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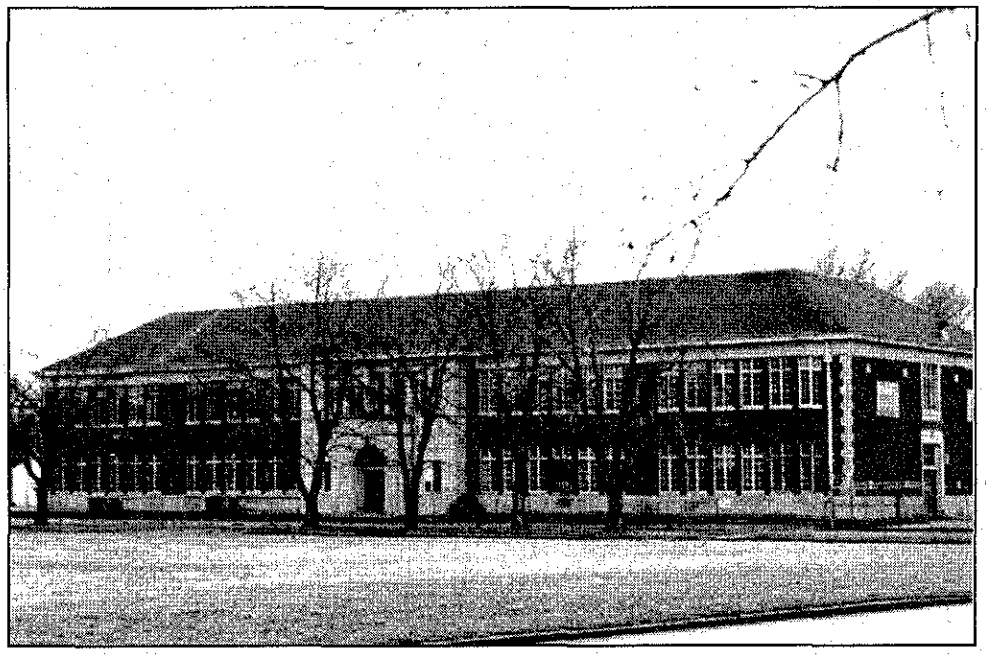
"A STRONG PULL, A LONG PULL, AND A PULL ALTOGETHER:"

TOPEKA'S CONTRIBUTION

TO THE CAMPAIGN FOR SCHOOL DESEGREGATION

Rachel Franklin Weekley



Historic Resource Study

Brown v. Board of Education National Historic Site
Topeka, Kansas

National Park Service
United States Department of the Interior

December 1999

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Dear Colleague ::

It is with great pleasure that I send you the recently published, *"A Strong Pull, a Long Pull, and a Pull Altogether:" Topeka's Contribution to the Campaign for School Desegregation*, historic resource study for the Brown v. Board of Education National Historic Site. This work, begun in 1994, offers a comprehensive look at the five school cases incorporated in the landmark Supreme Court action, *Brown v. Board of Education*, personalities involved, and associated cultural resources.

Please feel free to contact me at 402-221-3921 or rachel_franklin-weekley@nps.gov if you have any questions about the study or wish to obtain additional copies.

Sincerely,

Rachel Franklin Weekley

Rachel Franklin Weekley
Architectural Historian

Enclosure

"A Strong Pull, A Long Pull, and A Pull Altogether:" Topeka's Contribution to the Campaign for School Desegregation

Historic Resource Study

Brown v. Board of Education National Historic Site
Topeka, Kansas

Rachel Franklin Weekley

Midwest Regional Office
National Park Service
United States Department of the Interior
Omaha, Nebraska
1999

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"A STRONG PULL, A LONG PULL, AND A PULL ALTOGETHER:"

TOPEKA'S CONTRIBUTION

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Brown v. Board of Education National Historic Site
Topeka, Kansas

National Park Service
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December 1999

At key times in this nation's history,
children have wrought great and beneficial change,
as exemplified by those involved in the school desegregation cases.

This study is presented in their honor
and is dedicated to the children of contemporary society,
including my nieces and nephews –

the Franklins,
Amy, Steve, Brian, Michael, Lauren, Zachary, Paul,
Daniel, Dylan, Alexandra, Morgan, and Patrick

and the Weekleys,
Leah, Kristin, Isabelle, Andy, Michael,
Amy, Katie, and Paul

for the challenges they've embraced thus far
and those that lie ahead

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LIST OF ABBREVIATIONS

AME	African Methodist Episcopal [Church]
BRvB	Brown v. Board of Education National Historic Site, Topeka, Kansas
CORE	Congress of Racial Equality
CRM	cultural resources management
DDE	Dwight D. Eisenhower [Library]
DOE	determination of eligibility
DoJ	U.S. Department of Justice
FBI	Federal Bureau of Investigation
HABS	Historic American Buildings Survey
HEW	U.S. Department of Health, Education and Welfare
HRS	historic resource study
KKK	Ku Klux Klan
KSHS	Kansas State Historical Society
LDF	NAACP Legal Defense and Educational Fund, Inc.
LoC	Library of Congress, Washington, D.C.
MIA	Montgomery Improvement Association
NAACP	National Association for the Advancement of Colored People
NARA	National Archives and Records Administration
n.d.	no date of publication listed
NHL	National Historic Landmark
NHS	National Historic Site
n.p.	no place of publication /or/ no publisher listed
NPS	National Park Service
NRHP	National Register of Historic Places
PTA	Parent Teacher Association
SCLC	Southern Christian Leadership Conference
SHPO	State Historic Preservation Office /or/ Officer
SNCC	Student Non-Violent Coordinating Committee
USD-501	Unified School District-501 (of Topeka, Kansas)

ACKNOWLEDGEMENTS

I truly appreciate Thurgood Marshall's characterization of the valiant school desegregation campaign. Like its subject, the completion of this study could be termed "a long pull," as well. The project began in early August 1994 with an energetic introduction to Topeka and its resources, and now, three years later, at last is coming to a quiet close. Research and writing have ebbed and flowed through this time as I have become involved in additional research projects and new professional responsibilities. Throughout the process, colleagues, friends, and partners listened patiently to my concerns and offered assistance when possible. Yes, it was a long pull, but also "a pull altogether."

Through the most recent reorganizations of the National Park Service (NPS), Cultural Resource Management (CRM) professionals in the Midwest Region grounded me when I became unstrung. Particular thanks go to Ron Cockrell, my first supervisor for the historic resource study (HRS) and unofficial NPS mentor from my seasonal days, and Dr. Don Stevens, who wrote a baseline historiography of *Brown* v. *Board of Education* which provided a great starting point for my own research. Both reviewed the study and offered much-needed professional guidance through every step of the project. Bill Harlow lent his good sense of humor, technical expertise, and specific assistance with analyses of Topeka's schools, their architecture and construction. Sherda Williams assisted with preliminary assessments of the Monroe site and its former playgrounds, offering expertise on the historic cultural landscape around Monroe School. Andy Ketterson, my *de facto* third supervisor for the project, offered support throughout and pointed analysis of the first draft. Craig Kenkel led this project to completion, aided by a good sense of humor and firm commitment to the establishment of the Brown v. Board of Education National Historic Site. Each of these individuals, and others in the Midwest Regional Office, tendered empathy, interest, and enthusiasm when mine was running out.

NPS professionals based in Washington, D.C., and in Topeka also provided direction for the HRS. Dr. Harry Butowsky wrote the NHL theme study which targeted properties associated with the implementation of the U.S. Constitution as well as the NHL nomination of Sumner and Monroe Elementary Schools. He encouraged me from the outset to explore the constitutional ramifications of the landmark school cases and graciously reviewed at least two drafts of the study. Dr. Butowsky's pertinent comments definitely improved the final product. I also appreciated Laura Feller's review of the work and moral support during its completion. Dr. Dwight Pitcaithley, Chief Historian of the NPS, patiently listened to my frustrations, providing professional support and encouragement when I felt stymied. David Barnes, a seasonal cultural landscape architect technician, worked with Sherda Williams on the completion of the cultural landscape inventories for the Brown v. Board of Education NHS. He introduced me to the Topeka resources in August 1994 and collected important research data during his brief tenure in the park. Superintendent Rayford Harper, the second supervisor for this project, reviewed selected portions of the study and helped secure some historic photographs which greatly enhanced the text. Robin White, then serving as Chief of

Interpretation, carefully reviewed the entire document, offered meaningful suggestions, and caught some of my mistakes. I will always be grateful to Robin for her considerate analysis. Teri Perry, as administrative officer for the park unit, gave her friendship as well as much-needed logistical assistance and moral support. Staff in the park changed as the study underwent repeated, final reviews. Superintendent Bess Sherman, Chief of Interpretation Tyrone Brandyburg, and Administrative Officer Alicia Bullocks lent support during this time. Cheryl Brown Henderson, who helped bring well-deserved recognition to Monroe Elementary, remains a staunch supporter of the park and will shape the school's new legacy as historic site.

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I had the distinct pleasure of working in three, key federal repositories during this project. Herbert L. Pankratz, archivist at the Dwight D. Eisenhower Library, aided my investigation of the executive view of these historical events. Barbara Nathanson, Archivist in the Prints and Photographs Division of the Library of Congress, directed me to some very useful photograph collections. Ernest J. Emrich and many anonymous archivists with the Library's Manuscript Division helped me pinpoint the most useful collections in their vast repository of data on the school desegregation campaign and administrative responses to events in the mid-twentieth century. Although not viewed as a repository, *per se*, the Department of Justice maintains valuable case files through its Freedom of Information/Privacy Act Office in the Civil Rights Division. Chief Nelson Hermilla, Mrs. Arzenia Graham, and other staff members opened their offices and allowed me to peruse several files from the U.S. Attorney General's office pertaining to actions in South Carolina, Virginia, Kansas, and Washington, D.C.

On the historic preservation side, several individuals brought materials to my attention which highlighted the cultural resources associated with the school cases and subsequent desegregation activities. Dr. Robert R. Weyeneth, co-director of the Applied History Program at the University of South Carolina, compiled an inventory of resources associated with the larger civil rights movement and reviewed the study for specific content. Professors Rainier Spencer, of the University of Nevada-Las Vegas and Michael S. Mayer, with the University of Montana, also provided technical reviews, contributing valuable comments on factual content and editorial style. Staff in various State Historic Preservation Offices (SHPOs) provided survey information on properties in their respective states. These included Carolyn Hinson,

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And, finally to my mentors, I express my deepest appreciation. Dr. John L. Bullion always lends his personal and professional support wherever my work takes me. I greatly benefited from the good foundation he provided through instruction of the history of the modern civil rights movement. I appreciate Dr. Susan Flader's dogged determination and sense of commitment because she shares them when I need them most. To Mark R. Weekley, I extend my congratulations because he also has lived with this project for the past five years. His graphics assistance is evident on almost every page of the study and his patience in almost every word. As this project draws to a close, I look forward to future collaborations.

Rachel Franklin Weekley
December 1999

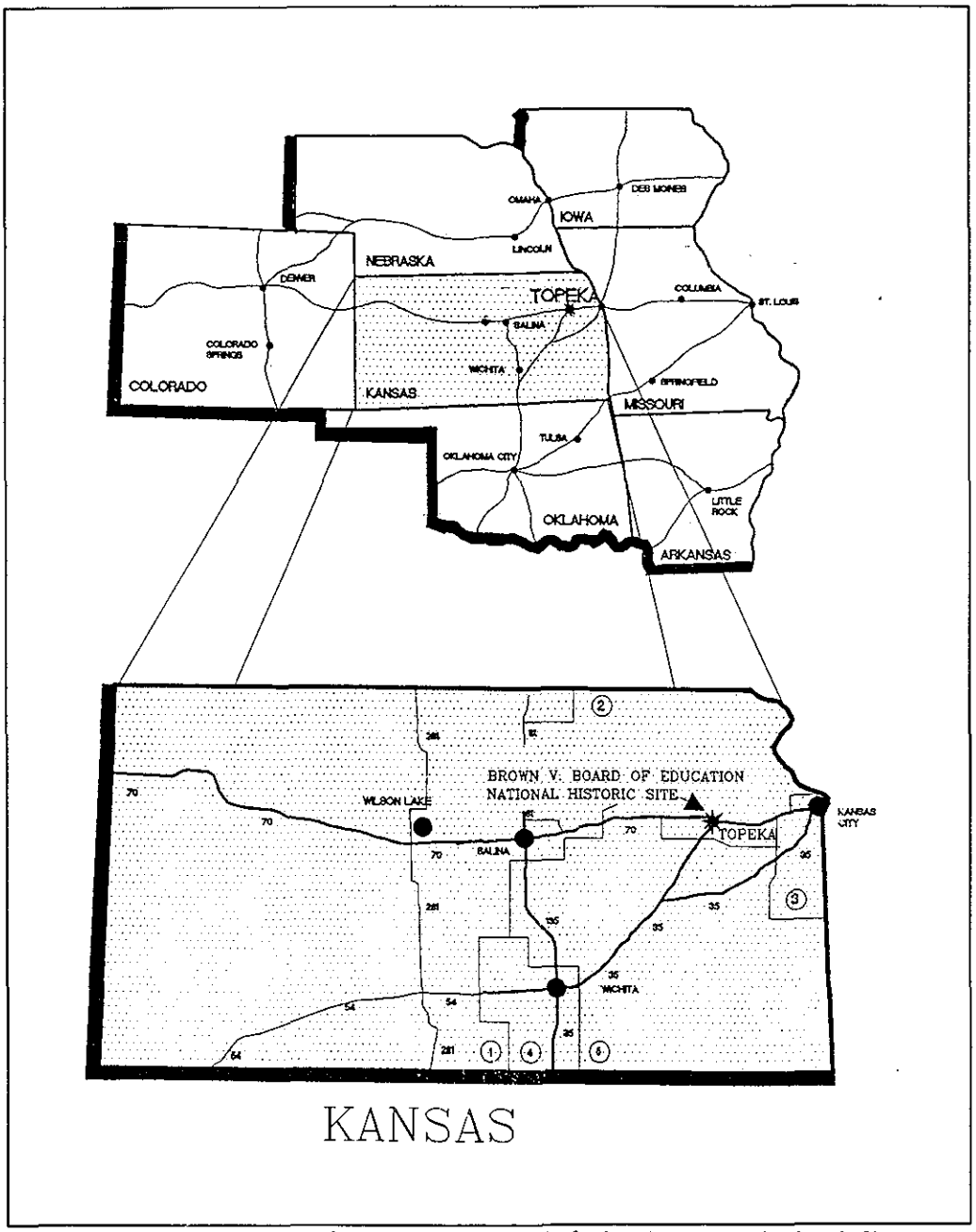

Figure 1. Regional location map for the Brown v. Board of Education National Historic Site.

--- PREFACE

Public Law 102-525 established the Brown v. Board of Education National Historic Site in Topeka, Kansas on October 26, 1992 to commemorate the 1954 U.S. Supreme Court ruling which overturned the constitutionality of racial segregation in public schools. The enabling legislation which established this historic site mandates that the National Park Service will

> preserve, protect, and interpret for the benefit and enjoyment of present and future generations, the places that contributed materially to the landmark Supreme Court decision that brought an end to segregation in public education; and to interpret the integral role of the *Brown* v. *Board of Education* case in the civil rights movement; and to assist in the preservation and interpretation of related resources within the city of Topeka that further the understanding of the civil rights movement.[1]

The Monroe Elementary School and its adjacent playgrounds comprise the 1.85-acre national park unit, which was transferred from private ownership to the United States Department of the Interior on December 16, 1993. During the second quarter of the twentieth century, Monroe was dedicated to the education of the Topeka's African American children. It is most well known as the segregated black school represented in the landmark Brown v. Board of Education case, one of five school desegregation cases heard before the U.S. Supreme Court in the early 1950s. With the establishment of this historic site, Monroe Elementary School exemplifies the larger fight for the equalization of rights, opportunities, and privileges among all citizens in the United States.[2]

Monroe exemplifies four elementary schools in Topeka, Kansas, which were restricted to African American students in the mid-twentieth century. Associated cultural resources not presently part of the national historic site also contribute to the story of race relations and community in Topeka. Plaintiffs from each of the city's black schools participated in the landmark *Brown* v. *Board of Education* case along with those taking legal action in South Carolina, Virginia, Delaware, and the District of Columbia. The resultant U.S. Supreme

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[1]Public Law 102-525, 102d Congress., 2d sess. (26 October 1992).

[2]The terms *black* and *white* will be used throughout this study, sometimes interchangeably with African American, in reference to persons and places according to the following usage guidelines. *The Random House Dictionary of the English Language* defines *black* as: a member of any of various dark-skinned peoples, especially those of Africa, Oceania, and Australia; an Afro-American. It is used in standard English in the following manner: *Black, colored,* and *Negro* have all been used to describe or name the dark-skinned African peoples or their descendants. *Colored,* now somewhat old fashioned, is often offensive. In the late 1950s *black* began to replace *Negro* and today is the most widely used term. Common as an adjective (ie: black woman), *black* is also used as a noun, especially in the plural. Like other terms referring to skin color, *black* is usually not capitalized, except in proper names or titles (ie: Black Muslims). The dictionary defines *white* as: light or comparatively light in color; marked by slight pigmentation of the skin, as of many Caucasoids; for, limited to, or predominantly made up of persons whose racial heritage is Caucasian (ie: a white school, a white neighborhood).

Court rulings of 1954 and 1955 struck down the precedent of "separate but equal" established via *Plessy* v. *Ferguson* (1896) and called for "all deliberate speed" in ending segregation in public education. This action, in turn, inspired people of all races to work towards the defeat of segregation in public accommodations and transportation venues, to acquire the full benefits of citizenship, and to combat prejudice and racism in society. Historians of the modern civil rights movement of the late-1950s and 1960s therefore trace its beginning to the initial *Brown* decision. Because of its historical significance, Monroe School, was designated as a national historic landmark (NHL) in 1991, and also was listed on the National Register of Historic Places (NRHP) in that same year.[3]

This historic resource study (HRS), completed for the Brown v. Board of Education National Historic Site in Topeka, Kansas, chronicles these nationally significant events, places them within appropriate historical contexts, documents related cultural resources, and appraises available research materials. The National Park Service's Cultural Resources Management Guideline (NPS-28) calls for the preparation of an HRS for each unit in the National Park System. Per agency policy, the report

> provides a historical overview of a park or region and identifies and evaluates a park's cultural resources within historic contexts. It synthesizes all available cultural resource information from all disciplines in a narrative designed to serve managers, planners, interpreters, cultural resource specialists, and interested public as a reference for the history of the region and the resources within a park.[4]

This study contains seven chapters which establish the background context in Topeka, Kansas and discuss the prosecution of the five school desegregation cases as well as the national and local impact of the Supreme Court opinions. It also provides documentary photographs of associated cultural resources, a historical base map, a chronological timeline of relevant events, copies of the joint NHL and NRHP nominations for Sumner and Monroe, nominations of associated properties, the park unit's enabling legislation, tables of pertinent litigation pertaining to school desegregation, and profiles of the Topeka plaintiffs. An extensive annotated bibliography completes the work, providing a categorized directory of relevant sources for further research. Thus, due to its comprehensive scope, the study will serve as a primary reference for interpretive programming, future research, and general park planning for the Brown v. Board of Education National Historic Site in Topeka, Kansas.[5]

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[3]NHL designation bestows automatic inclusion on the NRHP.

[4]"NPS-28: Cultural Resource Management Guideline," Release No. 4, United States Department of the Interior, National Park Service, July 1994, 25-26.

[5]My thanks to Senior Research Historian Ron Cockrell, of the National Park Service's Stewardship and Partnership Team, Great Plains Support Office, for some of the wording taken from the project's task directive.

--- PROLOGUE

The Brown v. Board of Education National Historic Site (NHS), a new unit in the National Park System, marks recent attempts by civil rights activists and the federal government to come to terms with important aspects of race relations in the United States. It functions as a symbol of the lengthy school desegregation campaign which prompted the U.S. Supreme Court to overturn the 1896 *Plessy* segregation ruling. The *Brown* v. *Board of Education* case inaugurated the desegregation of public education by declaring the unconstitutionality of racial separation. Composed of the Monroe Elementary School and its adjacent playgrounds in Topeka, Kansas, this new national park represents both historical fiction and irrefutable fact, refraction and reality, of the struggle to end segregated public education in the United States. Monroe first received national attention in the mid-1950s as a representative black school in the racially segregated Unified School District-501 (USD-501) of Topeka, Kansas. Administrators reserved four elementary schools, Washington, Buchanan, McKinley, and Monroe, for the city's African American children. Just as the Browns served as the focal point for the plaintiffs in this and four additional school desegregation cases, in like manner, Monroe became symbolic as a segregated black elementary school, even though it was hardly representative of most in the segregated South. Because relative parity existed between these black and white facilities, the Kansas case boiled down to a debate of the practice of segregation, *per se*. Counsel adeptly pointed out the obvious inconsistencies in Topeka's segregation policies, whereby children were separated in the lower grades, but mixed in junior and senior high schools. This breach in segregation policy created a very potent opportunity for a successful challenge to end **all** racial separation in public education.

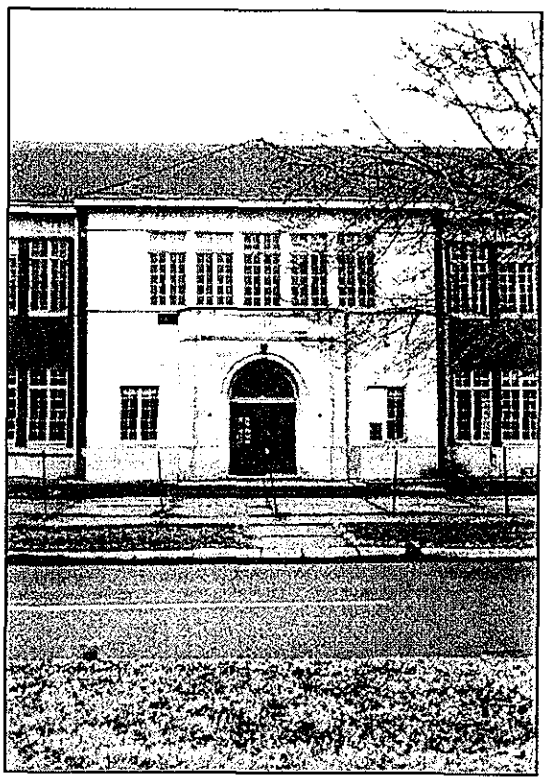

Figure 2. Entry, Monroe Elementary School.

In a broader context, however, the course of events that many simply refer to as *Brown* involved a complex mix of social currents, federal action, extensive litigation on state and national levels, and direct action by individuals and groups across the United States. Under the successive leadership of Charles Hamilton Houston and Thurgood Marshall, the National Association for the Advancement of Colored People (NAACP) enacted a well-planned legal campaign to end racial segregation in graduate and professional education. Through the 1930s and 1940s, litigation by a very talented group of counselors in federal and county courts chipped away at the "separate but equal" doctrine in higher education. By 1952, the

organization undertook a full-fledged assault on segregation in public schools at the elementary and secondary levels. Co-counsel from the national NAACP Legal Defense and Educational Fund, Inc. (LDF) offices in New York City oversaw the coordination of five separate cases which attacked segregation in public elementary and secondary schools.

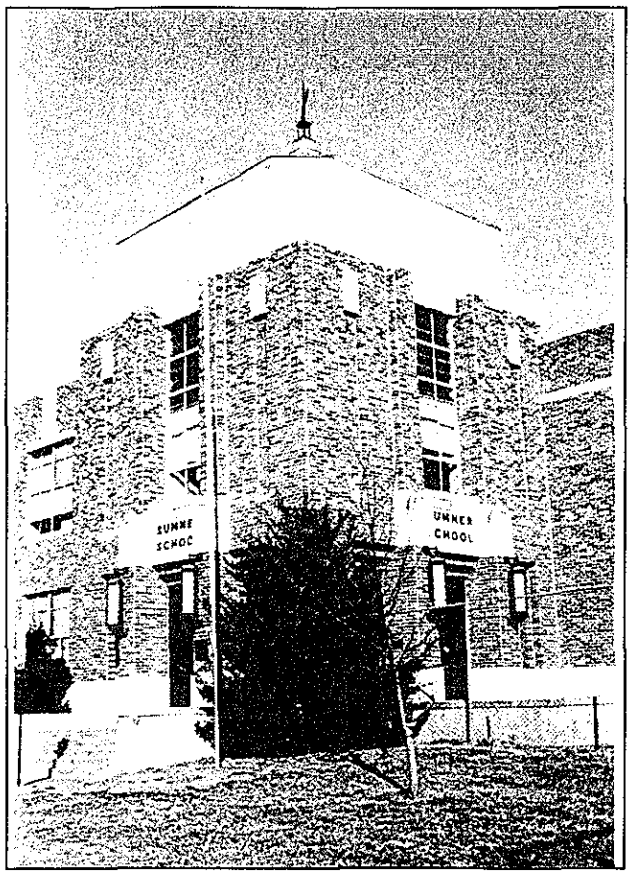

Figure 3. Sumner Elementary School, Topeka, Kansas.

The appeals process culminated a year later in a hearing before the U.S. Supreme Court which dealt with these consolidated school desegregation cases. The lead plaintiff, Oliver Brown, in the case from Topeka, Kansas, headed a docket which included *Harry Briggs, Jr., et. al.* v. *R.W. Elliott et. al.* (South Carolina), *Dorothy E. Davis et. al.* v. *County School Board of Prince Edward County, Virginia, et. al.*, *Francis B. Gebhart, et. al.* v. *Ethel Louise Belton, et. al.*[1] (Delaware), and *Spottswood Thomas Bolling, et. al.* v. *C. Melvin Sharpe, et. al.* (District of Columbia). *Brown* v. *Board of Education* gave its name to the composite litigation primarily because, by sheer circumstance, that case led the docket, but also because it epitomized the basic issue of each; namely, the denial of due process as guaranteed by the Fourteenth Amendment through the practice of racial segregation. Expert witnesses focused on the lessons of inferiority, learned in segregated classrooms by virtue of their separation and exclusion from the majority group in society. On May 17, 1954, after two years of delay and argument before the Court, Chief Justice Earl Warren announced the unanimous landmark decision which overturned the *Plessy* v. *Ferguson* precedent of segregated facilities. The high court ruled that racial segregation had violated the right of due process granted to all citizens because separate schools were "inherently unequal" and bestowed a sense of inferiority upon their students. The decision ended the 1896 "separate but equal" finding in *Plessy* v. *Ferguson* which had sanctioned separate public facilities in the United States. On May 31, 1955, the Court issued another unanimous opinion regarding the implementation of the desegregation decree, urging states to comply "with all deliberate speed." These constitutional victories

[1]*Belton* was linked with *Bulah* v. *Gebhart*, a case addressing segregation in Hockessin, Delaware.

stripped away the underpinnings of a segregated society and marked the commencement of the modern civil rights movement.

While the opportunity to eradicate inequality came via the U.S. judicial system, this national "debate" about the desegregation of public schools included a virtual cross-section of all Americans. Jack Greenberg, former Director of the NAACP LDF, believed the school desegregation cases "helped to crystallize a national commitment to eradicate racial inequality."[2] The convergence of grassroots and federal action initiated a groundswell of responses, from those who sought equalization and integration as well as those who fought to retain social subjugation and separation. Segregationists predominantly from Southern states rallied quickly to oppose what they perceived as an encroachment by a federal branch of government into the powers of state and county officials. Both the desegregation successes and their staunch opposition naturally led to a broader movement for equitable treatment that lasted into the 1970s. The two camps squared off over efforts to desegregate public accommodations, housing, and interstate travel, to facilitate voter registration and political participation, and some who wanted to establish personal and group identities via "Black Power." Although the civil rights movement diversified, many African Americans and their white supporters ultimately sought to equalize access to opportunities and fair treatment across the United States through many avenues broached during various stages of the movement.

Although the Supreme Court struck down the constitutionality of racial segregation more than forty years ago, society has engaged in a wrestling match over judicial powers, local options, and citizens' rights during the course of these decades. The United States continues its angst over race relations and fair treatment to the present. These issues interject themselves into virtually every aspect of public policy and most matters of private concern, such as criminal trials, gender issues, human relations, free expression, national educational standards, and affirmative action programs. The trend shows no signs of stopping. A discussion of the "after-effects" of *Brown* merely continues on-going conversations about everyday life in America and the people who participate in it. The Brown v. Board of Education NHS will provide a focus for these machinations and instruct the public in the process. Visitors who explore Topeka's participation in the school cases will learn of the broader campaign which initiated them and understand the contributions of all who worked to achieve its goals. The site provides the opportunity to analyze a comprehensive collection of actions, policies, and feelings, which denote the remarkable power of people to change their beliefs and behaviors. The call for legal affirmation by plaintiffs in the five cases exemplifies the persistent democratic contest for sovereignty and the specific struggle by African Americans to gain equitable status in society. As a new historic site, Monroe Elementary School joins an elite group of cultural resources in the National Park System which reaffirm optimism in the United States tradition of demanding full constitutional protection and confidence that the nation's political institutions will grant it.

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[2]Jack Greenberg, "The Supreme Court, Civil Rights and Civil Dissonance," *The Yale Law Journal* 77 (1968): 1523.

For almost fifty years, the *Brown* rulings have been synonymous with efforts to achieve educational equality in America's public schools and equity in all walks of life. These events marked an evolutionary leap in the gradual development of the concept of equality in this nation. As Stanley N. Katz explains, "Substantive equality (the notion that there is only one community of rights holders, that everyone is entitled to equal treatment in all aspects of life) came to maturity in constitutional jurisprudence in 1954 in *Brown* v. *Board of Education*."[3] By extension, the physical resources associated with these events possess importance, as well. Monroe Elementary School, now serving a new role as Brown v. Board of Education NHS, retains national historical significance for its association with these events that culminated in the landmark U.S. Supreme Court decisions of 1954 and 1955 that resolved the school desegregation cases. It will function as historic site and clearinghouse for information about the five school desegregation cases, as well as the broader endeavor for constitutional equality and its implementation.

The fundamental explanation of this dramatic progression lies with the people who initiated it, who retained the inner will and stamina to translate ideas into action and accomplishments. Their story follows. This historic resource study provides a comprehensive look at those who participated in the school desegregation campaign, their frustrations and successes. It provides a comparative analysis that places *Brown* v. *Board of Education* in a national framework, thus linking local players and events with the national significance of this landmark Supreme Court decision. While the study primarily concentrates on the people and events of the school desegregation cases, it also addresses the physical resources they left behind. The story begins with the backdrop of Kansas, the settlement of Topeka, and the growth of its African American community. Chapter Two deals with educational opportunities, the evolution of segregation in Kansas, and early attempts to stem the practice of racial separation. The focus then shifts, in Chapter Three, to Charles Hamilton Houston's work with the NAACP on the national scene. He directed the agency's litigation strategy to overturn the constitutionality of segregation in the 1930s and 1940s and trained an elite group of civil rights attorneys who formed the NAACP's LDF. This chapter also explores key legal successes in the desegregation of professional and graduate educational programs, and the NAACP's decision to enter cases pertaining to secondary schools in South Carolina and Virginia. Chapter Four examines the specific litigation at the district court level for the five school cases through 1952. Arguments before the U.S. Supreme Court, interrupted by a variety of circumstances, are related in Chapter Five. It examines the oral arguments from 1952 to 1954 and the final resolution of *Brown I*, with a focus on related subsequent arguments on implementation of the desegregation decree and the 1955 edict of "all deliberate speed," issued through *Brown II*. Chapter Six looks at some of the more immediate effects of the *Brown* v. *Board of Education* decisions, by examining desegregation efforts in Topeka, Delaware, and Washington, D.C., and by tracing the dramatic story of retrenchment and

[3]Stanley N. Katz, "The Strange Birth and Unlikely History of Constitutional Equality," *The Journal of American History* 75 (December 1988): 758.

denial in Virginia and South Carolina. The physical evidence of these critical events remain in extant cultural resources. Chapter Seven surveys representative buildings, structures, and landscapes which supplement the documentary record and traces the evolution of the new national park which offer a comprehensive interpretation of the landmark desegregation victory.

The story of segregation in Topeka is composed of well-crafted strategy and capricious chance. The crux of the combined appeal was characterized by the main event in Topeka; Oliver Brown's plea for his daughter to be allowed to walk five blocks to attend Sumner School rather than ride across town to Monroe Elementary. Through the distance of time, her singular experience has overshadowed the chain of events that initially fueled the comprehensive legal action. This is one of several misconceptions about the history of *Brown* v. *Board of Education* which will be corrected in the following account. First of all, timing was crucial because the NAACP campaign was well-established by 1950 and effectively had won desegregation suits for graduate and professional academic programs. The Topeka branch chapter capitalized on the momentum from the national campaign and the successful desegregation of the city's junior high schools and requested assistance from the national organization for further assistance. Quite ironically, it was the condition of **equality** that revealed the glaring **inequality** of segregation. The Association had not intended to pursue desegregation in primary grades when the opportunity arose in Kansas, but it provided an almost perfect application of the "separate but equal" test deemed constitutional by *Plessy*. Second, plaintiffs relegated to the *et. al.* designation largely have been forgotten, but their hard work and determination contributed to the success of the school cases. Thirdly, some

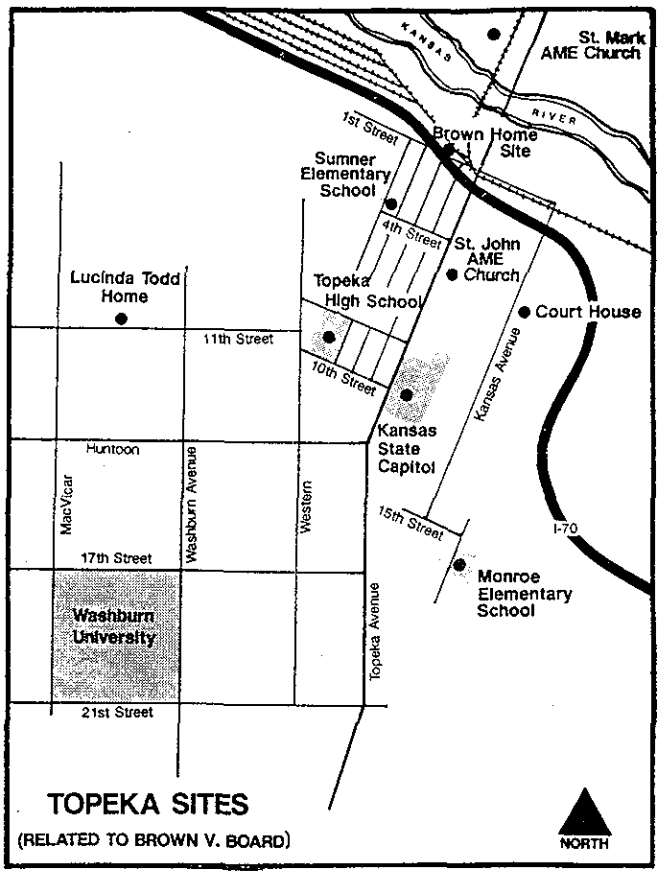

Figure 4. Map of related cultural resources in Topeka, Kansas.

participants faced resistance within their own black communities for shaking up the *status quo*. Fourth, busing, which once carried the stigma of segregation, became in the 1970s, the panacea for racial separation. Last, and most important, however, was the element added by the Kansas case. The relative equality of Topeka's elementary schools provided an important basis for debate on segregation, *per se*, because it removed equalization as a potential remedy for racial discrimination.

The twists and turns of fate brought Topeka and its citizens to the forefront of the national battle for constitutional and social equality. Image and reality characterize the historical record of *Brown* because memory contributes to, just as it distorts, the historical record. As we search for a "useable past," the two become intertwined. Edward T. Linenthal, who has extensive experience in this field, commented on the need for both, specifically in the interpretation of museum exhibits, but also at historic sites. He cautioned,

> Without the commemorative voice, history exhibits run the risk of being just "books on the wall," with little to fire people's imaginations. Without the historical voice, such exhibits become vulnerable to the seduction of personal memory and to the expediency that so often governs what nations choose to remember.[4]

NPS professionals must balance the two in the interpretation of the school desegregation campaign at the Brown v. Board of Education NHS. The politics of nostalgia will certainly come into play, but should be steadied with historical accuracy. The people in the Kansas capital played an important role in the lengthy campaign for school desegregation and, accordingly, earned a prominent place in the formal chronology of events and in the institutional memory of the broader civil rights movement. The drive for judicial and social equality did not begin in Topeka, nor did it end there. But, this place and its people cut to the crux of the argument by providing a classic example of the inherent inequality of "separate but equal." Each in turn, Topeka, Monroe Elementary School, McKinley Burnett, Charles Bledsoe, the Scotts, the Todds, and many others served as catalyst and prism for the long, strong pull which invigorated a successful challenge to racial segregation. The pages that follow tell just how they did it.[5]

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[4]Edward T. Linenthal, "Can Museums Achieve a Balance Between Memory and History?" *CRM* 18, no. 4 (1995): 20-21.

[5]Professor Linenthal discussed related issues of commemoration versus accurate historical representation in two larger works, *Sacred Ground--Americans and Their Battlefields* (Urbana: University of Illinois Press, 1991) and *Preserving Memory: The Struggle to Create America's Holocaust Museum* (New York: Viking-Penguin Press, 1995). David Glassberg also discusses these dynamics in "Public History and the Study of Memory," *The Public Historian* 18, no. 2 (Spring 1996): 7-23.

Every Kansas man knows, or ought to know, that the rough-hewn western men and boys who went in on their instincts as to what was right and wrong, as to what was square and fair in squatters' rights, took a full hand in all that was done in beating down the pro-slavery power on the soil of Kansas.[1]

– John Ritchie
Old Settlers' Meeting, September 1879

[1]John Ritchie, speech presented at an Old Settlers' Meeting, Lawrence, Kansas, September 1879, quoted in *John Ritchie: Portrait of An Uncommon Man*, ed. Daniel Fitzgerald, Shawnee County Historical Society, Bulletin No. 68 (Topeka: Shawnee County Historical Society, November 1991), 9.

CHAPTER ONE

THE FREE LAND OF KANSAS, 1854-1900

The decade of the 1850s was one of booming expansion for the newly-opened territory, and one that placed "bleeding Kansas" at the crossroads of the slavery debate. The application of popular sovereignty in the 1854 Kansas-Nebraska Act left the territory's status to be determined by a vote of its residents. Like air rushing into a vacuum, supporters and detractors of slavery charged into the breach to win control of the territory. Life on the plains calmed somewhat by 1861 because the flashpoint moved to Ft. Sumter, South Carolina and war exploded across the southeastern United States. After the Civil War, Kansas residents hoped that the bloody process which had forged the free state would ensure a future free from racial strife. Few had such high hopes for a postbellum transformation of Southern society. Although the Civil War amendments disbanded the institution of slavery, they merely dampened racial stratification for the short term. After Reconstruction, white Radical Republicans lost their passion, the flurry of social reform fizzled, and the nation suppressed regional divisions. Black Radical Republicans continued the struggle, with little success. This climate left a new generation of Southern politicians, dubbed Bourbon Redeemers, free to regain political power in former Confederate and border states. The self-proclaimed Redeemers devised new segregationist practices to reestablish hegemonic control over the African American population in the South and lower Midwest. Migration into Kansas increased proportionately once the Civil War was formally underway. The total black population in Kansas increased from less than one percent in 1860 to almost nine percent by 1865. The climate of postbellum society, combined with the lure of available land in the West, convinced many remaining Africans Americans to leave the South. In 1879, "exodusters" left Tennessee, Georgia, and Alabama for fertile lands west of the Missouri River, where they might establish lives free from racial prejudice and restriction. Many Kansas communities welcomed the newcomers initially,but race relations became tense and stratified during the last quarter of the nineteenth century. Individuals and groups, alike, challenged discriminatory treatment, but a national preoccupation with the "separate but equal" panacea limited their success.[2]

A. *Ad astra per aspera*

The Kansas state motto, *ad astra per aspera*, translates as "To the stars through difficulties." It, on the one hand, expresses unbounded optimism in limitless ambition. On the other, it expresses full recognition that potential obstacles lie in the way of those ambitions. The maxim suits the state's territorial beginnings because the settlement of Kansas

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[2]James R. Shortridge, "People of the New Frontier: Kansas Population Origins, 1865," *Kansas History* 14, no. 3 (Autumn 1991): 162-185.

comprised the most violent domestic circumstance of the 1850s. The Kansas-Nebraska Act of 1854 opened the two territories to settlement and potentially to the expansion of slavery,through repeal of the Missouri Compromise of 1820. Senator Stephen Douglas' bill caught the nation's attention because the subsequent admission of these two states threatened to disrupt parity between slave and free states, which, in turn, would disrupt the balance of power between these respective political forces in Congress.

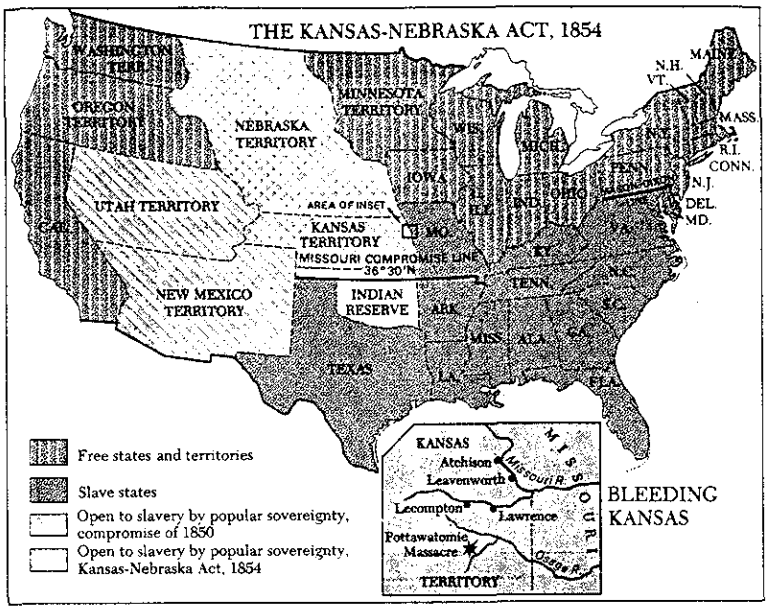

Figure 5. Map showing the impact of the 1854 Kansas-Nebraska Act.

Migration west of the Mississippi River during the first quarter of the nineteenth century raised the first serious examination of the expansion of slavery. Political leaders quashed confrontation over slavery through the Missouri Compromise (1820) which provided for the admission of Missouri as a slave state, but forbad any further expansion of slavery north of the 36 30' parallel. This measure temporarily curbed discussion about slavery's advancement north of cotton-producing lands, but the nation continually flirted with the issue throughout this period. Senator Douglas re-opened serious debate in 1854 with the proposal to repeal the Missouri Compromise and its 36 30' boundary, to form two territories from the expanse of land, and to allow settlers to determine the political status of each through the democratic practice of popular sovereignty.[3]

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[3]Works abound about the Kansas-Nebraska Act and its repercussions, including general U.S. history texts and specialized monographs. Readers might refer to; George Brown Tindall with David E. Shi, *America: A Narrative History*, Vol. I, 3rd ed. (New York: W.W. Norton & Company, 1992); Dorothy Weyer Creigh, *Nebraska: A History*, The States and the Nation Series (New York: W.W. Norton & Company, Inc., 1977); James Claude Malin, *The Nebraska Question, 1852-1854* (Lawrence: University of Kansas Press, 1953); James A. Rawley, *Race and Politics: "Bleeding Kansas" and the Coming of the Civil War* (Philadelphia: Lippincott, 1969); and Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (New York: Oxford University Press, 1970).

When Congress approved the Kansas-Nebraska Act, it opened the region to competition between the friends and foes of slavery. The free status of Nebraska Territory was settled easily compared with that of Kansas. The latter territory, located immediately to the west of slave state Missouri, became a proving ground for the future of slavery in the United States. The New England Emigrant Aid Society, led by Eli Thayer, immediately sent "colonists" to Kansas to set down roots for a free citizenry.[4] The society exerted a brief, but strong influence in the effort to stop slavery and other organizations followed its example. Pro-slavery advocates also poured in, from Missouri and southern states, to counter the free position. By 1855, democratic promise had given way to physical intimidation in the fight over Kansas. "Border ruffians" skirted across the Missouri state line, effectively invalidated elections, and harassed free-soil advocates. Free state "Jayhawkers" retaliated in like manner and soon this competition over whose sovereignty would prevail embroiled Kansas in a series of mini-wars.[5]

The term, "bleeding Kansas," appropriately describes the situation in the mid-1850s. The first election for a territorial legislature, held in March 1855, began the controversy over the legitimacy of elections, voter eligibility, and the validity of election returns. Pro-slavery forces and free-staters vied repeatedly from 1855 to 1860 for the establishment of a government and constitution which codified their respective platforms. Both succeeded, with a free assembly based in Topeka and one in Pawnee, moved later to Shawnee Mission, which sanctioned slavery. The problem was that Kansas now possessed two legislatures, each negated by the other as bogus. Topeka provided the site for the first constitutional convention. Free-staters dominated the proceedings, therefore the Topeka Constitution outlawed slavery in the Kansas Territory.[6] President Franklin Pierce denounced the Topeka legislature and the government it offered. His administration officially recognized the pro-slavery government formed in Shawnee Mission, funded it, and initially accepted its constitution. With federal backing then, the pro-slavery legislature began to organize counties, made political

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[4]Thayer, cotton mill owner, embraced free-soil ideology rather than abolitionism, itself. The distinction is important because many who contested the future of Kansas believed free labor, rather than slave labor, to be the foundation for capitalist expansion. Free-soilers advocated free, wage labor through open competition, but did not necessarily advocate the abolition of slavery or equal treatment for African Americans. Many Kansas free-soilers wanted to exclude African Americans, free or slave, from the territory--and later, from the state. Bill Cecil-Fronsman looks at criticism of Yankee free-staters and their commitment to anti-slavery, published during the period in a Missouri-based, pro-slavery newspaper; please see "'Death to All Yankees and Traitors in Kansas': The *Squatter Sovereign* and the Defense of Slavery in Kansas," *Kansas History* 16, no. 1 (Spring 1993): 22-33.

[5]George B. Tindall and David E. Shi, *America: A Narrative History*, brief 2d. ed. (New York: W.W. Norton & Company, 1989), 389.

[6]Quite curiously, it also excluded free blacks from the Kansas Territory.

appointments, and moved the capital to Lecompton. But, Kansas' future was by no means settled because Congress had not acted on any of its constitutions.[7]

By spring 1856, sectional forces had split the Kansas Territory into two factions. Free-staters vowed to ignore all power held by the "bogus" pro-slavery government. Residents of free towns, Topeka, Lawrence, Osawatomie, and Manhattan, opposed pro-slavery settlers in Atchison, Leavenworth, Kickapoo, and Lecompton. Violence rose to a new height in 1856, the year which characterized "bleeding Kansas" more than any other. An imminent clash lay ahead because pro-slavery Lecompton was located approximately twelve miles east of Lawrence, a free town. In May, a group of pro-slavery men from Missouri, composed of army officers, sheriffs, and civilians, arrested anti-slavery men in Lawrence and ransacked the town. Those on the free labor side vowed revenge. John Brown, with four of his sons and a few supporters, rode from their homes in nearby Osawatomie two days later and murdered five pro-slavery men living in a settlement on Pottawatomie Creek. Brown, an unyielding abolitionist, viewed the institution of slavery and anyone who condoned it with contempt. He found solace in this retaliation for the Lawrence attack. His more famous raid would occur three years later in Harpers' Ferry and solidify his reputation as a martyr for the cause of freedom. The earlier Kansas raid, dubbed the Pottawatomie Massacre of May 1856, sparked the territory's bloodiest, and possibly longest, guerrilla war which lasted well into the fall.[8]

The Kansas territorial government had coalesced somewhat by 1857, sporting an anti-slavery legislature and a pro-slavery constitutional convention. Events served as a microcosm for the ultimate, national clash over slavery. Sectionalism also dominated national politics during this period, resulting in a fragmented 1856 election which put James Buchanan, a Southern sympathizer, in the White House. Slavery advocates in Kansas felt his victory cinched their crusade and a year later they submitted the Lecompton Constitution, the third such document in the territory's brief history, for congressional approval. Pro-slavery advocates and Missouri "border ruffians" engineered a territorial victory when the constitution was submitted for voter approval. The ballot count ran 6,226 for the "importation" of slaves against 569 opposing it. Buchanan supported the constitution when it arrived in Washington, but his political appointee, Kansas territorial governor Robert J. Walker, opposed it because the territorial vote on the Lecompton Constitution was fraudulent. Although Walker personally endorsed the institution of slavery, he abhorred any violation of the principle of popular sovereignty. The matter publicized the seemingly endless spate of political fraud in Kansas and led to Walker's resignation. It then fell to Acting Governor Frederick P. Stanton to resolve the controversy over the Lecompton Constitution. He held another vote, this one dominated by free-soilers, and promptly lost his job. James W. Denver, the next territorial

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[7]*Ibid.*; Kenneth S. Davis, *Kansas: A Bicentennial History*, States and the Nation Series (New York: W.W. Norton & Company, Inc., 1976), 50-52; and Bliss Isely and W.M. Richards, *Four Centuries in Kansas*, Unit Studies (Wichita: The McCormick-Mathers Company, 1936), 122-132.

[8]Edwin C. McReynolds, *Missouri: A History of the Crossroads State* (Norman: University of Oklahoma Press, 1962), 189; and Tindall and Shi, *America*, 390-391.

governor, apprised Buchanan of the situation in Kansas, telling the president that the majority of *bonafide* residents wanted a state free from slavery. Buchanan again ignored reality and instead encouraged Congress to accept the Lecompton Constitution and admit Kansas as a slave state. The legislators balked at the request and sent the constitution back for yet another vote. Slavery advocates boycotted the political process on this go-round and free-soilers prevailed by a margin of 11,300 to 1,788. Despite the skewed vote, the referendum finally laid the *Lecompton Constitution* to rest.[9]

This defeat denoted the end of any hope that slavery would serve Kansans' future labor needs. With the Lecompton question settled, Southern white migration slowed dramatically and the influx from Northern states increased. This shift in migration altered the balance of opinion within the state to such an extent that the populations of former pro-slavery cities, such as Leavenworth and Atchison, now advocated an abolitionist stance. It was in this environment that another constitutional convention met in July 1859, this time in Wyandotte, which now comprises a portion of metropolitan Kansas City. Members produced a valid constitution, accepted by voters across the territory in October 1859, that finally settled the status of Kansas. It outlawed slavery, limited the state's size to its present area, situated the capital in Topeka, enfranchised white men, gave women parity regarding rights over children and property, allowed girls to attend tax-supported schools, and set up the framework of governor, assembly, and some political appointments. Congress formally admitted Kansas as the thirty-fourth state in January 1861, adding one more free state to a very fragmented Union on the brink of civil war.[10]

Kansas enjoyed a brief period of calm as the Civil War exploded in the southeastern United States. Seven states seceded in December 1860, in direct response to Abraham Lincoln's election as president of the United States. Four others followed in April 1861 after the fateful stand-off at Fort Sumter, comprising a total of eleven in the newly-created Confederate States of America. The conflict spread westward, though, and Kansans found themselves embroiled in another border war with Missourians. "For Kansas," Kenneth S. Davis phrases it, "the outbreak of the Civil War was not the shock that it was to most Americans and meant no totally new departure from familiar ways of life."[11] They endured guerrilla raids by Confederate supporters, Sterling Price, William C. Quantrill, and their followers, and bore the retaliatory violence of Unionist forces led by James H. Lane, Samuel

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[9]Tindall and Shi, *America*, 394-396; McReynolds, *Missouri*, 193-196; and Isely and Richards, *Four Centuries in Kansas*, 158-161. Shortridge, "People of the New Frontier" *Kansas History*, 182-184, looks at cultural indicators reflected in the vote on the acceptance of the Wyandotte Constitution. Land speculators with little deep, political conviction constituted a third lobbying group in the wrangle over control of Kansas. They play a very minimal role here because the study focuses on the experiences of African Americans in Kansas, rather than on the comprehensive history of Kansas, *per se*.

[10]Tindall and Shi, *America*, 407-408; and Isely and Richards, *Four Centuries in Kansas*, 161-163.

[11]Davis, *Kansas*, 78.

J. Crawford and many more. With the war's end in 1865, however, the interstate squabbles fell away and were replaced by a unified focus on Indian removal.[12]

Veterans enlisted in the U.S. assault against Native American tribes throughout the West, but particularly focused on the newly-settled areas of Kansas. A series of forts across the region functioned as safe-havens and supply stations for cavalry units mandated to control the native populations. The federal removal program generally resulted from inherent feelings of cultural superiority and racism towards natives, as well as some rather brutal attacks on early settlers. Kansas lands once occupied by the Pawnee, Kansa, Osage, Wichita, and Comanche were viewed by whites as free for the taking. The federal government used military might, persuasion, and intimidation to make that a reality. For the most part, the Indian wars in Kansas ended by 1878. Buffalo herds were all but extinguished by that time and most tribes had been removed to reservations in the Oklahoma Territory or restricted to preserves in Kansas. Potential settlers from the eastern United States now viewed the new state as stable, profitable, and bound for extraordinary economic growth.[13]

Throughout its turbulent "birthing period," the people of Kansas sought to establish farms, businesses, town centers, and rural communities. The battle over slavery provided an initial "pull" for many newcomers. Gold discoveries in the western region of the territory, in present-day Colorado, supplied another incentive. The flood of ideologues and wealth-seekers, in turn, facilitated business opportunities for those who would make Kansas their home. American citizens and European immigrants, alike, took advantage of opportunities offered by the 1862 Homestead Act by staking out 160-acre claims. Thousands of African American migrants flocked to what they hoped would be the "promised land" after the "opening" of the Kansas Territory. The resurgence of prejudice and racism after Reconstruction encouraged these people to seek better lives in the West. The availability of abundant land, virtually free from cost, made the move even more appealing. The railroad also aided settlement and economic growth in Kansas. Rail companies owned more than ten million acres across the state in the 1870s and dispensed most of it through public auction and relocation of European immigrant groups. Rail lines also facilitated the cattle drives from Texas to the "cow towns" of Abilene, Newton, and Dodge because they provided relatively quick access to eastern markets. By the turn of the century, Kansas was teeming with activity and truly seemed to be a free land open to boundless possibilities.[14]

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[12]*Ibid.*, 80-86. For a more detailed look at events in Missouri, please see Michael Fellman, *Inside War: The Guerrilla Conflict in Missouri during the American Civil War* (New York: Oxford University Press, 1989) and Gary L. Cheatham, "'Desperate Characters': The Development and Impact of the Confederate Guerrillas in Kansas," *Kansas History* 14, no. 3 (Autumn 1991): 144-161.

[13]Davis, *Kansas*, 12-15, 101-106. Full attention will not be given in this study to the rich history of Native Americans who lived in the area of Kansas before and after it became a state.

[14]*Ibid.*, 108-113; and Richard B. Sheridan, "From Slavery in Missouri to Freedom in Kansas: The Influx of Black Fugitives and Contrabands into Kansas, 1854-1865," *Kansas History* 12, no. 1 (Spring 1989): 28-47.

The phrase, "to the stars through difficulties," quite appropriately describes Kansas' entrance into the Union. Its initiation was unlike that of any other state. The prolonged and bitter constitutional debates, felonious elections, and bloody violence that characterized its organization signalled the determination of its people to make Kansas their own. From its beginning, Kansans addressed the toughest of issues--rule of the majority, the concepts of human freedom, democracy, and slavery--through numerous constitutional debates. Race permeated these deliberations because the question of slavery defined the state. Race *relations* were another matter, though, because one might oppose the institution of slavery, but regard African Americans as inferior to white Americans. After Reconstruction, society seemed to back away from progress towards full racial equality. Although the Thirteen, Fourteenth, and Fifteenth Amendments to the U.S. Constitution cleared away the legal vestiges of slavery, the stigma that white Americans attached to color remained. By the end of the nineteenth century, people were recovering somewhat from the long-term effects of the Civil War. A large number of white Americans were weary from the fight for human rights, held fast to misconceptions about people of color, and became competitive and defensive during a series of economic downturns and deep recessions during the late nineteenth century. Opportunities for blacks diminished in this climate, even in the free land of Kansas.

B. Topeka emerges from the maelstrom

The founders of Topeka directly correlated their actions to the on-going intrigues regarding the possible extension of slavery into the new territory. A group, including Cyrus K. Holliday, Fry W. Giles, Milton Dickey, and others, met on the banks of the Kansas (Kaw) River on December 5, 1854 and declared it a lovely spot for the future state capital. These men caught "Kansas fever" and migrated from the eastern U.S. with the determination to reap the plentiful bounty of the Great Plains through land speculation, but also to impose morality and justice on an otherwise "wild west." They met at "Papin's Ferry," a landing site on the north side of the Kaw established by Joseph and Ahcan Papin in 1842. The brothers carried traffic along a military road which extended from Fort Leavenworth to Council Grove where it joined with the Santa Fe Trail. The gentlemen had something more permanent in mind, however, and immediately organized a town association for the establishment of Topeka. William Treadway, in his documentary biography of Holliday, provides an article originally published in 1900 in the Topeka *State Journal*, in which Holliday recalled the site selection.

> On November 22 we arrived upon the ground upon which the city of Topeka now stands, which at once impressed me as a favorable location for a great city. The selection of this town site was not an accident: It offered every advantage as a town site. Here was a great river, plenty of water, and, above all, the two great trails of the continent--Fort Leavenworth and St. Joe to Santa Fe and Independence to California crossed at this point.[15]

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[15]Topeka *State Journal*, 29 March 1900, n.p., quoted in William E. Treadway, *Cyrus K. Holliday: A Documentary Biography* (Topeka: Kansas State Historical Society, 1979), 12.

