000 or more the right to segregate schools below the high school level according to race. Topeka High School was integrated, as the law required, although most extracurricular activities, such as athletic teams and student advisory councils, were segregated by race.

In 1941, the junior high schools had been integrated as well by order of the Kansas Supreme Court in *Graham v. Board of Education of Topeka*. Topeka had tried to establish segregated junior high schools, which offered white students in grades 7 through 9 departmentalized courses taught by subject specialists. Black students would have stayed in a grade school system through grade 8, in which a single classroom teacher was asked to teach all course offerings. Not until grade 9 would black students have had the opportunity to join white students for a single year in junior high. The Kansas court held that this system denied black students equal educational advantages in the seventh and eighth grades and the Topeka junior high schools were integrated. The victory came at a cost, however: eight black teachers lost their jobs.

Ten years later, the case of *Brown v. Board of Education* was filed in the United States District Court for Kansas. Encouraged by McKinley Burnett, head of the Topeka NAACP chapter, thirteen parents of black elementary-age students had tried to enroll their children in one of Topeka’s eighteen “whites only” elementary schools when school began in September of 1950. One of those parents was Oliver Brown, father of Linda Brown, whose name led the list of plaintiffs.

The District Court found that the facilities provided for black elementary students in Topeka were substantially equal to those provided to white students, and noted that existing Supreme Court precedent bound it to deny the plaintiffs’ claims that segregation itself violated their equal protection rights. But attached to the court’s decision was a finding of fact that “segregation of white and colored children in public schools has a detrimental effect upon the colored children,” and that “the impact is greater when it has the sanction of law.”\(^6\)

**Delaware: Gebhart v. Belton**
In Delaware, the NAACP got a taste of the victory that would come in *Brown* when Chancellor Collins Seitz of the Delaware Court of Chancery ruled that two “whites only” schools in the state, one high school and one elementary school, had to admit black students who proved that the education they were offered at “colored” schools was substantially unequal to the opportunities available to white students.

In Claymont, Delaware, white children attended a local high school situated in town on a 14-acre site, and were given state-funded transportation to school if they lived more than two miles from campus. Black students, including Ethel Belton, had to travel nine miles on public transportation to Howard High School, a segregated black school in urban Wilmington.

The facilities at Howard were clearly unequal to those in Claymont. The Howard auditorium, for example, was inadequate for the student population, and many physical education classes had to be conducted at a YMCA some four blocks away. Some of the physical education classes contained more than eighty students, making a satisfactory education virtually impossible.
Resources

Books


Irons, Peter. Jim Crow’s Children: The Broken Promise of the Brown Decision. New York: Viking, 2002. Argues that Supreme Court decisions over the past few decades have significantly reduced the promise of the Brown decision, contributing to trends of “resegregation” and persistent racial gaps in education today.


Films


Websites
American Bar Association Commission on the 50th Anniversary of Brown v. Board of Education. www.abanet.org/brown. ABA President Dennis Archer has appointed a special commission to plan events and resources for commemorating the 50th anniversary of the Brown decision. Available on the site is a downloadable version of the “Dialogue on Brown v. Board of Education” and information on upcoming events.


Brown Foundation for Educational Equity, Excellence and Research. brownwebboard.org. Provides the text of lower court decisions in most of the Brown-related cases, a bibliography of books related to Brown, an orientation handbook to the Brown decision, an online student activity book, and past issues of the Brown Quarterly for classroom teachers.


“Landmark Supreme Court Cases: Brown v. Board of Education,” Street Law Inc. and the Supreme Court Historical Society. www.landmarkcases.org/brown. Offers a comprehensive overview of the Brown decision, including biographies of key figures, background summaries of the case for various reading levels, excerpts from media coverage of the decision, and a variety of classroom activities.


“The Rise and Fall of Jim Crow.” PBS. www.pbs.org/wnet/jimcrow. Companion website to PBS series of the same name. Features interactive timeline from the 1870s to the 1960s; stories of the people, events, and organizations that fought for and against segregation; and lesson plans, activities, and resources for teachers.


Court Cases


In the nearby village of Hockessin, eight-year-old Shirley Bulah had to be driven two miles by her mother to a one-room segregated schoolhouse, while white students enjoyed state-funded transportation to their school. The white school had received funding of $178 per pupil, while the black school received only $137 per pupil. As a result, the physical plant at the black school was run down, and both the salaries and formal qualifications of the teachers lagged behind those at the white school.

Before deciding upon his ruling, Chancellor Seitz personally visited the schools at issue. Based on these visits and the testimony presented at trial, Chancellor Seitz denied the state of Delaware the right to refuse admission to black students who sought an education at the Claymont and Hockessin white schools. Explicitly rejected was the argument, accepted in other states, that school officials be given an opportunity to “equalize” the segregated facilities. “To postpone relief is to deny relief,” Chancellor Seitz wrote, “and to say that the protective provisions of the Constitution offer no immediate protection.”