The Topeka Town Association laid out the street grid on the south side of the river, apportioned lots, framed a rudimentary government, and solicited entrepreneurs who might make a go of it in their new hamlet. F.W. Giles, one of the founders, is credited with naming the town, "Topeka," a Kansa term for the Kansas River that translated as "the river upon the banks of which wild potatoes grow." The association continued its work, largely under the direction of Cyrus Holliday, until its dissolution in 1859.[16]

Holliday had ventured west from Meadville, Pennsylvania, where his wife and newborn daughter remained until he prepared a home for them. During the intervening separation, he described the open country, its harsh conditions, and efforts to modify them in letters to his wife, Mary. On December 24, 1854, Holliday wrote, "Our city site is without a doubt the prettiest in the Territory–the country 'round is more extensive and better for agricultural purposes than any other I have ever seen and the right kind of men have taken hold of it."[17] Most of the "right kind of men" were Congregationalists associated with the New England Emigrant Aid Society. The society pursued four goals through its colonization efforts in Kansas; those being freedom, religion, education, and temperance. Holliday, himself, acted as a temporary agent for the company, along with Dr. Charles Robinson, a Massachusetts native, who functioned as its principal resident agent and later served as Kansas' first governor. Many chroniclers write that the very character of Kansans sprang from these Congregationalist/ Puritan roots. These early settlers held strong abolitionist sensibilities and fought valiantly to tip the balance of popular sovereignty towards freedom. The temperance question also held particular sway with them and, as a result, the Topeka association prohibited the sale of alcohol on any town lots distributed by the group. Despite the founders' best efforts, however, at least four saloons were in operation by July 1855.[18]

From the beginning, Topekans intended their town to serve as capital of the free state. Holliday visited Governor Reeder in Shawnee Mission as early as February 1855 to offer the suggestion, but received little response. Pro-slavery advocates forestalled Reeder's efforts to establish a rudimentary government for the territory and several preliminary elections for legislative delegates fell by the wayside. The "border war" that ensued during the next few years disrupted all hopes for political stability. Free-staters rejected the "bogus" pro-slavery legislature that emerged from the intrigue and retaliated by convening a "Free-state" constitutional convention in Topeka on October 23, 1855. The Topeka Constitution proposed

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[16]Treadway, *Cyrus K. Holliday*, 14-15, 22-23, 28; and Isely and Richards, *Four Centuries in Kansas*, 260-261.

[17]Cyrus K. Holliday to Mary D. Holliday, 24 December 1854 quoted in Treadway, *Cyrus K. Holliday*, 23.

[18]*Ibid.*, 6-8, 23; and Daniel Fitzgerald, ed., *John Ritchie: Portrait of an Uncommon Man*, Bulletin No. 68 (Topeka: Shawnee County Historical Society, November 1991), 10, 60. Those interested in pursuing the "character issue" might consult Davis, *Kansas*, particularly Chapter 6: "The Developing State of Mind," where he links these Puritan origins with the Populist movement. Isely and Richards, *Four Centuries in Kansas*, Unit XI, also pursue this thinking by tracing "the Kansas spirit" to Congregationalist religious zeal, as manifested in idealism and patriotism. Shortridge, "People of the Frontier," also examines the transplantation of some cultural traditions and institutions from New England.

free status for Kansas, rejected the potential settlement of both slaves and free blacks, outlined state functions, and petitioned for statehood. Conventioneers established a provisional government with Charles Robinson as governor and an "executive committee" to oversee the logistical operations of the government. On December 1, 1855, the Lawrence *Herald of Freedom* reported,

> In the absence of any other legally constituted authority, this committee has been invested by the people, with all the powers that may be necessary for setting the wheels of government in motion under the new Topeka Free-State Constitution; and as such they hold stated meetings once in two weeks at the office of the committee in Topeka.[19]

The federal government, per President Pierce's direction, rejected the rebel government in short order and accused its participants of treason. The entire episode was a serious setback for the free-staters, but Holliday successfully used the Topeka and Wyandotte Conventions to advance his notion that Topeka should serve as the future state capital. Like a tornado sweeping across the plains, the resultant fight over Kansas pulled communities, one by one, into the vortex. The long, contentious ordeal finally ended victoriously for Topeka free-staters when the state entered the Union, *sans* slavery, in 1861.[20]

John Ritchie, who joined the Topeka community in April 1855, served as a key participant in events on both territorial and local levels. He immediately joined the town association soon after his arrival and spearheaded the anti-slavery crusade in Topeka. From 1857 to 1861, he and his wife, Mary Jane Shelledy Ritchie, "conducted" enslaved African Americans to freedom via the underground railroad. One path of this national network extended northward from Topeka through the small communities of Norton, Kansas and Nebraska City, Nebraska. Ritchie also participated in at least three constitutional conventions that proposed free status for Kansas. He attended the Topeka Convention, alongside Cyrus Holliday and future Senator James H. Lane, and later, at the Leavenworth Convention led a successful assault on the "Black Law," which had banned African American settlement in Kansas. John Ritchie also attended the successful Wyandotte Convention in 1859 as a delegate from Topeka and Shawnee County. During this period, Ritchie established a reputation as a fearless abolitionist, friend to John Brown, staunch prohibitionist, and important ally of blacks, women, and the poor.[21]

With the Kansas question settled, he turned to local events and shaped much of the modern-day landscape of Topeka. As early as April 1856, John Ritchie proposed the

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[19]Lawrence *Herald of Freedom*, December 1, 1855, n.p. quoted in Treadway, *Cyrus K. Holliday*, 62.

[20]Treadway, *Cyrus K. Holliday*, 32-34, 46-50, 54-65, 74-76; Tindall and Shi, *America*, 389; and Isely and Richards, *Four Centuries in Kansas*, 154-155.

[21]Fitzgerald, ed., *John Ritchie*, 18-22, 34-35; and Thomas C. Cox, *Blacks in Topeka, Kansas, 1865-1915: A Social History* (Baton Rouge: Louisiana State University Press, 1982), 15.

establishment of a "Christian college" on a wooded site above the Shunganunga Creek. Fellow Congregationalists endorsed the suggestion one year later and appointed a committee to finalize its location. Ritchie actively participated in the committee's work amidst the fracas over Kansas' fate. Unfortunately, the group discovered that the 160-acre lot that Ritchie sought was privately owned, but a turn of events made the land available and Ritchie tenaciously pursued financing for its purchase. He obtained the land in 1860 and promptly turned the deed over to the Town Association for the establishment of the Topeka Institute. A few financial glitches delayed the final transaction until February 1865 when the college became incorporated as Lincoln College, in honor of the president. For this era, the institute lay quite a distance from Topeka, proper, so a boarding school was constructed on site to serve as student housing. School administrators also built a preparatory school, known as the Academy Building, on two town lots near Tenth and Jackson Streets donated by John Ritchie for the convenience of non-boarding Topeka residents. The institute's name changed a third time during this growth spurt, specifically in 1868, in tribute to benefactor Ichabod Washburn of Worcester, Massachusetts.[22] This name stuck and Washburn became known as a well-spring for liberal arts and legal education in the Kansas capital. Although its name had changed, the Congregationalist foundation of fairness and equitable treatment imbued the institution with a high level of integrity. Washburn's charter announced "the incorporation of an institution of learning of high literary and religious character which shall commemorate the triumph of liberty over slavery in our nation and afford to all classes, without distinction of color, the advantages of liberal education."[23] From its beginning, Washburn welcomed African Americans and graduated some notable black scholars through the years.

With the college successfully underway, John Ritchie turned his attention to other civic matters. He apparently owned significant acreage in the very heart of Topeka and, ever the enthusiastic booster, donated several city lots in the heart of Topeka for commercial development. In 1859, Richie purchased from Jacob Chase a 160-acre claim located to the southeast of town, apportioned as Northeast 1/4 Section 6, Township 12, Range 16, on which he built his residence and farm. Ritchie's generosity had few bounds because he also donated some of his farmland to former slaves and to the poor of both races, with the provision that they would "improve" the land through residential development. Mary Ritchie Jarboe, a descendant, writes that the Topeka *Weekly Leader* praised John Ritchie's racial tolerance, by noting that "The General [Ritchie] calls it the free soil principle and seems bound to build a city upon his farm, although he does not realize one cent for the land."[24] This is not to imply, though, that Ritchie gave *everything* away. In the late 1860s, he subdivided portions of his farm into lots ranging in size from 75' to 100' and sold them to any purchaser regardless of race. Topekans referred to John Ritchie's farm and these cumulative grants as "Ritchie's

[22]Fitzgerald, ed., *John Ritchie*, 38-43.

[23]Quoted in "Washburn College," Walt Markley, *Builders of Topeka* (Topeka: The Capper Printing Company, 1934), 291.

[24]Fitzgerald, ed., *John Ritchie*, 63-64.

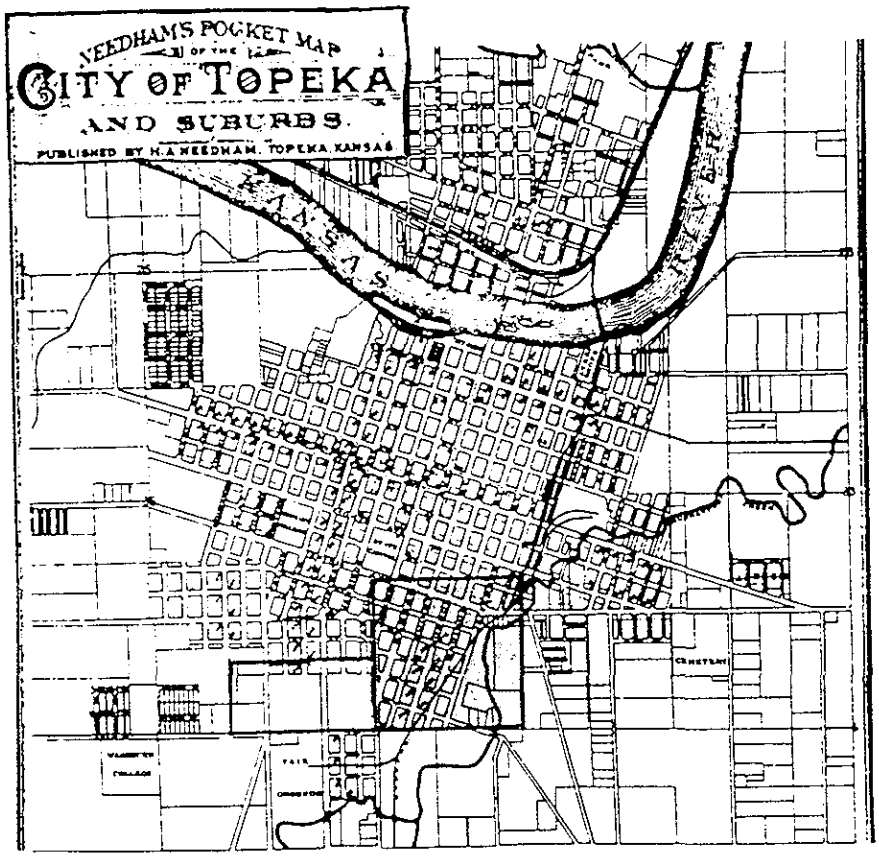

Figure 6. Map, ca. 1882, showing "Ritchie's Addition" in southeastern Topeka, as well as Washburn College and the Topeka Cemetery.

Addition," which roughly extended due east along Tenth Avenue to Huntoon, then following a line southward along Van Buren Street to Seventeenth, where the boundary extended eastward, and turned north along the bends of the Shunganunga Creek. This area later spanned many important Topeka neighborhoods along Kansas Avenue, Quincy, Monroe, Madison, Jackson, and Harrison Streets. Just as he provided home sites for freedmen in life, Ritchie also set aside a resting place for them after death. Topeka Cemetery was almost exclusively reserved for white residents of the capital city. Ritchie, therefore, donated an adjacent parcel of land, thereafter named Mount Auburn Cemetery, to serve the needs of African Americans and poor whites.[25]

Topeka's African American population began to boom after the Civil War due to mass migration from former slave states. Mary Ritchie Jarboe estimates that the influx into Kansas jumped from 816 to 13,000 during the 1860s, alone.[26] Not all remained in Topeka, but many who did found their way to the fair-handed John Ritchie. The resultant development attracted

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[25]*Ibid*, 5, 11, 63-65; Cox, *Blacks in Topeka*, 91; The BRvB NHS, composed of Monroe Elementary School, lies within the historic "Ritchie's Addition," as will be discussed in Chapter 2. The original John Ritchie home, located at 1116 Madison, will be restored and maintained as a historic house museum, by a private group in Topeka, in recognition of Ritchie's accomplishments. The building also carries significance as a former "stop" along the Underground Railroad.

[26]Fitzgerald, *John Ritchie*, 63.

the attention of Topeka's leaders who made two unsuccessful attempts, beginning as early as 1867, to annex "Ritchie's Addition." Despite staunch opposition by Ritchie and other residents, the town proceeded with its plans and began to make public improvements in the area. Ritchie responded with legal action, claiming that because his original grant lay outside of the city's borders, it fell beyond Topeka's political purview. In 1885, residents of "Ritchie's Addition" formed their own town, appropriately named South Topeka, and John served as its first mayor. This political independence was short-lived, however, because Topeka absorbed its southern neighbor in January 1888, a mere three months after John Ritchie's death.[27]

For Cyrus Holliday, ambition, rather than compassion, underlay his impact on Topeka. Upon its founding, the Kansas River seemed to form a natural, lasting boundary between the capital city and the small town of Eugene, situated across from Topeka on the river's northern banks. The two settlements grew in tandem until a group of Topeka entrepreneurs, led by Holliday, devised a plan to extend a railroad line across the Kansas River, thus threatening to annex Eugene. Somewhat ironically, Stephen Douglas' initial motivation for drafting the Kansas-Nebraska Act in 1854 had stemmed from a proposal to construct a transcontinental railroad system through this portion of the Louisiana Territory. The railroad project proceeded during the Civil War and the Union Pacific Railroad (Eastern Division) reached Topeka, by way of Lawrence, in 1865. The Union Pacific ultimately became the first of many lines steaming their way across Kansas, and Holliday wanted some of the action. He reputedly had come to Kansas with $20,000 in his pocket for just such a venture and, after Kansas stopped bleeding, he set out to make his fortune in Topeka. According to plan, the city leadership formally incorporated Eugene in

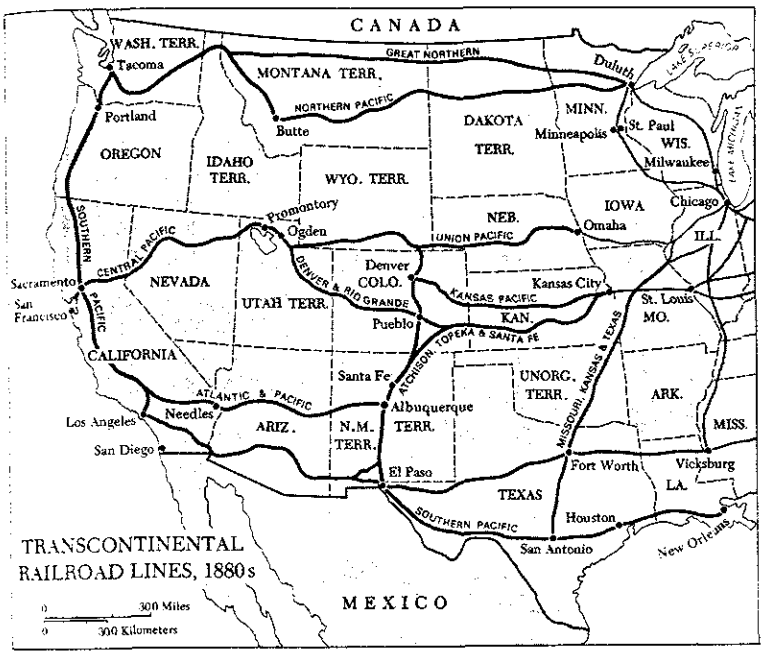

Figure 7. Map of railroad routes, circa 1880s. Please note Holliday's Atchison, Topeka and Santa Fe line.

[27] *Ibid.*, 64; and Sherda Williams and David Barnes, "Monroe Elementary School, Topeka, Kansas," Cultural Landscape Inventory, Level II, U.S. Department of the Interior, National Park Service, Midwest Region, February 1995, 7.

1867. This opened the area, renamed North Topeka, to rail traffic southward across the Kansas River. The way was open, then, for Holliday to found the Atchison, Topeka and Santa Fe Railroad in 1869, making it only the second railway to cross the state. A new railroad bridge spanning the Kansas River completed the scenario, providing easy access for trains originating in Atchison to continue across the river, southward through Topeka, and on to western destinations.[28]

Holliday's venture involved several trips to Washington, D.C. and New York City, political wrangling, treaties with the Osage, Pottawatomie, and Wyandotte tribes, as well as hard work by countless unnamed individuals. The Atchison, Topeka, and Santa Fe added an important economic boon to rural Kansas and made Topeka an important regional transportation center. Holliday located the line's large administrative and maintenance complex at the eastern end of First Avenue, just south of the Kansas River. The Santa Fe "shops" augmented Topeka's economy by providing a booming market for goods, services, and workers. Many African Americans and immigrants found relatively lucrative employment with the railroad, albeit in a general climate of discrimination and prejudice. Cyrus Holliday proved to be a key figure in Topeka history because he directly influenced the city's economy, political authority, and physical landscape. While these accomplishments certainly rest on the hard work of hundreds of Kansans and at the expense of the Pottawatomie, Wyandotte and Osage peoples, one cannot deny the important role that Holliday played in Topeka's development. He possessed the vision and drive which spurred the city to become the Kansas state capital and vital distribution/transportation center.[29]

In 1879, John Ritchie spoke before an "Old Settlers" meeting which was held in Lawrence as a reunion, of sorts, to honor those who led Kansas through adversity to booming prosperity. He particularly praised his fellow pioneers for maintaining the tough stand for freedom and providing safe haven for those who fled the discrimination of the Confederacy. Researchers can single out individuals, like Ritchie and Cyrus Holliday, who are known in the historical record for the direct impact of their actions. But, historians also must remember the anonymous thousands who established free communities across the state and contributed to their later prominence. Topeka stands as merely one example, but is pertinent here for its later history associated with the school cases of the 1950s. From one perspective, Topekans remained true to their religious, free-state roots, by treating blacks and immigrants with an uncommon degree of acceptance in the late-nineteenth century. From another, residents supported political platforms which called for the exclusion of blacks from the Kansas Territory, discriminated against those who settled in Topeka, and enacted segregation policies which restricted African American rights. Richard Kluger, noted chronicler of the landmark

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[28]Daniel Fitzgerald, ed., *Gone But Not Forgotten: The Lost Schools of Topeka*, Bulletin 67 (Topeka: Shawnee County Historical Society, November 1990), 82; Davis, *Kansas*, 99; Treadway, *Cyrus K. Holliday*, 191-205; and Isely and Richards, *Four Centuries in Kansas*, 204-205.

[29]Treadway, *Cyrus K. Holliday*, 191-205; Cox, *Blacks in Topeka*, 30, 33, 116; and Isely and Richards, *Four Centuries in Kansas*, 204-205.

Brown v. *Board of Education* case, recognizes this sense of moral ambiguity on the part of white residents. He points out that Topekans demanded free status for all people, but then manifested discrimination and prejudice towards Native Americans, African Americans, and immigrants from eastern Europe. "Moral ambiguity" seems a fitting description, given the evidence from the written record. Indeed, Topeka initially extended freedom and opportunity to African Americans, but as the century progressed, the community tempered these by imposing stigma and separation on their black residents. The impetus then fell to African Americans themselves, to react to the increasingly restrictive conditions.[30]

C. Building the African American Community

Issues regarding race, racial equality, and race relations certainly permeated the founding of Kansas and Topeka by virtue of the national debate over the expansion of slavery into western territories and, later, the discontinuation of the practice, altogether. African Americans poured into the new state because they believed that its firm stance against slavery indicated a population favorable to their settlement. They benefitted somewhat from the Homestead Act of 1862, which granted 160 acres to those who would register their claims and reside on them for at least five years, and the 1873 Timber Culture Act which added another 160 acres if the prospective settlers planted and maintained trees on the land. The federal government also sold lands vacated through forced Indian removal at public auction, sometimes for as little as $1.25 to $2.50 per acre, and railroads eagerly sought occupants for their properties for little more than that. African Americans perceived Kansas as a new "Canaan," a promised land, based on its favorable social climate and abundant land--so they set out for the plains by the hundreds.[31]

The masses seeking Canaan in the 1860s and 1870s found that they were not the first African Americans in Kansas. Some early black residents lived in the area as bound slaves. A rather large population of African Americans, estimated at 500, came from Santo Domingo in 1718 to work under the direction of ethnic French entrepreneurs in lead mines located near present-day Pittsburgh, Kansas. Others arrived much later, during Andrew Jackson's programmed Indian removal in the early s, with Native Americans from the southeastern United States. U.S. Army officers and dragoons serving in the network of forts that stretched across the region also used black slaves as cooks, domestic servants, laborers, and personal

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[30]Fitzgerald, ed., *John Ritchie*, 9; and Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (New York: Vintage Books, 1975), 370-371. Another perspective of race relations in Kansas during the late nineteenth century can be found in Randall Bennett Woods, *A Black Odyssey: John Lewis Waller and the Promise of American Life, 1878-1900* (Lawrence: Regents Press of Kansas, 1981).

[31]Tindall and Shi, *America*, 694; Davis, *Kansas*, 112-113; and Robert G. Athearn, *In Search of Canaan: Black Migration to Kansas, 1879-1890* (Lawrence: Regents Press of Kansas, 1978). The *Random House Dictionary of the English Language* reports that "Canaan" refers to any land of promise, but particularly that promised by God to Abraham, who is regarded as the father of the ancient Hebrew nation.

attendants. Most African Americans arrived after the Kansas Territory officially opened to white settlement in 1854. Pro-slavery settlers brought bound servants with them in a concerted attempt to establish the institution in Kansas. An 1855 census recorded 151 free African Americans and 192 slaves living in Kansas in that year. The underground railroad handled a brisk business during this period, with the primary escape route running westward from the slave state of Missouri through Lawrence and Topeka, then turning northward to Norton, and on into Nebraska. Free blacks, fugitives, and slaves, in a limited sense, functioned as pawns in the political game of sovereignty for "bleeding Kansas" and their numbers reflect the tug-of-war between pro- and anti-slavery factions. The game was up by 1860, when a reported 625 free blacks and only two slaves then resided in the territory.[32]

Black Kansans, including those who migrated by choice and by force, strengthened the Free-Staters' cause through military service in the Civil War. Under James H. Lane's initiative, they staffed at least two infantry units before President Lincoln opened the Union Army to African American recruits and two after he relented: the First Kansas Colored Volunteers (later 79th U.S. Colored Troops); the Second Kansas Colored Volunteers (later 83rd U.S. Colored Troops); the Leavenworth Colored Militia; and the Independent Colored Kansas Battery. The term, "volunteers," was apparently a misnomer because white officers pressed many former slaves from Missouri and Arkansas into service. Despite some forced enlistments, these soldiers established strong military reputations through battles on the Kansas-Missouri border and skirmishes with Confederate units from Arkansas and Texas. Military engagement and disease culminated in relatively high casualty rates, which were supplemented by a high incidence of desertion. Those who endured earned high distinction for their contributions to the Union victory in 1865.[33]

Thomas Cox's meticulous research on the development of Topeka's African American community provides valuable information about the growth of this segment of society after the Civil War. He regards Ann Davis Shattio and her husband, Clement Shattio (also known as Claymore Chattilon), as the first African American and white, respectively, circa 1852, to settle near present-day Topeka. The historical record is a bit cloudy as to details about their experiences, but the chronology shows that Ann Davis, born a free person in Illinois, was kidnapped and forced into slavery in Missouri. She served under several "masters" there before regaining free status. She married Clement Shattio, descended from French heritage in St. Louis, in Uniontown, Kansas. The Shattios moved to a farm located approximately one or two miles west of Topeka, where they lived for more than twenty years. Others, free and slave, followed in due course after the town's official founding in 1854. Independent African Americans came to the new town despite evidence of some Free-State bias against their

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[32]"Historic Preservation in Kansas: Black Historic Sites, A Beginning," Historic Sites Survey, Kansas State Historical Society (Topeka: Kansas State Division of Printing, 1977), 6-8.

[33]Dudley Taylor Cornish, "Kansas Negro Regiments in the Civil War," *Kansas Historical Quarterly* 20, no. 6 (May 1953): 417-429; Cox, *Blacks in Topeka*, 17-19; "Historic Preservation in Kansas, Black Historic Sites," 8; and Sheridan, "From Slavery in Missouri to Freedom in Kansas," *Kansas History*, 12, no. 1 (Spring 1989).

settlement in Kansas. Cox finds that, initially, black and white communities were mixed in 1865, but some movement had occurred by 1868 in favor of "racially homogenous neighborhoods." Four distinct neighborhoods existed; namely, Ritchie's addition in southern Topeka dubbed "Mud Town," an area on the southern bank of the Kansas River called "the Bottoms," a corridor along First Avenue near the Santa Fe Railroad offices, or "shops," and an area of North Topeka called "Redmonsville" became increasingly populated by African American households. By 1880, Tennessee Town emerged in southwestern Topeka, as a result of the Exoduster migration from the southeastern United States.[34]

Although the Exoduster movement of 1879, proper, brought a tremendous influx of African American settlers to Topeka and Kansas, it does not account for all black migration during this period of growth. Some wishing to establish cohesive "colonies" appeared as early as 1873. African Americans left former Confederate and border states, particularly Missouri, in increasing numbers as Southern "Redeemers" regained control of the political and economic processes during the 1870s. The stream of migration from the Deep South tended to flow through St. Louis, across Missouri, and into Leavenworth or Wyandotte, otherwise known as Kansas City. Blacks were also pulled out of the South by various factors, including the availability of cheap land, the opportunity for land speculation, the libertarian reputation of Kansas, the attractive advertisements of western settlements, and persuasive entreaties of emigrant agents. Various colonization societies capitalized on these incentives; the most famous was led by Benjamin "Pap" Singleton, a freed slave from Nashville, Tennessee. He began his work in 1869 with the formation of the Tennessee Real Estate and Homestead Association. Singleton initially encouraged African Americans to establish farms in Tennessee, but the reactions of white residents quashed his efforts. He turned, instead, to Kansas and circulated posters and pamphlets which touted its abundant land and benevolent social climate. From 1874 to 1883, "Pap" and his colleagues escorted several groups to Kansas yearly and directly participated in the establishment of Singleton Colony (1874) in Cherokee County and Dunlap Colony (1878) in Morris County. W.A. Sizemore, A.W. McConnell, and N.A. Napier also participated in these ventures, but Singleton emerged as symbolic leader of black migration from the South. He became known as "Father of the Exodus" and "Moses of his People" because his work helped African Americans escape the social remnants of slavery and establish independent lives.[35]

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[34]Cox, *Blacks in Topeka*, 1-2, 19-21; Noble L. Prentis, "Bypaths of Kansas History: The Story of Ann Shatteo [sic], and Mention of Other Early Negro Activity in Kansas," *Kansas Historical Quarterly* 35, no. 1 (Spring 1969): 89-94; and "Historic Preservation in Kansas, Black Historic Sites in Kansas," 19. Sheridan also discusses African American migration in "From Slavery in Missouri to Freedom in Kansas," 28-47.

[35]Glen Schwendemann, "Nicodemus: Negro Haven on the Solomon," *Kansas Historical Quarterly* 23, no. 1 (Spring 1968), 11; "Historic Preservation in Kansas, Black Historic Sites," 9-12, 16-18; and Nell Irvin Painter, *The Exodusters: Black Migration to Kansas after Reconstruction*, rev. ed. (Lawrence: University Press of Kansas, 1986), 146-148.

Singleton was not alone in these endeavors, however, for other groups gathered freedmen from Tennessee, Kentucky, Louisiana, and Mississippi for resettlement and some migrants simply established towns on their own. Organizers from both races, notably William Griffin, George Brown, W.J. Niles, and W.R. Hill also actively participated in this movement. Niles and Hill, in fact, contributed to the founding of Nicodemus, Kansas--perhaps the state's most famous African American community. In 1877, they pulled settlers from Kentucky and eastern Kansas to join the Nicodemus Town Company. In July of that same year, a group of thirty founded the town of Nicodemus near the banks of the Solomon River in Graham County. More emigrants from Kentucky, Missouri, and Mississippi arrived during the next few years and the colony's population neared 700 by 1880. The settlement hit its apex in the mid-1880s, when the town center could boast a commercial district, post office, church, school, and social clubs. Unlike some African American communities from this period, Nicodemus held on through declining populations, internal divisions between town company and colony, tensions with neighboring white ranchers, poor harvests, and natural disasters. While its settlement falls outside of the 1879-1881 temporal parameters which define the Exodusters, Nicodemus fits the movement of African Americans from the South to the Midwest in the 1870s and 1880s. Nicodemus survives as the most important African American town, dating from the pre-Exoduster period. The town's historic district was nominated to the National Register of Historic Places (NRHP) in 1974 and received national historic landmark (NHL) designation in 1976 for its historical and architectural significance. Twenty years later, the Nicodemus National Historic Site became a unit of the National Park System.[36]

The broad Exoduster movement, which followed in 1879-1881, amplified this historical pattern of African American migration. Nell Irvin Painter has written the classic study of the Exodusters, to date. African Americans from Mississippi, Louisiana, and Tennessee "who left the lower Mississippi Valley in a millenarian movement, seeking new homes in the freedom of Kansas," she explains, "were ordinary, uneducated former slaves, whom one of them called 'a class of hard laboring people.'"[37] Those who emigrated to Kansas in 1879 and 1880 fit the precise definition of an Exoduster, but blacks who fled the South both during and after Reconstruction also participated in this broad migratory trend. Freedmen inundated Wyandotte and Leavenworth to such an extent that members of these communities formed relief committees to handle the transients' needs; specifically, for food and shelter, to provide water, police, and sanitation services, and to prevent the spread of disease. Glen Schwendemann reports that Wyandotte, alone, gained one thousand newcomers in less than a two-week period. Local groups began to raise money to enable the Exodusters to move along on their way west. These communities also begged the state government to relieve them of this overwhelming burden of humanity. Governor John P. St. John answered their pleas

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[36]Painter, *The Exodusters*, 148-159; Schwendemann, "Nicodemus," 10; Sandra Washington, *et. al.*, "Nicodemus, Kansas: Special Resource Study" (Omaha: United States Department of the Interior, National Park Service, Midwest Region, May 1993), 5-8, 13, Appendix C; and "Nicodemus Historic District," Graham County, Kansas, National Register of Historic Places Nomination, United States Department of the Interior, National Park Service, 7 January 1976.

[37]Painter, *The Exodusters*, vii.

by reaffirming Kansas as "an asylum for the oppressed." He formed a temporary relief committee in the capital city to collect and disseminate contributions to needy Exodusters. The Kansas Freedmen's Relief Association built a national support network that helped emigrants reach Topeka and ready them for independent homesteading.[38] It "drew upon philanthropists across the nation and in England," Painter explains, "and between its formation in April 1879 and its disbandment in May 1881, it distributed over ninety thousand dollars in cash and supplies."[39]

Glen Schwendemann describes Topeka as the "center of the relief movement" because it served as headquarters and dispersal point for the new emigrants. The first thirty who founded Nicodemus, for example, reconnoitered in Topeka before moving farther west. This became a common pattern, whereby groups would rest and resupply in Topeka before resuming their journeys. Newcomers first camped on its fairgrounds, until opposition mounted for an alternative. In June 1879, the relief committee then constructed temporary barracks, basically an enclosed shelter, near the junction of the Atchison, Topeka, and Santa Fe and the Kansas Pacific rail lines in North Topeka to house the transients. Not everyone kept moving, however. Many blacks who originally intended to homestead on the open plains decided instead to remain in Topeka, for a variety of reasons. Some lacked funds needed to stake and hold a homestead claim; others remained because they found greater economic opportunity, more diverse career choices, and well-established support networks there. And, the town reflected the sudden influx of eager homesteaders and *bona fide* Exodusters, for its black population grew from 83 in 1865 to 3,648 in 1880. Segments of this population formed "Tennessee Town," a new African American neighborhood in southwestern Topeka, bounded on its eastern edge by Buchanan Street, Washburn on the west, Tenth Avenue to the north, and Huntoon to the south. "Pap" Singleton had encouraged emigrants from Tennessee and Mississippi to settle here as early as 1873 and it flourished six years later with the arrival of the Exodusters.[40]

The Exoduster migration slowed by the early 1880s, but its numbers swelled Topeka's black community and its institutions. Churches, organized long before the Exodus, formed its cornerstones, with central congregations dominating the various African American neighborhoods. The status of black clergymen as *de facto* community leaders illustrated the respect which this institution commanded. The black press also functioned as a unifying institution. Six newspapers were published between 1880 and 1896. The *Colored Citizen* was

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[38]Glen Schwendemann, "Wyandotte and the First 'Exodusters' of 1879," *Kansas Historical Quarterly* 26, no. 3 (Autumn 1960): 233-249; and Athearn, *In Search of Canaan*, 51-67.

[39]Painter, *The Exodusters*, 231.

[40]Schwendemann, "Wyandotte and the First 'Exodusters,'" 246-247; Athearn, *In Search of Canaan*, 177-178; Cox, *Blacks in Topeka*, 59, 63 fn 51; population figures taken from Table I, 201; "Historic Preservation in Kansas: Black Historic Sites," 19; and Timothy Miller, "Charles M. Sheldon and the Uplift of Tennesseetown," *Kansas History* 9, no. 3 (Autumn 1986): 129.

the first in print and possibly the most influential publication, closely followed by the *Tribune*, and the *Kansas State Ledger*. African Americans embraced the opportunity to voice their opinions about issues that affected their lives, to publicize grievances, and praise accomplishments. A vast array of social institutions in the capital, including fraternal orders, lodges, veterans groups, and trade unions, provided wonderful leadership opportunities, grassroots political experience, and social networks for skilled tradespeople, professionals, and entrepreneurs, alike. These associations enhanced the strength of Topeka's black community. The 1891 mayoral election particularly demonstrated the power and solidarity of African American voters because this voting block determined the outcome of the election.[41]

A rapid increase in the number of black professionals and entrepreneurs in the 1890s further strengthened Topeka's African American community. Migration brought a number of well-educated professionals from the Upper South. Thomas Cox found that many African Americans owned businesses, which provided an additional measure of independence and prestige recognized across the city. Black farmers located on the outskirts of the city also enjoyed a relatively high measure of prosperity late in the century. Women also participated in the full breadth of commercial and social activities found in late-nineteenth century Topeka. Lutie Lytle bears distinction as one of the earliest, and perhaps the first, female lawyer admitted to the Kansas bar. Other, less well-known, women owned beauty parlors, millinery and dress shops, provided fortune-telling services, and also worked as domestics, seamstresses, cooks, and laundresses. Patterns of consumption and types of entertainment during this decade also reflect social and economic activities which many black Topekans enjoyed, such as the Interstate Literary Association, comparable groups for art, music, and literature appreciation, the Odd Fellows fraternal organization, and a Negro baseball team. Class distinctions within this community, identified by purchasing power, patterns of consumption, and occupational status, entered into the mix. The common goal of "race progress," however, unified blacks from all segments of society to achieve the fulfillment of promises made by the people of Kansas.[42]

From the first African American presence in the Topeka environs to the turn of the century, blacks sought to find their way to freedom. Thousands of Exodusters realized their goal by establishing homestead claims, building small communities on the plains, or working in the larger towns in the eastern part of the state. Topeka functioned as both destination and provisioning station for the Exodusters of 1879-1881. Geography reflected the associated population boom because by 1890, the city possessed four viable African American neighborhoods within three political wards in the state capital. By the end of the nineteenth century, one could find African American men and women in professional and entrepreneurial ranks, in skilled craft trades, in the railroad industry, and as unskilled laborers. By 1900,

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[41]Cox, *Blacks in Topeka*, 83-85, 101-103; and Roy D. Bird and Douglass W. Wallace, *Witness of the Times: A History of Shawnee County* (Topeka: Shawnee County Historical Society, 1976), 113.

[42]Cox, *Blacks in Topeka*, 90-103; and "Historic Preservation in Kansas: Black Historic Sites," 30.

Topeka boasted a population of 33,608, with black citizens comprising 4,807 of that number. Although it only approximated fourteen percent of the city's population, this constituency set deep, strong roots through economic vigor, political savvy, and community solidarity.[43]

D. Conclusion

When the Kansas Territory opened to U.S. expansion in 1854, the ideals of freedom and equity for the black race ran strong in early pioneers. Whether those ideals would prevail in the new state remained in question for the first few years, as free-staters and pro-slavery advocates battled it out. But, Kansans ultimately came out on the side of freedom and African American migration increased, despite indications that some white residents not merely opposed slavery, but resisted any black presence in the state. Those sentiments declined during the Civil War, perhaps influenced by the hard work of early settlers and the bravery exhibited by black volunteers who joined the war effort. Westward migration changed the Kansas landscape again after Reconstruction, in light of heavy Exoduster migration from the lower Tennessee and Mississippi Valleys. Many settled in Kansas, establishing a modern Canaan far from the reach of New South Redeemers. Nell Irvin Painter found that "By 1900, blacks in Kansas were generally, if not overwhelmingly, more prosperous than their counterparts in the South; politically they were enormously better off."[44]

While African Americans lagged behind their white counterparts in both categories, Kansas provided a relatively benevolent environment for the times, as did Topeka. Its citizenry rose to the challenge of thousands of Exodusters pouring into the town. The Relief Association provided food, shelter, supplies, and funds for those establishing new lives in the West. After the Exodus had ended, approximately four thousand blacks made their homes in one of Topeka's predominantly black neighborhoods; including the Bottoms, Ritchie's Addition in South Topeka, Redmonsville in North Topeka, and Tennessee Town. By the end of the century, residents had built strong civic institutions and social networks that reinforced the community's solidarity. Perhaps Topeka's racial tolerance lay in the rather altruistic nature of its founders; such as Congregationalists in the New England Emigrant Aid Society, members of the Town Association, or in the legacies of individuals like Cyrus Holliday and John Ritchie. Although some modern authors laud the morality of Kansas society, there were signs in the late nineteenth century that some egalitarian behaviors were beginning to fall by the wayside.

These events in Kansas corresponded to national trends which indicated more stringent interpretations of individual rights, a resurgence of restrictions on African American opportunities, and the implementation of racial segregation in many social venues. After

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[43]Cox, *Blacks in Topeka*, 201.

[44]Painter, *The Exodusters*, 260.

Reconstruction, the nation seemed to turn its attention away from race relations and discriminatory practices went unchecked. The U.S. Congress and Supreme Court played roles in these developments because both branches of government allowed states to limit African American rights through local action. The Court honed very fine distinctions in its interpretations of the Fourteenth Amendment through key appeal cases during this period. *Plessy* v. *Ferguson* stands alone as the most significant finding which sanctioned racial segregation in public transportation. State and local governments applied segregation restrictions to many other social situations in *Plessy*'s wake and, accordingly, the Court allowed its widespread application through non-intervention. The tide was noticeably turning in the state of Kansas and the nation by 1900. Kansas' motto, "*ad astra per aspera*," held new meaning in light of the tightening limitations placed on the rights of African Americans. Segregation in transportation, education, housing, and public accommodations struck to the very heart of opportunities potentially available for African Americans. As the twentieth century approached, blacks found themselves being cut out of mainstream society.[45]

[45]Chapter 3 will discuss in greater depth these constitutional limitations on civil rights, enacted particularly by action of the U.S. Supreme Court, which began to relegate African Americans to subordinate social positions and inferior conditions during the late-nineteenth century.

It is the normal ambition of adults in any community to provide education for their children superior to that which they themselves enjoyed--seek[ing] through education to provide better lives for their children and a better society in which the oncoming generation may live and work.[1]

-- Mamie Luella Williams
handwritten notes, 1976

[1]Taken from handwritten notes prepared for appearance in "Seventy-Five Years on Quincy Street," a television special produced by Topeka KTWU, Channel 11, originally aired 26 March 1976. Mamie Luella Williams Collection, Kansas State Historical Society, Topeka, Kansas.

CHAPTER TWO

EDUCATIONAL OPPORTUNITIES, 1620-1945

A look at segregation first requires some analysis of educational opportunities available to African Americans through the course of U.S. history. Statesmen and theorists, alike, of the late-eighteenth century repeatedly emphasized the need for a knowledgeable and active populace to drive this grand democratic experiment they called the United States. Thus, republican government carried a specific, inherent demand for public education because its power lay in the hands of "the people." The implementation of democratic ideals therefore required an informed electorate. New Englanders also valued education because of their Puritan roots. Although Southern colonies, later states, lagged a bit behind their northern counterparts, the gentry class valued training in the liberal arts for its sons. The new republic's founders and its constituency further acknowledged the importance of an educated populace by first setting aside public lands for school construction and, later, by placing authority for public education within the individual states.

As the nation grew, state governments interpreted this reserve power, one of many set aside for state authority, in varied ways. Those in New England seemed to adopt a more proactive stance on public education and extended limited opportunities to African Americans and women. While often more egalitarian, discriminatory treatment of African Americans in New England became more systemic by the mid-nineteenth century. *Roberts* v. *City of Boston* (1849), an early case concerning segregation, illustrates the point because this state ruling found segregation to be constitutional. *Roberts* thus set an important, early precedent for the codification of racial separation. Southern states, by and large, valued male education over that for women, reserving the domestic arts for the more "delicate" sex. This society sharply restricted training opportunities for free blacks and slaves, with most legislatures specifically forbidding instruction in reading and writing. After emancipation, freedmen eagerly sought to reclaim the education that had been denied them and to gain the knowledge necessary to remain free from white domination.[2]

Kansas was born of this volatile period, reflecting both the transitional character of Reconstruction and the nation's subsequent withdrawal from racial issues. Its white majority initially vacillated about the status of African Americans, but they welcomed the Exodusters with aid and support. In 1879, however, Kansas lawmakers enacted a system which allowed school boards in cities of the "first class," designated by populations exceeding 15,000, to determine local policies of racial segregation. The relatively small percentage of African American youth in smaller Kansas towns and in rural districts made integration more practical,

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[2]This discussion pertains to legal, *de jure*, segregation, rather than circumstantial, *de facto*, segregation. There are significant differences between law and practice in the institution of slavery and in race relations during the period of segregation.

but specific practices often were left to local option. The intervening years served as a period of community building for both races and lines of division in politics, economics, and education fluctuated somewhat. The codification of segregation, however, proceeded in Kansas it did throughout the United States during the late nineteenth century. African Americans appealed to the courts for equal treatment under the law, but found little success during this period. Despite the high quality of instruction in segregated schools, at least ten court cases challenging these practices reached the Kansas Supreme Court between 1881 and 1941.

Topeka qualified as one of Kansas' three "first class" cities and separated its students in the primary grades, but educated them together in the upper grades. Whereas most segregated schools in the United States diverged sharply in levels of quality education, this was not the case in Topeka. By the 1940s, most African American educators equaled, and some far exceeded, their white counterparts in education and training. Despite the quality of school facilities and instruction, a large percentage of black parents sought to redress the inadequacies that did exist. The *William Reynolds* v. *The Board of Education of the City of Topeka* (1902) and *U.S. Graham* v. *Board of Education, Topeka* (1941) cases raised the strongest challenges to the city's segregated system. *Graham* successfully brought an end to the segregation of the city's junior high schools. By 1945, Topeka's Unified School District (USD-501) maintained four elementary schools for African American children, but allowed integrated facilities for students attending junior and senior high schools. This breach in segregation policy created a very potent opportunity for a successful challenge to end **all** racial separation in education.

A. The broader context of education in America

Many historians of public education trace the beginnings of the American educational system to Puritan roots. Pushed by devotion to their "errand into the wilderness," New Englanders outstripped their southern neighbors by schooling their youth in lessons of religion, moral instruction, and citizenship. Widespread agreement on the obvious benefits for both individual and society during the eighteenth century helped establish education as a cornerstone of American culture. Geographical regions differed, however, in the availability of and emphasis placed on education. Societal changes resulting from industrialization in the nineteenth century institutionalized education and brought about the modern public school system. While federal legislation mandated that communities extend educational opportunities to their citizens, local populations in those communities defined curriculum content and admission standards in accordance with local practices and standards. This discussion bears further relevance because of the Congregational/Puritan roots later set down in Kansas during the 1850s.

Puritans first entered the "wilderness" that was America in 1620. School children still learn the pat tales of their valiant search for religious freedom, far away from interference by the English government. Stories of religious freedom offer simplistic views of a quite restrictive, Calvinist belief system. Church and state maintained a symbiotic relationship in their society, and education provided fundamental preparation for a life defined by godly

behavior and good citizenship. Education for both genders was important to the practice of one's religion, as reading the Bible and other Christian texts served as an important means of receiving God's word and lessons for a regenerate life. Parents, ministers, and schools, respectively, bore greatest responsibility for the instruction of the colony's youth. Since schools stood third in the line of intellectual and spiritual defense, colleges were valued over grammar and dame schools because they educated future ministers, who, in turn, became the community's chief teachers. New England colonies which spun off of Massachusetts Bay during the seventeenth century adopted this fundamental Puritan belief about education's value for the salvation of individual and society. As congregations moved westward, their township charters often included land grants and public subsidies for schools. The core Congregational emphasis on learning, therefore, spread and matured throughout the region as the years passed.[3]

The gentry of the Chesapeake and Lower South topped the social scales of those regions. Education was reserved primarily for the middle and upper segments of white society in Southern colonies. Many first and second sons of wealthier families ventured back to England for a proper education during the early colonial period, with little competition from far inferior local colleges. Informal pupil-teacher relationships often predominated because the region possessed only a few colleges, and "reading law" with a tutor was the standard venue to that profession. Religion remained in the mix, but never dominated educational goals in these areas because the two institutions were never intertwined as in New England, even though most Southern colonies maintained a "state church" until the mid-eighteenth century. Ministers, often second or third sons, received religious instruction, but for others, law, finance, and the liberal arts took precedence. By 1775, young men could choose from nine colleges and more remained in North America for their schooling. Southern women usually received instruction in domestic arts, home management, nutrition, and child-rearing on a relatively informal basis. Poor whites often received no formal instruction and most Southern colonial governments forbad the instruction of free blacks and slaves. The rare "master" sometimes took the prerogative, however, of teaching house slaves to read and write, for his convenience, but this went against social precautions to subjugate potentially rebellious slaves. Although, on the surface, Southern society appeared to disregard the widespread importance of education, its prohibitions of the education for African Americans demonstrates Southern perceptions of its potential power against the restrictive social system.[4]

Interestingly, one of the South's own became a champion for public education in the new United States. During the period of Confederation (1781-1789), Congress decided that western lands would not be treated as colonies, but rather as territories that ultimately would

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[3]N. Ray Hiner, "The Cry of Sodom Enquired Into: Educational Analysis in Seventeenth-Century New England," in B. Edward McClellan and William J. Reese, eds., *The Social History of American Education* (Urbana: University of Illinois Press, 1988), 3-22; and David Tyack, Thomas James, Aaron Benavot, *Law and the Shaping of Public Education, 1785-1954* (Madison: The University of Wisconsin Press, 1987), 32.

[4]Tindall and Shi, *America*, brief 2d ed., 43, 65-66, 70-71, 150.

be admitted as states. Virginia Delegate Thomas Jefferson proposed a set of bureaucratic procedures for the admission of new territories, which became codified in the Land Ordinance of 1785 and the Northwest Ordinance of 1787. These laws applied specifically to the Northwest Territory, comprised of lands which later formed the states of Ohio, Indiana, Illinois, Michigan, and Wisconsin. The 1785 Land Ordinance mandated a grid system of survey which would subdivide the land into townships of thirty-six square miles, with thirty-six sections of 640 acres each. Congress hoped to solve two problems through this process; specifically, federal debt relief and national settlement. More importantly for this discussion, the law designated that revenue from Section 16 be reserved by the specific township for the maintenance of a public school. Tyack, James, and Benavot's legal history of public education points out that this act signified "the origin of the federal government's active involvement in promoting public schools as a form of internal improvement, one that had crucial ideological and practical dimensions." Two years later, the Northwest Ordinance completed the process by outlining a basic governmental framework and procedures for admitting states carved from the territory. The ordinance enacted standard guidelines for new additions to the Union and set an early precedent for the establishment of and financial support for public schools in the United States. Provisions for common schools were subsequently incorporated into new state constitutions.[5]

Common schools became a standard feature of the American landscape because the nation's founders believed education to be fundamental to the success of republicanism. Very basically, leaders of the Revolutionary generation combined eighteenth century Enlightenment reason with English precepts of common and constitutional law. As John Locke so cogently summarized it, the power of constitutional government lies with "the people." Framers of the new U.S. government believed that "the people" should be educated so that they, in turn, could carry out their duties to instruct and direct their governments. The will of "the people," as conveyed by the electorate, would make republican government work. The level of intellect and knowledge possessed by "the people" therefore was critical to the entire operation. Jefferson and his compatriots put great stock in public education to create a cogent group of leaders and voters. In this paradigm, the protection of liberty relied directly on the availability of public education because republican government depended on informed participation by its constituents. The nation, therefore, bore a direct responsibility to guarantee access to education for its citizens.[6]

The federal government sought to accomplish this by authorizing common schools through laws like the Northwest Ordinance of 1787 and by raising revenue through the sale of public lands. Primary responsibility for the administration of schools, however, fell to the individual states, as a reserve power, by virtue of the federal constitutional system which

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[5]Tindall and Shi, *America*, brief 2d ed., 154-156; and Tyack, *et. al.*, *Law and the Shaping of Public Education*, 31. Jefferson is also remembered for his multi-tiered plan for public education, based on intellect and talent, and as founder of the University of Virginia.

[6]Tyack, *et. al.*, *Law and the Shaping of Public Education*, 22-27.

divides powers between state and federal counterparts. Between 1820 and 1850 a democratic impulse swept the country, coinciding with the presidency and influence of Andrew Jackson. Political reformers of the Jacksonian period strove to increase participation in the democratic process and make government more responsive to the will of "the people." This meant bringing access to power and authority down to the grassroots level. Many states rewrote their constitutions to accomplish this, specifically by broadening the male electorate by eliminating property requirements for voting and expanding opportunities for office holding. Social legislation also became more acceptable in this climate and most of these new constitutions provided for the establishment of public school systems. Fundamental democratic precepts were reinvigorated during this era and education was considered to be critical for those white males now included in the electorate. As the century progressed, Americans moved to new lands in the West and common schools went with them.[7]

Tyack, James, and Benavot claim that public schools of the nineteenth century functioned as a fourth branch of state government. Jacksonian Democrats who sought to decentralize government found greatest success on state and local levels. Coincidentally, as the populace successfully diffused political power, it sought to consolidate social institutions and cultural values. Americans became concerned about increased numbers of immigrants entering the United States near mid-century because they feared possible fragmentation within society. They felt that these newcomers posed a threat to the democratic ideals and republican traditions that Americans held so dear. Danger also appeared on the frontier, where civil body politic and social institution were supposed to counteract the perceived uncivil effects of the wilderness. Education came to the rescue again as a means for standardizing and indoctrinating an increasingly diverse population, for training a reliable workforce, and for "civilizing" those on the geographical fringe of society. So, although authority for basic schooling fell to the purview of the states in a decentralized fashion, it functioned conversely as a unifying force to imbue standards of behavior and belief in a quickly expanding, diversified United States. This paradoxical arrangement worked well, whereby local option molded curricula to fit national goals. By 1850, many states delegated education to governmental responsibility and established a bureaucracy to handle it, one which thus acted as a fourth branch of government. State superintendents, local school boards, faculty, and staff thereafter served quasi-political roles with varying levels of authority, subject to subtle and not-so-subtle change in the political wind.[8]

It is evident, then, that public education in the United States historically has operated within a bureaucratic framework for specific social and cultural reasons. This discussion began with the Puritans, who had their own socio-religious goals for educating sons and daughters. This heritage ran deep in New England, and that region accepted common schooling as a public necessity which deserved funding. Other regions were a bit slower to assume this

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[7]Alfred H. Kelly and Winfred A. Harbison, *The American Constitution: Its Origins and Development*, 4th ed. (New York: W.W. Norton & Company, Inc.), 319-327.

[8]Tyack, *et. al.*, *Law and the Shaping of Public Education*, 43-63.

responsibility, regardless of education's social worth. Revenue from the sale of public lands helped finance western and midwestern schools, but the availability of schools and funding for education in the South lagged far behind. Funding rose steadily throughout the United States, as a whole, however, in the last half of the nineteenth century. Tyack, James, and Benavot report that the "ratio of public expenditures to total costs of education, including all levels of schooling, rose from 47 percent in 1850 to 79 percent in 1890."[9] Distinctions between public and private schools also sharpened during this period. The number of students attending private institutions fell as these schools were transferred to the public domain; a trend that occurred faster in rural areas. By 1890, more than ninety percent of rural children attended public elementary schools, while Catholic schools predominated in many large cities. Even as the public/private aspect became more well-defined, most viewed education as a public service to be rendered by government on all levels. Following this perspective, the nation, therefore, owed all of its citizens basic instruction and, in turn, benefitted from having an educated populace.[10]

Its institutional status as public service and social tonic meant that education also served reform purposes. Despite its loftier goals, the individual was not lost in the educational system because instruction provided one with the means for economic advancement and political participation. The growth of the public school system parallels that of industrial capitalism in the nineteenth century, which formed the economic base of the Northeast. Michael B. Katz, well-regarded as a historian of education, emphasizes the value of schooling as a disciplinary and socializing force necessary to train an industrial workforce. He believes that it received popular support in the nineteenth century because, as he states it, "Public educational systems crystallized key components of social ideology into an institutional form and assured its transmission."[11] They grew during this period because they, very simply, reflected the social order and its dominant values. By extension, society could convey new values or behaviors through its schools during times of significant change. Various waves of European migration in this century and the next were met by aggressive indoctrination programs in public schools, illustrating their powers of socialization. The system also could shape the same social order which created it, by teaching new values and behaviors to the nation's youth. For example, postbellum reformers hoped to effect real social change by using the educational system to integrate freedmen into society after the Civil War, to bring white youngsters together with their black counterparts, and thus modify the Southern social structure.[12]

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[9]*Ibid.*, 54.

[10]*Ibid.*, 53-54.

[11]Michael B. Katz, "The Origins of Public Education: A Reassessment," in B. Edward McClellan and William J. Reese, eds., *The Social History of American Education* (Urbana: University of Illinois Press, 1988), 111.

[12]*Ibid.*

James D. Anderson's important study of African American education in the South outlined the development of public and private school systems, as a result of this reform effort. Many felt universal education would threaten the sense of supremacy upon which the white race based the region's social order. Their economic dependence on agriculture also contributed to a lag in the development of public educational systems. The jump from legal statutes forbidding the education of slaves to a general acceptance of schools established by the Freedmen's Bureau was quite a shock for the majority. But, perhaps *because* of restrictions on learning and the desire for socio-economic advancement, African Americans craved education and worked hard to acquire it; as, indeed, they had prior to the Civil War. Anderson notes that they "were the first among native Southerners to wage a campaign for universal public education."[13] The Military Reconstruction Acts of 1867 swept away the political dominance of former Confederates and brought forth new opportunities for former slaves. Freedmen enjoyed a brief period of participation during Reconstruction and used their new powers to insert educational provisions in post-war state constitutions. Some Radical Republicans in Congress helped by establishing the Bureau of Refugees, Freedmen, and Abandoned Lands (Freedmen's Bureau) in 1865 which operated small schools throughout the South during Reconstruction. Northern missionaries and benevolent societies sent teachers and administrators to bring schooling to the newly liberated slaves. The actions of several parties came together, then, to enact universal public education in the southern United States after the Civil War.[14]

Things changed, however, with the end of Reconstruction. Southern Democrats who wanted to "redeem" the South regained political control in the 1870s and began to implement restrictions which pushed African Americans back to the bottom of the socio-economic scale. Some resented the moralistic tone of Northern reformers who used political and educational institutions to correct Southern society. Although accepting public education as a responsibility of state government, Bourbon Redeemers began to separate the races through state and local ordinance. This group purportedly "redeemed" the South by overturning Republican governments after Reconstruction; others branded them "Bourbons" because, like their French namesakes, they had learned little from the war experience.[15] They used intimidation and quasi-legal strategies to effect segregation in transportation and public accommodations through the late-nineteenth century and the U.S. Supreme Court deemed such practices constitutional in its 1896 *Plessy* v. *Ferguson* ruling. But, segregation was not new and was not confined only to Southern states, it just became more widespread by 1900 as a constitutional practice. Continued reliance on agriculture led the South, at large, to minimize the importance of liberal arts education for its white and black sons. Thus, African Americans

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[13]James D. Anderson, *The Education of Blacks in the South, 1860-1935* (Chapel Hill: The University of North Carolina Press, 1988), 18.

[14]*Ibid.*, 2-32.

[15]Both Bourbon Redeemers and *Plessy* v. *Ferguson* will be discussed at much greater length in Chapter 3. Readers will find a good, basic discussion in Tindall and Shi, *America*, 739-744, or most any fundamental U.S. History text.

either continued to establish their own schools, or gained the best instruction available at the local level. A few significant white benefactors provided alternatives through educational trust funds which supplied seed money for building and staffing black schools; namely Julius Rosenwald, Robert C. Ogden, George Foster Peabody, William H. Baldwin, Jr., J.L.M. Curry, and many others. Some of these philanthropists endowed liberal arts education, but most steered African Americans toward "the Hampton model," developed at Hampton Institute in Tidewater Virginia, which emphasized basic instruction and training for service occupations.[16]

Samuel Chapman Armstrong founded the Hampton Normal and Agricultural Institute in 1868, at a time when Southerners felt threatened by the prospect of an educated black populace. In this era, normal schools compared with high schools and those who attended were trained to become elementary teachers. Armstrong found middle ground by linking Hampton's teacher education curriculum with another track for "industrial" professions or manual labor. He fulfilled his social goal to educate African Americans sufficiently for economic independence, while avoiding direct conflict with Virginia's historic planter class and white supremacists. The "Hampton model" met with widespread approval from white Americans because it mainstreamed this labor source into professions at the lower end of the social ladder, into manual and custodial work. The Institute also fulfilled republican educational goals, by imbuing lessons of social indoctrination and good citizenship to its students. Booker T. Washington, perhaps Hampton's most renowned pupil, embraced its curriculum and in 1881 implemented the vocational model at Tuskegee Normal and Industrial Institute. During his career, Washington became a champion of manual education for African Americans and sharply countered criticisms from those, represented by W.E.B. DuBois, who advocated a broader education in the liberal arts for their countrymen.[17]

This fundamental issue pervaded debates among African American scholars about the future of black higher education well into the twentieth century. James D. Anderson follows major discussions which pitted Washington and the "Hampton model" against DuBois and the black intelligentsia. He argues that white philanthropists from the North and South believed that industrial education was best for individual African Americans and for the nation, at large, because they provided a very necessary workforce for the capitalist economy. Many, including Washington, also believed that African Americans would benefit in the long run because they would pose a lesser challenge to white dominance and evoke less rancor from the majority. The "Hampton model" offered a compromise whereby blacks gained education, but only pertinent to specific, necessary roles in the lower levels of society. This appeased both the Southern planter class and Northern philanthropists who sought to strengthen the Southern

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[16]Anderson, *The Education of Blacks in the South*, 79-84, 153-159. The record of Northern philanthropy is further detailed in James D. Anderson, "Northern Foundations and the Shaping of Southern Black Rural Education, 1902-1935," in B. Edward McClellan and William J. Reese, eds., *The Social History of American Education* (Urbana: University of Illinois Press, 1988), 287-312.

[17]*Ibid.*, 33-78.

economy. The curriculum lacked weight, however, for those who sought admission to academic professions and politics, to those who desired first-, not second-, class citizenship.[18]

For DuBois and other African Americans who wanted equity in American society, an educational curriculum grounded in liberal arts held the key for black advancement. They believed that African Americans deserved and wanted full access to all benefits of universal public education, not merely a supportive role in the labor force. Blacks, furthermore, valued learning for its own sake and placed great importance on education for self-improvement, self-preservation in, and liberation from a racist society. They recognized the republican importance of education, as Tyack, James, and Benavot explain, saying, "The learning that whites had kept to themselves was one cause of their hegemony, and blacks were determined to win the educational opportunities that undergirded participation."[19] But, it required a struggle because white Americans were reluctant to grant entree to this fundamental democratic institution. Segregation proved to be a useful strategy to block African American aspirations, for it presented opportunities for universal instruction, but kept black and white students apart. Separation proved to be the key in subverting black education in the nineteenth and twentieth centuries, through inferior facilities, curricula, and faculty. Racial segregation began long before the Civil War, however, and flourished far beyond the deep South. In a sense, segregation offered a way for communities passively to resist the proper education of their black citizens while, at the same time, guaranteeing their access to instruction. Separate schools convey different sets of options and opportunities to each group. Although the strategy worked fairly well, African Americans clamored for learning and the population's illiteracy rate fell from almost 80 percent in 1870 to 44.5 percent by 1900.[20]

After the *Plessy* finding of 1896, the practice of segregation became more aggressive. Both sides resorted to the courts to win their cause, either to block or gain access to knowledge, respectively. State and local governments applied the High Court's determination as if it were a veritable constitutional mandate to separate white and African American youth. Quite ironically, in the process, the white majority used republican institutions to thwart the functioning of democracy. As was their purview, localities throughout the United States implemented segregationist practices in varying degrees. History and civics lessons which lauded the great merits of democratic societies mocked the true conditions which black youths faced daily. African Americans were more likely to find some measure of equity in Northern communities, but life held no guarantees. One of the most significant challenges against segregation rose in 1849, in the historically Puritan town of Boston.

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[18]*Ibid.*, 79-109. Armstrong and other whites assumed that African Americans did not have the intellectual capacity to comprehend a liberal arts curriculum.

[19]Tyack, *et. al.*, *Law and the Shaping of Public Education*, 137-138.

[20]*Ibid.*, 148-149.

B. The *Roberts* case, 1849.

This discussion of *Roberts* v. *City of Boston* jumps back in time a bit, to the mid-nineteenth century, and an early case against racial segregation in public education. The city had maintained the Smith Grammar School for African Americans since 1820 and spread white youngsters among at least five grade schools. The black school dated to 1798, when it was established by African Americans who believed that their children would suffer prejudice and discrimination in a racially mixed setting. It operated privately until taken over by the public school system in 1820. By the 1840s, however, the abolition movement had gained strength in reform-minded New England and the Massachusetts Anti-Slavery Society requested that Boston's school system be integrated. Benjamin Roberts actively participated in this fight against segregation and used his own daughter, Sarah, to seek redress. Sarah Roberts, five years old at the time, walked past Boston's five white elementary schools each day on her way to Smith Grammar School and her father made four separate requests for her admission to one of the white schools. The Boston School Committee evaluated Smith Grammar School, finding it small, run-down, and badly needing repair. The school system rejected Roberts' request that his daughter be transferred to one of the white schools, so he secured the legal services of Robert Morris, an African American attorney, and later those of Charles Sumner, advocate for racial equality and future U.S. Senator.[21]

Morris and Sumner appealed to the Massachusetts State Supreme Court for the admittance of African Americans in Boston to schools closer in distance and higher in quality. The legal action represented other plaintiffs, as well, including William Cooper Nell, who aggressively fought for integration in the city's public schools. "Thus when Benjamin Roberts brought suit against the city," James Oliver Horton and Michele Moresi explain, "he did so as part of a series of efforts and strategies by the community to desegregate Boston schools."[22] Counsel argued that the Massachusetts state constitution provided equal protection for the state's black population, thereby outlawing political and civil discrimination. Their suit went beyond fixed statute to the heart of the matter, to the very nature of racial separation as a caste system which excluded African Americans. Sumner said, "Strange that here, under a State Constitution declaring the Equality of all men, we should follow the worst precedents and establish among us a Caste."[23] He went on to explain that although the school system protested that it maintained the separate facilities on an equal, and therefore equitable, basis, it fell short of the mark simply because of their separateness. As Sumner perceptively argued, "The matters taught in the two schools may be precisely the same, but a school exclusively

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[21]James Oliver Horton and Michele Gates Moresi, "Roberts, Plessy and Brown: The Long, Hard Struggle Against Segregation, *CRM* 19, no. 2 (February 1996): 10-13; Mark Whitman, *Removing a Badge of Slavery : The Record of Brown v. Board of Education* (Princeton: Markus Wiener Publishing, Inc.), 3; and Kluger, *Simple Justice*, 75-76. Readers may find the case transcripts at *Roberts* v. *City of Boston* (59 Mass. 198).

[22]Horton and Moresi, "Roberts, Plessy and Brown," 12.

[23]Whitman, *Removing a Badge of Slavery*, 4.

devoted to one class must differ essentially in spirit and character from that Common School known to the law, where all classes meet together in Equality. It is a mockery to call it an equivalent."[24] Chief Justice Lemuel Shaw did not agree. He issued the court's opinion which upheld Boston's segregation policy, which focused on the contention that segregation violated Robert's civil and political rights. In his ruling, Shaw posed an argument that would become familiar to civil rights advocates; namely, that districts could separate children as long as the school system provided facilities to both races on an equal basis. With that, the court denied Sumner's argument that separation amounted to different and inferior treatment.[25]

While Sumner's specific attack on the Boston segregated system failed, it provided an important model for future desegregation efforts and stands as an interesting parallel to *Oliver Brown, et. al.* v. *Board of Education of Topeka, Kansas.* Tyack, James, and Benavot place Roberts as the central precedent for *Plessy* v. *Ferguson* because the Massachusetts court "judged separate schools for blacks to be reasonable and denied that law could erase the prejudice that created the distinction in the first place."[26] Quite unbeknownst to its participants, *Roberts* v. *City of Boston* held the three classic components of future desegregation cases. Firstly, Benjamin Roberts, William Cooper Nell, and other African Americans initiated a strategy which focused on those most affected by the hurtful lessons of racial stigma, innocent children caught in the game of segregation. Secondly, Charles Sumner clearly stated the ills of racial separation when he likened the low status of African Americans to those entrapped in a caste system. In very eloquent fashion, he framed the classic argument against segregated education. Chief Justice Shaw added the third component, that being the opinion that separate facilities could be equal in a legal sense. The U.S. Supreme Court seized upon Shaw's logic forty-seven years later during its deliberation of *Plessy* v. *Ferguson* and proclaimed the constitutional principle of "separate but equal." The case contained these three components of the segregation debate, as did subsequent briefs which tried to undo *Plessy*'s damage. The State of Massachusetts undid the damage of *Roberts* long before its more famous progeny came about, by abolishing the practice of segregation throughout the Commonwealth in 1855.[27] Thereafter, discussions about the status of African Americans in the United States largely focused on conditions in the South and West, as the nation, as a whole, tried to come to terms with its divisive tendencies.

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[24]*Ibid.*, 5.

[25]Horton and Moresi, "Roberts, Plessy and Brown," 12; and J. Clay Smith, *Emancipation: The Making of the Black Lawyer* (Philadelphia: University of Pennsylvania Press, 1993).

[26]Tyack, *et. al., Law and the Shaping of Public Education*, 17.

[27]Whitman, *Removing a Badge of Slavery*, 3.

C. The Kansas state system of education

White settlers from New England and the southeastern U.S. who descended upon the Kansas Territory during the 1850s and 1860s brought divergent viewpoints about the future of African Americans in the new state. Kansas thus developed with a bit of a schizophrenic streak, whereby its residents accepted and aided black settlers, but placed restrictions on their full and equal participation in society. Legislators mandated universal public education, to be funded and maintained at the local, district, level, and left matters of race relations to the local population, as well. As early as 1868, the Kansas legislature incorporated these dual racial attitudes into the state's educational system by mandating that school systems in larger cities separate the races, while allowing smaller towns to teach their children together. State representatives revoked the segregation in 1876, but reinstated it three years later. This system remained in place, with slight modification, until 1954, when the U.S. Supreme Court ordered the elimination of all real and artificial barriers to universal public education in the United States.[28]

An early history completed in 1939 as part of the Federal Writers' Project, a program administered by the Works Projects Administration, hearkens Kansas educational programs back to early Indian mission schools. These were primarily organized by religious missionaries between 1820 and 1850, with curricula that emphasized basic reading, writing, hygiene, and agricultural practices. Approximately twenty-five schools operated at various times during this pre-territorial period, for the benefit of Native American and any white youngsters at area trading posts, stage coach stops, and railroad towns. The Wyandotte Indians forged ahead without missionary support, however, and are credited with the first public school in Kansas, built in 1844 in present-day Kansas City. Although not public in the modern sense, Kansans also benefitted from the availability of tuition and subscription schools. Each student paid a fee to the teacher of a tuition school, thus excluding the poorer in the community. Subscription schools gradually became more popular because, while privately supported, they functioned as public institutions. In this system, townspeople raised money specifically for the support of a common school, open to all residents free of charge. One of the first subscription schools opened in Lawrence, in January 1855, in offices provided by Dr. Charles Robinson, primary agent of the New England Emigrant Aid Society. These schools remained even after the Kansas territorial government established formal districts because logistical organization lagged somewhat and general tax revenue was sparse.[29]

Public education really began to take shape during the territorial period, 1854-1860. The first Kansas assembly, popularly known as the "bogus legislature" corralled by pro-slavery advocates from Missouri, adopted many of that state's laws for Kansas Territory. This group provided for schools "free and open to whites." A "free state" legislature gained control in

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[28]See Woods, *A Black Odyssey*, for more info on the wrangle over state segregation policies.

[29]Federal Writers' Project of the Work Projects Administration for the State of Kansas, *Kansas: A Guide to the Sunflower State*, American Guide Series (New York: The Viking Press, 1939), 105; and Isely and Richards, *Four Centuries in Kansas*, 267-268.

1858 and promptly revised this law to include all Kansans. The more equitable line of thinking ultimately prevailed, for the WPA history of Kansas reports that, "The State constitution, drawn up in 1859, provided for 'equal educational advantages for white and colored,' and for 'males and females alike.'" Even before statehood, the legislature slowly began to create a framework of district school systems, to be enacted on the local level. The first district, organized in 1858, began a slow process which paralleled settlement patterns and local government organization. The federal government sweetened the pot by contributing approximately three million acres of public land to the establishment of local schools and colleges. As per the precedent of the Northwest Ordinance, Sections 16 and 36 of every township was designated for public school support. The Morrill Act of 1862 added land grants for the establishment of state colleges and universities. Depression-era researchers in the Federal Writers' Project estimated that at least five percent of the revenue accrued from the sale of public lands in Kansas went to support the state's educational system.[30]

Although the Kansas legislature eliminated broad restrictions on public schooling for African Americans, local populations did not wipe away racial distinction so easily. Local control meant that towns could enforce segregationist practices, as community standards, that the state legislature outlawed. James C. Carper's research on attitudes toward black education shows that, while whites felt that African Americans needed the "socializing" force of education, they rejected common schooling shared by the races. African Americans, on the other hand, saw education as a prerequisite for achieving the prosperity and freedom of the "American dream." Many also believed education and training would eradicate racial prejudice because learned blacks could dispel some of the stereotypes widely held by whites and prepare African Americans to compete with whites in the workplace. Charity and freedmen's schools filled the need immediately after the Civil War, but became over-burdened by Exodusters. Apparently, the small number of African Americans during the territorial period delayed serious debate about the implications of integrated education, but as the population grew during the mass migration, white resistance increased accordingly. In 1867, the state legislature abdicated its responsibility in the matter by passing a statute which Carper cites, by saying, "schools districts were responsible for the 'education of white and colored children, separately or otherwise, securing to them equal educational advantages.'"[31] Perhaps for the first time on the state level, the concept of "separate but equal" was accepted in Kansas.

This same legislative assembly approved the Fourteenth Amendment to the U.S. Constitution, which granted the rights of citizenship to all African Americans, but implemented other actions which made 1867 a fateful year for the forces of segregation. The members grouped Kansas towns in two categories; "cities" with populations of more than

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[30]Federal Writers, *Kansas*, 105-106, quote from 106; Paul E. Wilson, *A Time to Lose: Representing Kansas in Brown v. Board of Education* (Lawrence: University Press of Kansas, 1995), 32-34; and Isely and Richards, *Four Centuries in Kansas*, 272-274.

[31]James C. Carper, "The Popular Ideology of Segregated Schooling: Attitudes Toward the Education of Blacks in Kansas, 1854-1900," *Kansas History* 1, no. 4 (Winter 1978): 254-264. Quote taken from 259.

15,000 were designated as "first class" and those with fewer citizens as "second class." Both first and second class cities were allowed to segregate students, depending upon local option. Economics, as well as personal attitudes, seem to have driven segregationist practices because small towns which could not afford to maintain two parallel systems educated students together, whereas larger, wealthier ones tended to segregate them. For three brief years, from 1876 to 1879, the legislature altered school laws to eliminate language about segregation. *De facto* segregation remained, however, and little changed during these intervening years. Code followed practice, however, and in 1879, the Kansas legislature reinstated its earlier school law and amended it to allow cities of the "first class" to segregate their elementary schools only. Researchers in the field propose that the influx of Exodusters in that year prompted white Kansans to retreat behind laws which separated them from the greatly increased numbers of black migrants. This law set a standard which larger Kansas school districts followed for several decades, whereby elementary grades were segregated and secondary grades were integrated. Paul Wilson pointed out that comparatively few Kansans, black or white, attended high school in the late-nineteenth century, and even fewer African Americans had the opportunity to go beyond grammar school. Financial constraints, law, and logistics prohibited most districts from providing a high school exclusively for African Americans. Therefore, even though post-1879 policy mixed black and white students on the secondary level in all Kansas cities, life experience and a relatively small black population kept African American attendance rates low.[32]

Through the 1870s and 1880s, many African Americans railed against separatist practices as socially divisive and prejudicial, but to no avail. Majority populations in town after town justified segregation in a variety of ways, from segregation as being beneficial to blacks to integration as a violation of "the laws of nature." The *Plessy* v. *Ferguson* ruling (1896) only strengthened state laws which sanctioned separate schools. Economic constraints in first class cities, largely consisting of Leavenworth, Atchison, and Topeka, fell by the wayside during the late nineteenth century. Segregation in education spread across the state as the number of first class cities increased. By 1950, twelve maintained separate elementary schools. When blacks and whites came together in high school, boards of education often used creative means to separate the races during extracurricular activities; by specifically segregating African American students in athletic and musical programs, dances, and social clubs. Second class cities dealt with the race issue according to community behavior, expectations, and available funding for separate schools.[33]

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[32]Kluger says the classification changed at a population of 7,000 rather than 15,000; please see *Simple Justice*, 371. Wilson, *A Time to Lose*, 36-40; and Paul E. Wilson, "Speech on *Brown v. Board of Education*, May 1, 1981," *Kansas Law Review* 30, no. 1 (Fall 1981), 18. In 1905, the legislature allowed Kansas City to establish a separate high school for African Americans, exempting it from restrictions on school districts in first class cities.

[33]Carper, "The Popular Ideology of Segregated Schooling," 259-264; and Wilson, "Speech on *Brown v. Board of Education*," 18-19.

As Kansas communities settled into comfortable patterns of avoidance, school districts began to formalize instruction across the state. A state school commission was created in 1913 to oversee the network of local boards of education. The state implemented compulsory education for all students in stages, extending required annual attendance and the length of the school year from three months in 1874 to nine months in urban districts by 1936. Teacher certification and examination also became stricter in the early twentieth century and the quality of instruction increased proportionately. Forms of instruction also diversified, with manual training, home economics, physical education and hygiene classes, adult evening courses, and vocational education rounding out the complement of curriculum offerings. This rapid growth reflects the value placed on education by white Americans and those of African descent. Both groups saw education as a key mechanism for shaping society, but the two differed sharply over the nature of that society.[34]

D. Topeka's school system takes shape

The capital city of Topeka took a very proactive stance toward universal public education. Its school system blossomed from a single tuition school, which opened in 1857, to a collection of twenty-two public institutions by 1950. During this period, the community placed importance on education for both races, but qualified and separated instruction for African Americans virtually from the beginning. The existence of black schools in Topeka date to 1867, a year which also happens to be the founding anniversary of the Topeka Board of Education. Despite its record of discrimination and racism, the city's school board and private citizens contributed to formal instruction for African Americans. Black students were stymied, however, by community practices, racism, and Topeka's status as a first class city. The Board of Education willingly segregated elementary students in the first half of the twentieth century and funded separate sports teams and social clubs for secondary students. The city invested heavily in its schools, certainly putting more money in the construction, staffing, and curriculum development in the white schools, but also providing for the basic needs of African American students. Like most cities during the early twentieth century, Topeka developed dual systems for the races which grew in tandem. While the infrastructure and faculty of the black facilities ranked on par with those for whites, the full educational experience for African Americans fell short of parity.

State and local historians credit Topeka's Puritan roots for its residents' enthusiastic support of education. Several Topekans donated sites for public schools and opened informal, private day schools in the mid-1850s soon after the town's founding, with Miss Sarah Harlan's credited as being the first. In its zeal to settle the rustic Kansas Territory, the New England Emigrant Aid Society went to work setting up social institutions for the edification of rambunctious settlers. It funded Topeka township's first school in 1857, which functioned as a tuition school with a few *pro bono* enrollments from poor families. Additional private

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[34]Isely and Richards, *Four Centuries in Kansas*, 275-278; and Federal Writers, *Kansas*, 107-108.

academies emerged a few years later, primarily emphasizing basic language skills, arithmetic, history, science, Latin, Greek, and bookkeeping. Shawnee County commissioners designated Topeka as school district number 23 in 1862, but did not appropriate money for public school construction until 1865. The lapse engendered some local criticism, but in 1867 the Topeka school board got the program underway. The Harrison School operated as the city's first for whites and a former black church on Sixth Street between Kansas Avenue and Quincy opened for black children. The next year brought construction of two new schools, one at Thirteenth and Quincy for majority students and a school on Lots 50-54 on Monroe Street, referred to in one source as the Lincoln School, for African Americans. By 1870, the city owned four

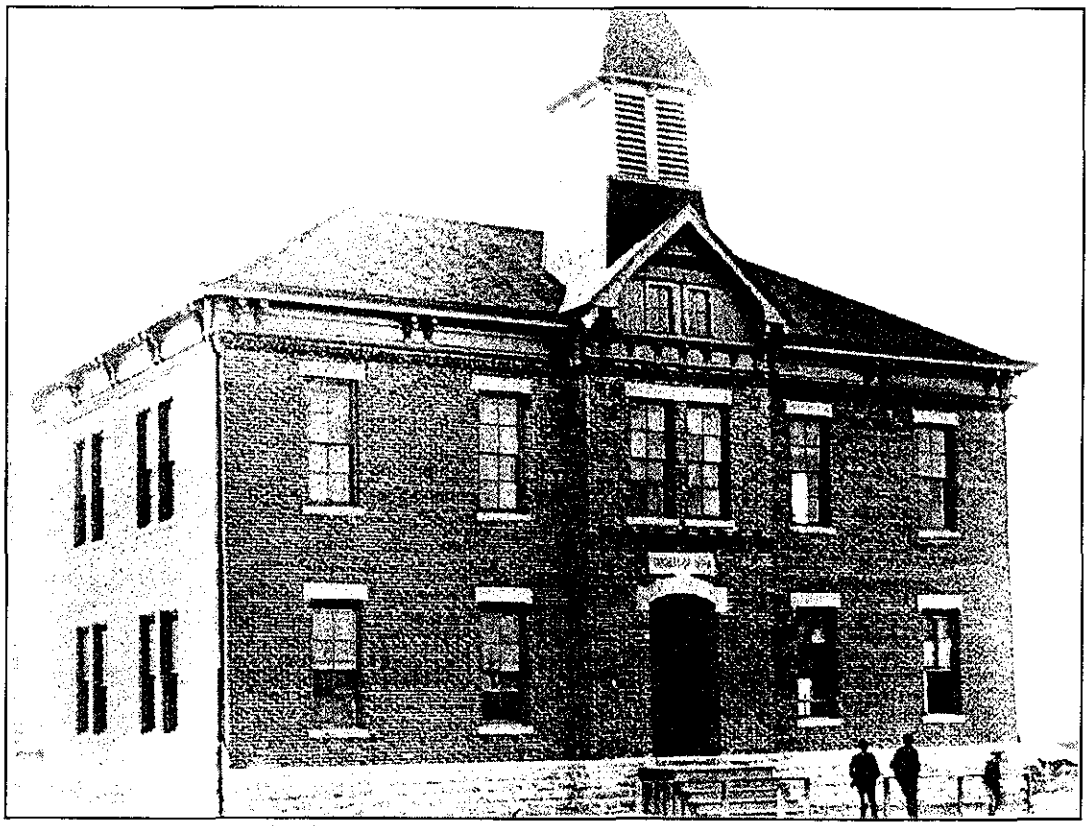

Figure 8. Buchanan School, 1885.

public schools and rented four more, comprising a total of eight with fifteen classrooms averaging 44 pupils per class. Shawnee County, as a whole, maintained 52 schools, began the construction of ten more, and enrolled 3,000 students in this same year. To extend the comparison, by 1874, the entire state of Kansas educated almost 200,000 students in 4,181 rural, and perhaps three urban, school districts. Once begun, the network of school districts grew

in number and strength across the state and in the capital city of Topeka.[35]

The decade of the 1880s was a period of tremendous growth for the capital's public school system because the board added several new buildings and expanded existing ones to accommodate its booming student population. Total enrollment recorded between 1880 and 1890 increased from 2,937 to 6,400, approximating a growth rate of fifty-one percent. The state compulsory attendance law of 1874 probably had some impact on this growth in terms of people and structures, but in-migration also stretched Topeka's spatial capacity. Immediate attention went to the condition of the city's elementary grades. By the end of 1886, the system had expanded to fifteen grammar schools, composed of:

Lincoln	Klein	Douglas
Quincy	Jackson	Lane
Grant	Sumner	Harrison
Parkdale	Polk	Madison
Clay	Buchanan	Monroe

Most sources claim that the city educated its black youth in five of these schools; namely, Buchanan, Douglas, Lane, Madison, and Monroe. African American students were taught in a building on Buchanan Street as early as 1881, but a new Buchanan School was built four years later. Douglas was built on Kansas Avenue in 1882, but apparently was used only a short time for black education. North Topekans attended Lane School, also constructed in 1882, at the junction of the Rock Island and Union Pacific Railroads. Madison was a third school erected in 1882, at the corner of Second and Madison Streets. It first housed white students, but four years later was listed as a black grammar school. Since 1874, a new Monroe School had graced the corner of Fifteenth and Monroe Streets, and it continued in operation for several decades. Sumner Elementary, named in honor of Sen. Charles Sumner of Massachusetts, was originally constructed in either 1875 or 1880 to educate African American children.

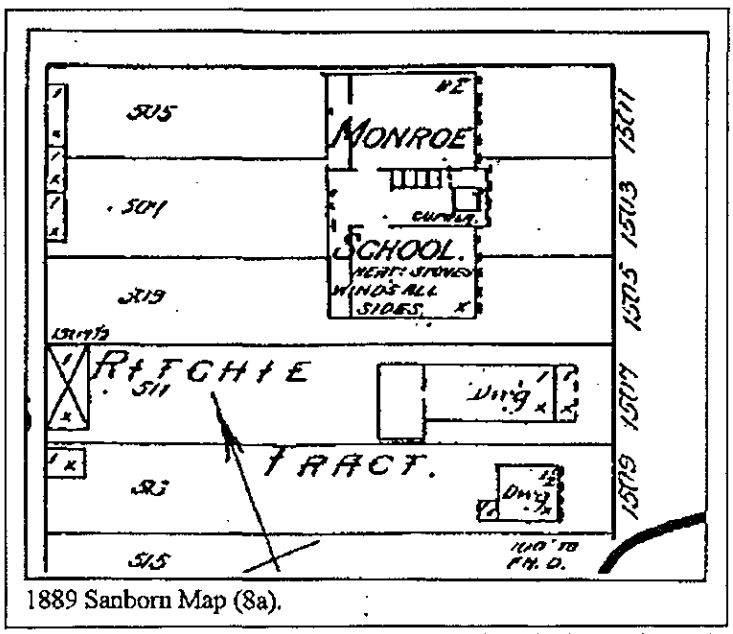

Figure 9. A Sanborn Fire Insurance map (1889) shows the early Monroe School, at the corner of 15th and Monroe.

[35]Bird and Wallace, *Witness of the Times*, 170-171, 173, 179-180. Fitzgerald, *Gone but Not Forgotten*, 2-3, 18, says the school built in 1868 on Monroe Street was called the Lincoln School.

The school's African American connection was short-lived, however, for the board reassigned its black students to a smaller building in 1885 and Sumner became a white school at that time. Topeka maintained more schools for African Americans during the 1870s and 1880s than at any subsequent time in its history, demonstrating a high level of commitment in the late nineteenth century for the education of its minority population.[36]

Leaders of the African American community repeatedly stressed the importance of parental support for children's education. Thomas Cox reviewed black newspapers for his extensive study of Topeka's black community and found that editorials and news stories, alike, emphasized learning as a means to race progress. He quoted a statement from 1879, published in the Topeka black newspaper, the *Kansas Herald*, which appealed for quality and steadfast support, saying, "Give us good schools; give us good teachers, and let parents be careful to keep their children in school regularly and our race is safe."[37] African American newspapers also publicized complaints that attendance restrictions and inferior conditions held children back in their development, and by extension, retarded the advancement of the entire race. Cox quotes comments about segregation from an 1879 edition of the *Colored Citizen* which complain, "We hear of no Irish or German school. All children are at liberty to attend the school closest to them, except the

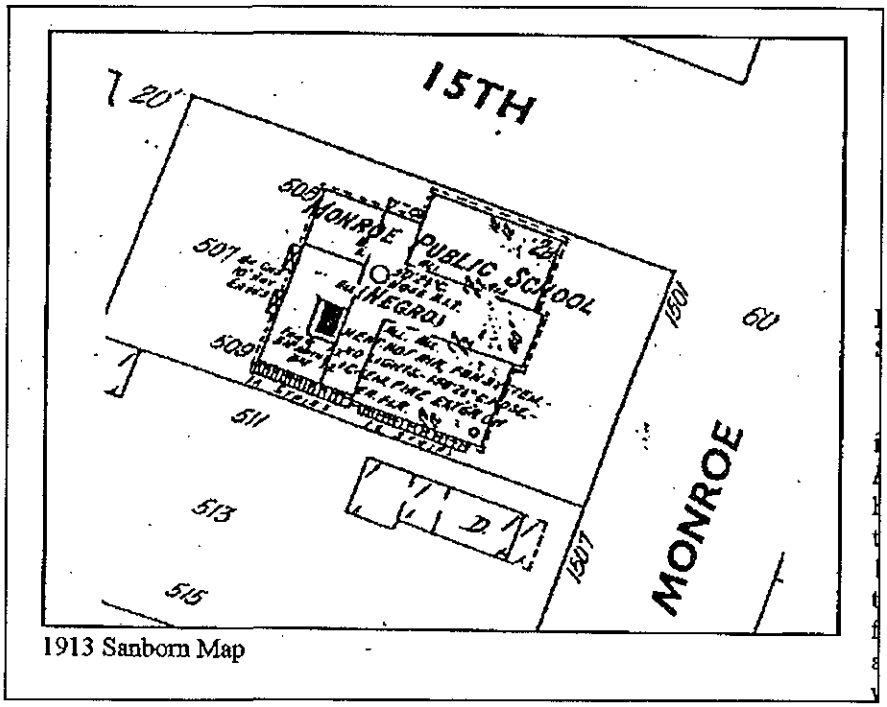

Figure 10. Sanborn map showing the second Monroe Elementary School.

[36]Fitzgerald, *Gone but Not Forgotten*, 17, 20, 48, 55, 73-74, 89-90, 94; Retired Teachers of the School System, "The Colored Schools, Pupils and Teachers," in "A Centennial History of the Topeka Schools, 1854-1954," typewritten manuscript, Kansas Collection, Center for Historical Research, Kansas State Historical Society, Topeka, Kansas, 1955, 113. It seems that the educational history should be fairly straightforward, but Roy Bird and Douglass Wallace compound the local record by asserting that Topeka possessed seventeen schools in 1887, with six reserved for African American students; including Lane, Madison, Washington, Adams, Buchanan, and Douglas. Please see Bird and Wallace, *Witness of the Times*, 181-182.

[37]Quoted in Cox, *Blacks in Topeka*, 111-112.

black child."[38] In this same year, the publication specifically railed against conditions at the newly established Monroe School as being unequal, proclaiming, "The management of the Monroe Street School has been such that many children in it are just where they were 2-3 years ago, and it is our deliberate opinion that they are purposely kept back to prevent their entering a mixed school."[39]

Topeka, as a first class city, channeled its African American youth into the city's first functional high school, which opened in 1871. The Lincoln School, centrally located at Fifth and Madison, addressed the needs of students on the intermediate and secondary levels until the construction of a proper high school. African American residents of North Topeka attended a segregated elementary school located on that side of the Kansas River in 1889-1890. Few African Americans in the city of Topeka entered the intermediate or secondary grades, however, and eight years passed before the first minority pupils graduated from Topeka High School, proper, in 1882. These students, with their white cohorts, attended class in rented office space in downtown Topeka, but a new school was built at Eighth and Harrison in 1893-1894. Approximately ten years later another facility opened for vocational training for those on the secondary level. The overall lack of professional job opportunities in Topeka, however, contributed to a low rate of graduation among African Americans from secondary schools, and the *Kansas State Ledger* succinctly posed a common lament in February 1894, asking "Why do we send our children to high schools and to academies, to earn $1.50/day cleaning the sewers?" One particular grievance lay with the school board's refusal to appoint African American administrators, faculty, and staff in the segregated schools and the perception that white teachers lacked interest in their students. It seemed especially galling that African Americans could accomplish the same training as white teachers, but had little opportunity to practice their skills and talents. The board conceded in 1894, agreeing to place only African American teachers in the black elementary schools, which, as Thomas Cox points out, actually reinforced segregation rather than dissipating the practice.[40]

Parents recognized such small gains in the late-nineteenth century and continued to send their children to school in hopes that greater accomplishments would follow. By 1894, formal instruction for those in Tennessee Town, an African American neighborhood in southern Topeka, began in kindergarten. The Reverend Dr. Charles Sheldon recognized the untapped potential of the African American community and opened Topeka's first free kindergarten in 1893 for poor children in Tennessee Town. He had made a name for himself as a charismatic and concerned minister who practiced acts of Christian charity during his life. The concept of a specialized school for children ranging in ages from three to six originated in Germany during the mid-1850s. Friedrich Froebel believed that children should be nurtured

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[38]*Ibid.*, 112.

[39]*Ibid.*, 112-113.

[40]Bird and Wallace, *Witness of the Times*, 180-184; Fitzgerald, *Gone but Not Forgotten*, 21; and Cox, *Blacks in Topeka*, 69-71, 113-114.

in a specialized environment for their intellectual and emotional development, which he called a *kinder garten*, or child's garden. Single women had operated private schools for Topeka's pre-schoolers since the 1860s. While not the first pre-school in Topeka, *per se*, Sheldon opened the city's first **public kindergarten** modeled after Froebel's prototype. Dr. Sheldon's congregation raised money for the kindergarten and held class in Jordan Hall, built by Andrew Jordan, an African American, for use as a dance hall. Sheldon and his congregation refurbished the building and renamed it, Union Hall. It specifically targeted African American children, but also welcomed poor whites and even accepted some children from Topeka's more renowned families, who paid tuition. Sheldon's kindergarten sparked a local movement to incorporate the German educational model on a broader scale. Training courses evolved to

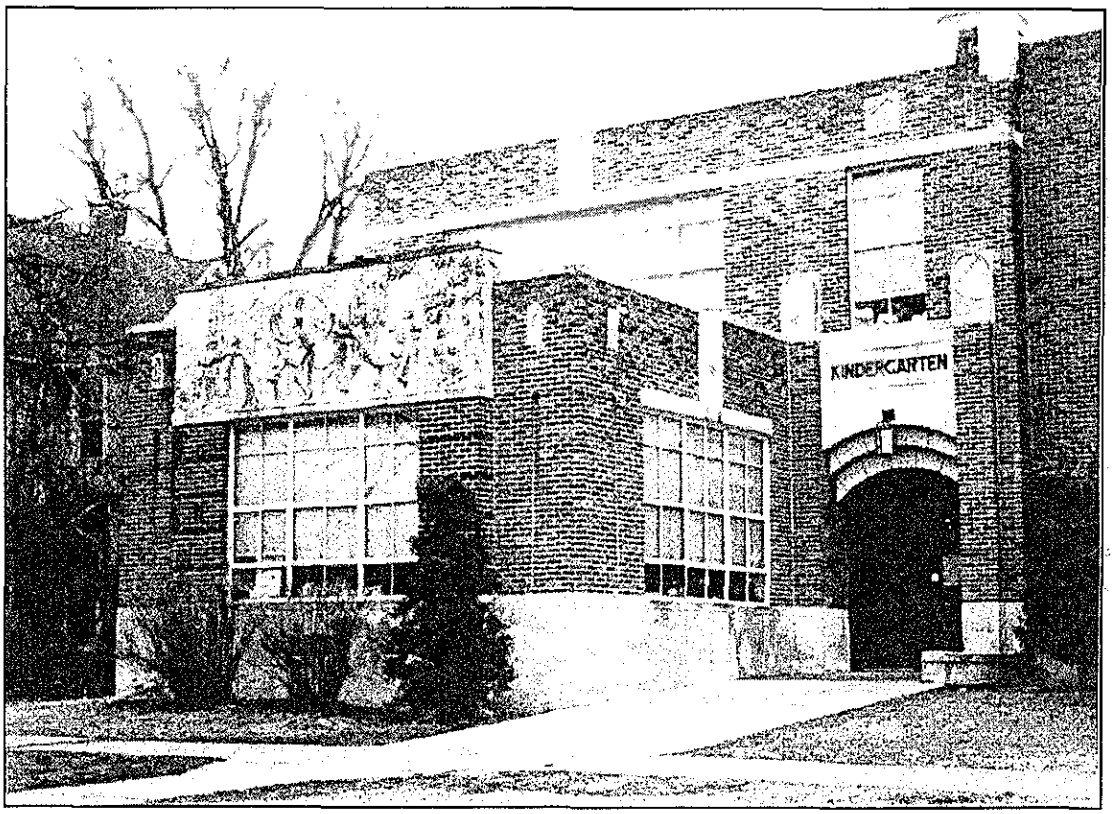

Figure 11. Kindergarten entrance at the new Sumner Elementary School, erected in 1935.

educate future kindergarten teachers and student interns participated in "practice teaching" in Sheldon's school as part of their training. Teachers also adapted classroom space to the children's needs, featuring long, tables and small, child-size chairs that could be rearranged as needed. Others copied the Froebel/Sheldon program and nine kindergartens functioned in Topeka within two years, each averaging an attendance of twenty-five students.[41]

[41]Timothy Miller, "Charles M. Sheldon and the Uplift of Tennesseetown," *Kansas History* 9, no. 3 (Autumn 1986): 125-137; and Fitzgerald, *Gone but Not Forgotten*, 95-102.

Sheldon seized upon an important idea at an opportune time and, quite significantly, implemented the kindergarten curriculum in the African American community. The situation was atypical, however, because a cutting-edge educational program benefitted the minority population first, then spread to the larger population of Kansas. In 1907, the state assembly authorized local boards of education to implement kindergarten programs in the public schools. Topeka acted during the next academic year, when the school board adopted the program for African American students in the public schools. Daniel Fitzgerald, in his important survey of Topeka's abandoned schools, quoted a 1910 "Report of the Superintendent," which guaranteed, "support of a kindergarten for colored children which had been supported for about ten years by private contributions and chiefly through the efforts

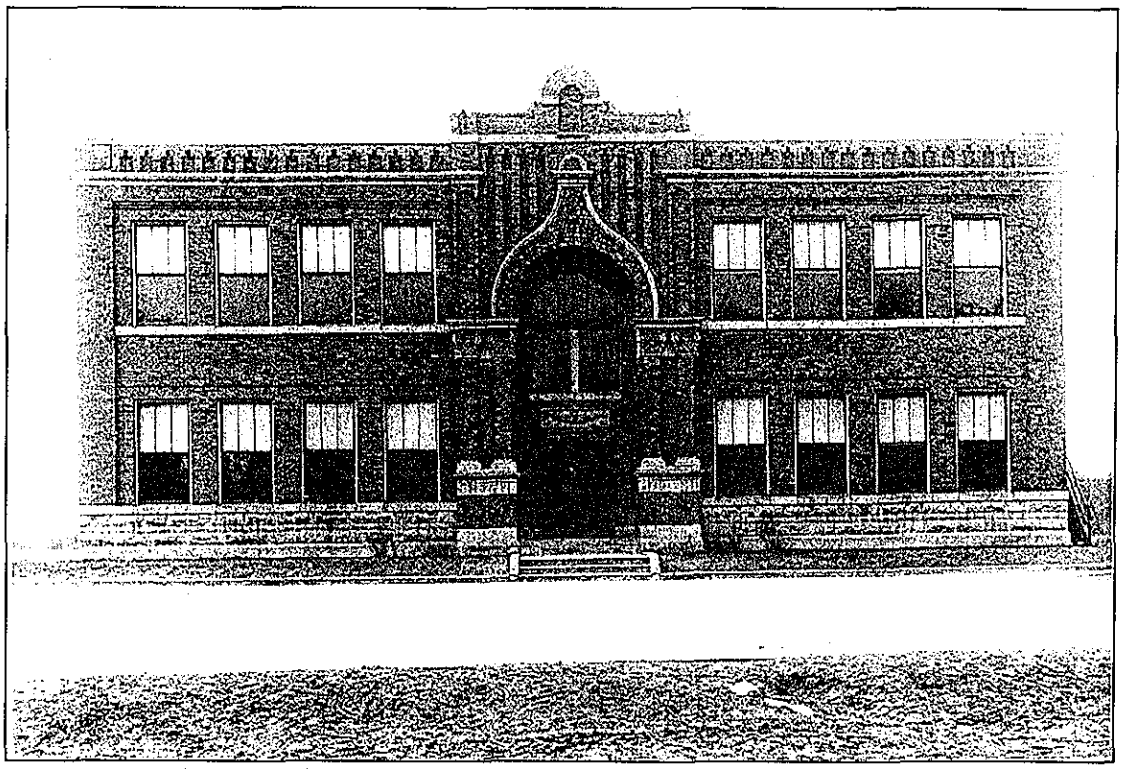

Figure 12. Washington School, 1910.

of the Rev. Charles M. Sheldon."[42] Parents of white children appealed to the board to extend the kindergarten program to the other elementary schools, and it gradually added kindergarten classes to existing white and black schools in the following order.

Buchanan (1910/14)	Clay (1922)	Polk (1923)
Potwin (1916)	Branner (1922)	Quincy (1923)
Lincoln (1918)	State (1922)	Branner Anx (1924)

[42]Fitzgerald, *Gone but Not Forgotten*, 101.

Lowman (1918)	Sumner (1922)	Lafayette (1924)
Grant (1919)	Van Buren (1922)	Oakland (1926)
McKinley (1919)	Boswell (1923)	Washington (1927)

By the 1920s, Froebel's program had become part of the mainstream curriculum in Topeka for all children. New school construction commissioned during this decade included kindergarten rooms, as a matter of course. Architecture and design elements of these new buildings reflected the importance of the kindergarten for nurturing little minds, as seen inside the kindergarten room in the new Monroe Elementary School (1926) and on the exterior of a newly constructed Sumner Elementary in 1935.[43]

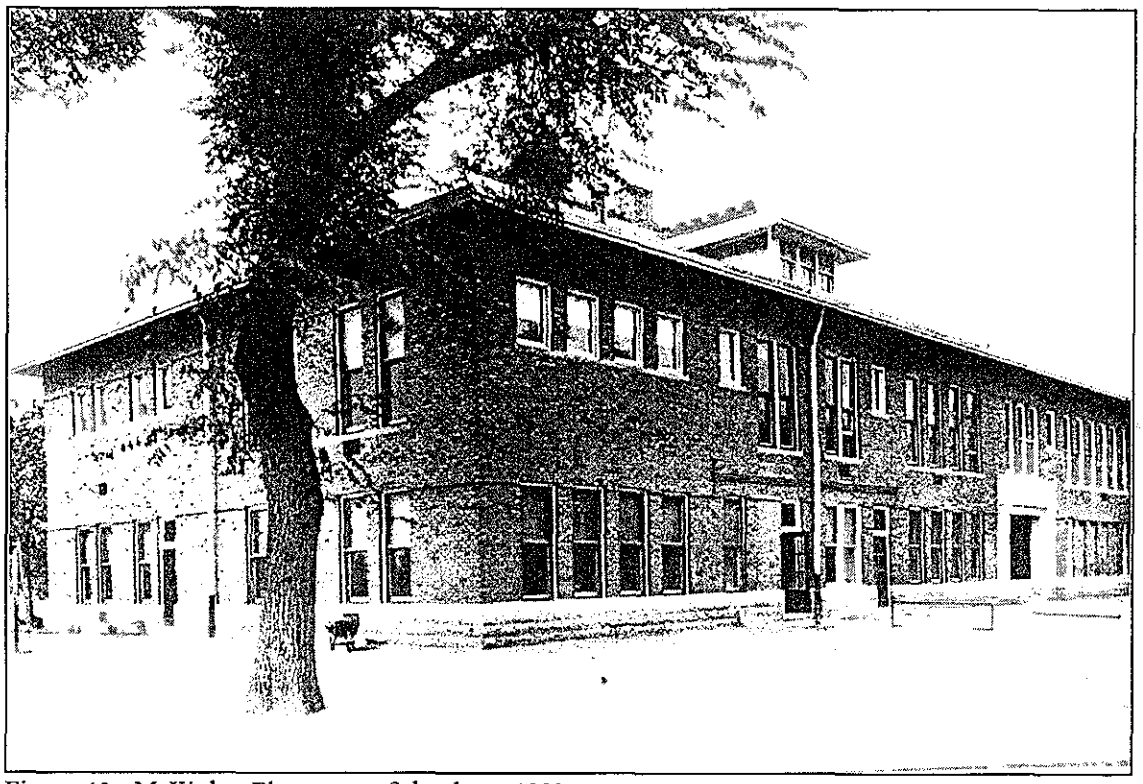

Figure 13. McKinley Elementary School, ca. 1920s.

The development of the kindergarten program indicated a deeper level of concern for even the earliest educational needs of its constituents. Topeka's school system expanded in quantity as well as quality during the early twentieth century as the board of education upgraded its facilities. Lane School in North Topeka was ravaged by the 1903 flood of the Kansas River and in 1907 the district replaced it with McKinley Elementary. It housed African American students in this community through the first half of the twentieth century.

[43] *Ibid.*, 48, 101-102.

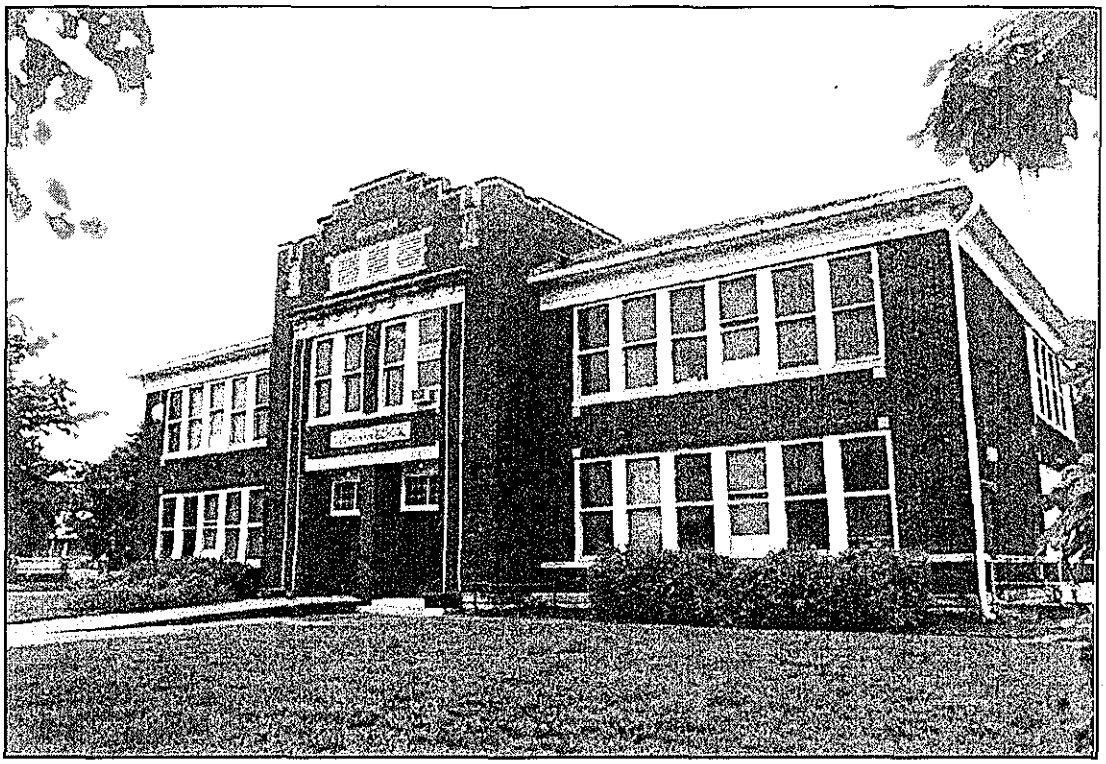

Figure 14. A contemporary view shows structural changes made to Buchanan in 1920.

Buchanan School received attention in 1920, when it was remodeled and enlarged. Situated at Twelfth and Buchanan, it functioned as a cornerstone of the Tennessee Town community until the school closed in 1955. Washington School, located at Eleventh and Washington Streets on Topeka's east side, served the needs of black children beginning in 1910. It underwent substantial remodeling in 1926 and received a large addition at a cost of approximately $30,000. Topekans, in fact, saw a number of changes and additions during that year of 1926. The board of education commissioned local architect, Thomas W. Williamson, to design several new schools in the 1920s and his team completed five buildings in rapid succession by the end of the decade. The two junior high and four grammar schools brought an eclectic mix of high-style architecture to the Kansas capital and recognition to the school board that commissioned them. An article published on November 15, 1927 in the *Kansas City Times* reported that board members began the "million-dollar program" in 1925 "to bring the Topeka school system up to first class condition."[44]

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[44]*Ibid.*, 48, 73-74, 94; Retired Teachers, "The Colored Schools, Pupils and Teachers," 135, 155-156, 170-171, 174; and "Views Showing Different Architectural Designs of Topeka's New School Buildings," *Topeka Capital Journal*, 25 August 1929, n.p., in "Topeka Schools-Public," clipping file, Topeka Room, Topeka-Shawnee County Public Library, Topeka, Kansas. Quote taken from "A Million in New Schools: Topeka's Building Program to be Completed Soon," *Kansas City Times*, 15 November 1927, n.p., in "Topeka Schools-Public," clipping file, Topeka Room, Topeka-Shawnee County Public Library, Topeka, Kansas.

Thomas Williamson (1887-1974) showed great flourish in each of these "million dollar" projects, but most specifically in schools commissioned by the Topeka Board of Education for white students. Williamson's work dramatically modernized Topeka's landscape with a variety of buildings that drew from past architectural styles and others designed in the 1930s which implemented more contemporary forms. He attended the University of Pennsylvania for two years (1908-1909) and began his career in Topeka in 1911, working as a draftsman in the state architect's office and in the firm of John F. Stanton. Williamson established his own office in 1913 and, within the next seven years, became Topeka's premier architect. Close association with the Topeka Board of Education certainly must have helped his practice, for Williamson completed almost all of the city's public school commissions during his tenure from 1920 to 1935 as consulting architect to the board. By mid-century, he had completed approximately fifty commissions across Kansas and the Midwest; including designs for public and private schools, recreational facilities, universities, courthouses, banks, hotels, churches, and plans for domestic military installations which Williamson drafted during World War II.[45]

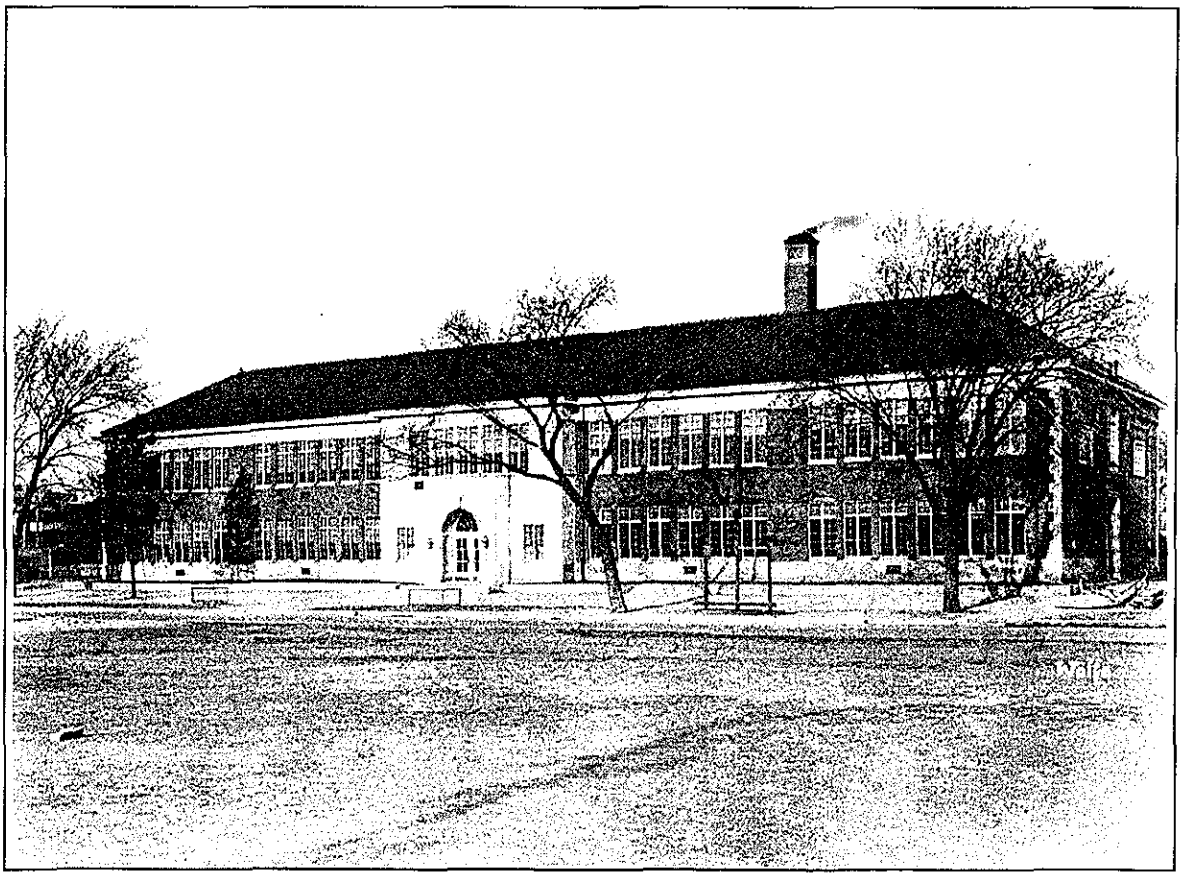

Figure 15. The "new" Monroe Elementary School, soon after completion in 1926.

[45]Walt Markley, *Builders of Topeka* (Topeka: The Capper Printing Company, 1934), 264; Walter Markley, *Builders of Topeka* (Topeka: The Capper Printing Company, 1956), 288; "Thomas W. Williamson," Biographical Search Sheet, American Institute of Architects Library and Archives, Washington, D.C., 21 July 1995; and David H. Sachs and George Ehrlich, *A Guide to Kansas Architecture* (Lawrence: University Press of Kansas, 1996).

His buildings predominated Topeka's "million dollar school system" of the 1920s. The boon of new construction, and its fine architectural design, reflected Topeka's booming economy during the "roaring twenties." Thomas Williamson fashioned an eclectic mix of high-style architecture which, in turn, displayed and instilled pride in the city's school system. Despite qualitative improvements within and architectural spectacles without, the Topeka schools remained segregated and Williamson's work reflects that fact. In the mid-1920s, those in the majority, and perhaps some African Americans, simply accepted the reality of segregation as part of life in this midwestern city. The 1927 *Kansas City Times* article which lauded Topeka's new architectural gems offers a revealing hint about the nature of society there, by noting that, "In all the buildings the school board has held faithfully to its plan to make the schools not only scientifically correct and modern, but things of beauty, and architectural parts of the neighborhoods in which they stand."[46] This meant that those built in the western, more affluent, sections of the city possessed greater architectural detail, ornamentation, and perhaps better materials. The 1927 *Times* article expounded upon the goal that particular schools fit their physical contexts, explaining that,

> For the new residential section in the western part of the city, the large Randolph grade school was built along colonial lines. In the poorer part of the city where Mexicans and negroes live, the new Monroe school was built of Spanish type of architecture.[47]

The new Monroe Elementary, built just south of the older school at Fifteenth and Monroe Streets at a cost of $115,000, had plainer facades, less detail, but materials comparable to those used in the companion white schools. Contemporary historical architects describe Monroe's stylistic elements as Italian Renaissance in nature. Upon completion, the two-story, red-brick building featured eight regular classrooms, a kindergarten, a manual training room for boys, the parallel home economics facility for girls, a lunchroom, and a large gymnasium/auditorium. This large, attractive facility functioned as a community center for adult meetings and youth activities, alike, because the gymnasium/auditorium provided space for segregated high school sports teams, social clubs, neighborhood meetings, and special events.[48]

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[46]"A Million in New Schools," *Kansas City Times*, 15 November 1927.

[47]*Ibid.*

[48]Dr. Harry A. Butowsky and Martha Hagedorn-Krass, "Sumner Elementary School & Monroe Elementary School," Topeka, Shawnee County, Kansas, National Historic Landmark Nomination, United States Department of the Interior, National Park Service, History Division, Washington, D.C., 6 November 1991; and Roland Smith, *et. al.*, "Monroe Elementary School, Shawnee County, Kansas," Historic American Buildings Survey, Draft Report No. KS-67, United States Department of the Interior, National Park Service, Midwest Region, 1992. Researchers may find reproductions of fourteen construction drawings for Monroe in Thomas W. Williamson, "Monroe Elementary School," Architectural Construction Drawing File, Center for Historical Research, Kansas State Historical Society, Topeka, Kansas, n.d. My sincere thanks to NPS Historical Architect William S. Harlow, with the Great Lakes Systems Office, Omaha, Nebraska, for insights into Williamson's architecture, in general, and in Monroe's, specifically.