The Delaware Supreme Court affirmed Chancellor Seitz’s orders. It also noted, as had the Chancellor, that a decision declaring that segregation per se violated the Fourteenth Amendment’s equal protection rights would have to come from the United States Supreme Court. Nonetheless, the victory in Gebhart was such that it was the only one of the consolidated cases in Brown v. Board that was brought on appeal to the U.S. Supreme Court by the defendants, not the plaintiffs.

Virginia: Davis v. County School Board of Prince Edward County
On April 23, 1951, Barbara Johns led a student strike at the segregated Robert R. Moton High School in Prince Edward County, Virginia. Four hundred and fifty students joined Johns, all protesting the education they were receiving in an eight-room facility designed to accommodate 180 students. Lacking at the black high school, but part of the facilities at the school for white students, were a gymnasium, locker room facilities, cafeteria, teachers’ break room, and infirmary. White students could take courses in physics, world history, Latin, advanced typing and stenography, drawing, and wood, metal, and machine shop work that were not offered to black students.

On the same day that the student strike began, Barbara Johns and Carrie Stokes, a classmate, sent a letter to the NAACP’s office in the state capital of Richmond requesting the NAACP’s assistance in the students’ quest to improve their school. Impressed by the commitment of the students and assured of their parents’ support, the NAACP decided to bring suit against the Prince Edward County school board. The suit asked that the court declare invalid the provision of Virginia’s state constitution that required segregation of schools by race. In the alternative, the complaint sought a decree ordering the correction of the inequalities between the white and black schools.

The student strike and ensuing lawsuit shocked the county school board and state officials into action. Before the trial began, the school board sought, and the state approved, $600,000 in additional money to build a new school for black students in an effort to “equalize” —and preserve—the segregated schools.

At trial, the three-member panel of federal judges found pronounced inequalities between the facilities and curricula at the white and black high schools and ordered that the school board and state continue the work it had commenced to equalize the educational opportunities available to black students. Arguments that segregation itself was harmful to black students found little support among these judges, however. “Separation of white and colored ‘children’ in the public schools of Virginia has for generations been a part of the mores of her people,” wrote Judge Bryan for a unanimous, three-judge panel. “To have separate schools has been their use and wont.”

Indeed, the Supreme Court’s 1954 decision in Brown v. Board of Education met a strategy of “massive resistance” by Virginia segregationists, particularly in Prince Edward County. Rather than integrate the schools, the county simply closed its public education system in 1959. The public schools stayed closed until 1964, when the county was forced to reopen them by order of the United States Supreme Court in Griffin v. County School Board of Prince Edward County.

The District of Columbia: Bolling v. Sharpe
The legal issues involved in Bolling v. Sharpe differed somewhat from the four state cases. The state cases claimed that state laws allowing racial segregation of the schools violated the Fourteenth Amendment’s guarantee that no state could “deny to any person within its jurisdiction the equal protection of the laws.” Because the District of Columbia is a federal district, not a state, the Fourteenth Amendment could not be invoked as the legal basis for a challenge to segregation within the District.

Bolling v. Sharpe arose from the efforts of a committed group of parents, led by barber turned activist Gardner Bishop, to end the practice of racial segregation in the nation’s capital. The initial legal strategy, led by the pioneering civil rights lawyer Charles Hamilton Houston, was to demand equalization of facilities for black students—as elsewhere in the country, the doctrine of “separate but equal” in the District of Columbia had produced a reality of “separate and unequal” in the schools. But when the dying Charles Houston referred the parents group to Howard University Law Professor James Nabrit, a decision was made to challenge segregation head on.

In September of 1950, Gardner Bishop appeared at “whites only” John Philip Sousa Junior High School with a group of eleven black students requesting their admission to the school. They were turned down, and a lawsuit was filed in the federal district court. The plaintiffs maintained that segregation was an unconstitutional deprivation, without due process of law, of black students’ liberty to pursue their education, a violation of the Fifth Amendment to the Constitution (unlike the Fourteenth Amendment’s equal protection guarantees, the Fifth Amendment is not limited to the states). The district court dismissed the case on the grounds
that the constitutionality of segregation was a settled legal issue.

The lawyers for the *Bolling* plaintiffs were waiting to argue the case on appeal to the federal Court of Appeals when they received word from the Supreme Court that they should be prepared to argue their case along with cases challenging segregation on appeal from four states. Together, these cases would be consolidated for argument under the name of *Brown v. Board of Education*.