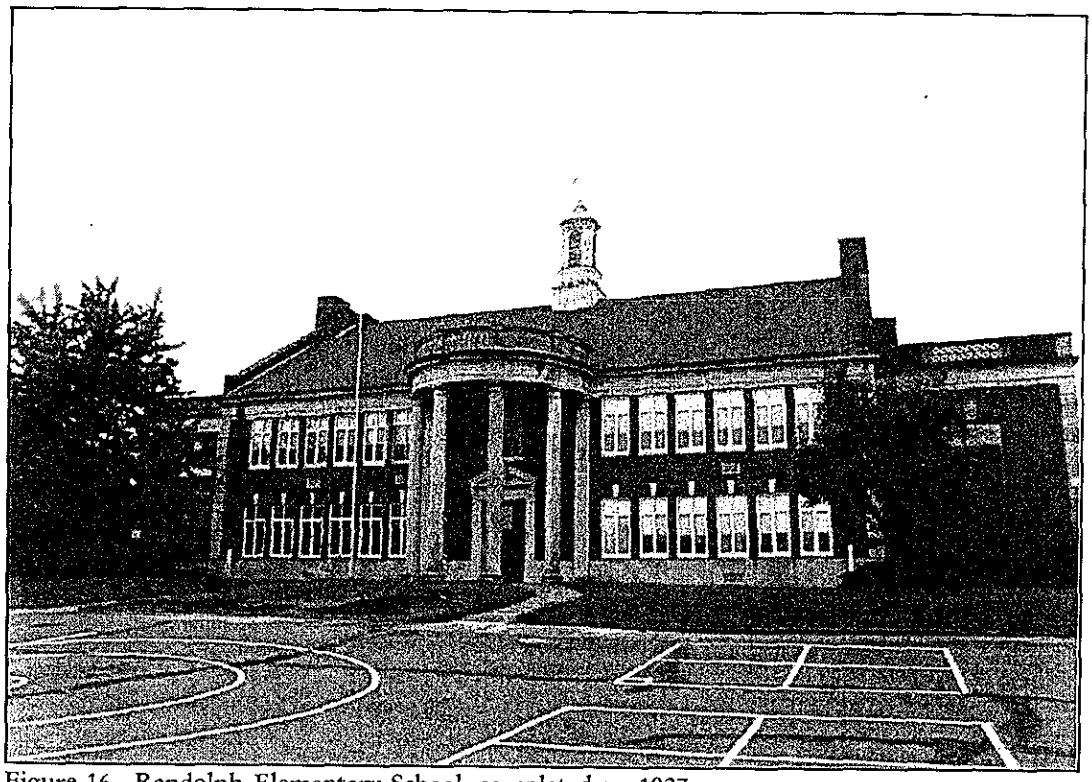

Figure 16. Randolph Elementary School, completed ca. 1927.

Facilities commissioned by the school board for white students, however, possess greater architectural quality in terms of design and construction. A new Parkdale School, built in 1924 at Tenth and Lake, operated solely as an elementary school for four years and in 1928 it housed a public health program for undernourished white children. Randolph Elementary, by comparison, was built in the late 1920s at Thirteenth and Randolph Streets for the middle-to-upper class white population living on Topeka's west side. Williamson implemented a colonial revival style for this structure, at a cost of $140,000. This large facility sports a typical colonial cupola, circular colonnaded portico, and broken pediment above the main entrance. Clay Elementary, completed at the same time, represents Tudor style architecture. It was located in an older section of the city at Seventh and Clay, an area the *Kansas City Times* proclaimed, "where houses of English type" predominated. Here, Williamson used brick and stone materials, pointed arches, half-timbered gable ends, and abbreviated entry porches to imbue a sense of "Englishness" in the building. Interestingly, Clay's construction costs of $115,000 equaled those of Monroe Elementary, even though the building possessed much more stylistic detail. Clay functioned as a standard grammar school, but also housed administrative offices for the Visual Education program and the Hard of Hearing Center which offered special classes to deaf children. A rather elaborate example of public school architecture capped Topeka's building program of the 1920s. Gage School, situated at the intersection of Eighth and Warren, was completed in 1928-1929. Its designer embellished a basic Georgian form with roofline balustrade, ornamental urns, quoins, and decorative treatments in brick and stone. English revivalism gave way to Gothic and Classical styles in his designs for two junior high

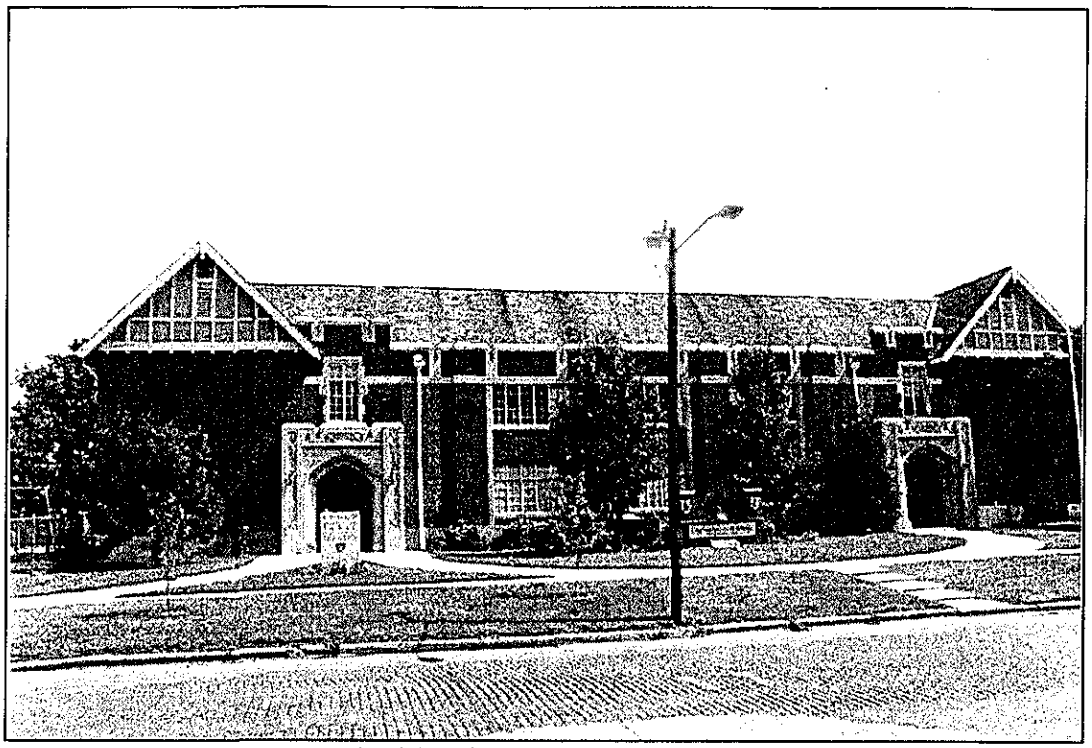

Figure 17. Clay Elementary School (1927).

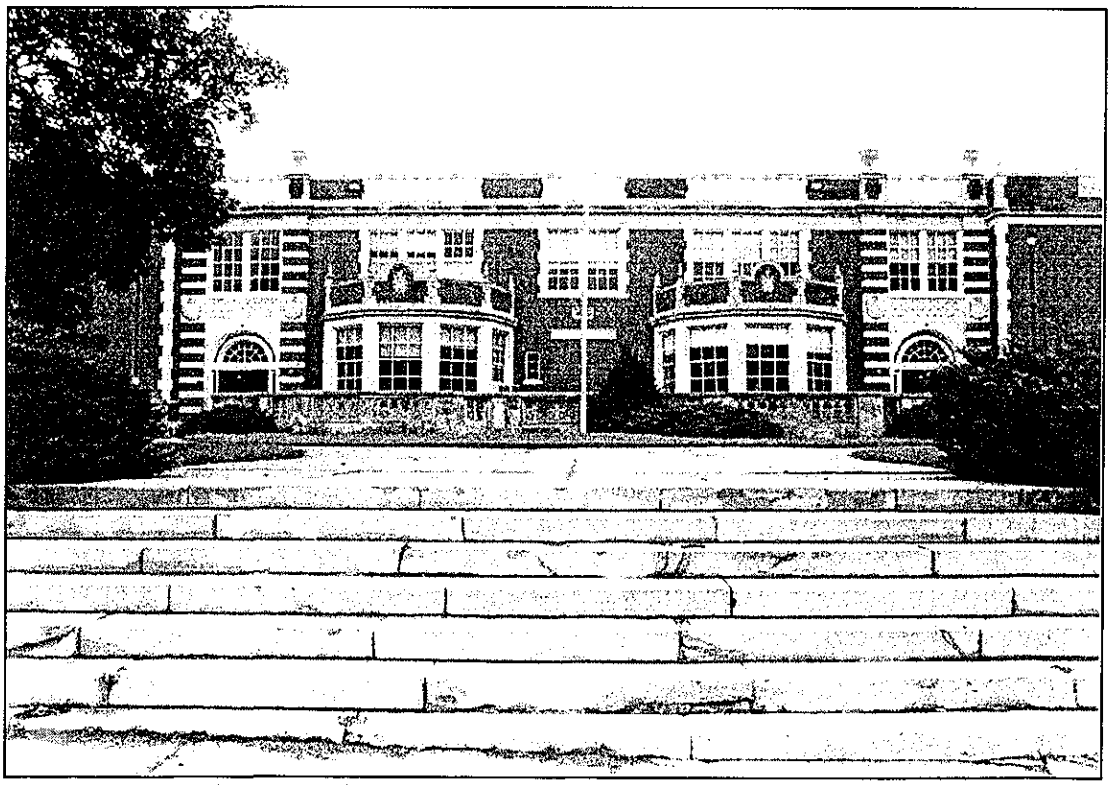

Figure 18. Gage Elementary, built ca. 1928.

schools, Holliday and Curtis, during this same period. Again, media lauded these triumphs as typical of Topeka's modern approach to education, a "million dollar" effort largely fashioned by the city's premier architect.[49]

Economic boom turned to bust in dramatic fashion when the stock market crashed in 1929. But a second, much smaller, wave of construction hit Topeka in the 1930s, partially funded by federal New Deal agencies. Williamson designs for public and private buildings again played a dominant role in transforming the Topeka landscape. Topeka High School stands, at Tenth and Taylor Streets, as the most-widely acclaimed monument to Williamson and Company. Its English Academic style, also described as Collegiate Gothic, connoted the

Figure 19. The well-regarded Topeka High School (1932).

[49]Fitzgerald, *Gone But Not Forgotten*, 52-53, 58-59, 77-78, 106; "A Million in New Schools," *Kansas City Times*, 15 November 1927. "Views Showing Different Architectural Designs of Topeka's New School Buildings," *Topeka Capital Journal*, 25 August 1929; and Board of Education, City of Topeka, Record of Minutes, 1925 Through 1930, Administration Building, Unified School District 501, Topeka, Kansas. Williamson's architectural drawings, details, and documentary records have been deposited in a closed collection in the Kansas Collection, Kenneth Spencer Research Library at the University of Kansas in Lawrence, Kansas. His grandson, Thomas W. Williamson, controls access to the collection. A Historic Structure Report (HSR) on Monroe Elementary, completed Quinn-Evans, Architects, provides more information about the context of school construction in Topeka and about Williamson's body of work, in general.

hallowed halls of the university, similar to Oxford, Cambridge, and Princeton. The design for the expansive, three-story building, completed by T.R. Greist, conveyed a sensitivity and regard for liberal arts education with its use of English antecedents. Students, however, also found instruction in industrial arts, mechanical drawing, business courses, within these rooms for the secondary school prepared both the college and career-bound. The Topeka Board of Education apparently raised the school's two million dollar tab from private sources or from locally-funded bond sales. But, as the depression deepened, the city turned to federal funds and construction assistance from the Public Works Administration (PWA). East Topeka Junior High, erected by Williamson's firm, and Grant Elementary School in North Topeka, both received PWA funding. The agency also subsidized a new Sumner Elementary School, built in 1935 on the site of its predecessors for a total cost of $240,000. The prolific architect broke with European traditions and crafted a modern, Art Deco design for the new facility at Fourth and Western Streets. Williamson applied an L-shape plan in this project, arranging classrooms along the two "legs," or ells, which join at a central tower. This linear pattern framed the old school, which sat behind the new building until razed a year later. The new, two-story, brick elementary featured ten standard classrooms, and specialized rooms for a kindergarten, a clinic, home economics, sewing, and manual training. A large auditorium, with a basement-level play area, formed a quarter circle to round off the inside of the ell. Williamson's firm applied stone Art Deco design treatments in *bas relief* on the exterior of the building, including stylized heads on the tower, a half figure on the eastern facade, and a frieze above the kindergarten

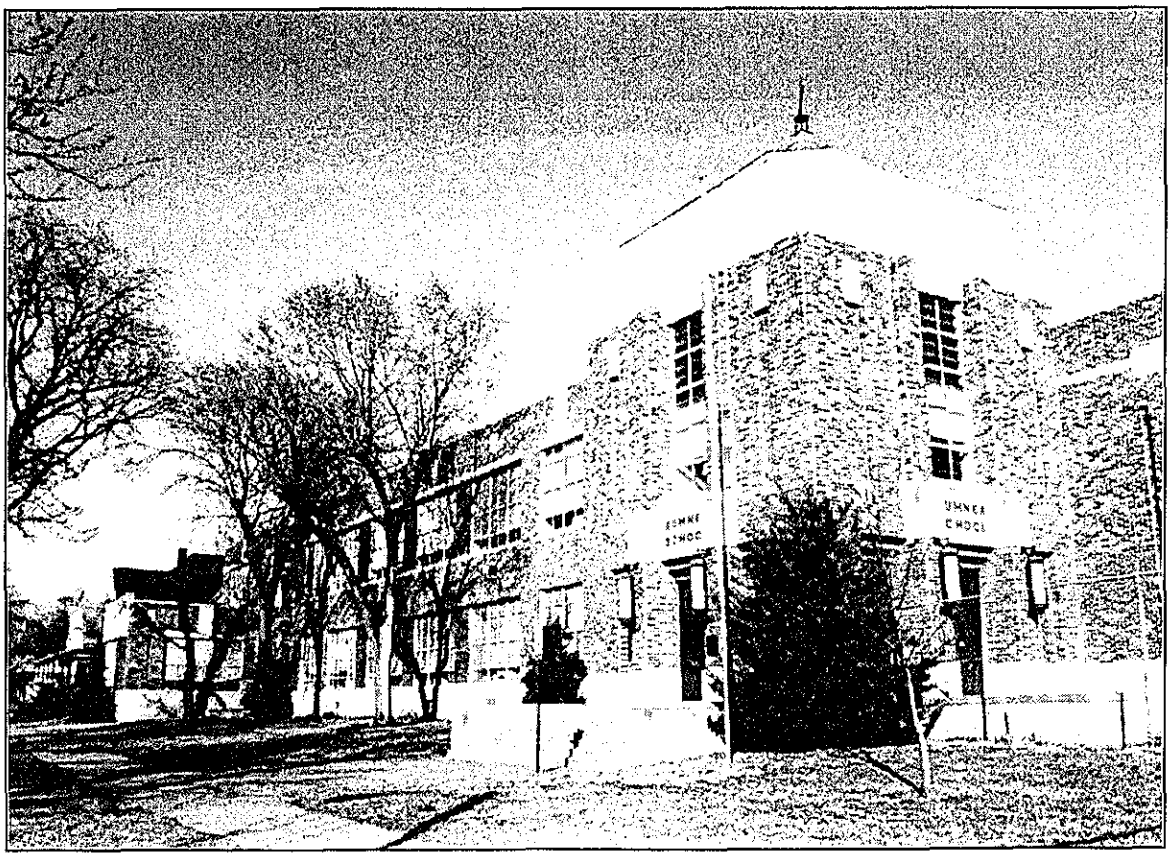

Figure 20. Sumner Elementary School (1935).

entrance, as seen in Figure 12. Topeka commissioned a few additional schools during the late 1930s, namely East Topeka Junior High and State Street School, but construction on a grand and intensive scale slowed by the end of the decade.[50]

The city certainly needed new schools as fast as Williamson and Company could finish them. A sudden spurt in enrollment, resulting in overcrowded classrooms, fed the board's building program. Daniel Fitzgerald, in his review of Topeka's abandoned schools, reported that public school attendance jumped from 8,929 in 1920 to 12,497 in 1930. School population then declined somewhat during the 1930s and 1940s, before resurging again in the 1950s. By mid-century, some of these "newer" buildings approached twenty years of age, but still ranked as modern in form and function. The quality of service provided within those schools also

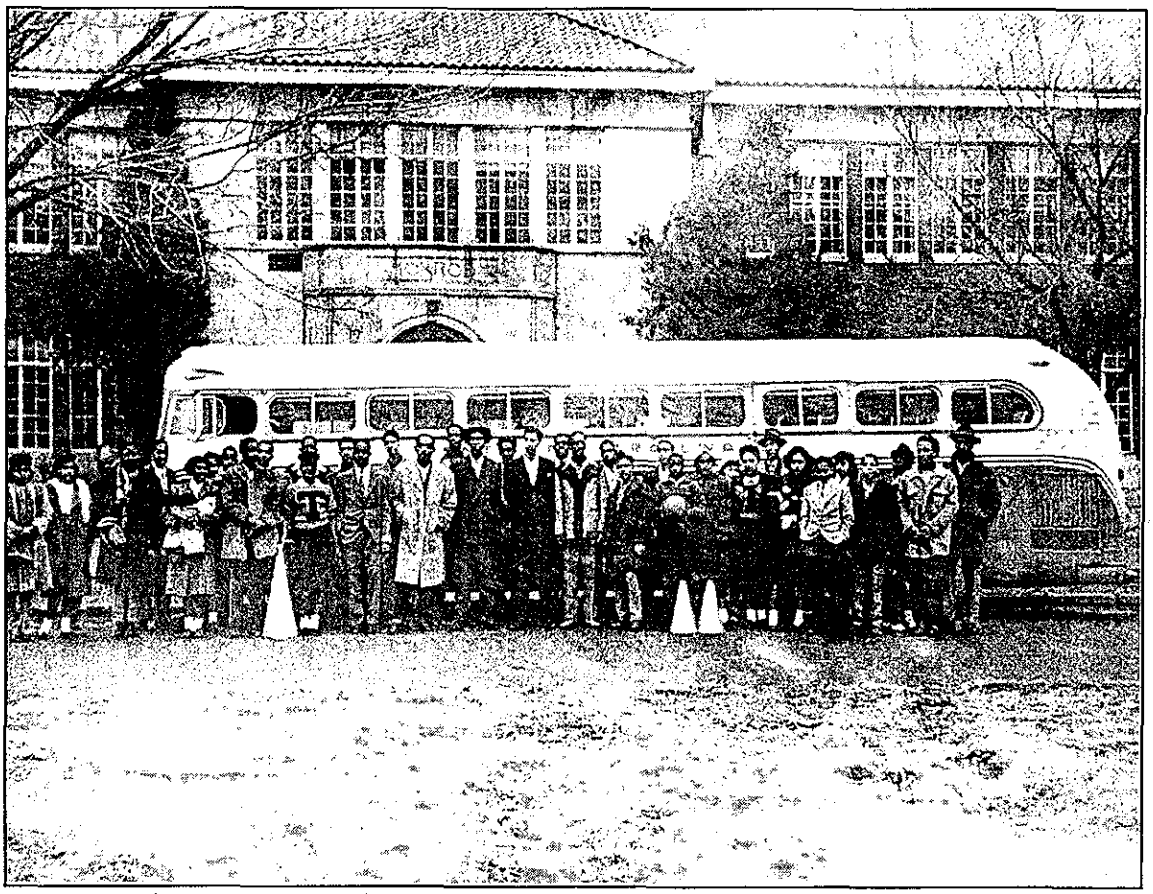

Figure 21. The Ramblers, Topeka High's black basketball team, arrive for a game at Monroe during the 1940s.

[50]Untitled article, *Topeka Daily State Journal*, 7 September 1935, n.p., in "Topeka Schools-Public-Elementary-Sumner," clipping file, Topeka Room, Topeka-Shawnee County Public Library, Topeka, Kansas; Federal Writers, *Kansas*, 156, 288; Fitzgerald, *Gone But Not Forgotten*, 89-90; and Board of Education, City of Topeka, Record of Minutes, 1930 Through 1944, Administration Building, Unified School District 501, Topeka, Kansas. My thanks, again, to William S. Harlow for some of the wording used in this discussion of Topeka's architecture and to Steve Jones, of Quinn-Evans, Architects, for some of the chronology.

remained high among teachers of both races. During Topeka's history, teaching requirements advanced from a reliance on "good moral character" to firm requirements of academic training, prior teaching experience, and professional certification in the subject field.[51] Many, of course, went beyond the minimal requirements. As Richard Kluger noted, "At two of the four black schools in the town, more of the teachers held master's degrees than at any of the white grade schools, and their devotion to their work was exemplary."[52] Mamie Luella Williams, Ethel Williams Barbour, Barbara Ross, Merrill Ross, and many anonymous, hard-working souls contributed to the quality education found in the city's African American schools. White

Figure 22. A sporting event held in the Topeka High School gymnasium during the late 1940s.

teachers, as well, maintained high academic standards in their classes and Topeka's entire educational system held a well-earned reputation for excellence.

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[51]Fitzgerald, *Gone But Not Forgotten*, 5-8, 17, 21-22; and Retired teachers, "The Colored Schools," 9-11.

[52]Kluger, *Simple Justice*, 379.

A large segment of the African American community felt offended by the segregated system, despite relative parity between the white and black schools. Even though instruction in black facilities equalled or surpassed that in white schools, teachers had to work with fewer materials and older books. Black elementaries also lacked health facilities, music programs, and other extra-curricular activities. Racial integration theoretically occurred on the secondary level, but not in actuality. For example, prior to 1941, white students attended seventh and eight grades in Topeka's junior high schools, and advanced to the ninth grade at Topeka High School, whereas African American students attended the seventh and eighth grades in segregated elementary schools before joining their counterparts in the ninth grade. Blacks, therefore, remained segregated in the middle grades until 1941, when the board of education integrated the district's junior high schools. When students did come together, they did so only inside Topeka High's classrooms. Sports teams, clubs, and social groups remained segregated and African Americans often held their events in Monroe Elementary's large gymnasium/auditorium. The school board began to integrate athletic and social events in 1949, but many parents and community leaders pushed for more. They insisted on **full** integration on all academic levels.[53]

Topekans had exhibited a high regard for the importance of education from the start. White philanthropists, ministers, businessmen, and women, in particular, contributed to the establishment of strong academic institutions in the Kansas capital. And, they included African Americans in their efforts after 1867. Reverend Charles Sheldon's kindergarten, implemented first in Tennessee Town, became a cornerstone of elementary education throughout the school system by the end of the century. More typically, anonymous women bore the brunt of teaching duties in the late nineteenth century and dedicated their lives to children of both races. Classroom instruction and school administration became more ordered during the first quarter of the twentieth century as state and district regulations defined public education policy. In turn, Topeka's board of education took a proactive approach to improving physical plants, instructional programs, and extracurricular activities during this period and the system grew accordingly. African Americans joined the teaching ranks steadily, but slowly, as allowed by the community and board of education. Racist attitudes and unreasonable assumptions among those in positions of authority meant that the talents of black teachers largely were restricted to the city's elementary schools and extracurricular programs for African Americans. By 1950, the district had lost one legal challenge to segregation in public education and had fended off at least two others. Topeka's progressive record in education became tarnished because of continual resistance on the part of administrators and board members to end discriminatory policies that affected African American teachers and students. And, the strongest challenge lay ahead.

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[53]*Ibid.*, 376, 379; Bird and Wallace, *Witness of the Times*, 186-187; Merrill and Barbara Ross, interview with author, 4 August 1995; and "Record of Minutes, March 1942 through July 1953," Office of the Board of Education, City of Topeka, 263 (26 September 1949). Vivian Scales, a plaintiff in the Kansas case, attended McKinley Elementary and Curtis Junior High in North Topeka. Please see Vivian M. Scales, interview with Jean Van Delinder, Brown v. Board of Education Oral History Project, Brown Foundation in cooperation with Kansas State Historical Society, Topeka, Kansas, 4-5.

E. Early desegregation cases make small gains

Segregation in Topeka public schools reflected the larger social situation. A regular schizophrenia existed in the capital regarding practices of racial division, as evident in the partial, qualified separation of school children in some grades, but not in others. Citizens tolerated similar inconsistencies in Jim Crow regulations which separated the races in restaurants, movie theaters, businesses, and public transportation systems. Thomas Cox's wonderful study of the socio-political institutions in Topeka's African American community delved into segregationist practices and policies prior to 1915. He described a picture of situational segregation, which restricted blacks to the balcony at the movie theater, but sometimes allowed them to dine freely in Topeka restaurants.[54] *De facto* segregation ranged from restrictive to loose, depending on undefined circumstance, and this inconsistent order of things may have given African Americans strong hope that the practice could be eliminated altogether. Blacks responded to such social constraints through political organization and protest, through participation in short-lived groups like the Colored League and the Afro-American League, and in more lasting ones, like the National Negro Business League and National Association for the Advancement of Colored People (NAACP). White and black Topekans formed a local branch of the NAACP in 1913, on the heels of the association's founding. Members of such organizations worked for race progress and civil liberty, striving to equalize opportunity through socio-economic advancement and educational accomplishment. Cox remarks that, "Political consciousness in black Topeka was made acute by a high literacy rate, an informed press, and a zest for political action."[55] The public school system became a target of reform because education provided an important means to social advancement, but also an end, prized by African Americans for its own sake.

Most challenges to dual school systems throughout Kansas drew their primary ammunition from the lack of parity between books, materials, and educational opportunities for white and black students. Ten cases concerning racial segregation in Kansas public schools came before the state Supreme Court between 1881 and 1941. Three originated in Topeka; including *Reynolds* v. *Board of Education* (1903), *Wright* v. *Board of Education* (1929), and *Graham* v. *Board of Education* (1941). The most insightful raised the condition of separateness, itself, as the key constitutional issue. Paul E. Wilson, co-counsel for the state in the 1954 *Brown* v. *Board of Education* suit, claims that the *Reynolds* case provided the most significant Kansas precedent used in arguments posed by the Attorney General's office against the *Brown*

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[54]Cox, *Blacks in Topeka*, particularly chapters 5-7. Segregation seems to have become more restrictive after 1915, perhaps in response to attempts to eliminate it. Merrill and Barbara Ross describe fairly consistent practices of discrimination in the Topeka of the 1940s, personal conversation with author, 4 August 19995. Paul Brady also provides a personal account of prejudice in the capital city in *A Certain Blindness: A Black Family's Quest for the Promise of America* (Atlanta: ALP Publishing, 1990). Richard Kluger also discusses the ambiguous nature of segregation in Topeka and relays the experiences of several *Brown* participants, particularly those of Lucinda Todd, see *Simple Justice*, 371, 374-377.

[55]*Ibid.*, 185.

petition because it did just that. In 1903, William Reynolds, an American of African descent, sought to enroll his son in a new elementary school located in the Lowman Hill district. Children of both races previously had attended the same facility in this area, but the school burned in 1900. Quite curiously, three buildings used successively as temporary quarters for the school were plagued, one after the other, by unexplained fires. The pattern raised suspicions of arson, and some assigned responsibility to local Ku Klux Klan (KKK) members who objected to a mixed student body. The city erected a new eight-room building, on a new site, in 1901 for white students, but relocated a one-story frame building on the site of the original school, for use by African American children.[56] When William Reynolds tried to enroll his son in the new white school instead of the ramshackle black one, the school board denied his request, "on the sole ground that the proposed pupil was of African descent and must attend the colored school."[57]

Quite significantly, the argument now hinged on the characteristic of race as the sole determinant in school assignment. Reynolds' attorney eloquently argued that Topeka's school board subverted the meaning and intent of "common schools" by so segregating its students. The plaintiff's brief explains, "A school is not 'common,' according to the definitions, if a single race is excluded from its advantages; else it would still be 'common' though half a dozen races and nationalities should be excluded. 'Common' has reference to *the people as a whole*, and that cannot be 'common' to *all* from which any are excluded."[58] Indeed, the logic seems failsafe because the Fourteenth Amendment carries guarantees of equal protection under the law. The Topeka Board of Education, however, called on the 1896 U.S. Supreme Court in *Plessy* v. *Ferguson* and lower court opinions in other Kansas suits to assert its constitutional right to divide its students on the basis of racial classification. The 1879 Kansas law, which authorized separate schools in "first class" cities, provided additional ammunition for the defendant in the *Reynolds* case. Although only seven years had passed since the *Plessy* finding, "separate but equal" had grown rapidly by 1903 as a mainstay in American public education. In turn, *Reynolds* aided its regression to a quality of mere separateness as a test under Kansas statutes. The court's majority opinion held that state law, legal precedent, and local tradition granted the Topeka board wide latitude in the organization of its school system. This meant that William Reynolds lost his suit and segregation became a little more entrenched in the Kansas capital.[59]

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[56]Wilson, *A Time to Lose*, 40; Kluger, *Simple Justice*, 371-372; and Fitzgerald, *Gone But Not Forgotten*, 71-73. Please refer to *Reynolds* v. *Board of Education*, Topeka (1902), 66 K. 672, 72 P. 274. Appendix F provides a comprehensive record of court action against racial segregation in Kansas.

[57]"In the Supreme Court of Kansas, *William Reynolds*, Plaintiff, v. *The Board of Education of the City of Topeka*, of the State of Kansas, Defendant, Original Mandamus, No. 13140, Brief for Plaintiff," 3.

[58]*Ibid.*, 6-7.

[59]"In the Supreme Court, State of Kansas, *William Reynolds*, Plaintiff, vs. *The Board of Education of the City of Topeka, State of Kansas*, Defendant, No. 13,140, Supplemental Brief for Defendant," 3-5; and Wilson, *A Time to Lose*, 41.

This closed the matter for the meantime. Separation of elementary students became more commonplace in the early twentieth century, and segregation of the middle grades occurred at some point between 1908 and 1941.[60] As occasional practice turned to stagnant policy in the twentieth century, African Americans increasingly were restricted to subordinate positions, limited experiences, and inferior treatment. J.B. Holland, a native Topekan, served in the city's public school system for thirty-four years, from 1940 to 1974, in the capacities of teacher and principal. Holland grew up in the African American community and described some of the more tangible aspects of second-class status, imbued by arbitrary restrictions placed on black students, saying,

> High school was integrated except for activities–activities were all black and white. We couldn't play baseball. We finally had a football team, but that was segregated. You couldn't belong to the debate team. When we went to a class, the whites were seated alphabetically. We sat behind the whites. All of our classes... Well, we had some fine teachers who wouldn't buy that, but we frequently were seated that way. You were always at the end of the room, back of the room. So that's one of the experiences I'll always remember.[61]

Subsequent attempts to chip away at segregation, namely through *Wright* (1929), found no success. In the interim, African Americans had tried to broaden the limited opportunities available to their children through selected court action and private appeal. By 1940, one segment of the black community made a concerted effort to end racial separation in junior high schools.

That venture elicited the most successful action of this period, *U.S. Graham* v. *Board of Education, Topeka* (1941). Mr. Graham brought suit against the school board for his twelve year old son, petitioning for the younger Graham's admittance to the seventh grade at the white, Boswell School. He initially wrote to board president, James McClure, requesting the transfer, but McClure demurred, believing that the child's admittance would open the door to two potentially disruptive situations; 1) either overcrowding in the traditional junior high schools if the administration mainstreamed all African Americans; or 2) too few black students attending classes in elementary school buildings if only some chose to attend white schools. Minutes of school board meetings in June and July 1940 reveal that members seriously addressed the issue of discrimination, itself, and specifically whether or not segregation, *per se*, amounted to bias. They compared various conditions in the white versus "colored" schools, and offered a tentative proposal to transform Monroe School into a junior high for African American youth. Members rejected that proposal in due course, but it left untouched the potential solution of removing the seventh and eighth grades from the four elementary schools

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[60]Cox said that African Americans fended off an attempt to segregate seventh and eighth grades in 1908, but failed to discuss the inevitable split which occurred sometime prior to 1931; please see *Blacks in Topeka*, 168.

[61]Jacob U. Gordon, ed., *Narratives of African Americans in Kansas, 1870-1992: Beyond the Exodust Movement* (Lewiston: The Edwin Mellen Press), 94.

and placing them at Topeka High School.[62]

The Kansas State Supreme Court ruled on the *Graham* case by summer 1941, finding in favor of the plaintiff and ordering the Topeka Unified School District (USD) 501 to admit the student to the white junior high school. But, in the minds of administrators and parents, the broader issue of wholesale desegregation remained unresolved. Elisha Scott, a prominent local black attorney, led a delegation of African Americans which appeared before the Board of Education on June 23, 1941. He proposed that the board move students in the seventh and eighth grades from the elementary schools, but that they be taught in a segregated junior high school established for African Americans. Scott deemed that "the time is not ripe" for full integration of these youth, but instead they should be taught by black teachers who understood and cared for them. He expressed grave concern for African American teachers who might be displaced if integration proceeded. Scott proposed a survey of the black community to ascertain the sentiment among the population regarding the school situation. When board members asked another representative, Mr. Joe Thompson, his opinion of the situation, he stated his belief that most parents would reject integration because "it is not so pleasant for colored children to attend school maintained for whites; that it would give the colored students an "inferiority complex" and that many of them would drop out of school which might lead them into trouble of various kinds."[63] Thompson and Scott reiterated their hope for the retention of black schools, but leaving open the option for those who so desired to attend the traditional white junior high schools. They offered to conduct a survey of those affected by a policy change, to determine the level of support for integrating the city's junior high schools. The board accepted the proposal and left the issue for future debate. This meeting began a series of discussions about Topeka's school situation between typical factions in American society, namely blacks versus whites and school board versus parents, but they also exposed divisions within the African American community, itself.

On July 7, 1941, a second delegation of forty parents, this time led by NAACP chapter president R.J. Reynolds, spoke to the USD-501 school board about the situation. This group countered the sentiments of Elisha Scott and those who attended the previous meeting by insisting that any option to retain separate seventh and eighth grades would constitute a

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[62]Record of Minutes, November 1937 through February 7, 1942, Office of the Board of Education, City of Topeka, 269-270 (5 February 1940) and 346 (24 July 1940). While Richard Kluger's *Simple Justice* is a masterful work, he incorrectly stated (372) that forty-eight years passed between two desegregation suits, *Reynolds* v. *Board of Education, Topeka* (1903) and *Brown* v. *Board of Education* (1951). He completely overlooked three important Topeka suits argued before the Kansas Supreme Court and at least one formal request that was never litigated in the interim; including *Wright* v. *Board of Education* (1929) and *Graham* v. *Board of Education* (1941). Curiously, Kluger mentioned *Graham* in a section dealing with African American teachers (379), but not when discussing desegregation attempts in Topeka. Since this case directly led to the desegregation of the city's junior high schools, this appears to have been a serious oversight on the part of Mr. Kluger.

[63]"Record of Minutes, November 1937 through February 7, 1942," Office of the Board of Education, City of Topeka, 485, quotation 486-487 (23 June 1941). The case, itself, may be found in the *Digest of Kansas Reports* under *U.S. Graham* v. *Board of Education, Topeka* (1941).

violation of the *Graham* decision. Reynolds suggested that the board could reassign any displaced teachers to elementary grades, which would alleviate overcrowded elementary classrooms. Minutes from the meeting note that after this group's presentation, Elisha Scott "asked to go on record again against any discrimination between white and colored children but in favor of segregation, for the present at least, with equal facilities and accommodations."[64] School board members discussed the situation further, with one member, Judge McClure, reiterating the illegality of continuing separate classes for the seventh and eighth grades with no plan for merging the races. He backed away from this staunch view during the July 11 meeting and another member suggested that USD-501 convert Monroe Elementary to a junior high school for African American students. The board also considered the results of Elisha Scott's poll regarding the black community's preference of schools. Reportedly sixty-five percent favored student attendance of segregated rather than integrated schools.[65]

The board took up the issue again at its August 4th meeting, during which a lengthy discussion ensued about the ramifications of retaining the option of choice in school selection. Members expressed fears of contributing to racial tensions within the African American community, of violating the court's integration ruling, and of discriminating against students if the system retained segregated schools. They finally adopted a united stance, voting to eliminate the seventh and eighth grades in Topeka's four segregated elementary schools and reassigning those students into pre-existing, white, junior high schools. Eight African American teachers lost their jobs or were forced into retirement, as Elisha Scott had feared, but these events affected far fewer teachers than some had predicted. Most of the remaining faculty endured a tenuous period of employment during the transition, but the situation opened new opportunities for a few. The school board moved some educators, including Mamie Luella Williams, into administrative positions in the black elementary schools. This dedicated effort to face job loss and division within the African American community in order to stem segregation denoted a significant change in Topeka. The lengthy machinations within the African American community indicated some degree of hesitation for immediate desegregation on the part of a significant portion of the black population. The issue went to the core of control over the educational process, itself, and the right of African Americans to maintain their own institutions. For some parents, the right to protect their children from rude and possibly hostile treatment from white teachers and students outweighed potential gains that might arise from a mixed student body. For others, desegregation represented an opportunity for their children to enter mainstream American society; namely, to learn with white children, socialize with them, and ultimately to work and live peacefully together as one community.[66]

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[64]*Ibid.*, n.p. (7 July 1941); and Bird and Wallace, *Witness of the Times*, 187.

[65]Record of Minutes, 500 (11 July 1941).

[66]*Ibid.*, 500-502 (11 July 1941), 515-516 (4 August 1941), 532 (18 August 1941). Kluger discussed teachers' fears and the dismissal of eight faculty members as a result of this action in *Simple Justice*, 379.

F. Conclusion

A system of public education in the United States first developed in New England, largely because of devotion to Puritan Congregationalism which emphasized the importance of a staid life of learning and religious discourse. Southerners regarded schooling from an engendered, class-based perspective whereby the sons of the gentry learned law, liberal arts, and estate management. As the nineteenth century neared, a more regimented, universal approach to public education emerged. Americans reached a consensus that instruction should be made available to all citizens of the republic because it was just that, a republic, which survived or failed by the proper functioning of its democratic institutions. A virtuous, enlightened citizenry, which lay at the base of these institutions, relied on education to provide the skills necessary to process data and make informed decisions. An educated populace would elect representatives to govern in the best, most reasonable manner.

Political theory meshed with real life on the borders of this little republic. Congress established the governmental precedent of public schooling through the Land Ordinance of 1785 and Northwest Ordinance of 1787. These laws set the standard for the admission of territories and states by delineating a process which called for the appropriation of public funds and lands for the development of common schools. By 1854, the United States stretched far beyond the Mississippi River and the slavery question had resulted in a reevaluation of the nature of the republic. Americans, divided over the expansion or continuation of slavery, debated the morality of such acts by examining the gradients of citizenship that existed in this reputedly classless society. Those who looked within found diversity rather than homogeneity. The growth of a multiplicity of group identities revealed deep social stratification in a nation that touted virtues of equality and opportunity; as exemplified by the status of slaves, Native Americans, indentured workers, free blacks, immigrants, industrial "wage slaves," working women, wealthy women, artisans, and businessmen at various times in this nation's history. Even old New England Puritanism was tainted in the process, particularly during a period of discrimination and segregation in the early nineteenth century. The South, entrenched in an economy built on slavery, struggled to maintain its system of racial stratification. Settlers from both regions converged on the Kansas Territory at mid-century, building communities that would be conflicted over race relations.

While Jayhawkers eschewed bound labor and all its trappings, free-staters puzzled about the future status of African Americans in their new state. Rather than ponder, Topekans simply went on with the daily business of creating socio-political institutions in their community on the Kaw. Schools were a mainstay, relying on trained professionals and concerned citizens to provide instruction to African American and white children on a relatively even basis during the late nineteenth century. Attitudes began to change, however, during a period of post-Reconstruction retrenchment. During this period, federal courts spewed restrictive interpretations of Fourteenth Amendment rights, which led to more stringent regulations for African Americans in communities across the country. Topeka was no different, and segregation grew stronger after the 1896 *Plessy* v. *Ferguson* opinion codified the "separate but equal" test.

As a result, Topeka's educational system experienced some sharp growing pains during its first century. Selected case histories illustrate the development of dual systems for blacks and whites, as well as the strength of challenges to this *status quo*. African American citizens felt excluded from the full benefits of society, and from the fair and equal treatment due them. Kansans largely were spared from the worst discriminatory conditions, but segregation prevailed nevertheless. While Topeka's school facilities for African Americans surpassed those in most Southern segregated districts, they were still separate and students were stigmatized by that fact. Thomas W. Williamson and Company erected several schools in Topeka during a flurry of activity in the 1920s and 1930s, including the rather spartan Monroe and Art Deco Sumner. Those built for white children far surpassed the architectural character and quality of the four black primary schools, Buchanan, Washington, McKinley, and Monroe. Williamson's body of work in Topeka brought the greatest level of recognition to the architect because of the quality of design exhibited by his buildings and because of the historic events that occurred inside them. Later attempts by African American parents to move their children from segregated black schools to neighborhood white schools subsequently brought national attention to Monroe and Sumner Elementary Schools. These and all other resources associated with the school desegregation campaign now represent far more than either education or architecture.

By 1940, momentum was building within the African American community for a challenge to end the USD's system of segregated education, and on the heels of national success by the NAACP, such a challenge would not be denied. U.S. Graham's fight to enroll his son in a white junior high school, braced by support among the African American community, directly led to the desegregation of junior high schools in Topeka. *Graham* v. *Board of Education* is vitally important to the history of race relations and public education in the capital city because it signified a major step toward the full desegregation of Topeka's public schools. Community protest and local legal action successfully confined racial separation to the elementary grades, but that was not enough. *Graham* provided a litmus test for members of the local NAACP chapter and the larger African American community, as a whole. Ten years later, many of the same players found themselves enmeshed in the ultimate fight for educational parity, a legal action dubbed *Brown* v. *Board of Education*.

Throughout the struggle in the courts against obstacles of one type or the other, and often against what had been considered binding precedent, a most gratifying source of inspiration has always been the challenge thrown down by the poor souls who have repeated over and over again: "It can't be done." These court cases and the decisions from them have been made possible by the stalwarts who held faith with our Constitution and the men who have interpreted it to prove "it *can* be done."[1]

– Thurgood Marshall, 16 July 1959
NAACP *Freedom Fund Report Dinner*

[1]Excerpts of address, "The Fifty Year Fight for Civil Rights," Presented at the NAACP Freedom Fund Report Dinner, 16 July 1959, 5, Thurgood Marshall Papers, Box 579: Folder 16, Manuscripts Division, The Library of Congress, Washington, D.C.

CHAPTER THREE

THE NAACP LAYS THE GROUNDWORK, 1930-1950

On the national scene, African Americans sought viable strategies to challenge well-established Jim Crow laws that maintained segregated school systems. The Howard University Law School, located in Washington, D.C., provided the setting for the development of plans to prove the inherent injustices of the "separate but equal" doctrine, as determined to be constitutional by the U.S. Supreme Court in the 1896 case, *Plessy* v. *Ferguson*. Professor Charles Hamilton Houston and his student colleagues joined with the National Association for the Advancement of Colored People (NAACP) to map out a plan to attack *Plessy* v. *Ferguson* by exposing the inherent inequalities found in separate school systems across the nation. Lawyers with the NAACP's Legal Defense and Educational Fund, Inc. (LDF) filed several suits in the 1930s and 1940s which chipped away at segregationist practices in graduate and professional schools. They ultimately sought dependable plaintiffs for an exemplary case, however, that would definitively overturn the constitutionality of *Plessy*. Several possibilities arose in the early 1950s, including school cases in South Carolina, Virginia, Delaware, Washington, D.C., and one particularly reliable suit filed in U.S. District Court in Topeka, Kansas.

A. *Plessy* v. *Ferguson*

Approximately sixty years earlier, Homer Adolph Plessy had thrown himself into the fray by challenging the constitutionality of a Louisiana state law which segregated public transportation systems. The Separate Car Act designated "equal but separate accommodations for the white and colored races" on railway cars. Plessy, a thirty-year old shoemaker from New Orleans, first challenged the statute when he refused to move to a car reserved for African Americans. A local *Comite des Citoyens* had organized specifically to appeal the constitutionality of the Jim Crow law by prosecuting two test cases through the federal appeals process to the Supreme Court. They had selected Homer Plessy as a model plaintiff in the case because of his fair skin color and had prearranged the events that led to his arrest on June 7, 1892. With the chain of events thus set into motion, Plessy's case came before New Orleans Judge John Howard Ferguson a month later. Albion W. Tourgee, counsel for the *Comite des Citoyens*, claimed that Louisiana's law violated Plessy's rights as a citizen of the United States. But, Judge Ferguson felt that the central issue hinged on commerce rather than citizen rights. He ruled the law unconstitutional for trains traveling between states because it potentially placed restrictions on interstate commerce. Travel within state boundaries, however, presented a different set of circumstances. Here, Ferguson specified that states retained the right to

regulate railroads operating within their boundaries, therefore the Louisiana statute complied with constitutional guidelines and so had not violated Homer Plessy's liberty.[2]

As planned, Albion Tourgee appealed the ruling in *Homer Plessy* v. *J.H. Ferguson* before the Louisiana State and U.S. Supreme Courts.[3] He argued that racial segregation violated the legal protections of due process guaranteed by the Fourteenth Amendment. The concept of due process, or equal protection, can be traced through the evolution of English common law to its guarantee in the Fifth and Fourteenth Amendments to the U.S. Constitution. It places limitations on the police power of the state, as applied through statutes, ordinances, or administrative acts which restrict private property or free contract rights. This principle became the symbolic protector of vested rights in the United States after 1890, replacing the contract clause in this respect, and served as a guarantee against unreasonable legal interference by the state. Both courts denied Tourgee's claim that the statute violated Homer Plessy's right to equal protection because of the "equal but separate" criterion stipulated in the Louisiana Separate Car Act. Justices of the U.S. Supreme Court interpreted the due process clause of the Fourteenth Amendment narrowly in *Plessy* by reasoning that if each race possessed equal facilities, then no violation occurred. In their classic text on American constitutional history, Kelly and Harbison emphasized that the Court's majority opinion, issued in 1896, stated that "Such a statute,... did not deprive Negroes of the equal protection of the laws, provided Negroes were furnished accommodations equal to those for whites." Justice John Marshall Harlan found Louisiana's statute to be unconstitutional in his famous lone dissent, which eloquently proclaimed the U.S. Constitution to be "color-blind." He felt that segregation violated both the Thirteenth and Fourteenth Amendments because "the arbitrary separation of citizens" by race branded blacks with "a badge of servitude wholly inconsistent with the civil freedom and the equality before the law established by the Constitution."[4] Justice Harlan, however, was a minority of one.

At least two findings issued prior to the landmark *Plessy* v. *Ferguson* ruling dimmed hopes for an equitable application of U.S. law to all the nation's citizens. The *Slaughterhouse*

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[2]Keith Weldon Medley, "The Sad Story of How 'Separate but Equal' was Born," *Smithsonian* 24, no. 11 (February 1994): 105-117, quotation taken from 108-109. Readers should also refer to C. Vann Woodward, "The Case of the Louisiana Traveler," in John A. Garraty, ed., *Quarrels That Have Shaped the Constitution* (New York: Harper & Row, Publishers, 1987), 157-174.

[3]*Homer A. Plessy* v. *J.H. Ferguson*, 163 U.S. 537 (1896).

[4]Kelly and Harbison, *The American Constitution*, 4th ed., 496; and Woodward, "The Case of the Louisiana Traveler," in Garraty, 171-172. Several historians have questioned Harlan's widely publicized altruism because he adopted a contradictory stance in later Supreme Court cases and had condemned "mixed schools" as a candidate in the 1871 Kentucky gubernatorial campaign. Although he questioned the legality of racial segregation in public accommodations, Harlan apparently supported it in public education. Please see J. Morgan Kousser, "Separate but *not* Equal: The Supreme Court's First Decision on Racial Discrimination in Schools," *The Journal of Southern History* 46, no. 1 (February 1980): 37-44.

Cases (1873) and the *Civil Rights Cases* (1883), in effect, restricted the protections guaranteed in the Fourteenth Amendment by limiting federal authority to intervene in individual matters on the state level. Radical Republicans in Congress, led by Charles Sumner and Thaddeus Stevens, passed the Civil War amendments and the Civil Rights Act of 1875 so as to extend judicial rights and due process protections to recently-freed African Americans. Judicial review thus far had established a theory of dual citizenship which absolved the federal government from any responsibility to protect individual rights, leaving it to the responsibility of the state. Justices determined that each U.S. citizen possessed dual citizenship, of the country as a whole and of the specific state of residence. The *Slaughterhouse Cases* offered the first test of the Fourteenth Amendment protection against the arbitrary use of state powers, providing the U.S. Supreme Court with its first opportunity to review and interpret this constitutional reform. This litigation specifically involved the ability of the state of Louisiana to grant a monopoly to one slaughterhouse in New Orleans. Plaintiffs claimed that the monopoly violated individual privileges and immunities protected by the Fourteenth Amendment. But the Court denied their claim, in an exceedingly narrow interpretation of the Fourteenth Amendment, by ruling that the federal government lacked the authority to monitor a state's action in this respect. Justices determined that the Fourteenth Amendment protected only federal rights, largely international in scope, but had no purview over civil rights, which flowed from the states.[5]

Rooted in its post-Civil War context, the Civil Rights Act of 1875 stipulated that all citizens were entitled to "the full and equal enjoyment" of accommodations, public conveyances, and places of public amusement. In the *Civil Rights Cases* of 1883, however, the Court struck it down because it pertained to individual, rather than state action. Justices reiterated the interpretation that the federal government could legally monitor state actions, but lacked the authority to control individual behavior. This finding stipulated, therefore, that the Civil Rights Act of 1875 violated certain individual rights which were beyond federal control, precisely because, at that time, the regulation of individual behaviors, in general, was beyond federal control.[6] These two cases established precedents which decreased the Fourteenth Amendment's ability to protect individual rights against state actions. Meanwhile, Bourbon Redeemers regained control of local and state governments through the decade as Republican interest in the South's reconstruction declined. The period came to an official close with the inauguration of Rutherford B. Hayes and the subsequent withdrawal of federal troops, as promised in the Compromise of 1877. All of these events signified a definite shift in the 1870s away from concern for African American socio-political participation in general, and the protection of any individual in particular. For all practical purposes, the question of civil rights for black Americans was dropped from the national agenda.

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[5]Kelly and Harbison, *The American Constitution*, 506-510; and the *Slaughterhouse Cases*, 83 U.S. (16 Wallace) 36 (1873). Readers may also find a good discussion of the cases in "... With All Deliberate Speed" in John H. McCord, ed., *With All Deliberate Speed: Civil Rights Theory and Reality* (Urbana: University of Illinois Press, 1969), 14.

[6]*Ibid.*, 495. Please refer to *Civil Rights Cases*, 109 U.S. 3 (1883).

The 1896 *Plessy* ruling added a crucial element to the momentum of retrenchment from the equitable treatment of African Americans in the post-Reconstruction United States. A battle had waged in the South during the 1870s and 1880s over the status of newly-freed African Americans and the degree to which they would participate in society and politics. But it quickly became a one-sided affair because Republicans lost interest in the South and its problems, Reconstruction formally ended, and Supreme Court actions condoned segregationist laws which limited the civil rights of African Americans. All the while, Redeemers successfully reinstated many former Confederates in political office and enacted legislation to maintain antebellum social divisions along racial lines. The Court's ruling in *Plessy* v. *Ferguson* added credibility to these actions by affirming the constitutionality of "separate but equal" transportational venues. Communities throughout the United States, in both the North and the South, applied the doctrine to many types of public accommodations and to educational facilities. Formal racial classification, which the Court earlier had condemned, was thus legitimized by *Plessy*. In effect, the nation's legal and moral authority condoned local and state legislation that mandated separate facilities for blacks and whites, known as Jim Crow laws. The 1896 finding of "separate but equal" meant that these practices did not violate the due process or equal protection guarantees of the Fourteenth Amendment. Although the Thirteenth Amendment officially ended the practice of slavery, separate societies became the norm in the late nineteenth century through the enforcement of these Jim Crow laws. Many people denied the significance of segregation by assuming that the quality of separate facilities for blacks equalled those enjoyed by whites, but they were rarely comparable. African Americans sought to redress the "separate but equal" doctrine despite opposition from the Court and society, at large. They realized, however, that any protest about inequitable facilities or opportunities automatically raised the specter, and the credibility, of *Plessy* v. *Ferguson*.[7]

B. The work of the NAACP

Unfortunately, the precept of "separate but equal" carried the U.S. Supreme Court's seal of approval. African Americans first tested the doctrine of "separate but equal" in *Cumming* v. *Richmond County Board of Education*, three years after the Court's finding. Citizens in Augusta, Georgia, challenged segregated education in Richmond County by petitioning for an injunction to interrupt the operation of a "white" high school until the board of education reopened one for African American youth.[8] Parties involved in the case had wrangled over the availability of a "black" high school for years, and when it was converted to elementary

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[7]Please see Woodward, *The Strange Career of Jim Crow*, for a thorough discussion of these events. The term "Jim Crow" originated in a song written by Thomas D. Rice in 1832 which was performed in minstrel shows. Woodward says that the term had become an adjective by 1838 and was used commonly in the 1890s to describe segregationist laws (7n).

[8]*Cumming* v. *Richmond County Board of Education*, 175 U.S. 528 (1899).

use, the plaintiffs sought relief because the county then provided no facility, much less an equal one, for African American high school students. The case centered on the amount of taxes paid by blacks in Augusta versus the amount of public benefits they enjoyed. Justice Harlan, of *Plessy* dissent fame, wrote the unanimous opinion for the Court. He denied any claim of discrimination resulting from a disproportionate share of public accommodations and stayed away from a discussion of equal facilities completely. Harlan found no violation of the Fourteenth Amendment or of the "separate but equal" rule, despite his rejection of a similar argument three years earlier. Richard Kluger points out, in his classic study of *Brown* v. *Board of Education*, that the plaintiffs' strategy in *Cumming* needed a sharper focus because they sought punitive relief rather than a re-evaluation of segregation, itself. Nevertheless, the case had a significant impact because it sent the message that African Americans had little recourse to inequitable use of public funds or discrimination in public accommodations.[9]

Civil rights advocates realized that the full benefits of African American citizenship had slipped away quickly in the late nineteenth century. Booker T. Washington's call for patience, his emphasis on vocational training, and accommodation of the white majority's expectations of blacks, as well as Washington's increasing national prominence, rankled more than a few liberals. In 1909, a core group of proactive intellectuals organized the National Association for the Advancement of Colored People (NAACP) in New York City to fight race discrimination. It sprang out of the Niagara Movement led by W.E.B. DuBois, who gathered a prestigious group, as Minnie Finch quotes, "for 'organized determination and aggressive action on the part of men who believe in Negro freedom and growth....'"[10] DuBois opposed Washington's moderate stance on race relations, much preferring an aggressive campaign to redirect socio-political participation for the equal enhancement of African Americans. The Niagara Movement included a broadly-based coalition of former abolitionists and their descendants, socialists, Progressives, liberals from many disciplines, social workers, and opponents of accommodationism. Members of both races founded the Association in 1909 and formally organized it in stages from 1910 to 1912. William English Walling became the first chairman of the thirty-member board and Moorfield Storey took the honorary title of president. Du Bois served as director of publications and research, editing its mouthpiece, *The Crisis*. Although the NAACP adopted an activist rather than an accommodationist stance, Mary White Ovington, a wealthy, white social worker and founding board member, feared that the organization needed Washington's support, with an appropriate nod to his views, to attract financial backing.[11]

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[9]Kousser, "Separate but *not* Equal: The Supreme Court's First Decision on Racial Discrimination in Schools," 17-44; and Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (New York: Vintage Books, 1977), 121.

[10]Quoted in Finch, *The NAACP*, 4.

[11]Mary White Ovington, *The Walls Came Tumbling Down*, The American Negro: His History and Literature Series (New York: Arno Press and *The New York Times*, 1969 repr. of 1947 ed.), 100-117; Kluger, *Simple Justice*, 94-104;

Money was indeed tight, but the NAACP raised enough funds to begin a legal campaign against the bulwarks of racial discrimination. Members petitioned Woodrow Wilson's administration to attack segregation in the federal government and the armed forces, to appoint a race commission, and to lobby for anti-lynching legislation. The Association launched a major anti-lynching campaign as early as 1911 which drew attention to violence against blacks throughout the United States. The mass migration of blacks from the rural South to urban areas in the North and Midwest sparked additional riots and lynchings after World War I. By 1919, the organization focused on the disparity between the contributions made by African American servicemen in the war versus the benefits of democracy they shared back in the states. The NAACP lobbied hard for federal anti-lynching legislation, with little success. The widespread violence and discrimination in the 1920s pointed to persistent practices of segregation which allowed unrestricted access to resources and full socio-political participation for whites, but denied them to African Americans. The extent of prejudice and racial violence across the country showed that it had become a national problem, no longer limited to a reconstructed South.[12]

Participants in the Niagara Conferences had viewed education as a means for ending racial stereotypes, creating an informed populace, and effecting change in race relations. They transferred this conviction to the NAACP. Du Bois had stated openly his personal beliefs about the importance of liberal arts education and had proposed the development of a "talented tenth" who would direct African American energies. He differed with his colleagues, however, on the issue of segregation as means to equality. In his comprehensive study of the NAACP's litigation strategy against segregation, Mark V. Tushnet states that Du Bois "wanted to distinguish segregation from racial discrimination" because the African American community possessed tremendous power through solidarity. Integration would diffuse this power. Furthermore, Du Bois believed that African American youth often profited from segregated education because it removed them from subtle discrimination and direct racist attacks by white students and instructors that they would find in mixed schools. During the 1930s, he published several editorials in *The Crisis* and articles in *The Journal of Negro Education* which explained his philosophy about segregation. Even though he couched his arguments in a realistic context of race relations, Du Bois' position on segregation led to rancor with his colleagues and contributed to his resignation from the NAACP in 1934. Du Bois summarized his arguments for racial separation in a 1935 article, entitled "Does the Negro Need Separate Schools?" He examined both sides of the issue, finding that, with integration, the critical teacher-pupil relationship would suffer and white instructors would not teach African American history. Calls for mixed schools, Du Bois claimed, belie a low level of confidence on the part of African Americans, in black educators and curricula. He believed separate schools which educated their students far outstripped mixed ones where they were mistreated. Du Bois ended his argument with this analysis,

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[12]Finch, *The NAACP*, 28-57.

> To sum up this: theoretically, the Negro needs neither segregated schools nor mixed schools. What he needs is Education. What he must remember is that there is no magic, either in mixed schools or in segregated schools. A mixed school with poor and unsympathetic teachers, with hostile public opinion, and no teaching of truth concerning black folk, is bad. A segregated school with ignorant placeholders, inadequate equipment, poor salaries, and wretched housing, is equally bad. Other things being equal, the mixed school is the broader, more natural basis for the education of all youth. It gives wider contacts; it inspires greater self-confidence; and suppresses the inferiority complex. But other things seldom are equal, and in that case, Sympathy, Knowledge, and the Truth, outweigh all that the mixed school can offer.[13]

At this time in his career, Du Bois came down on the side of economic advancement for African Americans, racial pride, integrity, and separation.[14]

The Association focused its efforts on ending segregation by overturning the *Plessy* "separate but equal" precedent despite such weighty opposition. Early on, members created a legal redress committee to organize a well-funded, well-planned litigation campaign against discrimination. The NAACP initially placed two conditions on its cases: 1) the case had to involve racial discrimination; and 2) it must deal with some fundamental right of citizenship. Arthur B. Spingarn and Charles H. Studin handled legal matters at first, but the organization's demand outswept the workload capacity of two men. Members compiled a list of lawyers across the United States who could be drafted into service when necessary, including jurist Felix Frankfurter and his students at Harvard. Moorfield Storey successfully argued two early cases before the U.S. Supreme Court, dealing with Oklahoma's grandfather clause restriction on voter registration (1915) and segregation in Louisville, Kentucky (1917). The NAACP prosecuted a number of cases from 1911 to 1930, dealing with a range of injustices from lynching to salary disputes. But, members viewed segregation, in transportation, public accommodation, and education, as the primary means by which the majority population restricted African American socio-political participation and status. Discussions of access and status naturally led to the issues of public opinion and economic equalization. Some members argued that without the support of the white middle class, legal change would be futile because it would not automatically lead to social change. Others believed that adjustments to the political structure, effected via litigation and legislation, would direct social change and economic advancement, to which the public would adapt. The NAACP, as a whole, also viewed legal action as a way to galvanize African American solidarity.[15]

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[13]W.E. Burghardt Du Bois, "Does the Negro Need Separate Schools?" *The Journal of Negro Education* 4 (1935): 328-335, quotation taken from 335.

[14]Mark V. Tushnet, *The NAACP's Legal Strategy Against Segregated Education, 1925-1950* (Chapel Hill: The University of North Carolina Press, 1987), 8-11.

[15]Ovington, *The Walls Came Tumbling Down*, 109-117, 266.

As with all things, inadequate financing placed real limitations on the NAACP's work. It received a grant in 1929 from the American Fund for Public Service, more commonly known as the Garland Fund, which was established by Charles Garland with a large bequest left by his father. The relationship between the Garland Fund and the NAACP was a tenuous one, at best. The initial promise of $100,000 shrank to $30,000 real dollars during the Great Depression of the 1930s. Nevertheless, members of the Association and Fund formed an administrative board which outlined key targets for litigation, including segregation in housing, transportation, franchisement, restrictions on black juries, and "the unequal apportionment of school funds." Garland moneys allowed the national office to hire an attorney to prosecute such civil rights cases on a full-time basis. Nathan R. Margold, protege of Felix Frankfurter and former assistant United States attorney for the Southern District of New York, filled the post from 1930 to 1933.[16]

Margold immediately began a comprehensive study of the legal status of African Americans. The work naturally focused on complex questions about the nature of citizenship, constitutional guarantees versus political rights, and social dynamics between the races. The Margold Report, published in 1931, discussed at length legal routes for attacking segregation in public schools. It suggested a direct attack on disproportionate spending patterns between white and black schools, which would be fairly easy to prove but difficult to change. Facilities for African Americans rarely matched those used by Caucasians. Margold initially outlined three points of action; 1) obtain mandamus, an order from the state courts, requiring the school system to abide by state law; 2) obtain federal remedy when federal funds were misapportioned; and 3) force the issue of "equal" in the "separate but equal" dictum so that taxpayers would opt for one school system instead of two.[17] These strategies would attack segregation in a logical way, by pointing out discrepancies in *de jure* segregation which showed that separate rarely meant equal. By forcing segregated school systems to equalize funding, the courts would place an expensive burden on taxpayers because they would, by law, be required to support two systems. After this preliminary analysis, however, Margold felt that lawsuits using mandamus and those protesting disproportionate funding would be too tedious for three major reasons. They would have to target specific individuals responsible for expenditures, mandamus orders would have to be renewed annually, and state regulations do not apply strictly to certain schools within counties, but only call for equalized funding across the state. He summed up his thinking by saying,

> It would be a great mistake to fritter away our limited funds on sporadic attempts to force the making of equal divisions of school funds in the few instances where such attempts might be expected to succeed. At the most, we could do no more than to eliminate a very minor part of the discrimination during the year our suits are commenced. We should not be establishing any new principles, nor bringing any sort of pressure to bear which can reasonably be expected to retain the

[16]Finch, *The NAACP*, 84-86; and Tushnet, *The NAACP's Legal Strategy Against Segregated Education*, 14-16.

[17]Mandamus is generally defined as a writ ordering the execution of a non-discretionary duty, a duty not left to one's own will, but by one charged with responsibility therefor.

> *slightest force beyond that exerted by the specific judgement or order that we might obtain.* And we should be leaving wholly untouched the very essence of the existing evils.[18]

As a result of his analysis, Margold effectively honed this broad legal argument to three points; that state law required separate schools, that expenditures were obviously unequal, and that state remedies for specific schools or counties were unavailable. He recommended that the NAACP directly challenge segregation in elementary and secondary schools by seeking findings of unconstitutionality for violations of these precise points rather than by pursuing temporary orders of mandamus for funding equalization. Margold summed it up by saying, "On the other hand, if we boldly challenge the constitutional validity of segregation if and when accompanied irremediably by discrimination, we can strike directly at the most prolific sources of discrimination." Success in explicit lawsuits would force specific issues with school systems and reduce appeal options, causing them to either equalize facilities or end segregation.[19]

Nathan Margold resigned from his post at the NAACP in 1933, but he framed a critical argument central to the organization's existence. As summarized by Jack Greenberg, former co-counsel and director of the Legal Defense and Educational Fund, Inc., "The idea was that if wherever there was segregation there also was inequality, which was invariably the case, segregation, therefore, was unconstitutional."[20] Margold explicitly crafted a methodology for accomplishing this goal. He further believed that litigation successes would provide a crucial rallying point for the nation's African Americans and would lead to greater respect from the population at large. Although Nathan Margold captured the essence of the Association, his report's effectiveness was limited by Margold's departure, NAACP financial worries, and disagreements with administrators of the Garland Fund. Charles Hamilton Houston, prominent faculty member and dean at Howard University Law School, succeeded Margold as special counsel in May 1934. He operated on the same fundamental beliefs expressed by Margold, but targeted graduate and professional education and salary equalization as starting points in the fight against segregation. Houston also emphasized racial pride as an important element in the NAACP's work and sought involvement by local communities in civil rights efforts. During his tenure, the organization added more black lawyers to its legal staff, shifted influence from Arthur Spingarn and the Legal Committee to staff counsel led by Houston, and initiated model cases which sharpened procedural strategies to strike down segregation. Houston wanted the NAACP to grow stronger and litigation offered one way to attract new members. Continual disagreements over the use of the Garland grant terminated that relationship by 1938. Nevertheless, the Association drafted and sustained its own economic

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[18]Quoted in Tushnet, *The NAACP's Legal Strategy Against Segregated Education*, 27.

[19]*Ibid.*, 26-29, Margold quotation taken from 27-28.

[20]Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: BasicBooks, 1994), 59.

plan. Its membership and influence grew as legal work flourished on a foundation laid by Charles Hamilton Houston.[21]

C. The Life and Work of Charles Hamilton Houston

No one signifies the Association's efforts to end segregation more than Charles Hamilton Houston. He refined the litigation campaign during his brief tenure as NAACP special counsel and trained an elite group at Howard University Law School to conduct it. Genna Rae McNeil, who has written a very complete biography of the man and his mission, stated, "Charles Houston's entire career as a civil rights lawyer exemplified the belief that the law could be used to promote fundamental social change and that it was an instrument available to a minority even when that minority was without access to the ordinary weapons of democracy."[22] Throughout his life, Houston sought equitable treatment for himself and those of his race. Education and jurisprudence proved to be the most effective avenues for his labors.

Charles Hamilton Houston, born into a middle class family in 1895, lived most of his life in Washington, D.C. His father, William, conducted a private law practice and taught evening law classes at Howard University Law School. Mary Houston, Charles' mother, operated a hairdressing salon for some of Washington's elite. As their professional standing matured, the household's economic security stabilized and provided Charles with a supportive and nurturing environment. He attended one of the nation's most acclaimed secondary schools, M Street High, which was the first built exclusively for black students with public funds. This facility, and its successor Dunbar High School, sustained a prime group of outstanding African American educators and students from 1890 to 1954, including Francis L. Cardozo, Robert Terrell, Mary Church Terrell, Rayford Logan, Carter G. Woodson, and Charles Hamilton Houston. M Street's faculty maintained high academic standards, resisted pressures to emphasize vocational training, and turned out graduates prepared for rigorous university instruction. Like many of M Street's graduates, Houston advanced easily to a well-renowned, eastern university, but, unlike his compatriots, he did so at the tender age of fifteen. Buoyed by full financial support from his parents, he completed an undergraduate degree at Amherst College four years later, in 1915. Houston later graduated with honors from Harvard

[21]Tushnet, *The NAACP's Legal Strategy Against Segregated Education*, 29-33, 42.

[22]Genna Rae McNeil, *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights* (Philadelphia: University of Pennsylvania Press, 1983), 218.

Law School, with a Bachelor of Laws and Doctor of Juridical Science, but not without an interim period of contemplation, frustration, and worldly experience.[23]

In 1915, the younger Houston emerged at nineteen from the academic cloister with little "real world" experience. William Houston hoped that his son would join his legal practice, but the young man resisted and instead became an English instructor at Howard University for two academic terms from 1915 to 1917. At this time, the Progressive Era, defined by optimistic social reform, was winding down and the United States teetered on the brink of involvement in "the great war" that would be the "war to end all wars," but which only would be America's first in a busy twentieth century. President Woodrow Wilson watched with his country as the war bogged down in Europe and ultimately offered its forces in 1917 to "make the world safe for democracy." Charles Hamilton Houston enlisted in the U.S. Army officer corps rather than face an uncertain draft situation. He and other college graduates called for the establishment of a separate training facility for African American officers who would then lead "black" units. Some opposed this out-right request for segregation, but supporters argued that the War Department would organize Jim Crow units, anyway, and place white officers in the lead. This way, African Americans might make some gains by proving capability and earning respect. Houston's group received leadership positions, but training and placement moved at a slow pace and was interspersed with disrespectful and discriminatory treatment. Many aspects of his military career frustrated Charlie, especially the notion of a prejudicial nation espousing a democratic ideal that it did not meet. He returned from the war with a bitterness shaped by racist behaviors and by the hypocrisy of U.S. rhetoric and socio-political systems. Racial tensions heightened by the "Red Scare" and post-war economic recession provided a candid homecoming that further illustrated the slim justice shared by African Americans. Houston became convinced that blacks could receive equitable remedy, not through the accommodationist approach espoused by Booker T. Washington or Robert Russa Moton, but only by changing the system from within.[24]

A proper education in the law offered the first step to this end. Houston returned to academia to gain recourse against the cruelties of the "real world," completing his degrees at Harvard in 1924. He then joined his father's law practice in Washington, D.C. and after a few months, also joined the faculty of the Howard University Law School. By all accounts, Charles led his students through a tough regimen that required excellence and hard work. His biographer, Genna Rae McNeil says, "But Charles Houston asked no more of his students than he expected of himself, and for that reason," Spottswood Robinson, III claimed, "while

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[23]*Ibid.*, 24-34; Antoinette J. Lee, "M Street High School," National Register of Historic Places Nomination, United States Department of the Interior, National Park Service, National Capital Region, 23 October 1986; and "M Street High School," in Beth L. Savage, ed., *African American Historic Places* (Washington, D.C.: The Preservation Press of the National Trust for Historic Preservation, 1994), 146.

[24]McNeil, *Groundwork*, 35-45.

'students were sometimes driven to swearing' at Houston 'they also swore by him.'"[25] Houston engaged in a year-long research project which took him across the South to survey the activity and status of its African American lawyers. He saw widespread poverty, personal degradation, and meager facilities firsthand. This aggressive, young faculty member drew the favorable attention of the university's administration early on and by 1929 was appointed vice-dean of the law school. A petition for accreditation by Howard's president and board of trustees coincided with Houston's arrival and the young professor supported the bid wholeheartedly. Houston believed that the school carried an obligation to train African American lawyers to defend their people against a monolithic juridical system. In his philosophy, these lawyers should function as "social engineers" and "group interpreters" who worked for the advocacy of their race. Without full certification, Howard Law School lacked academic credibility, which would, in turn, potentially handicap its graduates, hinder their work, and tarnish their reputations.[26]

Charles Houston worked hard to bring the law school up to contemporary professional standards. Critics accused him of trying to "Harvardize" it when he raised admission standards, abolished the evening school, lengthened the academic term, and revised the curriculum to include basic economics, administrative law, and practical professional training. Despite heavy criticism, Houston remained convinced that Howard had a crucial role to play in the future social advancement of African Americans. And, he saw that it did. The changes toughened standards and curtailed opportunities for part-time students, but established a more conducive environment for those who could devote themselves wholeheartedly to jurisprudence. Vice-Dean Houston instituted teaching fellowships to bring some of the best to Howard as visiting faculty who would conduct "special lectures" to motivate and instruct. Howard Law School became a laboratory for the development of a corps of conscientious, well-trained litigators. He pushed his students to greater accomplishments and recruited some of the more outstanding ones to conduct the NAACP's litigation campaign. Alumni Thurgood Marshall, Robert Carter, and Spottswood Robinson later comprised a valuable core for the NAACP's Legal Defense and Educational Fund, Inc. Although Howard would graduate fewer attorneys each year, they would be better qualified as professionals and leaders of their communities.[27]

When Charles Hamilton Houston joined the NAACP in 1935 as Special Counsel, he launched into the position with the same energy displayed at Howard Law School, by revising the Legal Committee's agenda. He picked up where Nathan Margold left off, agreeing that

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[25]*Ibid.*, 66, quoting Spottswood W. Robinson, III.

[26]*Ibid.*, 59-75. Images of Houston during his tour may be seen in William Elwood, *et. al.*, "The Road to Brown: The Untold Story of the 'Man Who Killed Jim Crow,'" videocassette presentation by the University of Virginia, California Newsreel, 1990.

[27]McNeil, *Groundwork*, 71-79; and Tushnet, *The NAACP's Legal Strategy Against Segregated Education*, 35-36.

segregation offered a basic key to prejudicial treatment, but developing a practical strategy based on a *process* of litigation modified for each case, rather than retaining the broad, static planning outlined in Margold's report. Houston toured the South in 1935 to assess educational facilities for African Americans and was shocked by the conditions of most "black" public schools. He immediately targeted two major causes; salary equalization for teachers and parity in admissions to graduate and professional schools. Although believing desegregation at all levels held the potential for racial equalization, Houston regarded the desegregation of graduate and professional education as a first and less threatening step for a race conscious society. Furthermore, he believed that suits for minority university admissions more likely would find success in the Upper South and in border states; that is, if the right plaintiffs could be found. Mark Tushnet, in his study of the NAACP's legal strategy, quoted William Hastie as describing "the desirable plaintiff as a person who would be 'of *outstanding* scholarship... neat, personable, and unmistakably a Negro.' The plaintiff would be 'a valuable object lesson which shows the whites in the community that there are negroes... who measure up in every respect to collegiate standards.'"[28] In like manner, representative lawsuits had to possess characteristics that offered wider applicability beyond the specific case and, if litigated successfully, could establish a precedent to be used for the more prolonged attack on *Plessy* v. *Ferguson*'s "separate but equal" doctrine. Each small victory would contribute to the war against segregation and unequal treatment in American society. From 1935 to 1950, qualified litigants represented exceptional plaintiffs in suits germane to fundamental civil rights issues in the Upper South. Counsel carefully selected both case and plaintiff, learning by trial and error which combinations of case and plaintiff worked best to beat back segregation. The formula of time, place, players, and action worked in rather quick fashion, with Houston as the catalyst.

Although this period proved to be a rigorous one for NAACP counsel, Charles Hamilton Houston ran the "shop" from behind the scenes, while Thurgood Marshall eased into national prominence. Houston's service in the New York office as Special Counsel officially lasted only three years, from 1935 to 1938, because in July of that year he returned to Washington, D.C. Charles then resumed the practice of law with "Houston & Houston" and also continued to coordinate the NAACP's litigation process. Thurgood Marshall was immediately tapped as assistant special counsel for the interim, providing direction in the New York office until officially advancing to the top position in 1940. Houston argued *Missouri ex. rel. Gaines* v. *Canada* regarding admission to the University of Missouri Law School before the U.S. Supreme Court during this transitional period, consulted on other key cases, most notably, *Bolling* v. *Sharpe* regarding desegregation in the District of Columbia, and litigated many labor grievances. Marshall, however, had assumed a primary role in the prosecution of most education and salary equalization suits by 1938, along with others educated by Houston at Howard or honed under his leadership at the NAACP. After his resignation as special counsel, Charles Houston retained a seat on the NAACP's National Legal Committee and

[28]Tushnet, *The NAACP's Legal Strategy Against Segregated Education*, 37.

continued to advise Marshall until his death in 1950. Ill health had plagued Houston throughout most of his professional career. Bouts with influenza during World War I had damaged his lungs, which, in turn, contributed to the onset of tuberculosis in the mid-1920s. He resumed work after a period of quarantine, but Houston suffered sporadically with angina and heart problems during the hectic years of the 1930s and 1940s. These problems simply escalated and Charles Hamilton Houston died of heart failure on April 20, 1950 at the age of fifty-four.[29]

"His name may be little known," Juan Williams has commented, "but the results of his efforts were profound."[30] The groundwork for the destruction of *Plessy*'s legacy was laid by Houston. Instead of accepting the *status quo*, Charles Houston established his own legacy by training young attorneys to look beyond the law, to the people it affected and the society it shaped. He emphasized the importance of social engineering conducted by African Americans to enhance opportunity, equity, and status for African Americans. Houston provided the skills with which attorneys could dispute in cogent and rational fashion, not merely the day-to-day atrocities of segregation, but the well-entrenched, institutionalization of racism. To this end, a team of bright, talented lawyers had coalesced by the late 1930s. They formed the center of the NAACP's Legal Defense and Educational Fund, Inc. (LDF), more commonly referred to as the "Inc., Fund," which then selectively litigated cases regarding the desegregation of graduate, professional, and public elementary schools. Charles Hamilton Houston was the "father" of these young professionals who achieved so much for racial equality in the mid-twentieth century.

D. The legal course against segregation

Thurgood Marshall, Constance Baker Motley, Jack Greenberg, Robert Carter, Spottswood Robinson, James Nabrit, Louis Redding, William Hastie--the list has become a veritable "who's who" comprised of members from both races employed by the LDF for the purpose of overturning *Plessy* v. *Ferguson*. Walter White led the NAACP during this period, and in fact, had suggested employing Charles Houston to continue the legal program established by Margold. Under White's direction, the Association had formed the LDF specifically to conduct legal action and used it to raise both human and financial capital. By the late 1930s, however, the Association's successful anti-lynching crusade and congressional lobbying efforts had raised serious challenges to its tax-exempt status. LDF counsel feared a potential loss of funding and also realized that the sheer scale of its litigation efforts required far more money than membership dues could cover, so the Fund separated from the NAACP in order to remain non-profit and to vigorously solicit funds exclusively for its legal program.

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[29]McNeil, *Groundwork*, 149-155. Readers may also find a brief biography of Houston in Juan Williams, *Eyes on the Prize: America's Civil Rights Years, 1954-1965* (New York: Viking Penguin, Inc., 1987), 2-18.

[30]Williams, *Eyes on the Prize*, 2.

This allowed greater focus on the work at hand, but the division augmented tensions between the two organizations as the century progressed.[31]

This "cadre of lawyers," as they are often labeled, ventured beyond Houston's attack to bring equalization to the "separate but equal" doctrine. They set out to prove the intrinsic illegality of segregation, itself. This careful process required the establishment of a juridical foundation via the prosecution of a series of lawsuits which challenged manifestations of segregation in graduate and professional education. The line of argument concerned well-established guarantees of due process that were entrenched in western culture and codified in the Fifth and Fourteenth constitutional amendments. The Magna Carta (1215) first recorded the concept of "due process of law" in western culture as a means of protecting private property against the potential, arbitrary power of the English monarch. It became incorporated into English common law over several generations and ultimately crossed the Atlantic in governmental charters for various British colonies. State constitutional conventions subsequently adopted the measure and their representatives later incorporated it into a Bill of Rights attached to the new Constitution for the United States in 1791. The Fifth Amendment codified a guarantee of due process which applied specifically to protections of "life, liberty and property" against the arbitrary use of power by the federal government. Prior to 1870, the due process clause offered general procedural protection of broad judicial rights; such as requirement of a warrant for an arrest, the right to counsel, trial by an impartial jury of peers, the right to hear evidence, and requirement of a verdict before sentencing.[32]

Specific individual rights became a greater issue after 1870 when the concept of due process replaced the contract clause as a guarantee against unreasonable interference with private property. The dynamics of the Civil War experience added to this metamorphosis by bringing about the "Civil War Amendments," consisting of the Thirteenth which outlawed slavery, the Fourteenth which bestowed citizenship, and the Fifteenth which granted voting rights to adult males regardless of race or ethnic origin. These related specifically to African Americans, but also directed attention to the subject of individual rights, with the Fourteenth, in particular, ostensibly broaching citizens' rights versus those of the state. This marked a profound change in judicial interpretations of due process, for this guarantee dealt with individual civil rights concerning personal interactions to make and enforce contracts, to sue and be sued, to retain or dispose of real and personal property, and most importantly--to extend equal protection of the laws to any citizen living within the jurisdiction of the United States. The Fourteenth Amendment, born of the Radical Republicans' Civil Rights Bill of 1866, specifically countered arbitrary and unsanctioned state powers. Section One specifically states,

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[31]Finch, *The NAACP*, 122; and Tushnet, *The NAACP's Legal Strategy Against Segregated Education*, 100. White's autobiography provides a timely, personal view from the inside of the agency, please see *A Man Called White: The Autobiography of Walter White*, orig. publ. 1948, repr. (New York: Arno Press and *The New York Times*), 1969.

[32]Kelly and Harbison, *The American Constitution*, 504-506, 26.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State 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.[33]

On paper, this comprehensive amendment specifically checked the powers of the state rather than the federal government and pinpointed rights that rested with the individual citizen. Section One's provision for equal protection paved the way for future attacks on practices, segregation, for example, that obstructed the broad protections of civil law. It, in a sense, preserved the sovereignty of the individual against the over-arching power of the civil body politic.[34]

Concepts of due process and equal protection which descended from European socio-political traditions were given form in this nation's dynamic, innovative political system. LDF counsel drew upon this long history in the mid-twentieth century by claiming that segregation violated individual guarantees of due process and equal protection. Several precedents gave judicial backing for a final push to overturn the constitutionality of the "separate but equal" finding in *Plessy* v. *Ferguson*. Although the record of litigation regarding fundamental civil rights is quite extensive, some landmark cases stand out because they either condoned or reproached segregation. *Gong Lum* v. *Rice* (1927), a case which dealt with the assignment of a young girl of Chinese descent to a public school for African Americans, reinforced the legality of racial separation. The plaintiff did not challenge racial segregation, itself, but only requested exemption from minority racial assignment. Martha Lum's father requested that the Bolivar County, Mississippi school system allow her to attend the local school district's "white" rather than its "black" school. His request was denied. When the case reached the U.S. Supreme Court, Chief Justice William H. Taft deemed the constitutionality of racial segregation as thoroughly settled in *Roberts* v. *City of Boston* (1849), finding no contradictions with the privileges and immunities of the Fourteenth Amendment. He furthermore determined that the Court had no place in the state's business and maintained the legality of Lum's racial assignment with African American youth. This became an important precedent which upheld the *Plessy* finding and which the LDF had to address on its own merit.[35]

The "failure" of *Gong Lum* reinforced some opinions that the LDF had to structure its attack on segregation to be as least threatening as possible to the white majority. Behavior patterns seemed to indicate a reluctance on the part of many Southern whites to allow the

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[33]U.S. Constitution, amend. 14, sec. 1.

[34]Kelly and Harbison, *The American Constitution*, 458-465, 803. Readers may find a good explanation of nineteenth century precedents in J. Harvie Wilkinson, III, *From Brown to Bakke: The Supreme Court and School Integration, 1954-1978* (New York: Oxford University Press, 1979).

[35]Kluger, *Simple Justice*, 120-121.

mixing of young, impressionable children.[36] Even though pre-schoolers of both races often played together, parents usually separated them when they entered elementary school. Houston and others, therefore, believed that LDF strategy should acknowledge these perceptions and avoid them altogether by focusing on the integration of young adults in professional and graduate schools. In 1933, William H. Hastie, Jr., Houston's second cousin and member of the family law firm, took on a case which fit this goal perfectly. Walter White, the NAACP's executive secretary, recommended the case of Thomas Hocutt, a graduate of North Carolina College for Negroes, who had applied to the state's only school of pharmacy, located at the University of North Carolina. Interestingly, Hocutt's application was blocked not by white university administrators, but by the state's leading African American educator and a wide majority of Durham's black business community.[37]

Dr. James E. Shepard, president of the North Carolina College for Negroes, effectively blocked the admission by refusing to provide Hocutt's undergraduate transcript and written recommendation for further study. "He believed that blacks preferred separate education," Gilbert Ware claimed, "provided that it was indeed equal, a quality that had been made even more unlikely in light of severe cuts in the budgets of Negro colleges." But, other members of the African American business and professional communities opposed Hocutt's legal challenge because they felt that the action generally would undermine the race's social progress in North Carolina, and specifically hinder legislative support for black colleges. Some African Americans very simply decried the intrusion of "outsiders" into their affairs. Nevertheless, the case of *Thomas R. Hocutt* v. *Thomas J. Wilson, Jr. Dean of Admissions and Registrar, and the University of North Carolina* (1933) reached Superior Court, where Hastie's request for relief was refused. The court ruled that Hocutt sought improper relief because his petition failed to request that the university consider his application in good faith, without regard to his race. The university could not consider Hocutt's application without the required copies of transcripts and letters of recommendation, which Dr. Shepard refused to provide, so Hastie's request for mandamus ordering such action was denied. It summarily dismissed the suit and Hastie filed no appeal.[38]

Despite its quick, but disappointing, resolution, *Hocutt* provided some important lessons for the NAACP's campaign against segregation. Firstly, counselors realized the critical

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[36]Many African Americans believed that Southerners were particularly anxious about black males associating with white women, as stereotyped by myths about the uncontrollable "black beast rapist." See Joel Williamson, *A Rage for Order: Black/White Relations in the American South Since Emancipation* (New York: Oxford University Press, 1986), or Williamson's larger work, *The Crucible of Race* (1984).

[37]*Ibid*, 155-158.

[38]Gilbert Ware, "*Hocutt*: Genesis of *Brown*, *The Journal of Negro Education* 52, no. 3 (Summer 1983): 227-233, quotation taken from 228. For the case record, please refer to *Thomas R. Hocutt* v. *Thomas J. Wilson, Jr. Dean of Admissions and Registrar, and the University of North Carolina*, North Carolina Superior Court, County of Durham, Civil Issue Docket #1-188, 28 March 1933.

importance of support for legal action from local African American communities. As mentioned, the NAACP found little support for *Hocutt* among African Americans in Durham, and even the Association's local chapter voted to oppose it. Secondly, attorneys realized that plaintiffs must meet exemplary qualifications in order to guarantee success. Hocutt's academic performance was less than stellar. His high school grades were low and, although his undergraduate scores ranked above average, he had deficient reading skills and performed poorly on the witness stand. Arguments for his admission to the University of North Carolina were nullified because Hocutt's weak academic record outstripped the issue of race, his application lacked supporting documentation, and his poor trial performance raised questions about Hocutt's qualifications for advanced education. North Carolina Superior Court's finding further showed that Hastie's specific call for mandamus defined the legal question too narrowly, thus allowing judges to resolve or dismiss precise grievances out-of-hand, without room for appeal. NAACP attorneys would avoid mandamus in the future, and would frame their arguments more broadly. In addition, they found that firm control by the central office in New York was critical because the physical proximity of participants, namely potentially great geographical distances between plaintiffs and counsel, could result in very real logistical problems. Particular attention also had to be paid to local law--to the idiosyncracies of local courts, where, as Mark Tushnet says, "litigation could be aborted by what state judges could treat as technical errors of various sorts." The *Hocutt* experience proved to be very beneficial because NAACP counsel quickly grasped the importance of four key criteria for litigation; including community support, exemplary clientele, petition of a redressable grievance, and central control over cases. Charles Hamilton Houston learned from this experience and adapted NAACP strategy accordingly.[39]

Maryland provided the setting for the next significant case. Donald Murray, a graduate of Amherst College, applied in 1935 for admission to the state university's law school. The University of Maryland rejected the applications of nine African Americans during the previous year, and rejected Thurgood Marshall's application in 1930, so the desegregation of this particular school held broad support from the black community and a personal connection for this leading African American attorney. Murray met the same fate. The university's president, Raymond A. Pearson, declined admission to the School of Law, but gave Murray two choices; he could either attend the segregated Princess Anne Academy on the Eastern Shore or receive a scholarship for study outside of the state. Richard Kluger refers to the "black" equivalent of Maryland's School of Law as a "glorified high school," hardly equal to its well-established counterpart. Murray declined the offer and sought relief through the courts. Houston and Marshall challenged the school position as a direct violation of the Fourteenth Amendment's equal protection clause in *Murray* v. *Maryland* (1936).[40]

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[39]Tushnet, *The NAACP's Legal Strategy Against Segregated Education*, 52-53.

[40]Kluger, *Simple Justice*, 186-194. The case is listed as *Murray* v. *Maryland*, 182 A. 590 (1936), 169 Md. 478 (1937).

The case met all of the NAACP's criteria; the African American community supported the litigation, Donald Murray possessed an impeccable academic record, Houston and Marshall requested relief via Fourteenth Amendment guarantees, and it was litigated by the NAACP's top counsel in a border state within close proximity to the New York and Washington offices. Furthermore, Marshall grew up in Baltimore and knew from personal experience the intricacies of Maryland state law and the university's treatment of black applicants. During the hearing, he established that the Princess Anne Academy was, according to Carl Rowan, "really an unaccredited junior college whose faculty contained only one person with an earned college degree."[41] The University of Maryland possessed the only accredited law school in the state. The combination of talent, credibility, and clear demonstration of inequality between the two facilities led to success. The state court initially found in Murray's favor, and the Maryland State Court of Appeals reaffirmed the lower court's ruling. It rejected the scholarship system as a method of relief for equal treatment, ordering the university to either admit Donald Murray to its existing School of Law or establish a new, equitable one for African Americans. The school admitted Murray during the appeals process and he received diverse forms of support from a number of sources during his successful academic career. His case bolstered confidence in the NAACP strategy, particularly reaffirming Houston's belief that segregation could be attacked more successfully in border states, and marked a significant precedent for the continual battle against the "separate but equal" ruling.[42]

Soon after this success, Houston contacted Sidney Redmond, a leading NAACP activist and attorney in St. Louis, regarding an incident at the University of Missouri in Columbia. Lloyd L. Gaines had applied for admission to the university's School of Law in 1936, but was referred to the state's representative "black" school, Lincoln University, approximately thirty miles away in Jefferson City. Gaines graduated from Lincoln with honors and knew that it did not possess a law school. Since he was the first African American to apply to any degree program at the University of Missouri, President Middlebush and the board of curators deliberated briefly about procedures for dealing with Mr. Gaines. They ignored and then rejected his application, based on race and the legalities of segregation, and instead offered Gaines the choice of an out-of-state scholarship or their promise to found a segregated law school at Lincoln University. Gaines instead chose to file a grievance, with the NAACP's help. Houston, at first, had expressed unspecified misgivings about Gaines' suitability as a plaintiff and wanted Redmond to find additional clients to bolster the suit, but no others could be found. Houston finally accepted the case because the university's rejection provided a clear target for arguments based solely on race. The board of curators had made a critical mistake by citing race as the determining factor for Gaines' rejection because it provided a clear opportunity to file suit based on a denial of equal protection under the law. Marshall and Houston were ecstatic about the curators' confession. They argued the case, along with

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[41]Carl T. Rowan, *Dream Makers, Dream Breakers: The World of Justice Thurgood Marshall* (Boston: Little, Brown and Company, 1993), 52.

[42]Tushnet, *The NAACP's Legal Strategy Against Segregated Education*, 56-58.

Redmond, in Missouri state court, which determined that the university's options fell well within constitutional guidelines. Appeals for mandamus, ordering the school to admit Gaines, were repeatedly denied in the Missouri Supreme Court and federal circuit courts.[43]

The NAACP legal team finally found relief before the U.S. Supreme Court *in Missouri ex. rel. Lloyd L. Gaines* v. *S.W. Canada, Registrar, University of Missouri* (1938), which resolved that Gaines deserved the opportunity for legal education comparable to that available to white students. Chief Justice Charles Evans Hughes cited *Murray* as a precedent for his opinion that Missouri's action constituted a denial of equal protection. He considered the proposed remedy of out-of-state scholarships as null because it evaded the state's responsibility to provide equal education to African Americans within its boundaries. Despite his victory, Lloyd Gaines never entered the University of Missouri School of Law. He enrolled in an economics program at the University of Michigan during the appeals process. Despite graduating from Lincoln with honors, he failed to qualify for financial aid at Michigan and considered accepting Missouri's scholarship offer. Charlie Houston hustled to retain his client by locating funds to defray Gaines' educational expenses during the litigation process. It was critical to keep Gaines happy, for without him, the NAACP had no case. Gaines remained in school through the full resolution of the case by the U.S. Supreme Court, but dropped out of sight soon afterward and the NAACP never heard from him again. The University of Missouri went ahead with its plans and, by 1939, had established the Lincoln University Law School (located in St. Louis) for African Americans.[44]

Lloyd Gaines never entered law school, despite his Supreme Court victory, and the University of Missouri-Columbia remained segregated until 1950. Nevertheless, *Missouri ex. rel. Gaines* v. *Canada* provided a second, crucial precedent for the desegregation of graduate and professional schools. It also reinforced NAACP strategy because it demonstrated the significance of credible, steadfast plaintiffs and highlighted the importance of having multiple plaintiffs, due to the very real chance that a sole complainant would withdraw the petition before its full resolution. Years later, Carl T. Rowan interviewed his old friend, Thurgood Marshall, who recalled the situation with mixed pride, by saying, "I remember *Gaines* as one of our greatest victories, but I have never lost the pain of having so many people spend so much time and money on him, only to have him disappear."[45] In the future, NAACP counsel would pay closer attention to the reliability of their plaintiffs and would try to secure several clients, in subsequent desegregation actions rather than relying on only one.

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[43]*Ibid.*, 70-73; Rowan, *Dream Makers, Dream Breakers*, 71-78; and Larry Grothaus, "'The Inevitable Mr. Gaines': The Long Struggle to Desegregate the University of Missouri, 1936-1950," *Arizona and the West* 26, no. 1 (Spring 1984): 21-42.

[44]Tushnet, *The NAACP's Legal Strategy Against Segregated Education*, 74-77. Readers also may refer to the U.S. Supreme Court finding, *Missouri ex. rel. Gaines* v. *Canada*, 305 U.S. 337 (1938).

[45]Rowan, *Dream Makers, Dream Breakers*, 78.

Throughout the years of training and litigation, NAACP strategists learned from these and other key cases, modifying plaintiff selection and case preparation accordingly. By 1946, counsel added a new methodological approach to the mix by using sociological arguments in legal briefs. Mark Tushnet explained that this stemmed from the 1930s-era Legal Realist school of thought within the judicial corps at Howard and the NAACP, which considered law as policy, operating within a social context. He also credited the Margold Report as arguing "that desegregation could follow from the fact of irremediable inequality," which meant that no legal recourse could remedy the situation. Nathan Margold did not create the concept, however, for Oliver Wendell Holmes, Jr. addressed the use of intellectual theory in a dissent which severely criticized the use of economic concepts in *Lochner* v. *New York* (1905). Louis D. Brandeis confirmed professional acceptance of extra-legal arguments through his famous "Brandeis Brief" presented in *Muller* v. *Oregon* (1908), which addressed working conditions for women. Brandeis submitted a concise constitutional argument along with a lengthy supplemental report which compared factory systems in the U.S. and Europe, reviewing statistics, legislation, working conditions, and their effects on laborers. He not only overwhelmed the Court with information, Brandeis plied them with social philosophy according to "the rule of reason," as opposed to the formalist theory of "received law" which held that judges did not **make** law, but merely discovered and applied it. Social theory won the day and denoted a significant change in American jurisprudence. Constitutional scholars, Alfred H. Kelly and Winfred A. Harbison point out Brandeis' contribution,

> The logic behind the brief rested upon the premise that if the Court in fact passed upon legislation of this kind in the light of its reasonable character and plausible relation to the social welfare, then the best possible approach was to overwhelm the justices with direct and specific documentary evidence as to the wisdom and intelligence of the law under review.[46]

Brandeis made a significant leap by raising questions about the **prudence** of law, not merely its juridical track record. And the U.S. Supreme Court made the jump with him by confirming the relevance of sociological evidence. Ironically, Brandeis' deviation from the practice that mandated legal briefs composed of dry, constitutional recitation created a radical new precedent. A new form of judicial review evolved whereby the U.S. Supreme Court increasingly applied more personal interpretations of due process to tests of constitutionality. This fresh perspective resulted in opinions that settled matters of public policy and injected a quasi-legislative function into the duties of the Supreme Court.[47]

The practice of using extra-legal evidence had became fairly common practice by 1946, when NAACP lawyers added it to their repertoire. They also drew upon the scholarship of Swedish sociologist, Gunnar Myrdal, who raised public consciousness a step higher by

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[46]Kelly and Harbison, *The American Constitution*, 530.

[47]*Ibid.*, 530-531, 541-546; and Tushnet, *The NAACP's Legal Strategy Against Segregated Education*, 117-119.

illustrating the application of sociological constructs to the issue of race. Myrdal produced his findings in *An American Dilemma* (1944), which documented the oppression of African Americans in the United States. This study brought a double benefit by corroborating the NAACP's message and providing sociological data for use in future petitions which opposed segregation by virtue of documented instances of inferior, discriminatory treatment. NAACP strategy took a significant turn in the late-1940s, away from a straightforward attack on segregation as a denial of equal treatment under the law, to a plea to end the practice because it carried racial stigma and messages of inferiority. Sociological studies, like Myrdal's, and new interpretations of judicial review facilitated that change. William Hastie and Thurgood Marshall had long believed that equalization should be a last resort, favoring instead a complete end to double standards and social separation. Now they had documented proof of the inherent immorality of segregation through a number of academic studies published in the mid-twentieth century. These simply corroborated what LDF counsel already knew through personal experience, but scholarship provided a widely-regarded tool for the legal campaign.[48]

The NAACP first applied this new methodology on behalf of plaintiffs in Oklahoma and Texas who sought admission to these state university law schools. Ada Sipuel provided the first in a quick series of test cases designed to reaffirm, and define, the Supreme Court's finding in *Gaines* v. *Canada*. While Chief Justice Hughes clearly declared the exclusion of African Americans from graduate and professional schools as a denial of equal protection, southern states balked at the authority of the Court to do so. Upon closer analysis, attorneys realized that the *Gaines* opinion actually failed to nullify "separate but equal" on any level, but merely emphasized a state's responsibility to provide access to "white" facilities where none existed for African Americans. Oklahoma and Texas even balked at this contention. When Ada Lois Sipuel applied for admission to the University of Oklahoma School of Law in 1945, the Board of Regents flatly refused her request and further claimed that the dearth of potential candidates indicated little need for a separate school for African Americans. At the time, Sipuel attended the State College for Negroes, where she volunteered in 1946 to serve as a plaintiff to desegregate the University of Oklahoma. Consistent with an emerging pattern, local attorneys initiated the litigation and then referred it to the national NAACP office, where Sipuel's complaint came under the direction of Thurgood Marshall.[49]

State trial courts and the Oklahoma State Supreme Court dispensed with the case rather quickly, denying Sipuel's plea with successive verdicts that firstly said that mandamus could not be used to challenge state law and secondly that NAACP briefs failed to demand the establishment of a "black" law school. Despite feeling that the appeal lacked sufficient evidentiary foundation, Marshall argued *Sipuel* v. *Board of Regents* (1948) before the U.S. Supreme Court in early January 1948. Sources describe the NAACP legal briefs as somewhat

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[48]Tushnet, *The NAACP's Legal Strategy Against Segregated Education*, 118-120.

[49]*Ibid.*, 120-124.

"loose" in logic and argument, but the Court reversed the lower court rulings an astonishing four days after oral argument. Justices reaffirmed *Gaines* in very short order by affirming the state's responsibility to provide Ada Sipuel with a legal education, "in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group."[50] The finding's speed and substance buffeted growing optimism within the NAACP that *Plessy* would, indeed, be definitively reversed. But, Oklahoma refused to give in. The Board of Regents went back to the state supreme court, which allowed the university to establish an inadequate, make-shift law school for African Americans. It cordoned off an area in the state capitol building for their "equal" education, but neglected provisions for books, professors, and moot courtrooms. Marshall retaliated by charging that the school directly evaded the U.S. Supreme Court mandate and insisting that the Court declare an end to segregated education. After further reargument before the Court in February 1948, it found that the university had not acted improperly because the earlier finding included no consideration of the "separate but equal" doctrine. It issued no order for the school to admit Miss Sipuel, but directed Oklahoma only to treat her equally. The Court, therefore, left the university free to resolve the issue by constructing a separate school for African Americans. Richard Kluger sums up the situation by saying, "All that *Sipuel* established, then, was that a state had to offer something or other that passed for a school to meet the separate-but-equal test, and it had to do so promptly."[51] He, in fact, considers Sipuel to be a setback, rather than a victory, in the NAACP campaign. LDF counsel rejected such a dour outlook and viewed the case as a qualified success because Ada Lois Sipuel integrated the University of Oklahoma in 1949 when the "black" law school closed and successfully completed her law degree two years later. Even though the Supreme Court thus far had deferred direct consideration of segregation's basic constitutionality, *Murray*, *Gaines*, and *Sipuel* established important precedents. They also signalled a developing trend, however, whereby the Court issued opinions which required equal treatment, but which also left plenty of wiggle room for appellees to evade the judicial directives.[52]

The wave of NAACP victories continued in America's heartland. Concurrent with Ada Sipuel's complaint, Marshall prosecuted a similar case against the University of Texas involving Heman Sweatt. He had prodded the state NAACP chapters to locate several viable plaintiffs, but potential candidates either withdrew under pressure or were discounted by Marshall. Only one remained, Heman Sweatt, a mail carrier. By January 1946, Sweatt agreed to participate because he had been denied advancement to a clerical position in the postal service and now wanted to attend law school. Sweatt submitted an application to the

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[50]*Ibid.*, 121. Readers may find the entire text of the opinion in *Sipuel* v. *Board of Regents*, 332 U.S. 631 (1948).

[51]Kluger, *Simple Justice*, 260.

[52]Kelly and Harbison, *The American Constitution*, 922; and Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: BasicBooks, 1994), 63-64.

University of Texas Law School at Austin in February 1946, which was promptly denied by the board of regents. Marshall was optimistic about litigation in Texas, even though Sweatt held an undergraduate degree from an unaccredited college, because the regents had denied Sweatt's application on the sole basis of race without any mention of ability or merit. Marshall filed suit in May 1946 against the president of the university, Theophilus Painter, who functioned as the respondent in the famed *Sweatt* v. *Painter* desegregation suit.[53]

In his letter of denial, Painter said that Sweatt could request the establishment of a "black" law school, an option later confirmed by district court. The judge ordered the state to establish a law school at Prairie View University within six months. This African American school consisted of a group of rented rooms in Houston which barely approached equal status to the well-regarded academic village reserved for whites in Austin. A hearing before the Court of Civil Appeals in March 1947 resulted in an agreement to establish the Texas State University for Negroes complete with law school, faculty, and library. Sweatt declined admission to the new school and continued a tedious course of litigation that challenged the state's contention that its new law school was indeed equal. Although Thurgood Marshall alternated his time and attention between several lawsuits during the next three years, he built a solid foundation for an ultimate appeal of *Sweatt* before the U.S. Supreme Court in April 1950.[54]

NAACP LDF strategy called for sociological arguments to bolster the technical legal case against the University of Texas. Marshall called upon Robert Redfield, chair of the Department of Anthropology and head of social sciences at the University of Chicago, for testimony which documented the negative social consequences of racial prejudice and the absence of any scientific basis for racial preference. This evidence broadened arguments beyond mere educational policy in the state of Texas. Marshall's dual strategy correlating equalization issues to sociological data eventually worked. In a unanimous opinion written by Chief Justice Fred Vinson, the Court determined that the state of Texas failed to provide equitable educational opportunities for African Americans, as required under constitutional guidelines. Although several justices privately felt that the case held merit for a consideration of *Plessy*, the final ruling backed away from any scrutiny of the validity of the "separate but equal" precedent. Vinson, instead, focused on the obvious inadequacies of Texas' African American law school; such as inexperienced faculty, staff, and administration, poor facilities, and the absence of an established reputation and alumni association. The University of Texas School of Law ranked well in all of these categories, illustrating the incongruity in this situation of separate being equal. Vinson's opinion went to the essence of legal education, the association with colleagues, rather than its framework of physical trappings, and he came down on the side of Heman Sweatt. Vinson ordered the University of Texas Law School to admit

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[53]Tushnet, *The NAACP's Legal Strategy Against Segregated Education*, 107-109.

[54]*Ibid.*, 125-126.

Sweatt on the grounds that the state lacked a comparable educational facility for African Americans. This case determined that, despite inherent problems, separate facilities remained constitutional, but must be equal and where they were not, additional relief was merited. *Sweatt* confirmed precedents calling for equalization, so the LDF's next step involved challenging separation in and of itself.[55]

NAACP LDF counsel took hold of two legal threads in this case which would go far beyond *Sweatt*; one being the issue of inequality under the law and the other delving into the sociological debate about racial difference. At the same time, Marshall pursued another case which closely paralleled Sweatt, that of George W. McLaurin, who sought admittance to Department of Education at the University of Oklahoma. Marshall initiated this second case against Oklahoma even while Ada Sipuel's suit proceeded. The NAACP, therefore, pursued three very significant, and similar, actions concurrently during the late-1940s; consisting of *Sipuel* v. *Board of Regents* (1948), *Sweatt* v. *Painter* (1950), and *McLaurin* v. *Oklahoma State Regents* (1950). In this instance, George McLaurin already possessed a master's degree and now wished to earn a doctorate in education. LDF counsel selected McLaurin from a pool of eight potential plaintiffs. His age of sixty-eight added a nice quality to the case because at the time, Dixiecrats complained that African Americans who sought desegregation merely wanted social equality and intermarriage with whites. Few could accuse the elderly and distinguished McLaurin of having a roaming eye for young, attractive white co-eds.[56]

The university denied McLaurin's application and the NAACP immediately filed suit in special federal district court overseen by three judges, two from U.S. District Court and one from the Court of Appeals. Richard Kluger explains the typical three-step appeals process whereby suits of national concern which call for reassessment of federal law or constitutional guidelines are first introduced in U.S. District Court, then advance to a Circuit Court of Appeals before heading to the U.S. Supreme Court, which can accept or deny a hearing request at will via a writ of *certiorari*.[57] As Kluger puts it, the process is "downright streamlined" because this procedure allows pending litigation to proceed faster to the U.S. Supreme Court without intermediate review. The NAACP was able to circumvent the lengthy appeals procedure by taking *McLaurin* directly to a three-judge federal court because the action satisfied the court's test of national immediacy. Judges heard the case in August

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[55]*Ibid.*, 127-132; and Kluger, *Simple Justice*, 260-266 and 280-282. District court findings and Vinson's opinion may be found at *Sweatt* v. *Painter*, 210 S.W. 2d 442 (1947), 339 U.S. 629 (1950).

[56]Kluger, *Simple Justice*, 266.

[57]A writ of *certiorari* is the means by which a higher court calls up the record of a proceeding from a lower court for review. The appeals court uses this procedure to signify its acceptance to review a case on appeal. By contrast, the U.S. Supreme Court expresses its refusal of a case by denying *certiorari*. Please refer to the glossary for a more complete definition.

1948 and quickly ruled that the state must provide all students, including McLaurin, access to education in a timely manner.[58]

Oklahoma skirted the mandate, but conceded after a second court appearance in November in which McLaurin won admission to the university because the state's African American college lacked a doctoral program in education. Administrators allowed him to attend classes with white students, but required McLaurin to sit in an anteroom, or alcove, publicly cordoned off for African Americans with a sign that read, "Reserved for Coloreds." They also restricted him to specific tables in the library and cafeteria in an attempt to keep the races as separate as possible. The NAACP now had a clear demonstration of equitable facilities, by such disparate treatment based solely on racial grounds. The LDF appeal to the U.S. Supreme Court clearly presented a challenge to "separate but equal" policies maintained only for separation's sake. George McLaurin attended the same classes, studied in the same library, used the same materials, and ate the same food in the same room with whites. His case presented the most direct test of the *Plessy* doctrine to date, and again the American judicial system backed away from it. The U.S. District Court refused to hear McLaurin's specific complaints about this treatment and so the NAACP proceeded to the Supreme Court.[59]

LDF co-counsel Robert L. Carter presented arguments for *McLaurin* v. *Oklahoma State Regents* on April 3-4, 1950, alternately when Marshall argued *Sweatt* v. *Painter*. The two opinions also were delivered together on June 5. Vinson initially addressed the broader picture in the *McLaurin* opinion's introduction by saying, "State-imposed restrictions which produce such inequalities cannot be sustained." This seemed to indicate that groundwork for the ultimate reversal of *Plessy* had firmly been laid. But, although the Court unanimously ordered relief in the appellant's favor, it sidestepped a broad examination of racial separation. Vinson acknowledged that the egregious conditions under which George McLaurin pursued his graduate studies impaired his education, and in turn could affect his future career negatively. These inequalities amounted to a denial of the constitutional guarantee of equal protection, so the Court ordered the University of Oklahoma to lift all restrictions placed upon him. Despite Carter's best efforts, justices limited their attention in this case to McLaurin's singular experiences with no public consideration of *de jure* racial segregation. Tushnet and Kluger both reported that members of the Court remarked privately about an imminent re-evaluation of *Plessy*, but that would be left for the future.[60]

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[58] *Ibid.*, 267.

[59] *Ibid.*, 267-269, 280-284.

[60] *Ibid.*, 283; Jack Greenberg, *Crusaders in the Courts*, 66-67 and 73-74; and Tushnet, *The NAACP's Legal Strategy Against Segregated Education*, 132-133. Please refer to *McLaurin* v. *Oklahoma State Regents*, 339 U.S. 637 (1950) for the complete opinion.

None of these cases impaired segregation, *per se*, but each targeted the denial of equal protection to African Americans, as guaranteed by the Fourteenth Amendment and as affirmed, after a fashion, in the "equal" component of the *Plessy* v. *Ferguson* doctrine. Despite torturous lengths to avoid desegregation, state university graduate and professional schools in the Upper South and Midwest began to admit African American students in the late-1940s. Steady litigation by NAACP experts cracked the wall of racial segregation because co-counsel paid close attention to the effectiveness of each strategem forwarded in specific cases. Marshall and his colleagues worked out a unified plan through "trial" and error. Although it makes for a bad pun, these bright, young attorneys added tactics and evidence, piece by piece, until a scheme had been formulated for the final push to overturn *Plessy*. Written and oral records show that "the road to *Brown*" was no accident. Houston's cadre sought reliable plaintiffs with redressable complaints, possessing community support in locales not too distant from the NAACP spheres of influence. Extralegal evidence, such as sociological data, provided the extra punch needed to demonstrate the incongruities of segregation. Legal successes facilitated the growth of the association across the United States and the NAACP's sphere of influence expanded. Although the Legal Defense Fund split from the NAACP in 1939, the two organizations worked in tandem for a common goal. The NAACP benefitted from the LDF's success because as co-counsel won cases, the NAACP attracted more members and added both emotional and financial support for the "Inc. Fund's" primary cause.

The LDF strengthened its power-base and sharpened its focus through this period, adding staff to carry the ever-increasing case load. Marshall recruited several outstanding young attorneys in the mid- to late-1940s to participate in the legal campaign. Robert L. Carter, an Air Force veteran, joined the staff in 1944 and functioned as Marshall's assistant in the New York NAACP office. He attended Lincoln University and Howard Law School, where he earned William Hastie's respect. Carter worked on the *McLaurin* suit and later added his talents to the team that prosecuted the Topeka desegregation case before the U.S. District and Supreme Courts. Marshall also located a key ally in Virginia, a white attorney named Spottswood Robinson, III. "Spot," as Marshall called his good friend, also attended Howard University Law School and then returned to his native Richmond. He investigated conditions throughout the state for Marshall in 1947 and provided evaluations of potential equalization lawsuits pertaining to public primary and secondary education. This, too, would prove portentous because the two men later worked together on key school desegregation cases from Clarendon County, South Carolina, and Prince Edward County, Virginia. Constance Baker Motley came on board in 1945 to clerk with Marshall and passed the bar three years later. She remained with the LDF for twenty years, and specifically provided technical research, compiled background data, and wrote legal briefs for the school cases of the 1950s. Jack Greenberg joined the group in 1949 as an assistant, but quickly moved ahead through his work on the famed desegregation case from Delaware. These staff members comprised an outstanding group of young attorneys who later would establish their professional reputations through successful litigation of the five school desegregation cases. They, and unnamed others,

lifted the LDF to its pinnacle of success in the 1950s by adapting the Margold/Houston strategies to the realities of American courtrooms.[61]

E. Conclusion

The period of 1930 through 1950 was a very successful one for the NAACP under the direction of Charles Hamilton Houston, Walter White, Roy Wilkins, and Thurgood Marshall. By mid-century, the legal strategy to end segregated education had coalesced, with some significant precedents established. Although Charlie Houston failed to see the campaign to successful completion, he refined the Margold plan and provided valuable direction of young professionals, many from Howard Law School, who then would implement it in carefully selected courtrooms. Ill health was partially responsible for Houston's less-official role after 1938, but he remained involved in NAACP activities throughout the rest of his life. For Houston, education functioned as the catalyst for social change. He realized its importance at Howard, re-shaped the university law school in short order, and trained better litigators who then furthered educational reform by forestalling desegregation in graduate and professional schools. Jack Greenberg believes that World War II interrupted its progress briefly by siphoning off potential plaintiffs, but the war also contributed an important element to the struggle for equal rights.[62] Military service affected many young African American men as World War I influenced Charlie Houston. In both instances, blacks faced the dichotomy between United States rhetoric of democracy's beneficence and restricted opportunities in the armed forces.

The international trumpeting of human rights during and after World War II invigorated the effort to gain racial equality in this country. By 1950, many Americans of both races, within the NAACP and beyond, supported an end to segregation. Journals targeting a more intellectual readership, such as *The New Republic*, *The Crisis*, and *The Journal of Negro Education*, featured articles ranging from editorial essays to scholarly studies which trumpeted the NAACP mission to bring an end to racial disparity. These served four primary purposes: to defuse racial stereotypes, to exchange ideas and refine strategy, to publicize the progress of the course of litigation, and to emphasize the long-term importance of racial equalization. LDF co-counsel, James Nabrit, Robert Carter, and Thurgood Marshall, used this forum to discuss the LDF's evolving strategy and its relative success. This was but another important channel for the convergence of talent, method, and social context, for the successful

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[61]Kluger, *Simple Justice*, 272-274; Tushnet, *The NAACP's Legal Strategy Against Segregated Education*, 110-111; and Greenberg, *Crusaders in the Court*, 26-27. Only the most significant suits have been reviewed here, readers should refer to Appendix F for a more complete listing of relevant litigation which set the foundation for the 1954 Supreme Court reversal of *Plessy*.

[62]Jack Greenberg, *Crusaders in the Courts*, 63.

reversal of *Plessy* v. *Ferguson* through the litigation of five school desegregation cases in the 1950s, better known as *Brown* v. *Board of Education*.

Well, it wasn't for the sake of hot dogs. It wasn't to cast any insinuations that our teachers are not capable of teaching our children because they are supreme, extremely intelligent and are capable of teaching my kids or white kids or black kids. But my point was that not only I and my children are craving light--the entire colored race is craving light, and the only way to reach the light is to start our children together in their infancy and they come up together.[1]

– Silas Hardrick Fleming, 25 June 1951
testimony given in the Kansas case, explaining the essential need for desegregation

[1]Quoted in Kluger, *Simple Justice*, 411.

CHAPTER FOUR

THE SCHOOL CASES, 1945-1952

By 1950, the national NAACP office had come together with local chapters in a concerted effort to outlaw "separate but equal" school systems. Legal counsel had established some important precedents which invalidated the contention that segregation held constitutional validity. At this point, the organization needed to apply its desegregation strategy to public education in the primary and secondary grades. This fed a new initiative to define the purpose and goals of the NAACP in order to refocus its energies. The organization circulated a two-page memo in 1949, entitled the "NAACP Legal Program," which stated,

> In line with the NAACP Board of Director's mandate that this association go on record as being opposed to segregation of the Negro in the civil, political and economic spheres of our national life, the legal department in a continuation of its battles against discrimination outlines the following program.[2]

The document highlights efforts: 1) to end "discriminatory practices by local school boards;" 2) to draw attention to disenfranchised African Americans; and 3) to represent those denied equitable "transportation facilities in interstate commerce." It went on to state, "On the educational front it is estimated that no less than ten suits a year be brought in widely separated areas in order to be effective as precedent and persuasion for surrounding areas."[3] Staff in the central office actively networked with local chapters during the late-1940s and early 1950s through direct contact and national conferences, trying to clarify the NAACP mission, garner support at the grassroots level, raise funds, and select potential plaintiffs for the on-going legal campaign. They followed up with a national conference on strategy in September 1950, held in the central NAACP office in New York City.