“Declaring Jim Crow an Outlaw”* Brown v. Board at the Supreme Court

It would take two sets of arguments and two Supreme Court terms before the nine justices issued their unanimous opinion that, in the field of public education, segregation had no place. The initial round of oral arguments began on December 9, 1952, and continued over three days, concluding in the afternoon of December 11. Separate arguments were heard in each of the four consolidated state cases and in the District of Columbia case. A total of seven attorneys represented the plaintiffs, while ten attorneys represented the defendant states and school boards.

When the nine justices met under the leadership of Chief Justice Fred Vinson for their first conference following oral arguments, it became clear that the Court was likely to split over the decision of whether to uphold *Plessy* or declare an end to segregation. And indeed, from a legal standpoint there were clear, if not insurmountable, obstacles to ruling in favor of the *Brown* plaintiffs. First was the precedent of *Plessy* and the Court’s general resistance to overruling an earlier decision. Many of the school districts had been ordered by the trial courts to equalize educational facilities for white and black students, and there seemed to be a sentiment among some of the justices to allow this remedy time to work. A second obstacle was the clear will of over twenty state legislatures and, in the District of Columbia, the United States Congress, to maintain segregated school facilities. To intervene in what was arguably a political process struck some of the justices as a return to the judicial activism of the early twentieth century, when the Court had repeatedly and controversially struck down state and federal legislative efforts to regulate economic and labor issues.

Even if a majority of votes could be secured to overrule *Plessy* and hold for the *Brown* plaintiffs, the prospect of a closely divided Court in this case had the potential for disaster. A split decision would weaken the authority of the majority opinion and give ammunition to those most opposed to integration. Justice Felix Frankfurter devised a solution, which was publicly announced in June 1953. The lawyers for the two sides were asked to reappear for a second round of arguments on five questions posed by the Court. These questions focused on some of the thorniest issues the Court faced. First, what effect, present or future, did the Congress that framed the Fourteenth Amendment and the state legislatures and conventions that ratified it, contemplate the amendment would have on segregation in public schools? Second, if the history of the Fourteenth Amendment contemplated the abolition of segregation, was it within the judiciary’s power to do so? And finally, if the Court were to find that segregation does in fact violate the Fourteenth Amendment and that it is within the judiciary’s power to abolish it, what sort of decree could the Court issue to implement its decision?

Before the Court’s term began in October 1953, Chief Justice Vinson died of a heart attack. He was replaced by a new chief justice, Earl Warren, who was on the bench when the second round of arguments were heard in December 1953. And it was Chief Justice Warren who authored the opinion that would bring the remaining eight justices on board to present a unanimous opinion to the nation. The key to Warren’s success in uniting the Court is summarized by the words he attached to the first draft of the two opinions (one in the four state *Brown* cases and one in the District of Columbia case) that he circulated to his fellow justices for review. The drafts, he wrote, “were prepared on the theory that the opinions should be short, readable by the lay public, non-rhetorical, unemotional and, above all, non-accusatory.”

On May 17, 1954, the opinions in *Brown and Bolling* were made public. In *Brown*, the Court declared that segregated schools are inherently unequal, violating the equal protection guarantees of the Fourteenth Amendment. Two noteworthy aspects of the decision were, first, its conclusion that the history of the Fourteenth Amendment with respect to segregation was at best inconclusive, and, second, its explicit reliance upon social science research demonstrating the harmful effects of segregation that had been introduced at trial. A companion decision in *Bolling v. Sharpe* declared that segregation also violated the Fifth Amendment’s due process guarantees, for if “the Constitution prohibits the states from maintaining racially segregated public schools, it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government.” Segregation in public education had been declared unconstitutional; left open in both decisions, however, was how this finding would be implemented in the schools.

The Court’s decision in 1954 was both an end and a beginning. The *Brown* lawyers appeared again before the Court to take on the question of implementation, and on May 31, 1955, the Court ordered that the schools were to be integrated under supervision of the district courts “with all deliberate speed.” A new round of battles was about to begin over the necessity, extent, and pace of integration in schools around the country. Even today, we see evidence that public schools in many districts are undergoing a process of “resegregation,” in fact if not by law. And just last year, the Supreme Court’s decisions in the University of Michigan affirmative action cases demonstrated that our national debate over equal opportunity in education remains unresolved.

The *Brown* decision certainly represented a monumental shift in the history of our Constitution, for no longer could segregationists claim support for their practices in that document. But the history of *Brown’s* legacy continues to be written. As schools and communities across the United States commemorate this decision over the coming year, it
will be appropriate to reflect on what remains to be done for Brown’s promise of equal educational opportunities for all Americans to be fulfilled.

Notes
7. Ibid., p. 569.
8. Ibid., p. 562.
10. Ibid., 696.

James H. Landman is associate director of the ABA Division for Public Education in Chicago, Illinois.