Soon afterward, the association's offensive narrowed to five school cases from Kansas, South Carolina, Virginia, Delaware, and the District of Columbia. Local counsel joined with LDF attorneys in these challenges to end separatist policies in elementary and secondary schools in the Upper South, Midwest, and Mid-Atlantic regions. Four challenged state denials of equal protection as granted in the Fourteenth Amendment to the U.S. Constitution and the fifth suit, from Washington, D.C., charged that segregation violated federal responsibilities of due process/equal protection as stipulated in the Fifth Amendment. Thurgood Marshall coordinated this unified challenge to overturn *Plessy* v. *Ferguson* with the help of the LDF's

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[2]"NAACP Legal Program [1949]," "Thurgood Marshall-General-1948-1950" file, Box 99, Papers of the NAACP, Group II, Series B, Manuscripts Division, Library of Congress, Washington, D.C., 1.

[3]*Ibid.*, 2.

Robert Carter, Spottswood Robinson, Oliver Hill, Louis Redding, Jack Greenberg, William Hastie, Constance Baker Motley, and others. Local NAACP chapters and attorneys in Topeka, Summerton, Farmville, Wilmington, and Washington, D.C. also contributed critical technical support and, in some instances, initiated the litigation. The long-sought end to *de jure* segregation lay in the team's successful litigation of these five cases.[4]

A. "The other Mrs. Brown" and the Merriam school case

Individual citizens and members of local chapters of the NAACP in Kansas City and Topeka, Kansas played crucial roles in the events which culminated in the *Brown* v. *Board of Education* lawsuit. The state's attendance policy had left wide latitude for local practices regarding the mixing of races in public schools. Legal action had previously challenged selected public school programs, with some success. In 1948, a case involving schools in Merriam, Kansas moved to the forefront. It was initiated by Mrs. Esther Brown, a white, middle-class suburbanite who lived in this small residential area located on the southwestern edge of Kansas City. She noticed the conditions of the district's African American school when transporting her maid, Mrs. Helen Swan, to Swan's home in the nearby South Park community. The sight of a public school in such a state of disrepair prompted Esther Brown to attend school board meetings and rally for an end to separate, inferior treatment.[5]

Figure 23. Mrs. Esther Brown.

Frank J. Adler described Walker Elementary School, the facility reserved for black youth, as a "two room shack with outside toilet facilities," standing in marked contrast to the new Park

[4]For a good survey of this litigation, please see Alfred H. Kelly, "The School Desegregation Case," in Garraty, *Quarrels That Have Shaped the Constitution*, 307-333.

[5]Kluger, *Simple Justice*, 388-390. Milton S. Katz and Susan B. Tucker, "A Pioneer in Civil Rights: Esther Brown and the South Park Desegregation Case of 1948," *Kansas History* 18, no. 4 (Winter 1995-1996): 234-247 provides a good discussion of Mrs. Brown's life, devotion to civil rights causes, and details of the *Webb* case, itself.

Figure 24. Elisha Scott.

Elementary School, which the district erected for white students.[6] Although African American taxpayers contributed to the maintenance of all public schools, their children received the least consideration when District 90 administrators allocated funds. To add insult to injury, the 1879 Kansas state law regarding segregation in public education remained in effect and specifically disallowed racial separation in "second class cities," a category which included South Park. This fact and the tragic conditions at Walker lay at the heart of the crusade. African Americans in South Park organized a local branch chapter of the NAACP and gathered attorneys and plaintiffs to participate in a lawsuit which requested the admittance of black students to the white high school.[7] Parents withdrew their children from the segregated school until administrators addressed their concerns about its conditions and enrollment. Esther Brown and others held "home schools" to educate the students during the pending action. She also contacted and hired Topeka's most well-regarded African American attorney, Elisha Scott, to help with the case. Scott had established quite a reputation as a civil rights lawyer in eastern Kansas. Reverend Sheldon, of public kindergarten fame, served as mentor to the young man during Elisha's youth and hoped that he would join the ministry. Elisha Scott instead graduated from Washburn University in 1916 with a law degree and quickly established a reputation as a tough, eloquent advocate for black Kansans.[8] Mrs. Brown had so many concerns about his conduct and expertise that she asked the national NAACP office to send someone to assist in the litigation. Franklin Williams, LDF special assistant counsel in New York, interceded between Esther and Elisha, submitted focused legal briefs, and helped guide the case to the Kansas Supreme Court.[9]

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[6]Frank J. Adler, "'The White Mrs. Brown': A Story of Negroes and Jews" in *Roots in a Moving Stream: The Centennial History of Congregation B'nai Jehudah of Kansas City, 1870-1970* (Kansas City: The Temple, Congregation B'nai Jehudah, 1972), 255.

[7]Plaintiffs in *Harvey Webb, et. al.* v. *School District No. 90 of Johnson County, Kansas*, 167 K. 395, 206 P. 2d 1054 (1949), included Harvey Lewis Webb, Alfonso Eugene Webb, Jr., Shirley Ann Turner, Robert Edward Turner, Delores Gay, and Patricia Blake.

[8]Berdyne Scott, interview with author, 3 August 1995. Kluger, *Simple Justice*, 384-388, provides great biographical information about Scott's life and work. Scott also became a minister, as Sheldon had hoped, and used his oratorical skills in the courtroom as well as the pulpit.

[9]Katz and Tucker, "A Pioneer in Civil Rights,"236-242; Frank J. Adler, "'The White Mrs. Brown,'" 255; and Brian Burnes, "Protest Was a Step on Road to Equality," *The Kansas City Star*, 6 November 1994, C-1, C-4. Despite good intentions, Esther Brown, Elisha Scott, and Franklin Williams may have driven each other to distraction during the course of this litigation, if their correspondence is any indication. Please see "Schools-Kansas-*Webb* v. *School Board of Merriam* (1949 July-1950)" file, Box 143, Papers of the NAACP, Group II, Series B, Manuscripts Division, Library of Congress, Washington, D.C.

In a quite significant victory, the court found for the plaintiffs on June 11, 1949 in *Harvey Webb, et. al.* v. *School District No. 90 of Johnson County, Kansas.* Justices determined that the district's actions were "arbitrary and unreasonable," and ordered the desegregation of South Park Elementary School the following academic year. But, the process was not so easy and certainly not expeditious. District administrators used a variety of tactics to channel African American children back to Walker Elementary, with no success. Desegregation ultimately came to this small community located approximately seventy miles east of Topeka, Kansas. The impact of this case from Merriam traveled across those miles, bringing specific contributions to future legal action in the capital city. In a letter dated August 1, 1949 to Franklin Williams, Esther Brown recognized the broader value of *Webb* v. *School District No. 90 of Johnson County, Kansas*, saying,

> This case had definitely done [sic] a lot for the State and I repeat for the 50th time, we can raise any amount of money we need for civil rights fights in this state as a result of this case, and from individuals who have never given to these causes before. But, if we drag this thing out and don't follow thru [sic] we are losing all of this.[10]

Others also recognized the momentum initiated by *Webb* within Kansas and seized it.[11]

Esther Brown succumbed to cancer in 1970 at age fifty-two, well after the U.S. Supreme Court addressed segregation on a national scale in *Brown* v. *Board of Education.* She contributed to the ascension of the Topeka case to the high court during her lifetime, however, through correspondence with the national NAACP office, work on the grassroots level with African American communities through local NAACP chapters in Kansas City and Topeka, by aligning Elisha Scott with attorneys from the LDF, raising funds, and establishing a network of supportive white professionals who would aid in the Topeka case. *Webb*, itself, brought Kansas to the attention of Thurgood Marshall and his colleagues at a time when the Association was honing in on potential cases which would disarm any remaining justification for the "separate but equal" doctrine. Significantly, there would have been no *Webb* case without Esther Brown, and her family suffered accordingly. They endured quite an assortment of grievances during the prosecution of the Merriam and later, the Topeka, suit. The Browns received harassing phone calls, racist epithets in public forums, accusations of Communist sympathies, as well as warnings of physical violence, a cross burning, and threat of the same for their home. Esther suffered a miscarriage during this period and Paul Brown lost his job, which forced the family to sell their house and move into an apartment. Through it all, neither wavered in their support for equal rights for African Americans. Soon after the

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[10]Esther Brown to Franklin H. Williams, personal correspondence, August 1, 1949, "Schools-Kansas-*Webb* v. *School Board of Merriam* (1949 July-1950)" file, Box 143, Papers of the NAACP, Group II, Series B, 2.

[11]Burnes, "Protest was a step on road to equality," C-2. The case is cited in *Digest of Kansas Reports*, the reference for Kansas Supreme Court records as *Webb* v. *School District No. 90 of Johnson County, Kansas* (1949), 167 K. 395, 206 P. 2d 1054.

Figure 25. Unidentified members attending a local NAACP meeting in the late 1940s.

Merriam litigation, Esther Brown lent her talents and determination to desegregation efforts that were coalescing just down the road in the Kansas capital.[12]

B. Activity by the Topeka NAACP

By 1950, movement had already begun within Topeka's African American community to fully desegregate the USD-501 school system. Just as the NAACP had prepared well-documented precedents of court action, so had citizens in Topeka. Between 1900 and 1951, at least five civil suits pertaining to segregation in public education had proceeded to either the

[12]Katz and Tucker, "A *Pioneer in Civil Rights*," 243; Kluger, *Simple Justice*, 390; and Esther Brown to Franklin H. Williams, personal correspondence, August 1, 1949, "Schools-Kansas-*Webb* v. *School Board of Merriam* (1949-July 1950), Box 143, Papers of the NAACP, Group II, Series B, 2. Interestingly, such accusations of Communist sympathies became a typical epithet for those associated with the school desegregation campaign and the subsequent civil rights movement.

Kansas Supreme Court or U.S. District Court, with definite accomplishment.[13] Individual citizens also made private requests to go beyond the color line, with less success. During the latter part of this period, most gains came through group effort organized by *ad hoc* committees or by the Topeka NAACP chapter. Sustained, long-term organization apparently presented some problem for Topeka's black community, however. The local NAACP chapter had deteriorated from a record high membership of 114 in 1935 to disbanding four years later due to declining activity and a lack of support. Elisha Scott, *ex post facto* "sitting" branch president, contacted the national Director of Branches in February 1940 to express an interest in re-establishing the local chapter. The national office required twenty-five members for an active branch and fifty for full charter certification. Seventy-two members were recruited for a renewed chapter by the end of 1941 and Raymond Jordan (R.J.) Reynolds became its new president. This renewed activism in Topeka may reflect a national trend of increased organization by the NAACP, possibly inspired by advances made in *Murray* and *Gaines* which brought optimism about the full desegregation of post-graduate education throughout the nation, or it may have developed from events occurring closer to home.[14]

Victory in *Graham* v. *Board of Education* elicited what many perceived as positive change, but it was but a beginning of the local NAACP chapter's efforts to bring full integration to the city of Topeka. Several membership drives during the next few years boosted the chapter to an all-time high of 645 in February 1946. Two years later, the branch had a new president, McKinley Burnett, with John Sawyer serving as secretary and an executive committee that included John Scott, Elisha's younger son. At the same time that LDF counsel led the mobilization of judicial forces in Oklahoma and Texas, NAACP members in Topeka struggled to build local support by presenting lectures, organizing a credit union, reviewing housing conditions for veterans, and attempting to establish programs for the city's African American youth.[15] Burnett refused to give up on the school desegregation issue, however, and presented a formal request to the USD-501 Board of Education during the April 23, 1948

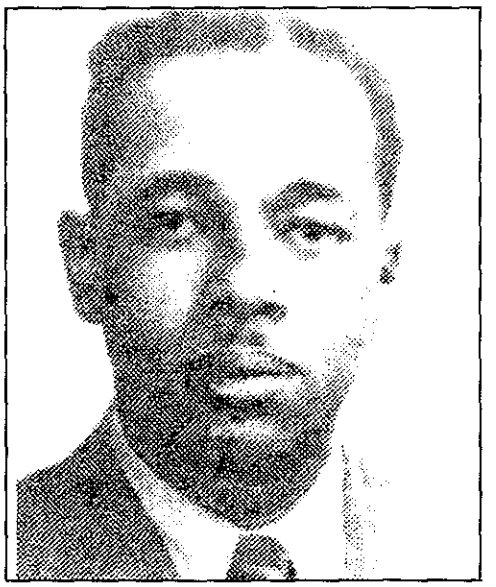

Figure 26. John Scott.

[13]Please refer to Appendix F for specifics on relevant Kansas/Topeka litigation.

[14]"Kansas NAACP: Topeka Chapter, 1940-1955," Microfilm Division, Kansas State Historical Society, Topeka, Kansas. Please see correspondence for February 1940, 2 September 1941, 31 December 1941, and 10 June 1942, n.p. As an interesting sidelight, documents show Reynolds' address as being 1015 Jewell, just down from Alvin and Lucinda Todd's home at 1007 Jewell. Mrs. Todd later served as secretary of the local branch.

[15]"Kansas NAACP: Topeka Chapter, 1940-1955," refer to correspondence for 16 February 1946, 12 January 1947, n.p. Kluger, *Simple Justice*, 392-393, provides some background information about Burnett.

meeting. The poor photocopy quality of the meeting minutes prohibits its reproduction as an illustration, but the text of the brief entry states that,

> The Clerk presented a letter from Mr. McKinley Burnett, represe[nt]ing the National Association for the Advancement of Colored People, in which they asked for a meeting. Mr. Hobbs [Board President] explained that this meeting had been called for the purpose of hearing from their committee.
>
> Mr. McKinley Burnett spoke first and asked for a change from the dual segregation system of education in Topeka to an integrated system. He explained that by integrated he meant full and complete integration of both pupils and teachers, and that "nothing less would suffice or get the job done."
>
> Mr. Amos M. Booker, Reverend E.S. Faust, Charles Bledsoe, John Scott, and Mrs. Douglas also spoke on the subject of complete integration.[16]

The minutes then include a letter from the Topeka Council of Colored Parents and Teachers, which represented members of the Parent Teacher Associations of the four black elementary schools. The NAACP qualified Burnett's position, by withholding full support for total integration, saying,

> We would not be in favor of abolishing Colored schools if such a move means abolishing our own teachers' jobs. We fail to see how children can be inspired to get an education if we continually do away with the jobs they can fill after securing their education. We would not be in favor of changing our present set-up without more evidence that our children would do as well and be as happy as they are now.[17]

With some frustration, Burnett contacted Walter White, NAACP Executive Secretary, a month later for advice regarding faculty opposition to integrated schools and their intimidation by USD-501 supervisor, Harrison L. Caldwell. Even though Caldwell was African American, his professional position as a school administrator and personal friendship with Superintendent Kenneth McFarland contributed to his reputation as an uncompromising advocate of segregation. Both of these men strove to maintain racial separation in the schools, supplementing the internal threat posed by African American teachers with a clearly-identified, external one. The Caldwell-McFarland team offered a rallying point which motivated some teachers to join the Topeka NAACP chapter's efforts to desegregate the four black elementary schools. Richard Kluger relates that the release of eight teachers in 1941, after USD-501 integrated its junior high schools, instilled fear in those who opposed the desegregation of elementary schools ten years later. Harrison Caldwell capitalized on this and specifically threatened that integration would end teaching opportunities in Topeka for African

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[16]"Record of Minutes, March 1942 through July 1953," *Office of the Board of Education, City of Topeka*, 228 (23 April 1948).

[17]*Ibid.*, 229.

DANIEL SAWYER, Sec.

WESLEY TAYLOR, Treas.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

TOPEKA, KANSAS

McKINLEY L. BURNETT, PRESIDENT

FRANCES MACK, VICE PRESIDENT

NATIONAL OFFICERS

PRESIDENT
ARTHUR B. SPINGARN

CHAIRMAN OF THE BOARD
DR. LOUIS T. WRIGHT

ACTING CHM. OF THE BOARD
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HON. ARTHUR CAPPER
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BISHOP JOHN A. GREGG
REV. JOHN HAYNES HOLMES
DR. WILLIAM LLOYD IMES
HON. IRA W. JAYNE
ISADORE MARTIN
T. G. NUTTER
REV. A. CLAYTON POWELL
A. PHILLIP RANDOLPH
OSWALD GARRISON VILLARD

TREASURER
MARY WHITE OVINGTON

TOPEKA EXECUTIVE COMMITTEE

McKINLEY L. BURNETT
FRANCES MACK
DANIEL SAWYER
WESLEY TAYLOR
LOGAN MOSS
DR. C. H. PRICE
REV. MATTHEW FRAZIER
REV. BERNARD E. HUNG
REV. E. B. FAUST
MATTIE McINTOSH
ARETA JONES
JOHN SCOTT
JOHN DUNN

May 24, 1948

17766 MAY2548

Mr. Walter White
Executive Secretary
NAACP
New York City, N. Y.

Dear Mr. White:

Our branch here is facing a very peculiar situation, we are attempting to get the public schools integrated, the four elementary schools are all colored, the Jr. and Sr. high schools are mixed with all white teachers. Our aim is to mix both students and faculty.

There seems to be a heavy majority of Colored people on our side, but the Negro teachers and a few of their friends are opposing us. One Harrison L. Caldwell who holds the job of supervisor of Negro education is employing every means at his command—both right and wrong to defeat our plans. He is putting pressure on ministers who have been active in the matter by advising the teachers against supporting said ministers, as well as to contact employers ~~of~~ about their employes who have been interested in the case. On one occasion he forbade four teacher to go to a bridge party at the house of one of our members of the Executive Committee, who has declared that he would prevent the NAACP membership drive from being a success.

The above is a partial picture of our condition. We have been advised, and are confident that our cause is a failure unless we are able to move this supervisor first, who has a stand in with the Supt. and to some extent with the Board of Education.

A large majority of the Executive Committee feel that it would not be advisable to attack this individual, a member of our own race, that is, a direct attack by the NAACP. What would be your advise in this matter?

Very sincerely yours,
McKinley L. Burnett
McKinley L. Burnett
1522 Quincy St.

Figure 27. The Topeka NAACP requested advice in 1948, regarding opposition to its integration plan.

Americans. From his public forum within the USD-501 system, Caldwell officially voiced what many already feared.[18]

McKinley Burnett forced the issue of full desegregation despite opposition from both the USD-501 administration and African American teachers. Walter White referred his letter to Gloster B. Current, director of branches, who provided specific advice for proceeding with a desegregation plan. Current advocated public appeal rather than personal attack to defuse Caldwell's power; specifically suggesting that the Topeka NAACP survey and compare segregated school facilities, publicize the findings in print and radio media, draft a petition of supporters, and submit it to the school board. He also sent literature from the NAACP Education Committee and copies of surveys recently completed in other states, and suggested that a branch member attend the NAACP annual conference in Kansas City so that representatives "could talk with that person at length about the Topeka situation and perhaps give additional advice."[19] This exchange signifies important and early communication between the local NAACP branch in Topeka and the national, New York office about framing strategy to desegregate the city's four black elementary schools. While the correspondence lacks specific mention of litigation, the NAACP was then in the midst of two Supreme Court cases which would open the way for a direct challenge to the constitutionality of "separate but equal" practices in secondary and elementary grades. The time was not yet right for either LDF counsel or Topeka's African American community, but in two years the parties would come together to draft one of the five suits that eventually toppled *Plessy*.[20]

C. The Kansas case

In the meantime, Burnett's recourse still lay with the school board. He took the national office's advice and rallied supporters for "The Citizens' Committee," composed of NAACP members in a less threatening form. Burnett made a final, frustrated appeal before the USD-501 board in 1950. He presented a petition to school administrators, reminding them that two years had elapsed since his first request for full desegregation of Topeka public

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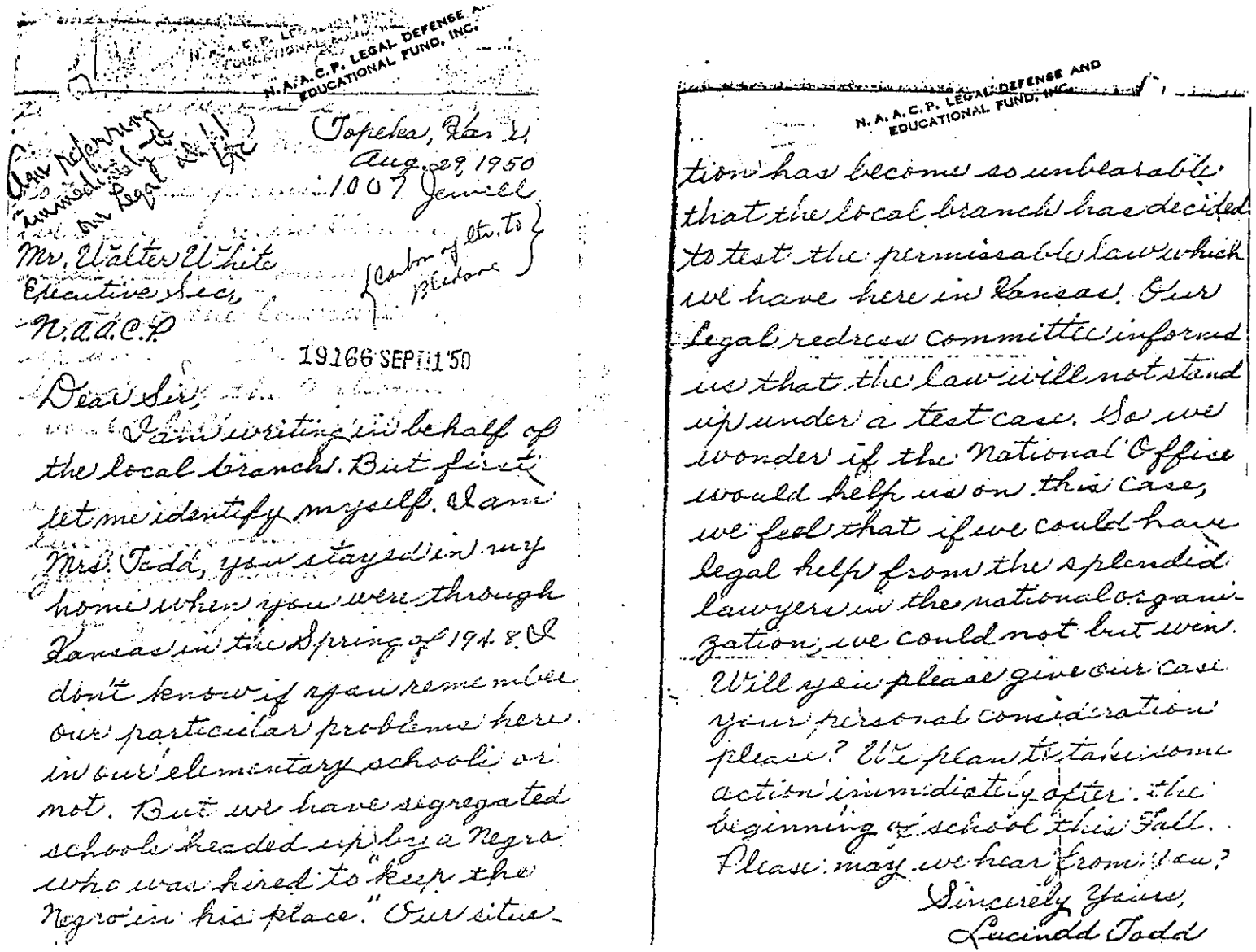
[18]Kluger, *Simple Justice*, 380-381.

[19]"Kansas NAACP: Topeka Chapter, 1940-1955," Gloster B. Current to M.L. Burnett, 3 June 1948, 2. This correspondence between the two offices pre-dated the 1950 request drafted by then branch secretary, Lucinda Todd, which reputedly requested legal assistance with the actual court case. By that date, however, McKinley Burnett had established a relationship with the national office and had called the situation in Topeka to the attention of its staff. Walter White, himself, visited Topeka in 1949 to speak to the local chapter (see *Ibid.*, Lucille Black to M.L. Burnett, 23 March 1949).

[20]Jack Greenberg, LDF co-counsel and *Brown* litigator, offers another interpretation by stating that Topeka branch member, Isabel Lurie, visited the New York office in September 1948 to request assistance in filing a suit attacking segregation. This is the only mention of Mrs. Lurie, however, and her request has not been substantiated by any other source. Research restrictions on the NAACP LDF Papers prevent any investigation of the incident in that collection. Please see Greenberg, *Crusaders of the Courts*, 126.



N. A. A. C. P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

Topeka, Kan
Aug. 29, 1950
1007 Jewell

Mr. Walter White
Executive Sec.
N.A.A.C.P.

19166 SEP 1 1'50

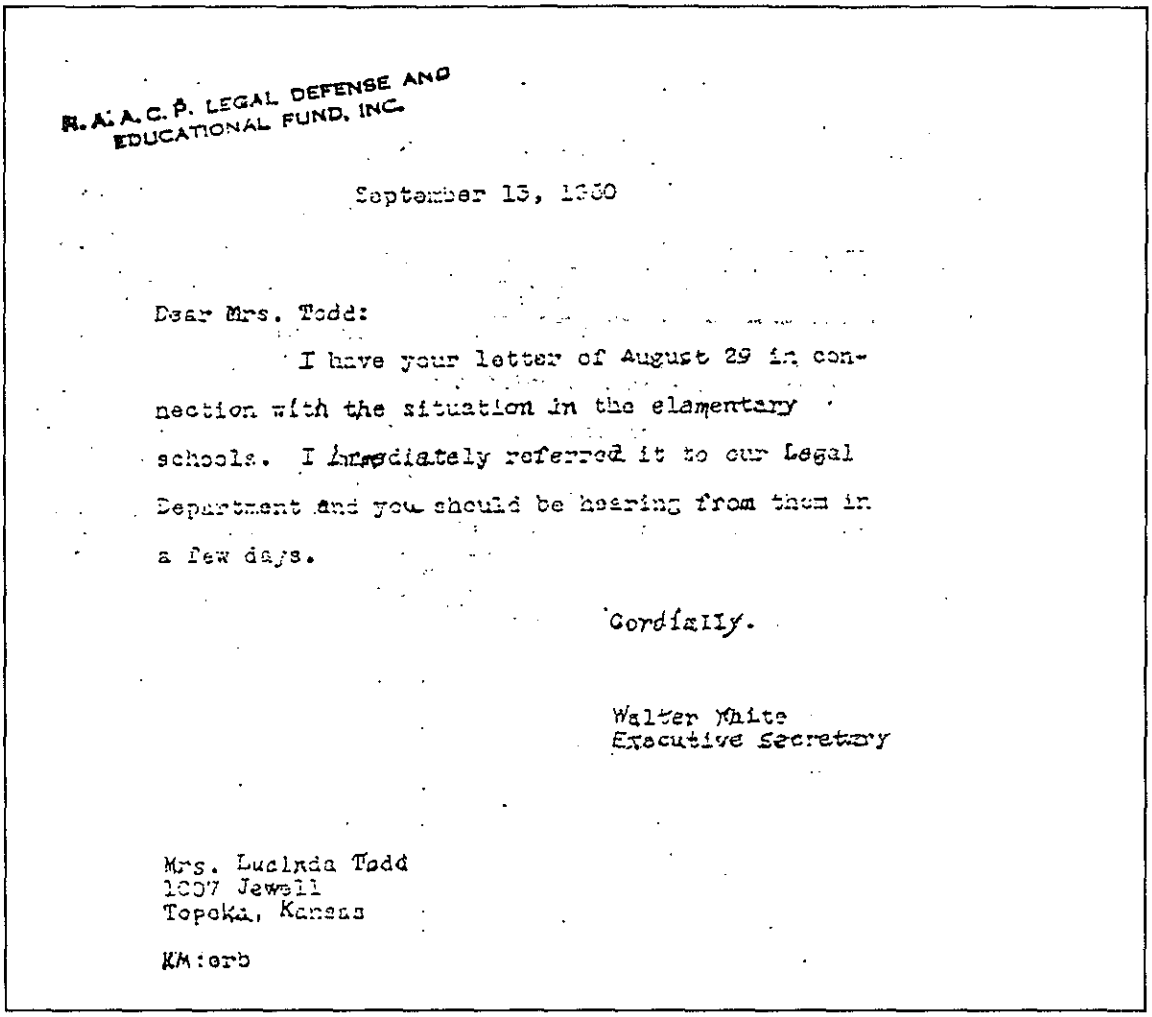
Dear Sir,

I am writing in behalf of the local branch. But first let me identify myself. I am Mrs. Todd, you stayed in my home when you were through Kansas in the Spring of 1948. I don't know if you remember our particular problems here in our elementary schools or not. But we have segregated schools headed up by a Negro who was hired to "keep the Negro in his place." Our situation has become so unbearable that the local branch has decided to test the permissable law which we have here in Kansas. Our Legal redress committee informed us that the law will not stand up under a test case. So we wonder if the National Office would help us on this case, we feel that if we could have legal help from the splendid lawyers in the national organization, we could not but win.

Will you please give our case your personal consideration please? We plan to take some action immediately after the beginning of school this Fall. Please may we hear from you?

Sincerely Yours,
Lucinda Todd

Figure 29. Lucinda Todd requested legal assistance in 1950, with a test case to desegregate Topeka's elementary schools.



N. A. A. C. P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

September 13, 1950

Dear Mrs. Todd:

I have your letter of August 29 in connection with the situation in the elementary schools. I immediately referred it to our Legal Department and you should be hearing from them in a few days.

Cordially.

Walter White
Executive Secretary

Mrs. Lucinda Todd
1007 Jewell
Topeka, Kansas

KM:erb

Figure 29. Walter White promptly acknowledged Mrs. Todd's request.

schools. Impatient with the board's inaction, Burnett and other African Americans formed a legal redress committee, led by Charles Bledsoe, and contacted the national NAACP office for assistance. This request came as no surprise because NAACP staff were fully apprised of the events and personalities of Kansas; including Mrs. Esther Brown and Elisha Scott's work in the *Webb* case, the re-organization of the Topeka chapter, as well as R.J.Reynolds and McKinley Burnett's work to end segregation. The important point is that a relationship had already developed between Walter White, Gloster Current, Frederic Morrow and hard-working Kansans by the time the Topeka chapter actually made its litigation request. Indeed, White, personally, had visited the city only the year before.

The dramatic conclusion of this Topeka suit has made its genesis one of the most significant events in the city, state, and arguably, in the nation. Because of its later importance, memories which try to recapture specific details of that fateful moment have muddied the historical record. Richard Kluger perhaps summarizes the now-famous event best, by saying, "On August 25, 1950, Lucinda Todd as secretary of the NAACP branch wrote to

Walter White in New York, saying that the school situation in Topeka had grown 'unbearable' and the branch was prepared to go to court to test the Kansas law that permitted it."[21] At this same time, McKinley Burnett wrote separately to Walter White, noting brusque treatment by the USD-501 board and its suggestion that the group simply should request the Kansas legislature to repeal the state segregation law. Most consider this round of correspondence by Mrs. Todd and McKinley Burnett between the local chapter and national NAACP office initiated the legal challenge which would become *Brown* v. *Board of Education*. Charles Bledsoe followed by contacting LDF attorney Robert Carter for technical assistance with initial preparation of the case. Carter recalled the incident during a 1992 oral history interview, saying that the first contact from Topeka occurred when Bledsoe notified him after the national 1950 NAACP convention in Kansas City. Carter affixes the Topeka connection within a national context by reiterating the goals pursuant to the NAACP's long-term legal strategy, explaining that,

> Resolutions passed announcing that the organization would only take cases in which the elimination of segregation was subject. We couldn't take any cases for equalization of schools. It was announcement of general policy. The branches at that point began, I noticed, were [sic] looking for cases in which we were attacking segregation not equalization and so forth.[22]

The Topeka case suited these national requirements and presented a rather unique example of a relatively "separate but equal" school system. The level of parity between the city's white and black schools focused the matter on the singular practice and rationale of racial separation, rather than on imbalances between the infrastructure and curricula of the dual facilities.

Figure 30. Charles Bledsoe.

The critical issue here lay in the constitutionality of the school board's denial of African American attendance of neighborhood elementary schools that were traditionally reserved only for white students. Because the Topeka schools were very similar, legal strategy could spotlight the constitutionality of separate facilities for black and white children, as well as the psycho-social effects of segregation. This strategy sharpened over the course of 1950-1951 through interaction between co-counsel in New York,

[21]Kluger, *Simple Justice*, 394. It is important to qualify, however, that Mrs. Todd did not open communication with the national NAACP office because a working relationship already existed by 1950.

[22]Robert Carter, interview with Jean Vandelinder, *Brown* v. *Board of Education* Oral History Project, Brown Foundation in cooperation with the Kansas State Historical Society, Topeka, Kansas, 5 October 1992; and Kluger, *Simple Justice*, 394.

Washington, D.C., and Topeka. Robert Carter and Walter White stayed in touch with the local chapter, providing technical assistance and moral support as the branch developed a plan of action. The legal redress committee of the Topeka NAACP began to gather potential players for a suit to desegregate the city's elementary schools. Charles Bledsoe initially led the campaign to solicit attorneys and plaintiffs. He had served the city as a fireman since 1916, but retired in 1947, at the age of fifty-six, to practice law full time. Bledsoe certainly knew of Elisha Scott's reputation as a civil rights attorney and knew his sons, John and Charles, who also were fellow Washburn *alums*. The brothers had served in the military during World War II and returned to Topeka to finish their education. With law degrees in hand, they joined the firm of Scott, Scott, and Scott in 1948, representing clients of both races. John was involved heavily with the local NAACP chapter and served as chair of its legal redress committee. It was natural, then, that Charles Bledsoe approached the Scott brothers in 1950 for assistance with the preparation of the initial legal petition which soon unfolded as *Brown v. Board of Education, of Topeka, Shawnee County, Kansas*.[23]

Figure 31. Charles Scott.

Jack Greenberg, co-counsel from the New York office, recalls that in communiques from October to December 1950, Carter urged Bledsoe to "sign up a large number of plaintiffs" and debated the advantages of presenting arguments before a one- or three-member court. NAACP strategists sought people who would be willing to test enrollment restrictions at Topeka's white elementary schools. They gathered a group of parents who tried to enroll their children in the white school located nearest to their homes at the beginning of the 1950-1951 academic year. Each expected to be refused and, one by one, white principals did not disappoint them. McKinley Burnett, president of the local branch, joined Bledsoe and the Scotts in the recruitment of potential plaintiffs. They first looked within the membership, itself, and then to others among the network of institutions in the African American community. It appears that, despite its reorganization and membership surge in the mid-1940s, relatively few members actively participated either in regular meetings or in this legal action. Lucinda Todd, branch secretary, readily agreed to serve as a plaintiff, in favor of her daughter, Nancy. Members Vivian Scales and Zelma Henderson represented their children, Ruth Ann Scales, and

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[23]"After 31 Years, Retires as Fireman to Be a Lawyer," *Topeka Capital Journal*, 27 July 1947, clipping under "Charles E. Bledsoe," in "Lawyers--Clipping--Alph.," Vol. 1., Kansas Collection, Center for Historical Research, Kansas State Historical Society, Topeka, Kansas, n.p.; Kluger, *Simple Justice*, 390-391; and Charles Scott Collection, Kansas Collection, University of Kansas Libraries, Lawrence, Kansas. Correspondence between Charles and Elisha during the war reveal that racism and prejudicial treatment persisted in the military. Charles' tone in some letters is reminiscent of frustrations expressed by Charles Hamilton Houston after his World War I experiences. The parallel career paths of these men are somewhat striking.

Figure 32. Participants (L-R): Zelma Henderson (Vickie & Donald); Oliver Brown (Linda); Sadie Emmanuel (James); Lucinda Todd (Nancy); Lena Carper (Katherine).

Donald and Vickie Henderson. The legal committee, however, recruited most of the thirteen plaintiffs through social networks; by way of contacts in churches, residential neighborhoods, social clubs, local businesses, and workplaces. Ten others joined the suit as plaintiffs for their children; including Mrs. Richard Lawton, Sadie Emmanuel, Iona Richardson, Lena Mae Carper, Shirley Hodison, Alma Lewis, Darlene Brown, Oliver Brown, Shirla Fleming, and Marguerite Emmerson. In all, they represented twenty children who, all things being equal, would have attended one of seven "neighborhood" elementary schools, rather than a segregated black primary school.[24]

Much has been written about the role of Oliver Brown in the landmark suit that bears his name. He was neither the first nor the most resolute plaintiff in the Kansas case. Oliver Brown, apparently, was a man of hard work and deep devotion, who labored as a welder in the Santa Fe shops but also served as an associate AME minister. Brown was not a member of the NAACP when the committee began calling upon plaintiffs. Initial contact may have

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[24]Greenberg, *Crusaders in the Courts*, 126; Kluger, *Simple Justice*, 392-395; Vivian Scales, interview with Jean Vandelinder, Brown v. Board of Education Oral History Project, 6-9, n.d.; and Zelma Henderson, interview with Ralph Crowder, Brown v. Board of Education Oral History Project, 21-17, n.d. Please refer to Appendix I for profiles of the "infant" plaintiffs in the Kansas case. These thirteen parents composed the final group of plaintiffs.

been made at St. John's African Methodist Episcopal (AME) church, where Brown served as assistant pastor, because Alvin Todd, McKinley Burnett, Zelma Henderson, and others also attended St. John's. Contemporaries recall that Oliver Brown's occupation as welder in the Sante Fe "shops" and role as associate minister made him an ideal candidate for such a suit, and may have contributed to his position at the head of the docket. As a welder and union member, Brown was protected from economic reprisal for his participation in a test case. As associate minister, he served in a position of high regard in both black and white communities. Some sources claim that Brown joined the case because of his friendship with Charles Scott. The attorney, however, spoke of the Brown's involvement with some detachment in a 1970 interview with James Duram, saying,

> The NAACP would go and solicit families or parents of children and explain the thrust of the NAACP and would they consent to being used as plaintiffs, as guinea pigs, as we refer to them quite frequently. Now the Brown family was just one of several families and it so happened that these names happened to be first, a number of names, you see, because it could have been Laughton [sic] and her two children that she had, Vicky Laughton [sic], for instance, you see.[25]

Figure 33. Reverend Oliver Brown.

Logistical considerations, however, contributed to Oliver Brown's decision to participate, but happenstance best explains his placement at the top of the docket. Those who contend that the list follows alphabetical order are mistaken. Family members have posited that Mr. Brown was listed first because of his gender. Those involved in the preparation of the brief, however, claim that Brown was just one of a group of thirteen plaintiffs until Charles Scott's secretary listed his name at the top of the suit. Scott also emphasizes the logistics of Brown's residence at the time Brown joined the case, which at that time was located strategically near Sumner Elementary School, as another point in his favor.

> Rev. Brown was a minister of the AME church, [and later of] St. Mark AME Church in Topeka, and he had the young lady, Linda, who lived in a very strategic neighborhood just approximately two or three blocks from an all-white school. We felt that she would serve our purpose perfectly, along with others that had lived in a similar situation. And so we--when I say we I'm referring to the committee that we had at that time--we solicited and gained the consent from these parents to use their names as well as the children in the test law suit. They all consented very graciously and there was not any great reluctance on the part of those that we had included. There was some reluctance and some refusals of some kids--I should say that parents

[25]Charles Scott, interview with James Duram, Oral History Transcript, Dwight D. Eisenhower Library, 25 June 1970, 6.

of these children--and the reason for it was because they felt that they would suffer some reprisals of employment and this type of thing.[26]

Whether due to carefully crafted reason, random accident, or divine intervention, Brown's name became synonymous with arguably the most significant civil rights litigation in the United States. Although he and his daughter are often emphasized, hundreds of participants contributed to the NAACP campaign for school desegregation. Many of the other individuals largely have been lost to the anonymity of an *et. al.* distinction simply because of legal shorthand.[27]

Figure 34. Linda and Terry walk through the railroad switchyard on the way to the bus stop.

The circumstances of all the plaintiff children, in fact, contributed vital evidence in this action. Legalese referred to the children of the thirteen adult plaintiffs as "infants" because as minor dependents, they could not file suit on their own volition against the Topeka Board of Education. Of the twenty children represented, it is speculated that Linda, like her father, became the focal point for specific reasons. The Brown family lived in an integrated

[26]*Ibid.*, 7. Brown accepted the position as pastor of St. Mark's in North Topeka during the course of the appeal process and moved his family into its parsonage.

[27]Berdyne Scott, interview with author, 3 August 1995; Kluger, *Simple Justice*, 395, 407-409; Greenberg, *Crusaders in the Courts*, 127; and Wilson, *A Time to Lose*, 21-25. Carl Rowan claims that Oliver Brown took the initiative to contact Charles Scott "who was the local attorney with the NAACP, and they agreed to file suit against the Topeka school board," *Dream Makers, Dream Breakers*, 183. Mrs. Leola Brown Montgomery, Oliver's widow, says that he, rather than she, served as the family's representative in the case because at that time she was pregnant with her third child; please see Leola Brown Montgomery, interview with Ralph Crowder, Brown v. Board of Education Oral History Project, 40-41. Interestingly, copies of a legal document listing Mrs. Brown as plaintiff for Linda, infant, can be found in both the Charles Scott Collection, Kansas Collection, University of Kansas Libraries, and also in the "Papers of the NAACP," Group II, Series B. When asked about it, Mrs. Montgomery said that she had no knowledge of such a petition; interview with author, 2 August 1995.

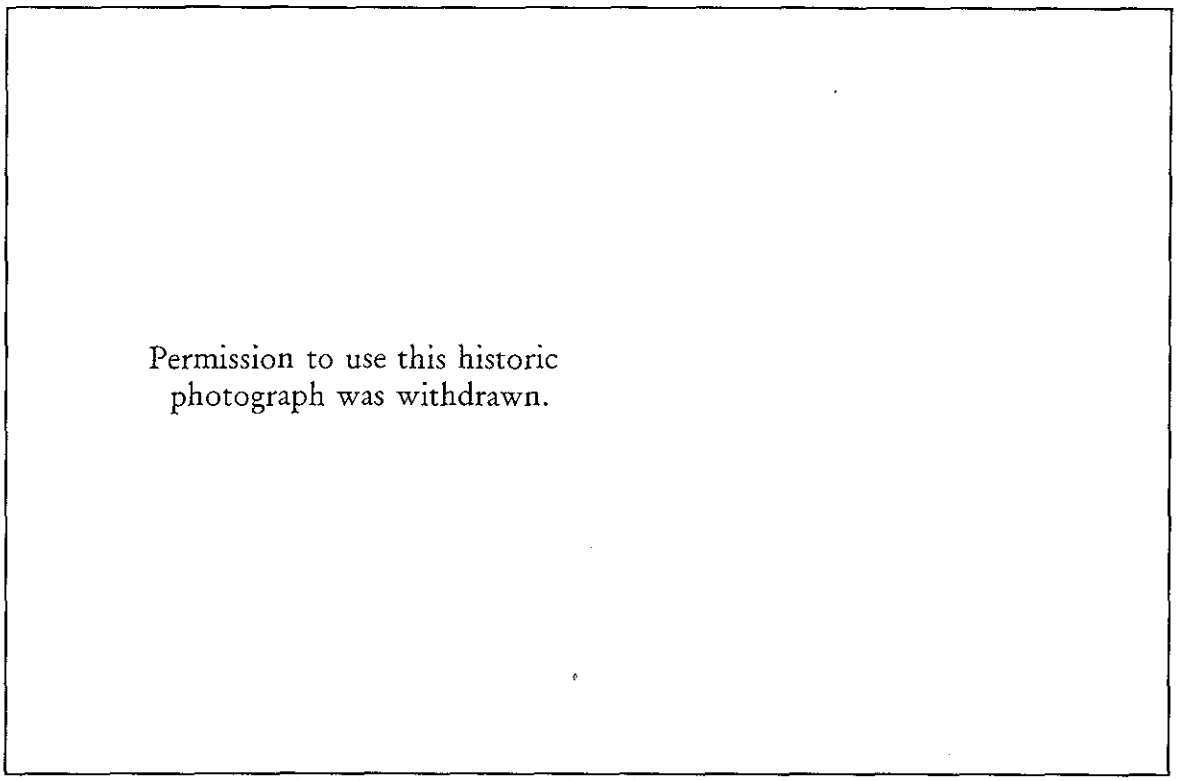

Figure 35. Linda, approximately at age 4, with white playmates Guinevere and Wanda McDaniels near the railroad yard that later would make her famous.

neighborhood on First Avenue, a street crossed by railroad tracks. Each school day, Linda and Terry Brown walked through the railroad switching yard and across a busy street to catch the public school bus. They then rode fifteen blocks to the segregated Monroe Elementary School. Without *de jure* segregation, Linda would have attended Sumner Elementary School, located on Fourth Avenue, approximately five blocks away from her residence. While Linda did not travel the farthest distance to her segregated school, the length of her school day, amounting to nine hours, was the longest among the group. Case notes indicate that Linda left home at 7:40 A.M., the earliest departure time among the group, and returned home at 4:45 P.M. She therefore spent more time outside, subject to the elements, than the other children.[28] The route which Linda and her sister Terry traveled, however, particularly the six-block journey through the switching yard, provided strong ammunition for the test case. The long journey to Monroe crystallized key issues in this case, those being experiences endured and

[28]Appendix H provides an analysis of factors considered by attorneys during the preparation of the district case.

opportunities denied, simply because of race.[29]

Figure 36. Miss Katherine Carper.

All the "infant" plaintiffs portrayed the types of hardships endured by African Americans who merely sought the benefits of their society. After Linda, Charles Hodison bore the next longest day among the group, lasting an average of eight hours and forty minutes. By comparison, the Carper family lived on the west edge of Topeka. Their daughter Katherine walked five blocks to catch a bus for the twenty-six block ride to segregated Buchanan Elementary School. Analyses completed in preparation for the hearing show that, although Katherine Carper traveled the longest distance, amounting to thirty-one blocks to Buchanan, her day lasted only eight hours and ten minutes, fifty minutes less than Linda's. Miss Carper offered the sole testimony on behalf of the children involved in the Kansas case. "Asked to describe the condition of the bus when she caught it in the morning," Richard Kluger reported, "she said, 'It is loaded, and there is no place hardly to sit.'"[30] All of the children in the Kansas case traveled longer distances to black schools, often on overcrowded buses, because board policy denied their attendance at closer, neighborhood schools. In fact, Sadie Emmanuel paid for her son, James, to ride the city bus to Washington Elementary because it normally was less crowded and better supervised than the school bus. The Flemings also sent their children to school via the city transit system because the distance to the school bus stop was almost as far away as the black school, itself. Iona Richardson and her husband perhaps took the most direct action against the segregated system. They withdrew their son, Roland, from Buchanan and enrolled him in Holy Name Catholic School, a parochial school which lay beyond the confines of public policy. Over and over, plaintiffs explained the hardships endured by their children at their segregated schools; comprised by long journeys to school, long waits at bus stops and school doors, gaps in safety and supervision, and excessively long school days. The race factor was most obvious because these children lived in mixed neighborhoods. They tolerated long commutes, while their white friends did not. The story was the same with most of the participants, as young Katherine Carper stated on behalf of her young colleagues.[31]

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[29]*Ibid.*, 407-410; Montgomery interview, 36-37; and Wilson, *A Time to Lose*, 89-91. Attorney notes, with charts comparing distances, may be found in the Scott Collection, Kansas Collection, University of Kansas Libraries, and in *Brown* v. *Board* files, "Papers of the NAACP," Group II, Series B. Notes in the "Papers of the NAACP, Group II," Manuscripts Division, Library of Congress, Washington, D.C. indicate others who were considered and either declined or were rejected as plaintiffs. Those who did agree to participate in the Kansas case fit similar patterns in terms of logistics to white, segregated, neighborhood schools, etc. Some, in fact, lived closer to these neighborhood schools than did Linda Brown.

[30]Kluger, *Simple Justice*, 407.

[31]Attorney notes, Scott Collection, Kansas Collection, University of Kansas Libraries; *Brown* v. *Board* files, "Papers of the NAACP," Group II, Series B; Wilson, *A Time to Lose*, 89-90; and Kluger, *Simple Justice*, 407, 410-411.

Figure 37. Formerly, the U.S. District Courthouse (Kansas Circuit) where *Brown v. Board of Education* got its judicial start.

The case presented to the U.S. District Court-Kansas Circuit first highlighted issues of inequality and then attacked segregation, *per se*, as unconstitutional. Robert Carter and Jack Greenberg, NAACP LDF counsel in the New York office, brought much-needed technical assistance to the local suit. They applied valuable lessons learned by trial and error during the lengthy desegregation campaign which the Association had conducted in the 1930s and 1940s. Three specific components paid off in the Kansas case; namely, 1) the involvement of attorneys within the community who knew its socio-political climate, 2) the reliance on a pool of plaintiffs rather than on a single individual, and 3) argument of the case before a three-judge federal district court, which would bypass the lengthy state circuit and make the appeal directly eligible for consideration by the U.S. Supreme Court. The local attorneys filed the case in March 1951, with a hearing scheduled for June of that same year. The NAACP sought a comparison of educational facilities in Topeka for use in arguments concerning equality of opportunity. As Richard Kluger says, "In order to secure its fall-back position in the school cases--that is, that segregation was illegal if for no other reason than that it invariably produced unequal educational facilities and curriculum--the NAACP legal corps had to have the Topeka system scrutinized for the inevitable disparities." Esther Brown, advocate for the 1948 South Park litigation, contacted, Hugh Speer, a friend on the faculty of the Education Department

at the University of Kansas City, to undertake such a study.[32]

NAACP counsel felt that separate schools could never be equal, by virtue of their separateness. Furthermore, any child who attended a segregated school became stigmatized by the experience because separation conveyed a sense of inferiority and exclusion from mainstream society. Speer, a specialist in educational evaluation, was tapped in March 1951 to provide evidence of the former. Three months later, he sent a telegram to Jack Greenberg which told the basic story in Topeka,

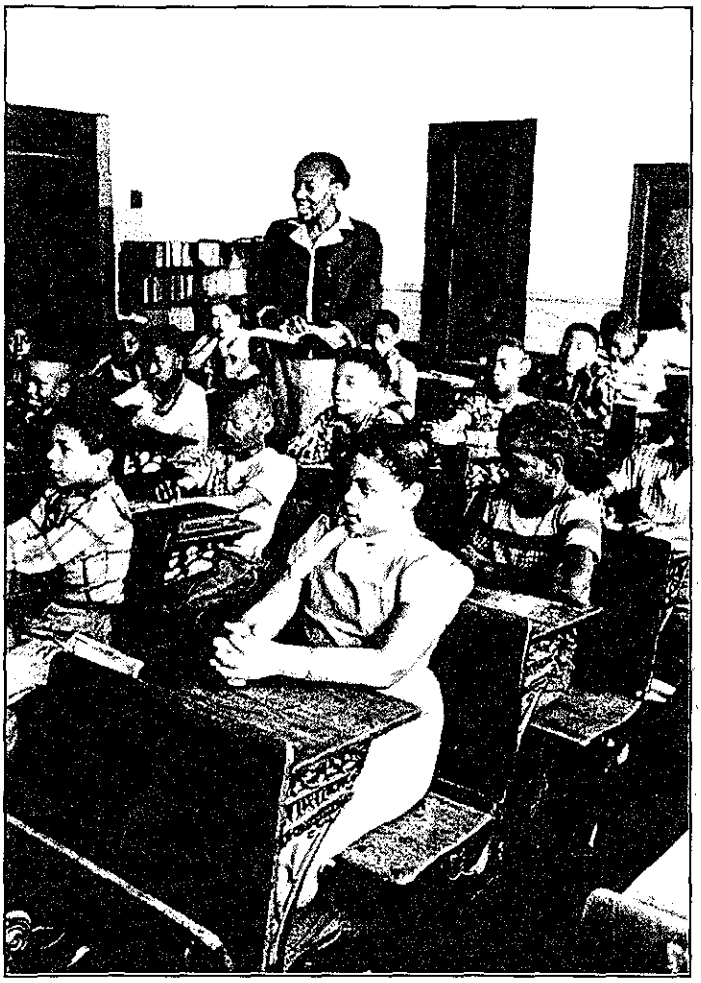

Figure 38. Mamie L. Williams with her 1952-1953 fourth grade class.

PRELIMINARY EVIDENCE REVEALS NO SIGNIFICANT DISCRIMINATION ON TEACHER PREPARATION SALARY OR CROWDED CONDITIONS PROBABLY SOME INFERIORITY IN BUILDINGS TRANSPORTATION SPECIAL TEACHERS AND CURRICULUM. SUGGEST EMPHASIS ON SOCIAL AND PSYCHOLOGICAL HANDICAPS OF SEGREGATION PER SE.[33]

Speer found that there was wide divergence between the ages and conditions of the city's schools, differences that cut across racial lines. The schools had been built over a sixty-year period and the oldest as well as the newest buildings were used by white students. Racial discrimination, alone, could not account for variations in the facilities. Facility ages and conditions made a direct one-to-one comparison impossible, so Speer used insurance valuations to compile a blanket appraisal of Topeka's twenty-two public elementary school buildings.

[32]Greenberg, *Crusaders in the Courts*, 119, 127. Greenberg leads his readers to believe that he "recruited" Hugh Speer to conduct this analysis. Greenberg coordinated the expert witnesses, but other sources indicate Esther Brown initially brought Speer on board as an educational specialist; please see Kluger, *Simple Justice*, 411; and Hugh Speer, "The Case of the Century: A Historical and Social Perspective on *Brown* v. *Board of Education of Topeka* with Present and Future Implications" (Kansas City: University of Missouri-Kansas City, 1968), 28-29, 31-33. N.B.: The University of Kansas City later became the University of Missouri-Kansas City.

[33]Quoted in Greenberg, *Crusaders in the Courts*, 127.

He and Dr. James Buchanan, chair of the graduate school at Kansas State Teachers College, personally inspected fourteen schools, the four black elementaries and ten white ones. They determined that the white schools carried higher insurance values because, on average, the black schools were six years older. Auditoriums, playgrounds, and gymnasiums were appraised as being equivalent. The lack of full-service cafeterias in the black elementaries, however, and the fact that black children could not return home to eat hot meals at lunchtime was presented as a glaring inadequacy. After compiling their findings, Speer and Buchanan verified great similarities between segregated facilities, as a whole. Speer also looked at curricula, materials, teacher qualifications, special programs, and transportation systems. African American teachers ranked highly because many had masters degrees and some white teachers lacked basic subject certification. The school board provided transportation only to African American students, so this factor also favored the minority group. The lack of in-school health clinics, music programs, clubs, and some sports teams marked sharp weaknesses in programming for the black schools. The major difference between Topeka's black and white schools lay squarely in the curricula.[34]

Although educational facilities ranked equitably in Topeka, African Americans missed out on the "nuts and bolts" of the school experience. During his testimony before the district court, Dr. Speer explained that curriculum amounted to the total school experience of a child, which, in turn, affected his social and psychological development. African American children in the primary grades lacked the same books, supplies, and school programs that white children enjoyed. Teachers segregated those in the middle and secondary classrooms and excluded black youth from extra-curricular programs funded by the school board. The situation forced African American teenagers to hold meetings, sports activities, and dances in the black elementary school, which denigrated this important part of their lives. Hugh Speer summed it up by saying, "For example, if the colored children are denied the experience in school of associating with white children, who represent ninety percent of our national society in which these colored children must live, then the colored child's curriculum is being greatly curtailed. The Topeka curriculum or any school curriculum cannot be equal under segregation."[35] This testimony directly bridged the analysis of USD-501s infrastructure to its educational programs, thereby linking the NAACP counsel's first litigation goal to the second--the injustice of segregation, *per se*.

Counsel for the plaintiffs called on social scientists to follow-up the line of reasoning opened by Dr. Speer. The NAACP had used this line of argument in earlier cases, when broaching the contention that separation or exclusion invalidated any sense of equality. Sociologist Kenneth Clark functioned as the NAACP's key expert on issues of prejudice

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[34]Wilson, *A Time to Lose*, 92-93; Speer, *Case of the Century*, 31-32; and Kluger, *Simple Justice*, 412-415. Researchers may find attorney notes about Speer's analysis and a transcript of "practice" direct-examination of him in the Charles Scott Collection, Kansas Collection, University of Kansas Libraries and in the "Background Material, 1945-1954" and "Expert Witness" files in the "Papers of the NAACP," Group II, Series B.

[35]Quoted in Kluger, *Simple Justice*, 412.

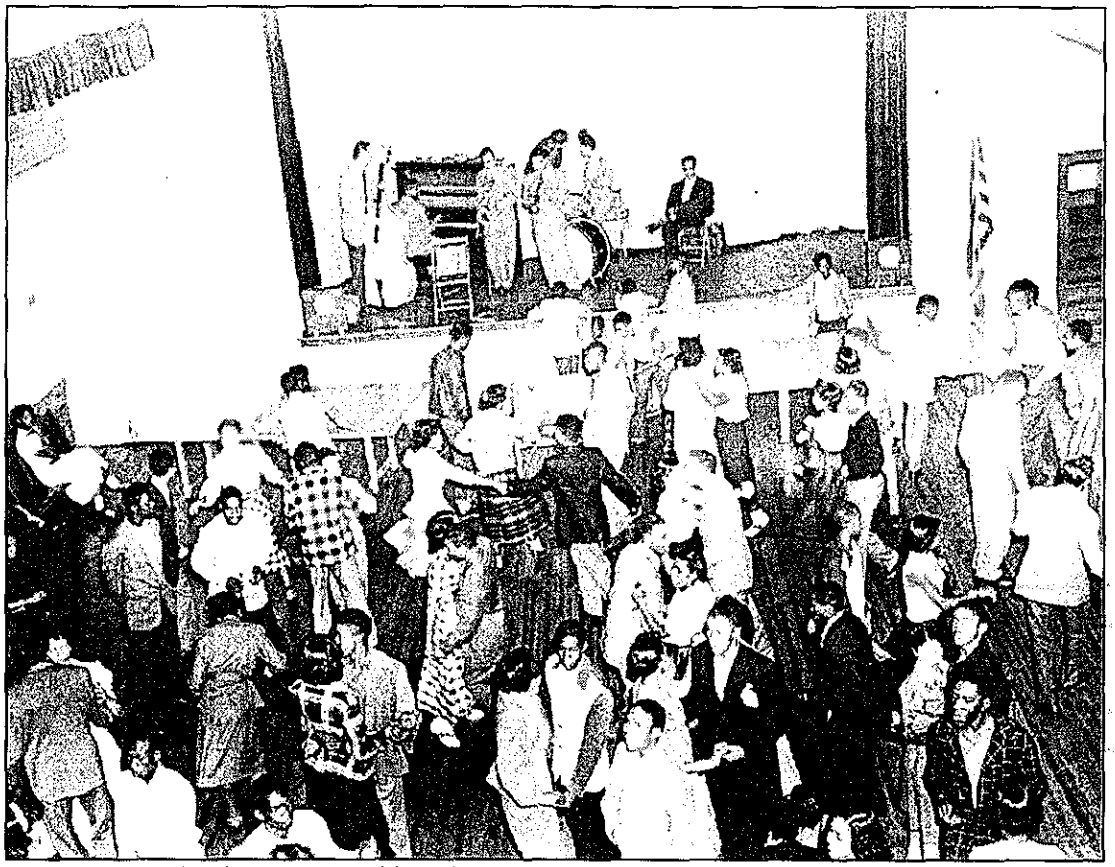

Figure 39. High school dance held in the Monroe gym during the 1940s.

and discrimination, testifying on this field in the South Carolina and Virginia school cases. But, Clark never made it to Topeka. Robert Carter and Jack Greenberg instead pursued this line of inquiry with great success through the testimony of Dr. Louisa Holt. A psychologist, she had worked at the Karl Menninger clinic in Topeka and, at the time of the trial, served on the faculty of the University of Kansas. Holt carried both professional expertise and personal experience with the Topeka system, for she had two children who attended USD-501 grade schools. Through direct- and cross-examination, Dr. Holt reasoned that segregation conveyed the implicit message that one group in society was inferior to another. By virtue of separation and exclusion, a minority was placed in a subordinate position that conveyed lessons of inadequacy and second-class status. Holt testified that "It is other people's reactions to one's self which most basically affects the conception of one's self that one has. If these attitudes that are reflected back and then internalized or projected, are unfavorable ones, then one develops a sense of one's self as an inferior being."[36] Social scientists corroborated Holt's line of reasoning, by providing documentation of the harmful effects of segregation on African American children; and, subsequently on American society, as a whole. Lester Goodell,

[36]Mark Whitman, ed., *Removing a Badge of Slavery: The Record of Brown v. Board of Education* (Princeton: Markus Wiener Publishing, Inc., 1993), 60.

primary counsel for the defense, tried to discount such psychological damage, by re-emphasizing the relative level of equality between black and white facilities, the availability of bus service for black students, and the fact that white students also traveled long distances to old, decaying schools. Kenneth McFarland, superintendent of Topeka schools, claimed that social custom primarily dictated the board's segregationist policy. Community standards, not the school administration should bear the blame for discriminatory actions. Carter's cross-examination went to the critical point in such a statement and seriously weakened McFarland's argument. The NAACP counsel adeptly pointed out the obvious inconsistency in this reasoning, given the fact that policy segregated children in the lower grades, but mixed them at the junior and high school levels. This argument would suggest that community sentiment towards children in grammar school differed from its attitude towards older students. Carter contended that segregation policy would be consistent if community standards were to blame. McFarland's "the community made me do it" defense simply didn't stand up.[37]

Presiding judges Walter Huxman, Arthur J. Mellott and Delmas C. Hill returned a unanimous decision in August 1951, five weeks after oral arguments. They found in favor of the defendants, the Topeka Board of Education, but expressed serious doubts about the old, formerly monolithic regimen of "separate but equal." Huxman wrote the opinion and drew heavily from the Holt and Speer testimony about the psychologically harmful effects of segregation. His opinion also showed that the NAACP victories in *Sweatt* and *McLaurin* were beginning to make a definite impact. Judge Huxman wrote,

> if segregation within a school as in the *McLaurin* case is a denial of due process, it is difficult to see why segregation in separate schools would not result in the same denial. Or if the denial of the right to commingle with the majority group in higher institutions of learning as in the *Sweatt* case and gain the educational advantages resulting therefrom, is lack of due process, it is difficult to see why such denial would not result in the same lack of due process if practiced in the lower grades.[38]

The court agreed that black and white facilities in Topeka had slight differences, but were basically equal, except for the condition of segregation. The *Brown* opinion, however, expounded on the effects of segregation as being detrimental to society because it branded African Americans as inferior, which retarded the emotional and intellectual development of black children. In Huxman's words,

> Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a

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[37]Kluger, *Simple Justice*, 419-422; Whitman, *Removing a Badge of Slavery*, 59-62; and Greenberg, *Crusaders in the Courts*, 130-131.

[38]Quoted in Greenberg, *Crusaders in the Courts*, 131.

> tendency to retard the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racially integrated school system.[39]

Nevertheless, *Plessy* v. *Ferguson* remained on the books and so the district court could not deviate from the U.S. Supreme Court's determination that segregation was constitutional. Courts which grappled with the same issues in South Carolina and Virginia did not express such liberal views. But, the Kansas case was different because it suspended lengthy debate of conditions by addressing the **ramifications** of segregation; namely, the fairness and long-term wisdom of it. In doing so, the NAACP counsel and the court elevated the discussion to a point at which the U.S. Supreme Court had to face the very constitutionality of segregation, itself.

The success of the *Brown* suit, despite its qualified failure in U.S. District Court, lay with the talents of NAACP counsel from Topeka and New York, and the many supporters who strengthened the case. Chronology also helped because some key events preceded the litigation; 1) the local chapter had reorganized with renewed vigor to end segregation in Topeka, 2) Bledsoe and Burnett were ready to mount a strong challenge to the school board's policy and recruited others to help, 3) the NAACP LDF achieved significant success in *McLaurin* and *Sweatt*, which lent national momentum to the desegregation of elementary schools. Support among the African American community in Topeka, at large, remained slight and has led to considered analysis through the years. Events after the 1941 *Graham* victory had convinced teachers to maintain a low profile during the *Brown* suit and threats of retaliation remained strong in the wake of *Brown*. By the end of August 1951, the NAACP LDF submitted *Brown, et. al.* v. *Board of Education, Topeka, Shawnee County* to the U.S. Supreme Court for reconsideration. The cause of thirteen Topeka plaintiffs, who sought to enroll their various twenty children in neighborhood elementary schools, would now join forces with parents in South Carolina, Delaware, and Virginia in a combined appeal to the high court. Although this study addresses them after the Kansas case, the South Carolina and Delaware disputes actually pre-dated the Topeka suit. The Virginia case, *Davis* v. *Prince Edward County*, followed in 1952. *Bolling* v. *Sharpe*, from the District of Columbia, dated to the 1940s, but joined this litigation package in 1953. Through an odd set of circumstances, *Brown* v. *Board* emerged at the top of the docket, thereby lending its name to litigation which comprised five separate actions. The crux of the joint appeal was characterized by the issues highlighted in the Topeka suit. In due time, this case would capture the nation's attention, overshadowing the chain of local events that fueled the companion school cases.[40]

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[39] *Ibid.*

[40] The entire case file, "Civil Case T316, *Oliver Brown, et. al.*, vs. *Board of Education Topeka, Kansas*," can be found on microfilm in the National Archives and Records Administration, Washington, D.C. and in the Microfilm Collections, Center for Historical Research, Kansas State Historical Society, Topeka, Kansas.

D. Reverend Delaine gathers his flock in Clarendon County

In 1947, Joseph Albert (J.A.) Delaine asked the school board of South Carolina's district #22, to provide school buses to carry African American students in Summerton to their segregated public schools. Such a request at this time in South Carolina brought severe retribution, but Delaine received backing from the NAACP and inspired twenty people to join a lawsuit which initially requested that the county equalize the segregated facilities, but was revised to ask that administrators get rid of them altogether. Conditions were much harsher in Summerton than in Topeka and the climate of racial tension simmered just below the boiling point. Thurgood Marshall served as chief litigator for the NAACP on the case, named *Harry Briggs, et. al.*, v. *R.W. Elliott, et. al.*, and drew heavily upon sociological findings about the psychological effects of prejudice and segregation. *Briggs* found some success before U.S. District Court, but certainly not the result that Marshall sought. The process proved useful, though, because counsel in the other school cases honed the "new" NAACP strategy to strengthen their argument before the U.S. Supreme for the reversal of *Plessy* v. *Ferguson*.

During the 1940s, African Americans made up approximately seventy percent of the population in Clarendon County. South Carolina, as a whole, had long possessed a black majority, as a result of the predominance of slavery dating to the state's colonial past. Although African Americans held the majority in numbers, they were subjugated to minority status in government and society by whites who kept strong control over positions of power. The history of race relations in the Deep South differs sharply from that in Kansas because Southerners endured what Kansans had escaped, by virtue of time and temperament. The social structure in South Carolina remained very stratified through the late-nineteenth century, reflecting the former slave system and the desires of white Southerners to keep black laborers in the fields. Whites rejected industrial development, and, instead, relied on agriculture regardless of poor soil, weakened plant stock, and overproduction. Forced labor systems like tenancy and sharecropping kept African Americans tied to failing agriculture and subjugated in low socio-economic positions. Education threatened this scenario because African Americans could learn about the world beyond South Carolina and their position in it. On a very practical level, school attendance simply would take the dominant labor force out of the fields; for hours, or days, or for a lifetime. The resultant labor shortage then would threaten the production of cotton, the state's cash crop, and would jeopardize the economic stability of the landowning class. James Anderson's study of black education in the South documents that whites in South Carolina overwhelmingly opposed extending education to African Americans. The state legislature passed a compulsory school law in 1900 which raised fears that it would open opportunities to black youth. Anderson says, however, "Even the supporters of compulsory school attendance carefully assured the state that local white officials could exclude blacks from the compulsory school law." And, they successfully did just that.[41]

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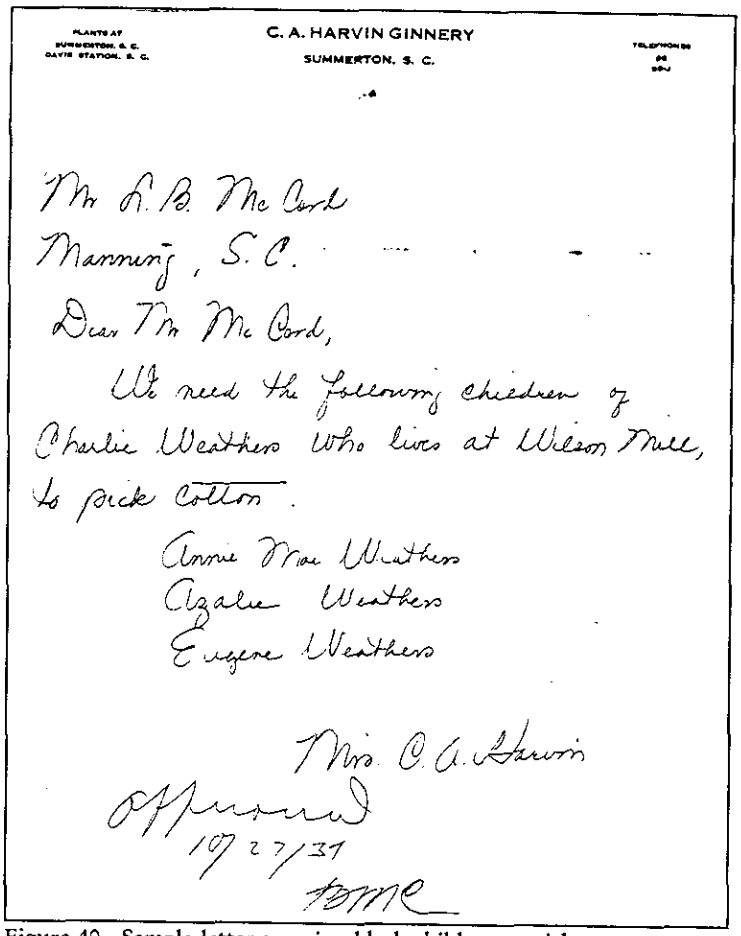
[41]Kluger, *Simple Justice*, 35-46, 303; and Anderson, *The Education of Blacks in the South*, 20-21, 101, 224-226, quote taken from 101. Cotton growers and gin operators often requested that school administrators excuse African American children from classroom attendance so that, instead, they might harvest cotton.

Little changed over time. Many who lived in Clarendon County either accepted or tolerated the hierarchical social system which functioned well into the twentieth century. This began to change with a simple request made by Rev. Delaine in 1947 that the county school board provide bus transportation to carry African American students to the segregated Scotts Branch High School. Board members denied the request, on the grounds that white taxpayers would be forced to pay for the transportation because African Americans, who generally earned small salaries, contributed comparatively less to the community till. Delaine sought help from state and federal officials, with no success. In the interim, African American parents took on the burden themselves and raised money to purchase a second-hand bus to transport their children to school. This band-aid approach solved nothing, however, so Delaine decided to seek judicial relief to change the situation in the long run. Levi Pearson, whose three children attended the school, agreed to appear as the plaintiff in a test case to expand Clarendon County's transportation policy to include African Americans. Pearson owned a farm which lay nine miles away from Scotts Branch and, unfortunately, straddled the boundaries of School Districts 5, 22, and 26. *Levi Pearson* v. *County Board of Education* (1948) ended before it really began because it had no merit. Pearson paid taxes to District #5, but sent his children to schools in Districts #22 and #26. He therefore had no legal claim to file


C. A. HARVIN GINNERY
SUMMERTON, S. C.

Mr L. B. McCord
Manning, S. C.

Dear Mr McCord,

We need the following children of Charlie Weathers who lives at Wilson Mill, to pick cotton.

Annie Mae Weathers
Azalee Weathers
Eugene Weathers

Mrs. C. A. Harvin

Approved
10/27/37
DME

Figure 40. Sample letter excusing black children to pick cotton.

grievances against Clarendon County's District #22 because he did not pay taxes in that district and, therefore, did not contribute to the maintenance of its schools.[42]

This initial request for greater equity in educational opportunities ultimately gave way to a petition for full integration. Even though it was a non-starter, the *Pearson* suit contributed to the legal campaign against segregation in South Carolina because it brought the involvement of the NAACP LDF in New York and signified an initial stand against the *status quo* in Clarendon County. Thurgood Marshall joined with Harold Boulware, an attorney from Columbia, in this effort which once again confirmed the inherent weakness of one-plaintiff cases. There was no case without Pearson. Marshall and Delaine regrouped a year later with a new effort to petition for the full desegregation of public schools throughout the county. Marshall charged Delaine with the task of recruiting twenty plaintiffs who would testify to the inferior conditions of segregated schools and request relief through integration of the white public schools. The local branch, under Delaine's leadership, held meetings in African American churches, private homes, and public schools to draft volunteers. Fellow brethren in Summerton, Reverend J.W. Seals, of St. Marks AME Church, and Reverend E.E. Richburg, pastor of Liberty Hill AME Church, broadened the drive to gather eligible plaintiffs. By November 1949, Marshall, Boulware, and Robert Carter, who would later participate in the Kansas case, presented the county school board with one hundred names of parents who sought integration. Harry Briggs, a service station attendant in Summerton, led the list and contributed his name to the case that would ultimately reach the U.S. Supreme Court.[43]

The board, in predictable fashion, refused to acknowledge the community petition for equal access to public education. NAACP counsel, in turn, filed *Harry Briggs, et. al.* v. *R.W. Elliott, et. al.* in federal district court in Charleston on May 17, 1950. The suit named only twenty plaintiffs, comprised of fourteen fathers and six mothers acting on behalf of forty-six children, who requested relief from several defendants, beginning with R.W. Elliott, chairman of the Board of Trustees of School District #22, Clarendon County, South Carolina. Other defendants included all District #22 board members, the Summerton High School District, the superintendent of education, superintendent of schools, and members of the County Board of Education for Clarendon County. All but two of these many participants were lost to the Latin, *et. al.*, and *Briggs* v. *Elliott* went forward as if alone in U.S. District Court. The slate of NAACP attorneys, led by Marshall, included Boulware, Carter, and Spottswood Robinson, Thurgood's close friend from Richmond, Virginia, who had been trying to recruit plaintiffs for a class action suit to desegregate schools in the former "Cradle of the Confederacy." Robinson and Marshall had met at Howard University, where both blossomed under the

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[42]Benjamin F. Hornsby, Jr., "Stepping Stone to the Supreme Court: Clarendon County, South Carolina," Booklet, Topics in African American History 1 (Columbia: South Carolina Department of Archives & History, 1992), 2-5; and Kluger, *Simple Justice*, 14-18.

[43]Hornsby, *Stepping Stone to the Supreme Court*, 5-7; and Kluger, *Simple Justice*, 18-26.

tutelage of Charles Hamilton Houston. Robinson kept an active hand in NAACP activities in his home state, but ventured south at Marshall's request to help with *Briggs*.[44]

The LDF team argued for the abolition of segregation before District Judges John J. Parker, J. Waties Waring, and George Bell Timmerman during a two-day hearing held on May 28 and 29, 1951. Judge Parker carried a national reputation as a staunch segregationist, traced to President Herbert Hoover's 1930 nomination of Parker to the U.S. Supreme Court. The nomination failed when the eminent judge publicly expressed his opposition to extending the vote to African Americans, a right granted in the Fifteenth Amendment (ratified in 1870). The NAACP, then under the direction of Walter White, had lobbied hard against Parker's nomination and was well-acquainted with his views on African American rights. Twenty-one years later, LDF counsel were none too optimistic about the potential outcome of *Briggs* v. *Elliott*. Judge Waties Waring, however, held the promise of acting as a counterweight against Parker's influence on the district panel. Waring, a native son from a long line of Charleston "blue-bloods," held very liberal views about the social status of African Americans, opinions quite uncharacteristic of his Charleston peer group. George B. Timmerman, described by

Figure 41. The plaintiffs in *Briggs* v *Elliott*; Harry Briggs stands in the center of the back row.

[44]Rowan, *Dream Makers, Dream Breakers*, 5-13. Please refer to the following case citations for the complete record of litigation, *Briggs* v. *Elliott*, 98 F. Supp. 529 (1951), 103 F. Supp. 920 (1952), 347 U.S. 497 (1954), 132 F. Supp. 776 (1955).

Richard Kluger as a religious fundamentalist, openly advocated white supremacy and would predictably align with segregation. Arguments began before the triad in late May with a direct assault on Clarendon County's system of racial separation. Marshall and his team implemented the NAACP strategy of attacking segregation, itself, rather than skirting around equalization, even though the board admitted that discrepancies existed between the dual school systems. Charleston attorney Robert McCormick Figg, Jr., highly regarded in all quarters, provided counsel for the defense and kept attention on the issue of equality, in order to avoid a prolonged examination of segregation, *per se*. He openly conceded the truth of the plaintiffs statements about the lack of transportation, the existence of inferior black facilities, and the prevalence of inequities in staffing and curricula. With promises to correct the inequities, the Clarendon County board of education sought to maintain a system which conformed to the "separate but equal" requirement.[45]

The defendants hoped that by equalizing the black facilities, they could rectify, rather than scrap, the segregated system. Thurgood Marshall and the LDF team would not surrender *Briggs* so easily, notwithstanding the board's promises to do better in the future, because it sought to keep the races separate. He stuck by the NAACP's decision to pursue a complete end to segregation and followed a strategy engineered by Robert Carter. In 1950, Carter had discovered the work of Dr. Kenneth Clark, a social psychologist who specialized in the field of child development. Clark and his wife, Dr. Mamie Clark, established the Northside Center for Child Development in Harlem, New York, specializing in the pathology of racism. The Clarks developed behavioral tests to determine a child's awareness of race and its effects. They used dolls which were identical in all respects, except for color, and asked children first to identify the white and black dolls, then moved on to more precise questions; such as 1) "Give me the doll you like best," 2) "Give me the doll that is the nice doll," 3) "Give me the doll that looks bad." Answers indicated levels of racial awareness, as well as perceptions and attitudes about the attributes or characteristics of each race. Overwhelmingly, the Clark's found that African American children associated good characteristics with white dolls and bad ones with black dolls. They traced these feelings to lessons of racism, both overt and subtle, learned in homes, schools, and communities. Black children very effectively and very early internalized the messages of inferiority that they found all around them. Racial separation carried a great deal of psychological stigma because those pushed away felt inferior to those doing the pushing.[46] When Robert Carter discovered the Clarks, he rushed to incorporate their findings into the NAACP legal strategy to end segregation. Marshall also realized the

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[45]Kluger provides interesting accounts of the judges's backgrounds in *Simple Justice*, 141-144, 295-305, 340-345. Rowan presents Parker in a less flattering light, in *Dream Makers, Dream Breakers*, 8. Attorney notes may be found in "Legal Papers 1951-1953," "Schools-Kansas-Topeka-Brown v. Board of Education (Briggs, Jr., et. al. v. Elliott, et. al.), Box 140, "Papers of the NAACP," Group II, Series B.

[46]Kluger, *Simple Justice*, 315-321, 328-340, 345-366. Kenneth Clark published his path-breaking study on the impact of racism in *Prejudice and Your Child* (Boston: Beacon Press, 1955). Notes on research finding, paper presentations, and case preparation may be found in the Kenneth Bancroft Clark Papers, Manuscripts Division, Library of Congress.

pertinence of the couple's research on the black self-image, later saying, "We needed exactly that kind of evidence in the school cases. When Bob Carter came to me with Ken Clark's doll test, I thought it was a promising way of showing injury to these segregated youngsters. I wanted this kind of evidence on the record."[47] Marshall thought it particularly important to prove damages in these cases, which resulted from the "stigmatic injury" of segregation.

So, Kenneth Clark brought his dolls to Clarendon County, South Carolina in the spring of 1951 and found similar results among the African American children who lived there. Marshall presented Clark as an expert witness in *Briggs* v. *Elliott* to provide evidence of the inherent racism which existed in a segregated system and to illustrate the damage it could do to the children who were educated in it. The NAACP felt that Clark's findings clearly proved the inherent inferiority of dual school systems in Clarendon County. Predictably, Judges Parker and Timmermann saw it differently. The District Court announced its decision on June 21, three weeks after the hearing. Parker wrote the majority opinion, which raised the specter of states' rights by claiming purview over the operation of public schools. He summarily rejected Clark's psychological arguments about the impact of segregation and instead concentrated on the prevailing constitutionality of *Plessy*. Parker threw the onus of judgement back on the U.S. Supreme Court, saying,

> We conclude, therefore, that if equal facilities are offered, segregation of the races in the public schools as prescribed by the Constitution and laws of South Carolina is not of itself violative of the Fourteenth Amendment. We think that this conclusion is supported by overwhelming authority which we are not at liberty to disregard on the basis of theories advanced by a few educators and sociologists. Even if we felt at liberty to disregard other authorities, we may not ignore the unreversed decisions of the Supreme Court of the United States which are squarely in point and conclusive of the question before us....[48]

Judge Parker implied that any debate of segregation, *per se*, would have to be made before the High Court, which would have to reverse *Plessy* in order to effect any change in school policy. He and Timmermann concentrated only on the narrow issue of equalization and ordered the school district to build new, equivalent, facilities for its African American students, thereby satisfying the "separate but equal" rule. Judge Waring opposed this finding in a separate, dissenting opinion which affirmed the validity of Clark's sociological testimony. Waring condemned segregation in very eloquent, at times poetic, discourse, saying

> This case presents the matter clearly for adjudication and I am of the opinion 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.

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[47]Quoted in Kluger, *Simple Justice*, 316.

[48]Quoted in Whitman, *Removing a Badge of Slavery*, 95.

> As heretofore shown, the courts of this land have stricken down discrimination in higher education and have declared unequivocally that segregation is not equality. But these decisions have pruned away only the noxious fruits. Here in this case, we are asked to strike its very root. Or rather, to change the metaphor, we are asked to strike at the cause of infection and not merely at the symptoms of disease. And if the courts of this land are to render justice under the laws without fear or favor, justice for all men and all kinds of men, the time to do it is now and the place is in elementary schools where our future citizens learn their first lesson to respect the dignity of the individual in a democracy.[49]

After expressing his disgust with the system and those who sought to retain it, Waring retired from the bench and left his home state for good. He and his wife suffered social snubs, insults, and vandalism of their property. The state legislature had even passed a joint resolution in February 1950 to appropriate funds "to Purchase Two One-Way Tickets for Federal Judge J. Waties Waring and his Socialite Wife to any Point of their Choice Provided they never Return to the State of South Carolina."[50] The Warings gladly purchased their own tickets about eighteen months later and moved to New York.[51]

The *Briggs* decision strengthened the segregationist position in South Carolina and provided a rallying point for states' righters and former Dixiecrats who were happy to have another precedent which tightened *Plessy*'s grip. The court had granted a six-month reprieve to District #22, during which it was supposed to raise the salaries of African American teachers, improve the black schools, and adequately stock them with supplies and teaching materials. Although Marshall immediately filed for *certiorari,* or review of the case, by the U.S. Supreme Court, the justices ignored the request because *Briggs* still fell under the jurisdiction of the District Court. Nothing would happen until the lower court had reviewed the defendants' progress and dismissed the case. Figg returned before Parker, Timmerman, and Waring's replacement, Judge Frank Dobie, on December 20, 1951 with the status report which showed that the board had accepted a bid for a new high school in Summerton, preliminary designs were underway for two new black elementary schools, salaries had been equalized, equipment purchased, and bus transportation provided for African American students. The District Court, however, refused final adjudication and, in January 1952, passed it to the Supreme Court docket for the next October Term. The Kansas case joined it soon thereafter, so for a very brief time in January 1952, the school cases consisted of *Briggs* v. *Elliott,* listed first, and *Brown* v. *Board of Education*, second. If *Briggs* had remained on the docket, the

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[49]J. Waties Waring, United States District Judge, Dissenting Opinion, In the District Court of the United States for the Eastern District of South Carolina, Charleston Division, *Harry Briggs, Jr., et. al.*, Plaintiffs, vs. *R.W. Elliott, Chairman, et. al.*, Defendants, Civil Action No. 2657, 21 June 1951, 15-16, copy in "Legal Papers 1951-1953," "Schools-Kansas-Topeka-Brown v. Board of Education (Briggs, Jr., et. al. v. Elliott, et. al.)," Box 140, Papers of the NAACP, Group II, Series B. Selected portions of Waring's dissent are provided in Whitman, *Removing a Badge of Slavery*, 97-98.

[50]Resolution reproduced in Hornsby, *Stepping Stone to the Supreme Court*, 14.

[51]Kluger, *Simple Justice*, 364-366, 523-525; Whitman, *Removing a Badge of Slavery*, 94-98; and Wilson, *A Time to Lose*, 107.

litigation package would have been known by that case, but the justices refused to bite and sent it back to Charleston, remanding the case for further action on the district level. This removed *Briggs* temporarily, until the District Court ruled that the board of education had satisfied its order to equalize the public schools, and *Brown* rose to the top of the docket. When *Briggs* returned for a second time, Parker and his colleagues on the bench dismissed the case and cleared the way for an NAACP appeal to the U.S. Supreme Court.[52]

Brown and *Briggs* moved to a national forum in June 1952 when the Supreme Court scheduled oral arguments for the two school cases for the following October. For all practical purposes, the fight over school desegregation in South Carolina was just beginning. Governor James F. Byrnes vowed that if a federal court ever ordered desegregation in his state, he would protect the rights of his constituents by closing the schools rather than integrating them. Those who had participated in the Clarendon County case as plaintiffs and supporters immediately felt retribution for their actions, long before the case was resolved in federal court. The Warings left South Carolina and its troubles behind, but many poor African Americans had no choice but to stay. The KKK kept busy with a campaign of terrorism and coercion, and in October 1951, a suspicious fire had destroyed Rev. J.A. Delaine's house in Summerton. Harry Briggs, his wife, and others lost their jobs, their livelihoods, and their tentative grip on financial independence. Plaintiffs and NAACP members who lived in Manning, Summerton, and Liberty Hill could no longer find markets for their farm crops, saw mills to cut their timber, or cotton gins to process their harvests. Whites in control used violence and coercion to send the message that life would not change for African Americans living in rural South Carolina. *Briggs* v. *Elliott* provided a very important battleground for the national debate over the status of blacks in American society. It exposed conditions in the Deep South that had been ignored for decades. This aspect, alone, was the critical element which the South Carolina case brought to the package of school cases. It provided an example of segregated education that was far more typical than were facilities in Topeka, which provided virtually equal structures, staffs, and materials to its black and white children. Circumstances in central Virginia also substantiated the atrocious conditions found in most segregated schools in the South, which the NAACP documented before a national audience through the prosecution of *Davis* v. *Prince Edward County*.[53]

E. Students strike back in Farmville

As the NAACP LDF pursued its litigation strategy in Kansas and South Carolina, high school students in Prince Edward County, Virginia decided to initiate a third action to desegregate public schools in the small community of Farmville. The town lay not too far from Appomattox Courthouse, the crossroads where General Grant sounded the death knell

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[52]Kluger, *Simple Justice*, 531-534; and Hornsby, *Stepping Stone to the Supreme Court*, 13-16.

[53]Kluger, *Simple Justice*, 333-336, 525, 538-539; and Julian Scheer, "The White Folks Fight Back," *New Republic* 133 (31 October 1955), 9-12.

of the Confederacy. While slavery had ended almost a century earlier, socio-economic independence continued to elude African Americans in central Virginia. Just like their cousins in the Deep South, whites fostered dependency among blacks by circumventing job opportunities, stalling black farmers in tenancy and sharecropping, and stifling intellectual growth. By April 23, 1951, 450 African American students protested such limitations by initiating a two-week boycott of classes and contacting the NAACP office in Richmond for assistance in a suit to equalize the public schools in Prince Edward County. *Davis* v. *County Board of Prince Edward County, Virginia* resulted, with 117 plaintiffs petitioning the board of education to end, rather than improve, the segregated system. The "dollman," Dr. Kenneth Clark, again demonstrated the sense of inferiority among Farmville's black youths and, again, the District Court rejected the NAACP's petition for integration. Eighteen months later, the suit joined the school cases on the Supreme Court docket for argument during the October Term, 1952. Although thus far the High Court had ducked direct reevaluation of the *Plessy* v. *Ferguson* finding, *Davis* added to the impulse for pointed discussions of this nation's attitudes and policies regarding race in public education.

The record of black education in Virginia parallels the history of the South, with some noteworthy exceptions. For the most part, ex-Confederates in the planter class and lower strata of society wanted to keep African Americans out of classrooms and in the fields. Most opposed even the **idea** of black education because of racist beliefs that African Americans were innately inferior and unteachable. Reliance on child labor, crucial to the economic success of black workers and white landlords, was the greatest enemy to education because the seasonal routines of planting and harvesting left little time for schooling. Academic terms were so short that children rarely got past rudimentary reading and writing skills. The establishment of the Hampton Normal and Agricultural Institute in 1868 by Samuel Armstrong provided a very bright spot in this bleak climate. The "Hampton idea" aimed to provide future elementary school teachers with basic requirements for teaching certification on a strong foundation of manual training. Matriculating students usually possessed only an elementary education and earned a two-year degree at Hampton, which meant students graduated with the approximate equivalent of a tenth-grade high school education. Armstrong's curriculum emphasized working within the white power structure, and, in many respects, prodded African Americans to aim only for careers suitable for a low station in society. James Anderson, in his study of black education from 1860 to 1935, points out the inherent tensions of the "Hampton idea" between the desires of African Americans to confront white hegemony and Armstrong's curriculum which emphasized conformity and adjustment to white control. He said, "Armstrong developed a pedagogy and ideology designed to avoid such confrontations and to maintain within the South a social consensus that did not challenge traditional inequalities of wealth and power."[54] By 1880, accommodation had become the operative word in the on-going debate between DuBois and Washington over the desired mission of black education.[55]

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[54]Anderson, *The Education of Blacks in the South*, 33.

[55]*Ibid.*, 22-23, 31-37.

Those who bucked this system and aspired to higher goals attended academic high schools and colleges which provided a richer liberal arts curriculum. Prior to 1920, most secondary education available to African Americans in the South came through private sources. Anderson provided an important perspective on the lack of public facilities for blacks, saying "In 1916, fully 95 percent of the southern black secondary school age population was not enrolled in public institutions, and in the deep South the proportion not enrolled in public secondary schools was 97 percent."[56] Virginia bucked this trend, by providing six public high schools for African American students with curricula that emphasized classical, liberal arts education, and college preparatory courses. Black public education expanded after 1920, but with a more moderate curriculum that combined academics with vocational training. This seemed to be an acceptable compromise to the white majority, which operated particularly well within the constraints of a segregated system. Public education, in general, had been a rather low priority for the Virginia legislature up to 1920 because of the social trends and economics. Although much had changed since the colonial period, many in the upper class still relied on private institutions to educate their children and few demanded quality public schools. Furthermore, in an attempt to diversify its economic base beyond stagnant agriculture, the state relied on low tax rates to attract railroads and industry in the late-nineteenth century. Low taxes meant low expenditures and few dollars for public school facilities for either race. The expansion of the federal government in the twentieth century changed this scenario. Increased military demand during World War I initiated economic

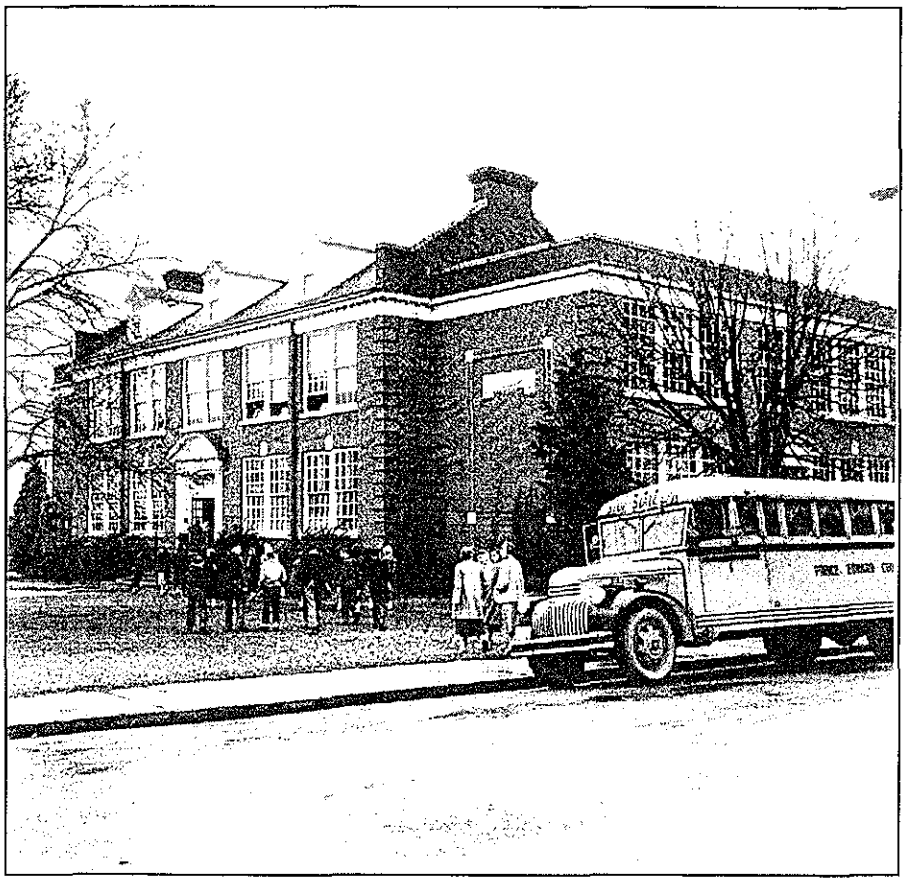

Figure 42. Farmville High School, a white facility, ca. March 1953.

[56] *Ibid.*, 197.

growth through the establishment of large military installations and shipyards on the Virginia coast. A federal, civilian, work force continued to grow from 1930 to 1950, populating the state's northern and eastern areas through the eras of the New Deal, World War II, and Cold War. Virginia now needed adequate schools for the children of its expanding, non-native workforce, so the impetus to improve the state's public schools grew.[57]

Unfortunately, Prince Edward County lay in the middle of the state, far away from the areas of expansion and growth. Its population hovered around 15,000 in 1955, including a large percentage of African Americans who depended on a failing tobacco crop. Like many

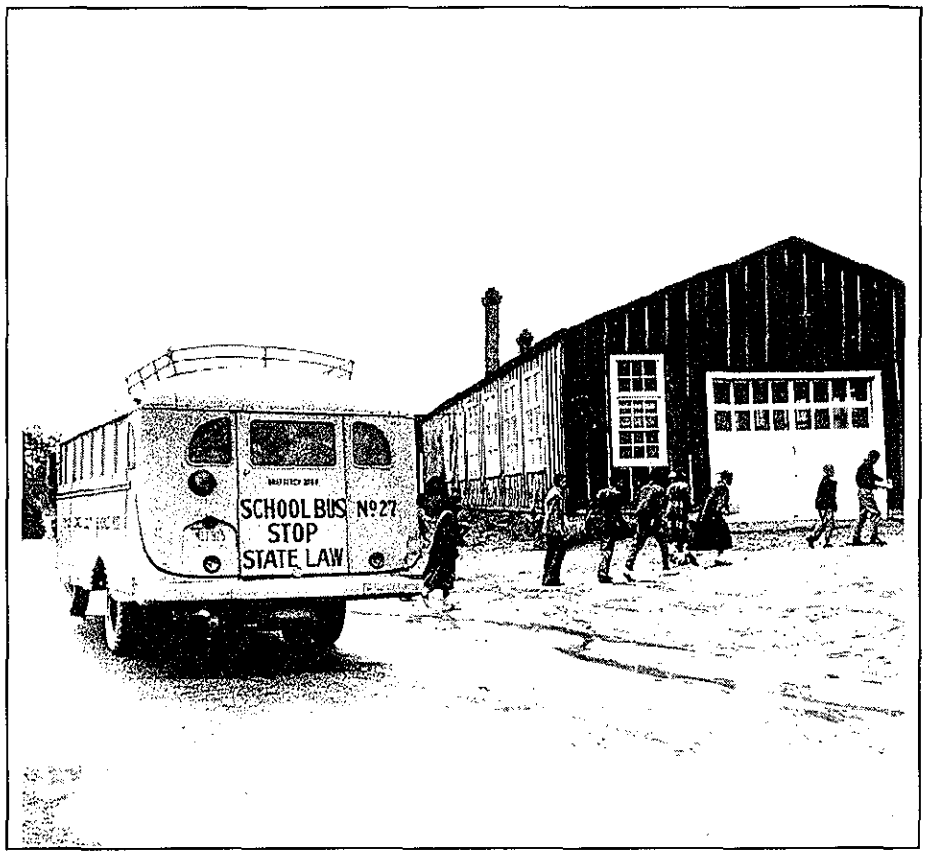

Figure 43. The infamous "tarpaper shacks," which led to the student strike at Moton.

areas in South Carolina, Prince Edward County lay on the western edge of the "black belt," where African Americans actually held a numerical majority over the wealthier, more influential white residents. Most African Americans owned small farms, worked as janitors or maids, as laborers in farm fields, on the railroads, in warehouses, or factories. Education

[57] *Ibid.*, 197-200. Kluger, *Simple Justice*, 458. The six public high schools operating in 1916 were located in Lynchburg, Danville, Norfolk, Petersburg, Mount Hermon, and Richmond.

was fleeting, physical labor was the norm, and those who wanted something else for their children left for a more northerly clime. But, those who remained grew impatient with the *status quo* through the 1930s and 1940s, as Virginia moved into the twentieth century. Whites also sought improvements and, in the 1920s, demanded that administrators provide new public high schools for their children. Magistrates built a large high school in Farmville, the county seat,and a second one in Worsham, a small town which sat in the geographical center of Prince Edward County. They provided a brick building in Farmville, housing grades one to eight, to serve as the primary school for African Americans and those in rural areas attended smaller, one-room schools. The school board commissioned a black high school in 1939, named Robert Russa Moton High School, after the Virginia native who succeeded Booker T. Washington at Tuskegee Institute. Attendance at Moton swelled after World War II, even though the African American population of Prince Edward County remained stable. Planners designed Moton to accommodate 180 students; however, 167 enrolled in 1939, 219 in 1940, and by 1947, the student population exceeded 360. Needless to say, administrators had greatly underestimated the black community's desire for and commitment to education. Instead of solving the problem, school officials erected three temporary outbuildings, wooden structures covered with tarpaper, to take care of the overflow. State law allowed the district to use these "shacks," as the black community called them, for five years, but a better solution had to be found for the long term. Prince Edward County's administrators duly resolved to build a new high school, at some point in the future, to accommodate Moton's student body comfortably.[58]

Whites, by and large, believed that their African American neighbors were satisfied with their lives in central Virginia. Perhaps both groups had become used to the languid tempo of life, the slow rate of change, and the quiet submission of blacks to white authority. By 1950, however, unquestioned deference to those who "knew best" was waning. The maturing black generation felt little satisfaction with the social conditions imposed upon them and were growing impatient with patriarchal white attitudes towards African Americans. Reverend L. Francis Griffin, pastor of the First Baptist Church, represented the new breed in Prince Edward County. After serving with the first African American tank corps under General George Patton in World War II, Griffin returned to central Virginia, where he established his ministry and reputation as a community leader bent on improving the lives of his followers. Griffin organized a chapter of the NAACP and initiated contact with NAACP attorneys in Richmond who were searching for candidates to file suit against segregation in Virginia public schools. Spottswood Robinson and Oliver Hill, already involved in the *Briggs* action in South Carolina, sought to expand the NAACP legal campaign with a Virginia case. They found hearty, willing souls in Farmville who had a legitimate grievance against the Prince Edward school board; namely, in the form of those tarpaper shacks behind Moton High School. John Lancaster, the black agricultural extension agent, and Boyd Jones, principal of Moton High, joined Rev. Griffin in his efforts to organize the local NAACP chapter and spur the African American community to action. This trio used the Parent Teacher Association (PTA), which

[58]Kluger, *Simple Justice*, 458-460; and Haldore Hanson, "No Surrender in Farmville, Virginia: Townsmen Describe How They Expect to Defy the Supreme Court Segregation Decision," *New Republic*, 133 (10 October 1955): 12-13.

Griffin presided over, from 1949 to 1951 as a primary medium for discussions about a new facility for Moton. The school board ignored every attempt to discuss the matter, ostensibly until a satisfactory site had been found, and Griffin later related that members finally told him that "They would let me know when it was time to build a school."[59]

During the fall semester of 1950, Barbara Rose Johns decided that the time had come. Johns, an eleventh grade student at Moton, was frustrated with the inadequacies of her school and angry that opportunities open to white teenagers at Farmville High were denied the African Americans at Moton. She rejected accommodationism and resented the attitude among both races that rewards would come, if she only waited long enough. Her uncle, Reverend Vernon Johns, had instilled a zeal for control and self-determination in Barbara. Richard Kluger writes that, "Where her father was a quiet and kindly man, her Uncle Vernon was a dazzlingly articulate and argumentative preacher who made as many enemies as friends with his thundering sermons that took no pity on the black man for his ignorance and docility in the face of the white man's malice."[60] Vernon Johns inspired his niece to get angry about inequities in society and to do what she could to rectify them. Therefore, after years of delay by the school board and the PTA, Barbara Johns approached Carrie Stokes, Moton's student body president, and suggested that the students take action into their own hands. A core group, including Barbara Johns, Carrie Stokes, and John Stokes, monitored the progress of the PTA and school board for a few months. When none ensued, they decided to strike. On April 23, 1951, the group reported that truant students were loitering at the local bus station, a blatant ploy to get Principal Boyd Jones away from Moton. With the principal otherwise engaged, sixteen year old Johns and her coterie convened an assembly, in Boyd's name, and called upon students to support a strike against conditions at the high school. Boyd, after discerning the red herring, returned to find the student body ready to walk out of school until they received treatment on a par with that given to white students. After some deliberation, the students agreed to stay on school grounds for the rest of the day, either demonstrating outside with picket signs or sitting inside at their desks. Johns' committee then called on Rev. Griffin to join and advise them. He met with the group and suggested they contact their parents, which the committee put to a student vote. They promptly rejected Griffin's recommendation and asked for the names of NAACP contacts who might support their walkout. Spottswood Robinson and Oliver Hill immediately came to mind, and within the month, made their way to Prince Edward County to meet with Miss Barbara Johns.[61]

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[59]Kluger, *Simple Justice*, 461-465. Griffin quote taken from Hanson, "No Surrender in Farmville, Virginia," 13.

[60]Kluger, *Simple Justice*, 454.

[61]*Ibid.*, 453-455, 461-465; Hanson, "No Surrender in Farmville, Virginia," 13-14; and Jarl K. Jackson and Julie L. Vosmik, "Robert Russa Moton High School," Farmville, Prince Edward County, Virginia, National Register of Historic Places Nomination, United States Department of the Interior, National Park Service, Southeast Region, 24 October 1995.

In the days following, Johns' committee met with Superintendent T.J. McIlwaine, who rebuffed their grievances and railed against Principal Boyd for inciting the student action. Moton's students remained on strike despite warnings of retribution and met with NAACP counsel, Robinson and Hill, on April 25 to discuss their options. The attorneys, both products of Charlie Houston's tutelage at Howard, had dedicated their careers to fighting discrimination in the Old Dominion by equalizing teachers' salaries, student transportation systems, educational facilities, and supplies. Robinson, heavily involved in the *Briggs* suit, had searched for a similar test case to implement the NAACP strategy to end segregation in Virginia, but wanted to fight the battle in a more progressive city, rather than in the rural backcountry. But, opportunity chose him and the students of Moton High School pledged to pursue litigation against Prince Edward County. Robinson later recalled his first impressions of the situation, saying, "We were going to tell the kids about the *Briggs* suit, which was about to begin in Charleston in a few weeks, and how crucial that would prove, but a strike in Prince Edward was something else again. Only these kids turned out to be so well organized and their morale was so high, we just didn't have the heart to tell 'em to break it up."[62] Thus with the national NAACP office behind them, Griffin and others from the local chapter drew the African American community into the organizational net. One thousand people rallied at Moton High for the first planning session, in the form of a county-wide PTA meeting to discuss the Moton situation. Meetings held throughout the process at black churches and schools routinely drew hundreds of supporters, mostly from

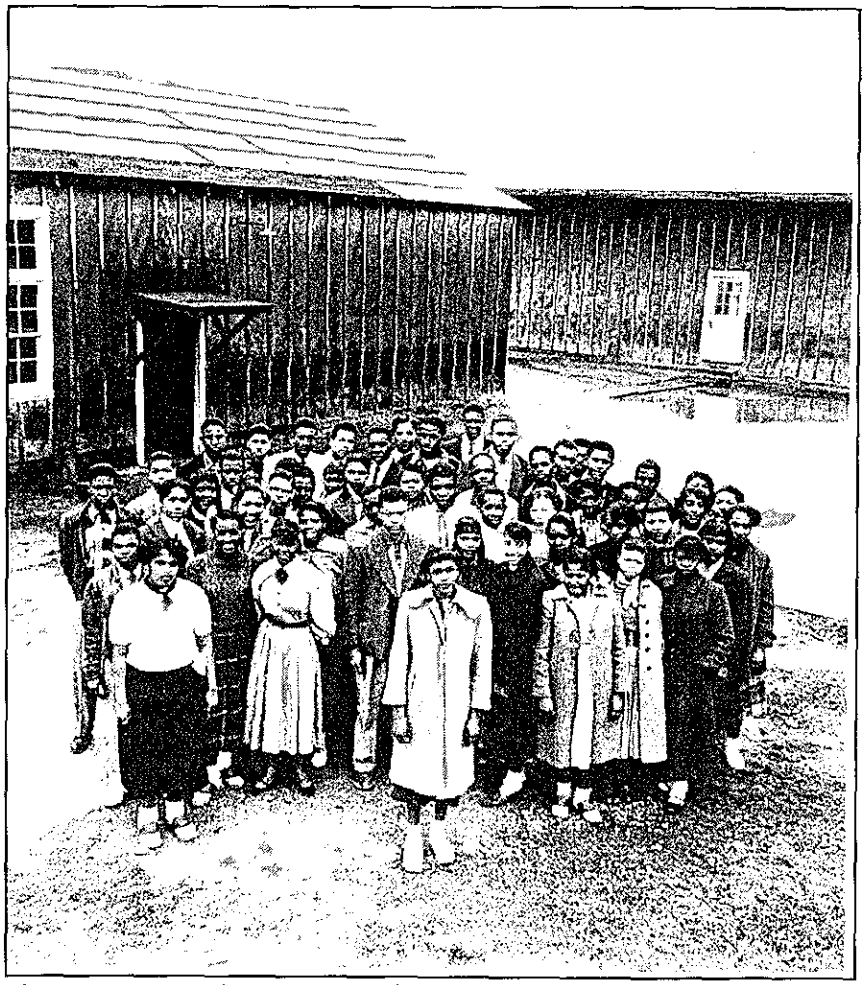

Figure 44. Dorothy Davis stands with some of the plaintiffs in the Virginia case.

[62]Quoted in Kluger, *Simple Justice*, 476.

the ranks of the county's independent black farmers. In a 1955 interview with Haldore Hanson, Rev. Griffin said, "Farmers will drive 20 miles to attend a PTA meeting whenever we discuss the lawsuit. We have 600 Negro farm families in the county, and 500 own their own farms. They don't make much of a living, but they have electricity now, and are buying tractors to replace their mules. Nobody bosses them. They are the backbone of the lawsuit."[63] Griffin took to the backroads, soliciting signatures for a petition which called for the desegregation of Farmville High School. On May 23, 1951, one month after the student strike, Spottswood Robinson and Oliver Hill filed suit on behalf of 117 plaintiffs who called for an end to segregation. Quite by circumstance, Dorothy E. Davis, at age fourteen, led the names of Moton students listed on the petition for *Davis, et. al.* v. *County School Board of Prince Edward County*. With the judicial process underway, Robinson joined Kenneth Clark and Thurgood Marshall that same day on a train bound for Charleston and a court battle over public education in Clarendon County.[64]

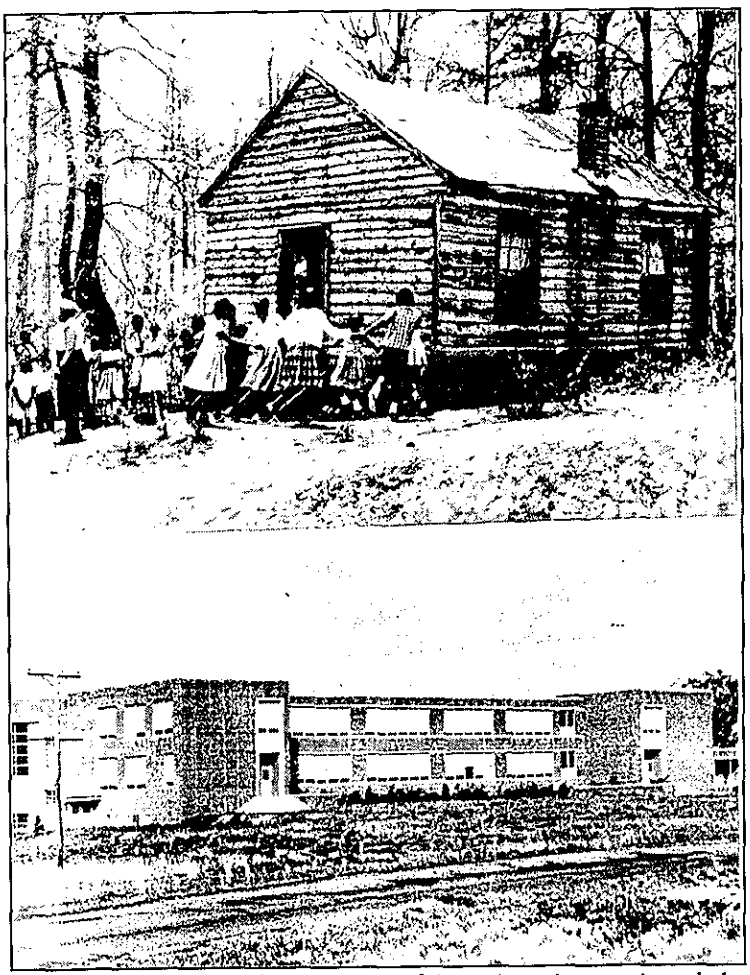

Figure 45. A study of contrasts: African Americans rejected the new Moton High School and the system it represented.

In due course, the South Carolina case came to a predictable end and LDF counsel expected much the same in Virginia. As in the prior two school cases, the NAACP filed its brief with a three-judge panel, the U.S. District Court for the Eastern District of Virginia in Richmond, which was composed of native Virginians Armistead Dobie, Sterling Hutcheson, and Albert Bryan. Lindsay Almond, the state's Attorney General, hovered over T. Justin Moore during case preparation and defense

[63]Quoted in Hanson, "No Surrender in Farmville, Virginia," 13-14.

[64]Kluger, *Simple Justice*, 471-479. Please refer to *Dorothy E. Davis, et. al.* v. *County School Board of Prince Edward County, Virginia, et. al.*, Civil Action No. 1333, United States District Court for the Eastern District of Virginia. A copy can be found in "U.S. District Documents 1951-1952," Records of the Attorney General, State Papers Collection, Center for Historical Research, Kansas State Historical Society, Topeka, Kansas.

of Prince Edward County policy. Almond knew that the ramifications of this case reached far beyond the Farmville backwater and, ever the adept politician, he sought to maneuver it to the benefit of old-line segregationists. Recognizing in the 1940s that the NAACP had undertaken a campaign against segregation, the state had hoped to avoid successful attacks by implementing a broad program to improve its public schools. Improvements, however, had never reached Farmville and accommodation was no longer an option for its African American community. Nevertheless, Moore's defense fell back on the rationale that equalization would correct the situation contested in *Davis*. In fact, construction finally had begun on a new Moton High School, which would offer facilities comparable to those at the white Farmville High. The NAACP defense strategy rejected any likelihood of settling for a new, but segregated, high school. There was no turning back from full integration.

Robert Carter joined the Robinson/Hill litigation team in Richmond for the February 24-29, 1952 hearing and again pursued the sociological argument that segregation instilled a sense of inferiority in African Americans. As in *Briggs*, Kenneth Clark provided evidence from his doll tests and testimony from interviews with sixteen Moton students. M. Brewster Smith, a psychologist appearing for the plaintiffs, supplemented Clark's core testimony and compared segregation to a state of being quarantined. Smith explained the emotional impact of racial separation in personal terms, "as meaning that I, the person segregated against, am someone that has to be quarantined, somebody that has to be kept, from associating with people because I am not good enough, and this is inherently an insult to the integrity of the individual."[65] Moore attacked both of these scholars by minimizing the social stigma of segregation and emphasizing the value of equal facilities. He felt that Clark's brief interaction with Prince Edward County youth proved very little. Moore then introduced a defense strategy used only in this school case, by calling upon his own social science experts who refuted the ill-effects of exclusion and endorsed the system of segregation. Henry Garrett, chair of Columbia's Psychology Department, William H. Kelly, a child psychologist, Colgate Darden, president of the University of Virginia, and Lindley Stiles, head of the university's education department, presented psychological data which, in their opinions, rationalized segregation and purported the potential dangers of integration. The brunt of the defense testimonies followed two tacks: the first contended that equalization removed discriminatory elements from the system of segregation; and the second stressed that segregation was a component of the established social order and cultural protocol of Virginia. Therefore, Moore argued, relief granted in favor of the plaintiffs would result in social upheaval and cultural disarray. Although Hill and Spottswood scored points against these contentions through cross-examination, defense arguments carried the day.[66]

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[65]Smith quoted in Whitman, *Removing a Badge of Slavery*, 65; Kluger, *Simple Justice*, 480-506; and Jackson and Vosmik, "Robert Russa Moton High School," Section 8, 10-11.

[66]Whitman, *Removing a Badge of Slavery*, 64-67, 69-70, 73-92. The Moton High School students were too old for Clark's doll tests, so he discussed specific issues with them; such as, disparities in Farmville's segregated facilities, suggestions to redress the situation, and attitudes toward whites, see Whitman, 86-89, for more. Kluger reports that Clark interviewed fourteen, not sixteen, students, see *Simple Justice*, 501.

Judges Dobie, Hutcheson, and Bryan returned their decision on March 7, 1952, only one week after closing arguments in *Davis* v. *County School Board of Prince Edward County.* The panel discounted psychological evidence of segregation's harm and instead determined that no discrimination existed in a system based upon the "separate but equal" principle. Judge Bryan wrote the unanimous opinion for the court, relying greatly on the recent *Briggs* v. *Elliott* finding and its antagonist, *Plessy* v. *Ferguson.* He reiterated Moore's reasoning that segregation had become an intrinsic part of Virginia life, by saying,

> In this milieu we cannot say that Virginia's separation of white and colored children in the public schools is without substance in fact or reason. We have found no hurt or harm to either race. This ends our inquiry. It is not for us to adjudge the policy as right or wrong...."[67]

Prince Edward County officials were to improve black facilities and curricula and the problem in Farmville was to disappear. But, Robinson, Hill, Johns, Griffin, and many, many others had worked too hard to simply drop the matter here. As Bryan inferred, the issue went beyond the purview of any district court. Only the U.S. Supreme Court could determine the validity of Virginia's educational policy, which meant a full reevaluation of "separate but equal," itself. The NAACP filed its appeal to the Court on July 12, 1952. Meanwhile, Marshall and his LDF staff prepared to debate *Brown* and *Briggs* in the October Term. On October 8, only days short of the scheduled appeal, the Court postponed the school cases in order to add *Davis* to the docket. *Davis* and *Briggs*, in particular, shared several factors that defined segregation in Prince Edward and Clarendon Counties; ranging from their poor agricultural base, the leadership of key ministers, the stark inferiority of black facilities, the proactive response of white society to balance conditions, and the dedication of African Americans to threaten racist institutions. If the justices had to face the constitutional question proffered by *Plessy*, they wanted to do it in one comprehensive action, rather than through separate appeals. Three school cases now were rescheduled for oral argument on December 8, 1952. Four and five soon would follow, adding vital components to undermine *Plessy* v. *Ferguson* thoroughly.[68]

F. The Chancellor's order

In 1951, two African American women, Ethel Belton and Sarah Bulah, spawned separate legal actions that melded as one school case from Delaware. Jack Greenberg, co-counsel in the *Brown* suit, joined Louis Redding in Wilmington to prosecute the two actions in Delaware's Chancery Court. Here, the initial petition concerned equal access to transportation for youngsters attending schools in Hockessin and Claymont, a suburb of Wilmington. Redding, on behalf of the NAACP, refused to petition the court merely for passage to segregated

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[67]Whitman, *Removing a Badge of Slavery*, 99.

[68]Kluger, *Simple Justice*, 506-507, 539; and *Dorothy E. Davis, et. al.* v. *County School Board of Prince Edward County, Virginia, et. al.,* Civil Action No. 1333, United States District Court for the Eastern District of Virginia.

schools, but encouraged Belton and Bulah to sue for full integration of white facilities in Hockessin and Wilmington. Chancellor Collins Seitz, whose integrity paralleled that of Charleston's Waties Waring, found for the plaintiffs in both complaints, *Belton* v. *Gebhart* and *Bulah* v. *Gebhart*. This presented an interesting dilemma for the NAACP's desegregation campaign because Seitz ordered immediate integration of the public schools in the two communities even though the "separate but equal" doctrine remained in force. His finding left the school boards, who had appeared as defendants in Chancery Court, in the position of appellant before the U.S. Supreme Court, petitioning in *Gebhart* v. *Belton* for relief from Seitz' order. Redding and Greenberg were now on the defensive, protecting their small technical victory against a renewed assault on the authority of the Court to countermand segregation in public education.

Delaware lies below the Mason-Dixon Line, adjacent to Maryland's Eastern Shore. Like its mid-Atlantic neighbor, Delaware allowed the practice of slavery until Congress abolished the institution in 1865. Its residents had rejected Abraham Lincoln in the 1860 election, opting instead for the pro-slavery advocate, William Breckinridge. But unionist politicos kept the state out of the Confederacy and Delaware remained in the Union as a slave-holding border state throughout the Civil War. This brief history is important because it indicates that Delaware's residents retained racist attitudes toward African Americans long after the war had ended. The legislature refused to ratify the Thirteenth, Fourteenth, and Fifteenth Amendments, which ended slavery, then granted citizenship and voting rights to freedmen after the Civil War. Although federal authority superseded attempts to maintain a slave system, the legislature did its best to limit rights granted to the newly-freed population. Delaware specifically used poll and property taxes to disenfranchise its black voters. Public education also provided a useful tool for subjugating the African American population. Quakers and other charitable groups provided the first schools to free blacks in Delaware. The African School Society (1830s-1866), later known as the Delaware Association for the Moral Improvement and Education of the Colored People (1866), sought to broaden access to education in the late-nineteenth century. In 1875, the general assembly funded the state's few black schools through a special tax on African Americans, who, by and large, could ill afford generous school facilities. Revenues covered only one-third of total costs and private donations made up the rest. The general assembly began to fund black schools in 1881 and required that they remain open for three months each year. In 1897, just one year after the *Plessy* decision, the state implemented a "separate but equal" mandate which stipulated that black and white schools receive equal funding. This marked the official beginning of dual school systems in Delaware.[69]

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[69]Kluger, *Simple Justice*, 424-427; Patricia A. Maley, "Howard High School," Wilmington, New Castle County, Delaware, National Register of Historic Places Nomination, United States Department of the Interior, National Park Service, North Atlantic Region, 2 January 1985, Section 8, 2-3; and Susan Brizzolara, "Iron Hill School Number 112C," Newark, New Castle County, Delaware, National Register of Historic Places Nomination, United States Department of the Interior, National Park Service, North Atlantic Region, 24 April 1995, Section 8, 1-2.

Black facilities fell behind, however, and the Delaware Colored Citizens Political Organization and the Delaware Negro Civic Association lobbied the state for educational funds into the twentieth century. Supporters gained substantial victories in 1919 when the legislature made four significant changes in the School Code: 1) funding responsibilities moved from local to state authority; 2) the 1875 tax on African Americans was revised and extended to all residents to raise revenues for the support of all public schools; 3) the state required that children under the age of fourteen attend 180 days of school per year; and 4) transportation was provided for students in grades one through six who lived more than two miles from school. The 1919 statute bound African Americans and whites together under the same regulations and financial restrictions for the first time in Delaware's history. Past indifference towards African American education, however, meant that the dual systems barely compared even though the state government now regarded both in a more consistent manner. Delaware's modern patriarch, Pierre S. du Pont, recognized that black facilities fell far behind white schools in quality and construction. The legislature apparently revised the 1919 School Code to include a two million dollar building program to bring the black schools up to par. DuPont contributed the funds and oversaw the comprehensive program which included improvements in the fabric and content of African American children education. Susan Brizzolara's National Register nomination of "Iron Hill School Number 112C" provided a wonderful synopsis of du Pont's educational program. She made an important point about the broader importance of du Pont's work, namely that "By choosing to fund the construction of the African American schools, which would become the property of the State upon completion, du Pont prompted Delaware educators to confront and to develop a position toward the education of the African American child."[70] Du Pont called for a "single-teacher system" to be implemented in black schools because the small, agricultural population spread thinly across the state. Small schools were built near black populations, but white students, in contrast, were pulled from rural areas into large, consolidated schools. This meant that black schools remained small, one-room facilities, but white schools were designed for large student bodies. Attendance remained a problem for both races, but particularly for African Americans, because of the reliance on small-scale agriculture in rural areas. African American families relied on income from the work their children performed as agricultural laborers, so poverty and limited opportunity contributed to the difficulty of economic advancement. Du Pont's efforts made a significant impact on Delaware's public schools, however, and provided a consistent strategy for improving black education. Its rank among the nation's schools climbed from thirty-ninth in 1915 to eighth in 1938. Changes in the administration of Delaware's public educational system and the du Pont agenda enhanced the educational experience for African Americans, but blacks still received stereotypic treatment in the form of shortened school terms, one-room facilities, and rudimentary curricula.[71]

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[70]Brizzolara, "Iron Hill School Number 112C," Section 8, 3.

[71]*Ibid.*, Section 8, 3-8; Kluger, *Simple Justice*, 425-429.

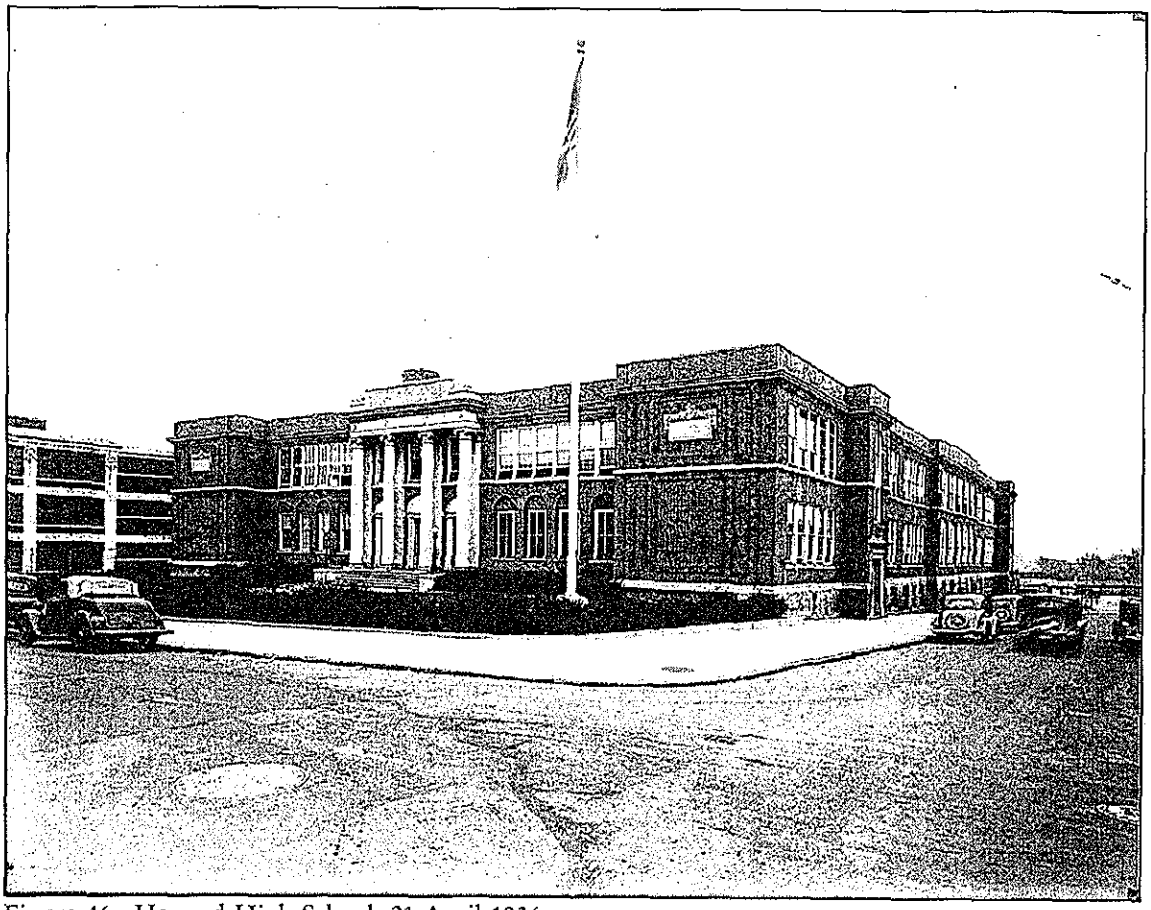

Figure 46. Howard High School, 21 April 1936.

Blacks made up only fourteen percent of Delaware's population in 1950, but these citizens were segregated in public facilities and kept out of most white collar professions. Segregation in education prevailed on both elementary and secondary levels from 1897 to 1954, although no four-year black high schools were to be found south of Wilmington, an area which included most of the state. Delaware's population centered in Wilmington and environs, just south of the Pennsylvania border. African American teenagers who lived within the city, proper, or in its outlying suburbs attended Howard High School, the state's first facility for black secondary education and the only one in the vicinity. The eighteen-mile commute could take an hour each way and in 1950, several parents from the town of Claymont decided that the distance was a bit excessive. They contacted Louis Redding, a prominent African American attorney in Wilmington, in March 1951, for advice about how they might proceed to integrate Claymont High School. He suggested that they petition the Claymont school board, on behalf of their children, for admission to the local, white high school. Coincidentally, a resident of Hockessin, a small community west of Wilmington, grew frustrated that the school district did not offer bus transportation for African American children attending the black elementary school located in the village center. Hockessin provided passage for white students, but not for blacks, so Sarah Bulah asked the Department of Public Instruction to rectify the situation. A bus for white children passed by her home

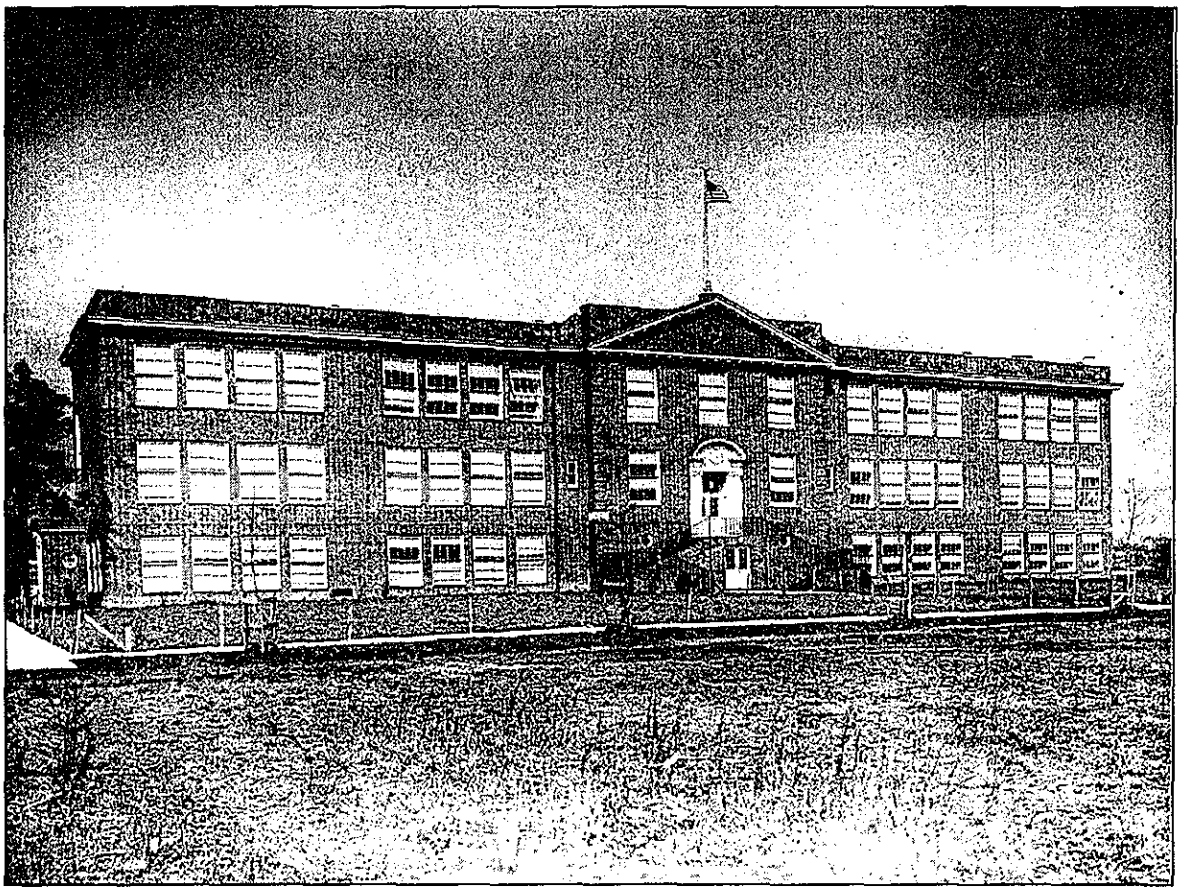

Figure 47. Claymont High School, 12 March 1926.

every morning and could take her daughter, Shirley, into Hockessin, but the department determined that segregation in education extended to the transportation system, as well. African Americans were not allowed to ride the bus used for white children and none were provided for blacks in Hockessin. Finding no help in Hockessin, Mrs. Bulah contacted Redding to initiate proceedings that would allow Shirley to ride the white bus. He refused to participate in this specific action, but encouraged her to sue, instead, for integration of the nearby white school. These two separate actions regarding segregation in the Claymont high school and in Hockessin elementary schools went forth, therefore, under the direction of Louis Redding and the NAACP LDF in the spring of 1951.[72]

Louis Redding descended from one of the most prominent African American families in Delaware. They have been referred to as members of the black elite, the "talented tenth," as it were, for the Reddings excelled in academic endeavors and civil rights activities that took them far beyond Wilmington. Louis attended Brown University and Harvard Law School, and bears distinction as the first African American admitted, in 1929, to the Delaware bar.

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[72]Kluger, *Simple Justice*, 426-427, 433-435. Maley, "Howard High School," Section 8, 1-3.

He established a private firm in Wilmington and maintained close ties with Thurgood Marshall and the NAACP in New York. Predictably, Redding worked where he was needed most, as an advocate for individual African Americans who needed legal assistance and defender of the race in the broader, civil rights arena. In 1950, he and LDF attorney, Jack Greenberg, successfully gained admission for thirty African Americans to the University of Delaware. They presented their case, *Parker* v. *University of Delaware*, before Vice-Chancellor Collins Seitz, who at thirty-six served as one of the youngest jurists in the history of the Chancery Court. In only five years of service, Seitz had proven himself a patron of those on the periphery of society. He believed in giving fair treatment to ethnic minorities, workers against large corporations, and African Americans. Despite political opposition, Seitz rose to the position of chancellor in June 1951, just in time to preside over Redding and Greenberg's latest endeavor, the *Belton* and *Bulah* school desegregation cases filed against the State Board of Education. Francis B. Gebhart had the misfortune to fall first in an alphabetical listing of board members and so became linked eternally with the Delaware school cases.[73]

Redding and Greenberg filed the cases in Delaware state court in July and August 1951, on the heels of proceedings in the *Brown* and *Briggs* cases. Ethel Louise Belton led a slate of eight children who formally petitioned for admission to Claymont High School in *Belton, et. al.* v. *Gebhart, et. al.* Ethel Belton, Joseph Crumpler, John W. Davis, Willie Robinson, Emma Fountain, John Short, and Harlan Trotter represented their eight children as official plaintiffs in Civil Action No. 258. Shirley Barbara Bulah stood alone with her parents, Fred and Sarah Bulah, in a separate action, *Bulah* v. *Gebhart, et. al.*, which requested the integration of Hockessin elementary schools. Both dealt with the issue of transporting children over long distances simply to maintain segregation. Arguments began before Chancellor Seitz on October 22, 1951, with Redding and Greenberg squared off against Delaware's attorney general, H. Albert Young, participating as counsel for the defense. The NAACP litigators followed the association's resolute strategy of attacking segregation at its sociological roots. Greenberg lined up an outstanding panel of fourteen experts to testify about the psychological damage inflicted by racial separation on all Americans, the harmful effects of busing, and to provide proof of African American intellectual capabilities in order to dispel false notions about the race's inferiority. Dr. Kenneth Clark appeared with new data from interviews with forty-one Delaware children, whose results in Clark's famous doll tests compared consistently with Southern blacks. Segregation spread its consistent lessons of inferiority and guilt across the United States, regardless of economic background, social class, or geographic region. Redding and Greenberg successfully showed that it was no different in Delaware. Albert Young put the state superintendent of instruction, George R. Miller, Jr., on the hotseat to defend the policy of exclusion. In 1943, Miller had assessed African American education in Delaware for his doctoral dissertation and found severe disparities between black and white schools. The state had neglected to provide equal funding for the dual systems to 1951 and it showed. On defense, the debate turned from the conceptual effects of segregation to the

[73]Kluger, *Simple Justice*, 429-439; Greenberg, *Crusaders in the Courts*, 87-89, 120-121; and J. Ritchie Garrison, "Under an Armistice: A Report on the Redding House," Preservation Prospectus, Prepared for the Division of Historical and Cultural Affairs, Department of State, State of Delaware, June 1992.

tangible disparities between black and white schools. At the close of three days of testimony, Chancellor Seitz chose to deviate from normal courtroom proceedings and visit the sites in question, himself. He, the court clerk, and participating attorneys found unsanitary restrooms, deteriorating structures, poor playgrounds and landscaping, unsafe settings, and no extra-curricular offerings or health clinic at Hockessin's black School No. 29 and at Howard High in Wilmington. Upon deliberation, the issue of equality certainly would be easy to resolve, but the essence of segregation, itself, might pose a more difficult question.[74]

Collins Seitz had time to mull over these important matters, however, for he had to wait for the clerk to submit an official copy of the trial transcript and then for attorneys to file briefs supporting their arguments. The whole process took five months, so the finding in *Belton* and *Bulah* was not announced until April 1, 1952, an unforeseeable April Fools' Day. The state board of education used the time to improve some of its facilities, perhaps in hopes of proactively countering the chancellor's finding. But Seitz would have none of it. He lambasted the state for the poor conditions of the African American schools, reiterated evidence of the sociological damage wrought by segregation, and declared that "the 'separate but equal' doctrine in education should be rejected." Since only the Supreme Court could accomplish that, Seitz took the next best course of action, explaining,

> It seems to me that when a plaintiff shows to the satisfaction of a court that there is an existing and continuing violation of the "separate but equal" doctrine, he is entitled to have made available to him the state facilities which have been shown to be superior. To do otherwise is to say to such a plaintiff, "Yes, your Constitutional rights are being invaded, but be patient, we will see whether in time they are still being violated."[75]

The Chancery Court of the State of Delaware therefore resolved that, "If, as the Supreme Court has said, this right is personal, such a plaintiff is entitled to relief immediately, in the only way it is available, namely, by admission to the school with the superior facilities. To postpone such relief is to deny relief."[76] Very simply, the chancellor ordered that administrators admit Ethel Louise Belton and her friends to Claymont High and Shirley Barbara Bulah to Hockessin's School No. 107, and indicated that integration begin immediately. Thurgood Marshall had believed that Delaware, as a border state, provided the best opportunity for success and after the hearing, proclaimed to the press, "This is the first

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[74]Kluger, *Simple Justice*, 439-447; Greenberg, *Crusaders in the Courts*, 135-139; and *Belton, et. al.* v. *Gebhart, et. al.*, Civil Action No. 258 in the Court of Chancery of the State of Delaware in and for New Castle County, in "Schools, etc.–Legal papers, notes, 1951-1952," Box 140, Papers of the NAACP, Group II, Series B. This box also contains attorney notes, correspondence, and memoranda relating to *Belton. Bulah* v. *Gebhart, et. al.*, Civil Action No. 265 in the Court of Chancery of the State of Delaware in and for New Castle County, "Schools–Kansas–Topeka–BRvB–Legal Papers, Drafts or Not Filed, 1951-[1953]," Box 139, Papers of the NAACP, Group II, Series B.

[75]Quoted in Kluger, *Simple Justice*, 449.

[76]Whitman, *Removing a Badge of Slavery*, 103; also quoted in Greenberg, *Crusaders in the Courts*, 150.

real victory ordered in our campaign to destroy segregation of American pupils in elementary and high schools."[77]

The Delaware cases provided the first instances in which a court ordered that white schools admit African American children on an equal basis. Seitz' finding in favor of the plaintiffs put the onus on the Delaware board of education to petition for relief from the chancellor's order. Young first appealed to the state supreme court, asking that it grant a stay which would delay integration. The former defendant now became the appellant in two new cases, *Gebhart, et. al.* v. *Belton, et. al.* and *Gebhart, et. al.* v. *Bulah, et. al.*, which reversed the roles of those involved. The state insisted that Seitz should have told the school systems to equalize conditions, as judges had done in *Briggs* and *Davis*, instead of directing immediate integration. In basic legalese, the court refused to countermand Seitz' order, thereby affirming the judgement of the Court of Chancery on August 28, 1952. Attorney General Young moved to the next step in the appeals process, to the U.S. Supreme Court, to gain relief from Seitz' mandate to integrate Hockessin and Claymont. Almost three months passed, though, before Young submitted his request for a writ of *certiorari* for the two *Gebhart* cases. He filed on November 13, 1952, only a few weeks before the scheduled hearing of the school desegregation cases. The Court's docket now contained four of them, listed one by one under *Brown* v. *Board of Education* because the justices had added a case from Washington, D.C. to the Kansas, South Carolina, and Virginia package. The Delaware cases would join the complement to be heard in early December, whether or not Young was ready for arguments.[78]

Attorneys on both sides were ready that December morning. Delaware stood alone as an appellant seeking to defer integration indefinitely. Counsel for the other states had staved off the NAACP's threat thus far, but realized the strong body of evidence that the five school cases presented. Distinctive characteristics of each case showed the breadth and pervasiveness of segregation in the United States. Social relations between the races in Delaware closely resembled the inequitable conditions in the deep South, but the relatively small size of the state's African American community may have made change more difficult. Residents of ethnic backgrounds and those of the Catholic faith accepted their African American neighbors more readily than the standard white, Anglo-Saxon, Protestant population. There seems to have been less conflict between diverse people at the same socio-economic level than farther south. Also, where black churches and community leaders played substantial roles in events in Kansas, South Carolina, and Virginia, there is no mention of either in accounts of the events surrounding the Delaware cases. In fact, Sarah Bulah found real resistance among her Hockessin neighbors when the case began. Richard Kluger recalls a response by her minister,

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[77]Kluger, *Simple Justice*, 447-450; Marshall quote taken from Kluger, 449; and Greenberg, *Crusaders in the Courts*, 150-151.

[78]Greenberg, *Crusaders in the Courts*, 157; Kluger, *Simple Justice*, 539-40; Opinion In the Supreme Court of the State of Delaware, *Francis B. Gebhart, et. al.* vs. *Ethel Louise Belton, et. al.*, *Francis B. Gebhart, et. al.*, vs. *Shirley Barbara Bulah, et. al.*, Nos. 15-18, 1952, "Correspondence 1951-1952," Box 62, Kenneth Bancroft Clark Papers, Manuscripts Division, Library of Congress, Washington, D.C.

Reverend Martin Luther Kilson, who said,

> I was for segregation. These folks around here would rather have a colored teacher. They didn't want to be mixed up with no white folks. All we wanted was a bus for the colored. Redding and some members of the NAACP encouched this issue of segregation. I hated to see them tamper with that little old colored school next to our church. It was so handy.[79]

Others apparently shared his feelings. The NAACP had met local resistance in other situations, from people who feared change or who rejected direct contact with whites because it might lead to personal, direct abuse. Marshall and his troops, of course, felt that, in the long run, the fight to end segregation in the United States would be for the greater good. They would rise above local resistance, wherever it came from, because this was a national fight for the future of African Americans.

G. And the first shall be last

Depending on one's perspective, the case from the District of Columbia, *Bolling* v. *Sharpe*, falls as the first, fourth, or fifth school desegregation case. Charles Hamilton Houston began working for integration in the District public schools during the late-1940s because, as the nation's capital, such blatant discrimination was an affront to the democratic ideals which the government was supposed to safeguard. Gardner Bishop, a black barber, spurred a local parents' group to seek equal access for their children to public playgrounds and public schools and sought Houston's assistance. He worked on several discrimination suits until health problems forced Charlie Houston to turn the civil rights work over to James Nabrit, Jr. Equalization was the goal in 1947, but four years later, Nabrit insisted on pursuing full integration in D.C. schools. Gardner Bishop recruited eligible plaintiffs for an action against the Board of Education of the District of Columbia, which Nabrit filed in 1951 before U.S. District Court. Young Spottswood Bolling, one of eleven junior high school students, topped the list of plaintiffs against board president and lead defendant, C. Melvin Sharpe. Although heard on appeal with the four other school cases, the issue in *Bolling, et. al.* v. *Sharpe, et. al.* differed from these because it appealed for desegregation of public schools in a federal district, which fell under the jurisdiction of the U.S. Congress. The issue of segregation in this instance pertained to guarantees in the Fifth, rather than the Fourteenth, Amendment, which the Supreme Court would have to address in a separate opinion. *Bolling*, therefore, stood with the school cases, yet alone, because it pertained to discrimination by the federal government against its own citizens.

The history of Washington, D.C. has always been blemished by the practice of slavery in the national capital. Those who helped craft the United States from thirteen colonies decided to set aside land for use as the seat of government so that no one state could assert implicit control over it. After a period of politicking while Congress migrated from Annapolis

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[79]Quoted in Kluger, *Simple Justice*, 435.

to New York to Philadelphia, a deal was struck for a parcel of swampy land juxtaposed on the northern bank of the Potomac River between Maryland and Virginia. Washington, therefore, developed a southern character and, although the Compromise of 1850 banned the **sale** of slaves in the District, the **practice** of slavery continued until 1865. Congress established public schools for Washington's African Americans, however, as early as 1864 because Republican reformers felt responsibility for its underprivileged citizens. Dual systems developed and were reaffirmed by legislation in 1874 and federal court action in 1910. Inadequacies existed in the black schools from their founding; characterized by overcrowded classrooms, few available kindergartens, few supplies, and watered-down curricula. A scarcity of building materials during World War II convinced Congress to halt the construction of new schools. A post-war population boom, due to heavy black migration, made the bad situation worse by escalating the problem of overcrowded schools. African Americans found themselves in quite a predicament because Congress directly controlled funding for District schools. The political winds could determine times of feast or famine because politicians who disregarded the importance of black education could, and did, block much-needed appropriations. The large quantity of tax-exempt properties owned by the federal government also meant that Washington had a small tax base, which could not make up the difference in meager times. Another dynamic, fed by socio-economic class, persisted within the African American community, itself. Upper middle-class blacks separated themselves from those whom they perceived fell lower on the social scale. As a result, workers near the bottom felt prejudice from whites and blacks. Affluent black families preferred to send their children to private schools to avoid the ill-effects of the inferior education that poorer blacks received. Socio-economic divisions within the community existed and may have delayed demands for either equalization or desegregation; that is, until Gardner Bishop started pushing for change.[80]

Bishop sensed that he fell below the affluent group in Washington society. He operated his own business, a barbershop, so had achieved some economic independence, but expressed anger towards whites and upper middle-class African Americans. He especially resented the fact that his daughter, Judine, could not play on a playground reserved for whites only. Bishop's anger grew as the years passed and facilities for African Americans deteriorated. His daughter, a young teenager in 1948, attended Browne Junior High School which jockeyed more, shorter classes to deal with the overcrowded conditions. Bishop and other parents realized that nearby white junior high schools swam in classroom space because class size was shrinking. The phenomenon of "white flight" had begun, whereby white families moved out of the District into the booming Maryland and Virginia suburbs. Whites moved out of Washington during the 1940s as more African Americans moved in. Conditions in segregated schools became even more unbalanced, as a result, and parents began to vent their frustration. The Browne Parent-Teacher Association (PTA) became the nexus for discontent. In 1947, the group engaged prominent Washington attorney, Belford Lawson, to file a lawsuit which accused the board of education of preventing black students in overcrowded schools from being reassigned to white schools which could accommodate them. *Carr* v. *Corning* prompted

[80]Kluger, *Simple Justice*, 508-511.

the board to move some students to two aging, white, elementary schools that functioned as annexes for Browne Junior High. Parents were not satisfied with this inadequate solution. Gardner Bishop had not joined the PTA because it was dominated by upper middle-class African Americans, but he felt just as much frustration over the Browne school situation. He rallied a second group of parents which first tried to participate in the PTA discussions, then formed their own group when the PTA turned them away because they were not official members. Bishop and his friends took refuge in Jones Memorial Church and officially organized as the Consolidated Parents Group, Inc. Protests and peaceful demonstrations ensued through the autumn of 1947 with little progress towards gaining adequate facilities for the teenagers. Three hundred adults joined Consolidated Parents and threatened to keep their children home from school until the board appropriately addressed their grievances. In February 1948, Gardner Bishop finally approached an upper-middle class African American from the Washington establishment, a social segment which his group actively had avoided in the past, and asked Charles Hamilton Houston for legal assistance.[81]

Houston was aware of the group's work and eagerly joined their cause. He polished their grievances that the board of education failed to provide adequate schools for African American children and had defrauded citizens by claiming that blacks received the same education as whites, in half the time. Consolidated Parents expanded their energies to include other injustices; such as segregation in recreation areas, the heavy teaching loads in black schools, the exclusion of African American children from kindergartens, and unequal conditions in other black facilities throughout the District. Through 1948 to 1950, the group tried to rectify some of these problems by pursuing at least three separate cases. Houston virtually became part of the parents' group and quickly defused their fears about working with someone outside of their social cluster. He worked on a *pro bono* basis through it all, until slowed by heart problems. Colleagues at Howard University, including Harry Merican, Charles Thompson, James Nabrit, Jr., and Ellis Knox worked with Houston during his illness until Nabrit and George E.C. Hayes took over the case completely in 1950, just before Houston's death. Both taught at Howard Law School at the time and were not officially on the staff of the NAACP's LDF, but Nabrit often served as an unofficial advisor to Marshall and his colleagues in civil rights matters. He closely followed the LDF's work in Virginia, South Carolina and Kansas, and was ready to tackle school desegregation in the national capital. Nabrit informed Gardner Bishop in the spring of 1950 that he would insist on pursuing full integration in future cases against the D.C. board, eliminating equalization as an option. In this respect, Nabrit led the pack by implementing the direct strategy first among the school cases. After years of frustration and delay, Bishop agreed with the more candid approach and engaged Nabrit as the new legal advisor for the Consolidated Parents Group, Inc.[82]

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[81]*Ibid.*, 511-515; and McNeil, *Groundwork*, 188-189. The student strike apparently lasted only a few days.

[82]McNeil, *Groundwork*, 189-191; Greenberg, *Crusaders in the Courts*, 118; Kluger, *Simple Justice*, 515-520; and Williams, *Eyes on the Prize*, 17-18.

Figure 48. Spottswood Bolling with his mother, Sarah, in March 1953.

An opportunity to implement the plan arose in September 1950, when Gardner Bishop initiated the incident that Nabrit would pursue in the Washington school case. Bishop accompanied eleven African American teenagers to the new, white John Philip Sousa Junior High School on September 11, 1950. The facility was large and clean, with a wonderful auditorium, a double gymnasium, a softball field and seven basketball courts on expansive grounds, and several empty classrooms. Bishop asked that the board of education allow the African American students to attend Sousa rather than the cramped black schools. It refused because black students were not allowed to attend school with white youth. Administrators instead offered to re-open an abandoned elementary school and use it as a black junior high. Parents had been protesting conditions at Browne Junior High School for years, but conditions at others throughout the city were no better. From 1948 to 1951, administrators had considered only accommodationist solutions to real problems in the public schools, so the time for legal action had come. Spottswood Bolling, a tall, gangly young man attended Shaw Junior High and led the list of plaintiffs in the formal complaint, *Spottswood Thomas Bolling, et. al.*, v. *C. Melvin Sharpe, et. al.*, filed in early 1951 in U.S. District Court during the early months of 1951. The soon-to-be-famous twelve year old had graduated from Garfield Elementary the previous year and now traveled across town to attend the seventh grade at Shaw. In his legal brief, Nabrit avoided discussions of distances to or conditions in black facilities because he based the case solely on the fact that segregation, itself, was unconstitutional. Nabrit claimed that, since District schools fell under federal jurisdiction,

administrators bore the responsibility of demonstrating the reason and legal basis for using race to make school assignments.[83]

Judge Walter M. Bastian, representing the U.S. District Court for the District of Columbia, heard arguments in *Bolling* v. *Sharpe* in the spring of 1951. Nabrit hammered at the issue of federal protection by arguing that discriminatory practices in Washington, D.C. constituted denials of due process, a civil right conferred in the Fifth Amendment. Like the equal protection guarantees in the Fourteenth Amendment, due process basically provided a check on the police power of the state. This Fifth Amendment protection, however, specifically pertained to statutes, ordinances, or administrative acts of the federal government, so any action that seemed to limit one's right of private property or free association could indicate a potential violation of due process. Nabrit argued that the board of education deprived his clients of liberty and property because segregation and due process were incompatible concepts. He invoked Justice Hugo Black's majority opinion in *Korematsu* v. *United States*, a 1944 appeal concerning the internment of Japanese Americans during World War II. Black wrote that, "Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can. The educational rights which petitioners assert are fundamental rights protected by the due-process clause of the Fifth Amendment from unreasonable and arbitrary restrictions."[84] In this and other precedents, the Supreme Court recognized that dire circumstance could call for restrictive action, but confirmed the clear responsibility of the federal government to safeguard the right of due process for all Americans. Nabrit argued that these precedents applied to *Bolling*. He went as far as to say that Sharpe and his colleagues misinterpreted congressional directives about educational programs in Washington, D.C. because Congress never intended to establish segregation in the nation's capital. Milton Korman, acting as Assistant Corporation Counsel for the District of Columbia, countered by saying that the board, indeed, provided public schools for all of its citizens and legally implemented the constitutional practice of segregation. And, Judge Bastian agreed. He dismissed *Bolling* in April 1951 on the grounds that the plaintiffs had failed to suggest a valid course of action, or relief, from segregation, by not asking for equalization. Nabrit had not bickered about conditions because that was not the issue: he only had addressed the legality of segregation, itself. From the Court's perspective, however, segregation was still constitutional, so the plaintiffs had no valid claim for relief from a legal practice.[85]

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[83]Kluger, *Simple Justice*, 521-523; "The Year Was 1950: District Family Recalls Role it Played in Events Leading to *Brown* Decision," *The Washington Post*, 18 May 1979, C2; and James M. Nabrit, Jr., "Resort to the Courts as a Means of Eliminating 'Legalized' Segregation," *Journal of Negro Education* 20 (1951): 469-471. Nabrit also filed *Cogdell* v. *Sharpe* at the same time, on the behalf of other minor plaintiffs who were denied admission to John Philip Sousa Junior High.

[84]Quoted in Kluger, *Simple Justice*, 521.

[85]Whitman, *Removing a Badge of Slavery*, 335-339; Kelly and Harbison, *The American Constitution*, 525-526; Kluger, *Simple Justice*, 521-523; and Nabrit, "Resort to the Courts," 469-471.

James Nabrit and George Hays had feared the speedy "justice" of a one-judge panel and their fears were realized. Attempts to file the *Bolling* complaint before a three-judge District Court failed. Nabrit and Hays then moved to the next highest level, to the United Circuit Court of Appeals for the District of Columbia. In the meantime, the NAACP LDF moved ahead with individual appeals for *Brown* v. *Board of Education*, *Briggs* v. *Elliott*, and began litigation of *Davis* v. *County School Board of Prince Edward County* and the two Delaware cases. All merged as one before the U.S. Supreme Court during the October 1952 term. After the Court postponed October arguments for *Brown*, *Briggs*, and *Davis*, the Clerk of the Court, Harold B. Wiley, contacted James Nabrit about adding the Washington case to the package. Chief Justice Fred Vinson had "suggested" that Nabrit and Hayes ask the Court to entertain all four school cases together. *Bolling* v. *Sharpe* had yet to receive a hearing before the Court of Appeals, so advancing directly to the High Court seemed ideal. The Justices agreed and granted a *writ of certiorari* to *Bolling* on November 10, 1952, one month before Nabrit and Hayes would present oral arguments. Delaware's appeal of *Belton* and *Bulah* joined the school cases three days later. The Washington, D.C. suit added a crucial element to the complement by presenting a situation where the federal government bore final responsibility for racial separation in public education. *Plessy* faced a strong test in this suit, particularly because *Bolling* directly juxtaposed discriminatory practice against democratic rhetoric. Only one outcome could preserve the republican integrity of the United States, one which confirmed the civil rights of all Americans by eliminating the illogical pretense of "separate but equal."[86]

Gardner Bishop had contested the unfair system since the mid-1940s, first on behalf of his daughter Judine and then for all black children who were cheated out of educational opportunities simply because of ethnic origin and skin color. One might say that Charles Hamilton Houston's efforts returned one-hundred fold because his work directly contributed to the success of all of the school cases. Progress in Washington, D.C. was long in coming, but real change became more evident by 1952 because of increased African American migration after World War II, white flight, and support from Democratic and Republican presidential administrations. The nation's capital carried special status as the seat of representative government for the strongest power in the "free world" in the 1950s, which Cold War tempers made even more significant when the U.S. pitted its democratic principles against the starkness of communism. School desegregation in Washington, D.C. became politicized in the Cold War environment because it provided a wonderful, unifying non-issue which members of both parties could support. As competent politicians, Harry Truman and his successor, Dwight D. Eisenhower, pledged to improve the conditions of African Americans, but particularly for those living in the national capital. The Washington school case, under the careful guidance of Nabrit and Hayes, provided a ready vehicle for accomplishing this goal.

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[86]Kluger, *Simple Justice*, 539; and Leon Friedman, ed., *Argument: The Oral Argument Before the Supreme Court in Brown v. Board of Education of Topeka, 1952-1955* (New York: Chelsea House Publishers, 1969), 108.

H. Conclusion

The course of events from 1945 to 1952 merged local concerns in Topeka with the national goals of the NAACP, producing a desegregation controversy that soon would affect school systems throughout the United States. A tedious trial-and-error process led the NAACP LDF to a successful litigation strategy for ending segregation in graduate and professional schools. They used it well in *Sipuel*, *McLaurin*, and *Sweatt*, even though the Supreme Court backed away from direct reconsideration of *Plessy*. By 1950, the national office sought valid plaintiffs for well-grounded cases that would knock the remaining "legs" out from under segregation in elementary and secondary education. These five school cases, argued before the Court in 1952, 1953, and 1954, did just that. Preliminary groundwork laid by NAACP professionals provided a context for litigation in Kansas, South Carolina, Virginia, Delaware, and Washington, D.C. The five came together in November 1952 because national NAACP strategy merged with local efforts in representative segments of the South. "Sheer accident," recalled Thurgood Marshall in a 1968 interview with Dr. Hugh Speer. Marshall went on to explain,

> The oldest one was the District of Columbia...that started in the 1940s. It was still pending in the Court of Appeals when the Supreme Court on its own motion brought it up. The Clarendon County South Carolina case came about by a shift in the county line. In Prince Edward County, Virginia, the Negro kids staged a strike on their own. Their parents didn't even know about it, so there was no plan there either. Topeka and Delaware came along slowly by local effort so all five of them were accidents. The nearest one to being planned was the District of Columbia. It had been festering and festering. The others were sudden....[87]

Marshall's group of LDF attorneys had expected to move step-by-step down the educational ladder; first desegregating graduate schools, then undergraduate programs, high schools, junior highs, and finally the primary grades. While case selection had a spontaneous quality, none originated in a vacuum. Nor did they proceed totally at random, without historical context or NAACP involvement. Local chapters knew about the broad campaign to desegregate public schools through national conferences, meetings, correspondence, and seminars. Enthusiasm for the LDF's work further increased after the Supreme Court opened access to African Americans in colleges and universities.

Each suit included in *Brown* v. *Board of Education* made important contributions to the NAACP's comprehensive campaign to end segregation in public education. Strong sociological evidence, like that used in the Kansas, South Carolina, Virginia, and Delaware litigation indicated that segregation committed social harm on very deep psychological levels. African American children learned that society, at large, considered them to be inferior to other children when they were relegated to poor, inadequate facilities apart from majority society. Physical comparisons of white and black schools showed that separate facilities could never be equal. Schools in Topeka, Kansas came closest to the "separate but equal" ideal, but Carter,

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[87]Speer, *The Case of the Century*, 149-150.

Greenberg, and the Scotts showed that educational inquiry involved more than quantitative measures of supplies and square footage. Curricula involved the **entire** experience which children encountered. LDF counsel wanted to call attention to the years of neglect suffered by African American children, but the litigation campaign zeroed in on desegregation as its goal. They found varying levels of support among African American communities across the South. In most situations, some African Americans tried to discourage integrationists because they wanted to maintain the integrity of black institutions and businesses. Teachers, in particular, feared for their jobs because an end to segregation could mean an end to the employment of black instructors. Some African Americans simply did not want their children to mix with whites and especially feared that white teachers would embarrass or criticize black students. Support, on the other hand, crossed many demographic sectors; including gender, economic status, occupation, race, and age group. African American churches and community groups formed strong networks of support for desegregation efforts. Women and men, adults, teenagers, and children played prominent roles in all phases of the operation.

Although attorneys filed the school cases on behalf of specific plaintiffs, all functioned as "class action" suits which, in effect, represented all African Americans living in the community where segregation was being contested. Hundreds, if not thousands, of African Americans were directly affected by the litigation. Silas Fleming, who testified on behalf of plaintiffs in Topeka, characterized the feeling and aspirations of his race as "craving light." He eloquently described an intense desire for opportunity and advancement, which segregation hindered. Sacrifice and service during World War II, along with Cold War rhetoric, raised expectations among African Americans and inspired them to demand the full benefits of citizenship guaranteed in the U.S. Constitution. Comparisons between the United States and the Soviet Union brought attention to the quality of life enjoyed by African Americans, particularly those who lived in the South. Image, by and large, outswept reality. In 1959 Thurgood Marshall said, "In truth, we in the N.A.A.C.P. and all other fair-minded people who are interested in democracy, realize that while what we are doing can be interpreted as benefitting Negroes, as such, actually it is in the interest of our government and democracy in general."[88] The school cases held universal significance and appeal throughout the world because they posed a very real opportunity for those normally ostracized to gain equal opportunity and status. In the interim, however, *Plessy* v. *Ferguson* represented post-Reconstruction attitudes and treatment that would not end easily. With cases consolidated by mid-November 1952, counsel on both sides prepared for a final assault on segregation's judicial cornerstone.

[88]Excerpts of address, "The Fifty Year Fight for Civil Rights," Presented at the NAACP Freedom Fund Report Dinner, 16 July 1959, 8-9, Thurgood Marshall Papers, Box 579: Folder 16, Manuscripts Division, Library of Congress, Washington, D.C.

We conclude that in the maintenance and operation of the schools there is no willful, intentional, or substantial discrimination in the matters referred to above between the colored and white schools. In fact, while plaintiffs' attorneys have not abandoned this contention, they did not give it great emphasis in their presentation before the court. They relied primarily upon the contention that segregation in and of itself without more violates their rights guaranteed by the Fourteenth Amendment.

This contention poses a question not free from difficulty. As a subordinate court in the federal judicial system, we seek the answer to this constitutional question in the decisions of the Supreme Court when it has spoken on the subject and do not substitute our own views for the declared law by the Supreme Court. The difficult question as always is to analyze the decisions and seek to ascertain the trend as revealed by the later decisions.[1]

-- Circuit Judge Walter A. Huxman, 3 August 1951
excerpt from the court's majority opinion for the
Topeka case, Kansas District Court

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[1]*Oliver Brown, et. al.* v. *Board of Education, of Topeka, Shawnee County, Kansas*, Civ. No. T-316, 98 F. Supp. 797, United States District Court, D. Kansas (3 August 1951) in Leon Friedman, ed., *Argument: The Oral Argument Before the Supreme Court in Brown v. Board of Education of Topeka, 1952-1955* (New York: Chelsea House Publishers, 1969), 539-540.

CHAPTER FIVE

THE *BROWN* DECISIONS, 1952-1955

Oral arguments for the five separate court actions comprising *Oliver Brown, et. al. v. the Board of Education, Topeka, Kansas* were scheduled to begin on December 9, 1952. Lawyers from the New York NAACP LDF office, like-minded colleagues from each of the states, and opponents representing the segregationist view gathered in Washington, D.C. for pre-trial preparations. Although the cases presented very contentious issues, the parties involved remained cordial and respectful throughout lengthy proceedings which extended over a period of two and a half years. Subsequent to the December 1952 arguments, justices requested that counsel, on both sides, submit answers to five constitutional questions regarding the original intent of key provisions of the Fourteenth Amendment. Chief Justice Fred Vinson's sudden death in 1953 further delayed proceedings, until the installation of the new chief justice, Earl Warren. Eisenhower's appointee changed the complexion of the Court, by casting a more liberal shadow over his peers, one most decidedly in favor of desegregation. The tone, therefore, was different during the second hearing, held in December 1953, and justices came to a consensus in the following spring. Warren spoke for the Court on May 17, 1954, striking down the "separate but equal" precedent established by *Plessy* and ruling that separate facilities were inherently unequal. He based the Court's *per curiam* opinion, subsequently dubbed *Brown I*, on the equal protection clause of the Fourteenth Amendment, which guarantees the right of equal treatment to all U.S. citizens regardless of race or ethnic background. Justices appended a separate decision for *Bolling* v. *Sharpe* because the suit dealt with action by the federal government, which fell under the due process clause of the Fifth Amendment. These findings did not lay the matter to rest, however, for the Court asked interested parties to address specific points regarding relief from segregation and potential impacts of such wide-sweeping social change.

Counsel appeared for a third and final time in April 1955, for debate on the appropriate remedy for segregation in public education. In an attempt to put some authority behind its *Brown I* finding, the Court issued an implementation decree, later referred to as *Brown II*, ordering desegregation efforts to proceed with "all deliberate speed." Some states enacted racial integration plans during the course of the proceedings, but most forestalled social change by insisting that federal authorities held no power to dictate policy to local school systems. The old states' rights theory of interposition reared its ugly head. The Eisenhower administration watched as the political winds changed during this period. The president was initially reticent about getting involved in the issue, but felt that, whatever one's personal views on race, federal jurisdiction superseded local option. He supported the Court's decision and used federal troops to enforce it when deemed necessary, but many African Americans reserved judgement about his personal prejudices and went on with more important work. By the late 1950s and early 1960s, civil rights activists capitalized on the momentum of the school desegregation campaign by tackling segregation ordinances in all venues of American society.

A. Mr. Wilson goes to Washington

After the dust had settled on the school desegregation cases, participants and observers, alike, wondered why Kansas, the "free state," had endorsed racial discrimination as a preferred social policy. Kansans, themselves, led the inquiry, possibly to assuage their guilt for engaging in such behavior. Some lamented that discrimination was the purview of the South, the old Confederacy, not of border states like Kansas and Delaware, and most certainly not of the federal government, as practiced in the nation's capital, Washington, D.C. But there it was, in each of these places, and in Boston, and Los Angeles, and in "anytown, U.S.A." In 1952, many communities practiced racial segregation and held African Americans in subordinate social positions. The school cases brought national attention to the dichotomy between democratic rhetoric and everyday life. Topeka, Kansas, provided a good example of "anytown, U.S.A." and the state attorney general's office was put in the position of defending the practice of segregation in middle America. Some significant new players entered the game when the cases advanced to the final stages. John W. Davis, widely respected as an elder statesman, functioned as lead counsel for the group of litigators who asked the Court to uphold the practice of segregation. Thurgood Marshall rallied the team of LDF staff and private counsel who prepared to depose *Plessy* v. *Ferguson*. For three days in December 1952, the two sides faced off on the floor of the Supreme Court for a grueling evaluation of judicial rights for African American citizens of the United States.

Figure 49. Paul E. Wilson.

Paul E. Wilson, a very young assistant attorney general, appeared on behalf of the state of Kansas. He had joined Harold Fatzer's office in December 1951, and began work on the school case in Spring 1952, pending receipt of *certiorari* from the Supreme Court. It seems that *Brown* v. *Board of Education* garnered relatively little attention in Topeka during the course of this year because political dynamics within the city's power structure changed. School board elections held in April 1951, actually prior to the District Court hearing, brought new blood into the administration and an easing of its staunch segregationist position. Topekans elected three new members who held more liberal views towards school integration. Support for Dr. Kenneth McFarland, superintendent, and Harrison Caldwell, administrator of black schools, dwindled because of contrasting perspectives, personality conflicts, and political difficulties. These two men had presented a stiff front against African American parents who supported integration and the administrators had threatened black teachers with dismissal if they supported the wrong side of the issue. McFarland submitted his resignation in April, due to allegations of financial impropriety, and left his post in August 1951, thereby removing quite a bit of animosity from the Topeka situation. The people of Topeka, by and large, lost the motivation to resist desegregation in the city's elementary schools. The new superintendent, Wendell Godwin, and

the new board, therefore, determined that they would do nothing to hinder or resist the appeals process. They felt that the *Brown* v. *Board* litigation targeted a legal statute of Kansas, so response to the NAACP's motion for appeal should be directed by the state's attorney general. Harold Fatzer saw it differently. He felt that while the Kansas law **permitted** segregation in cities with populations over 15,000, it did not **require** the practice. As Kansas attorney general, Fatzer believed that responsibility for a legal defense of segregation lay with the Topeka Board of Education.[2]

In the interim, neither party submitted a legal brief to the U.S. Supreme Court,

Figure 50. The Kansas capitol, which, in the 1950s, housed the Attorney General's office and state law library.

although *certiorari* was granted and arguments were scheduled for December 1952. The Court stepped into the breach with an "Intermediate Supreme Court Order in *Brown* v. *Board of Education*," issued on November 24, 1952. In it, justices acknowledged the lack of movement by the parties involved, but stipulated that,

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[2]Paul Wilson, oral history interview with James Duram, Dwight D. Eisenhower Library, Abilene, Kansas, 19 June 1970, 1-4; and "Record of Minutes, 1942-1953," Office of the Board of Education, City of Topeka, 290 (4 April 1951).

> Because of the national importance of the issue presented and because of its importance to the State of Kansas, we request that the State present its views at oral argument. If the State does not appear, we request the Attorney General to advise whether the States' default shall be construed as a concession of invalidity.[3]

The Court's "request" resolved the question of jurisdiction because the state would not abandon its position at this point. Four days later, Fatzer and Wilson made arrangements to be in Washington to represent the state of Kansas in opening arguments on December 9. Paul Wilson was well-prepared to write the state's brief and, although a bit nervous, ready to open the seminal debate of his professional career. Fatzer, however, wanted the Topeka school board to contribute a brief to the state's case and instructed them to do so. The board assigned the task to its attorney, Peter Caldwell, after engaging in a lengthy debate about the system's segregation policy. Members considered and rejected a resolution to end segregation in the city's elementary schools, settling instead on a statement which recognized the constitutionality of Kansas' statute, but which did not exactly endorse the practice of segregation, itself. Even though it held the winning hand at this point, Topeka administrators were backing away from discriminatory policies. A measure of embarrassment and integrity swept through the ranks as Wilson and Caldwell crafted a defense of Kansas law, rather than segregationist policy, *per se.* Comparable rationalizations also occurred in the other schools cases whereby the defendants justified segregationist practices in a variety of ways; namely, as accepted social practice, for the protection of both races, as best for the education of young children, for economic feasibility, and as constitutional by the Supreme Court's own collective hand. Racist sentiments may have permeated opinions behind these justifications, but pro-segregationist attorneys tried to leave that component out of their legal briefs. They countered sociological evidence of segregation's harm by denying it. Counsel for the defendants downplayed any suggestion that segregationist policies inferred that African Americans were inferior to whites. Attorneys representing Virginia and South Carolina asserted that the fundamental issue concerned equalization, not segregation.[4]

By raising such questions, the complement of school cases provided an opportunity for one of the most vital discussions in this nation's history, held both by scholars in formal halls of learning and by the unschooled in the most casual of settings. Paul Wilson characterized the group of young lawyers, of both races, who became involved in this classic legal and political event. Participation in *Brown* v. *Board* highlighted the careers of Topekans Charles Bledsoe, John and Charles Scott; LDF counsel, Robert Carter, Jack Greenberg, Constance Baker Motley, and Spottswood Robinson; and private attorneys, James Nabrit, Jr., George E.C.

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[3]"Intermediate Supreme Court Order in *Brown* v. *Board of Education*," *Brown, et. al.* v. *Board of Education of Topeka, et. al.*, 344 U.S. 141, An Appeal from the United States District Court for the District of Kansas, No. 8, 24 November 1952, published in Friedman, ed., *Argument*, 544.

[4]Wilson, *A Time to Lose*, 18, 67-71, 89, 121-126; Wilson, interview with Duram, 7-8; Kluger, *Simple Justice*, 547-550; and "Record of Minutes, 1942-1953," Office of the Board of Education, City of Topeka, 422-423 (1 December 1952). Peter F. Caldwell replaced Lester Goodell and George Brewster as counsel for the Topeka Board of Education, see Wilson, *A Time to Lose*, 105.

Hays, William H. Hastie, and Louis Redding. The school cases launched Thurgood Marshall on a path of federal service, for he later served as solicitor general of the United States and Supreme Court justice. Counsel for the pro-segregationist defendants, led by John W. Davis, included an older mix of experienced jurists and ambitious politicians. Participants on both sides regarded Davis as the premier gentleman jurist. A native West Virginian, he had served in the House of Representatives, as solicitor general of the United States during the Wilson administration, as ambassador to Great Britain, had launched an unsuccessful campaign for the presidency in 1924, and spent the rest of his years in private law practice with the New York law firm of Davis, Polk and Wardwell. Fatzer, and Wilson were joined by the attorneys general from Virginia, J. Lindsay Almond, and from Delaware, H. Albert Young and Joseph D. Craven. Archibald G. Robinson, T. Justin Moore, S.E. Rogers, Robert McCormick Figg. Jr., and Milton Korman completed the appellee team. Counsel seeking either to uphold or overturn segregation worked somewhat independently on the specific cases which had brought them to the Supreme Court, while contributing to the team effort for victory in *Brown* v. *Board of Education*. Therefore, Thurgood Marshall functioned as lead counsel on the complement of cases, but served as primary counsel only in *Briggs*. Robert Carter pled the Topeka case, as counsel of record for the plaintiffs in *Brown* v. *Board*. Appendix I provides a comprehensive view of the attorneys of record for each of the five school cases and the schedule of arguments presented to the Court in 1952, 1953, and 1955.[5]

While the litigation provided a capstone to the NAACP's long campaign for desegregation, it provided an important, early benchmark in the distinguished careers of these young professionals. Each side prepared for oral arguments by conducting considerable research into the judicial record of precedents pertaining to segregation, the historical antecedents for the constitutional rights of due process and equal protection, evidence of original intent on the part of authors of the Fourteenth Amendment, and on the part of authors of state laws which followed. As Topeka attorney Charles Scott remarked in a 1970 interview with James Duram,

> We did our homework, but yet, I think it ought to be fair to say that there were [a] large body of personnel that assisted in the research and all aspects of this case. I'm referring to the social aspects as well as the legal aspects. You mentioned earlier about the historical data–we even had historians working on, digging up this stuff and going in to the legislative history. Now we did some work on that as well–we had the state library over here, our state capitol building, digging up the legislative history as to when our state first adopted the permissive statute permitting the cities of the first class to maintain separate schools in the cities of the first class. What the thinking of the

[5]Wilson, *A Time to Lose*, 71, 102-104; and Friedman, *Argument*, 3-7. The roll of collaborators on the school cases has been narrowed down considerably. This brief synopsis glosses over contributions made by legal aids, support staff, students, concerned citizens, parents, historians, psychologists, sociologists, and educators in the NAACP's final effort to desegregate public schools. Those interested should first refer to Kluger, then other sources for more information about those who worked behind the scenes.

> legislators was at that time, as to what prompted them to enact such a statute and this type of thing.[6]

For the larger effort, the NAACP put historians, legal scholars, sociologists, and psychologists to work on research and analysis of the litigation's key components; those being, historical events, the judicial record, and the sociological impact of institutional racism. Marshall and his cohorts held several scholarly conferences and seminars in 1952, 1953, and 1954 to explore as many avenues as possible. Three hundred professionals met in April 1952 for a three-day colloquium held at Howard University regarding the topic, "The Courts and Racial Integration in Education." Marshall and Carter also arranged smaller group meetings through this period in Chicago, New York, Washington, and elsewhere to exchange information with professionals in the field. These discussions with some of the nation's best scholars helped sharpen LDF arguments against segregation and enabled counsel to anticipate debate from the opposition and from the justices, themselves.[7]

NAACP counsel also asked experts to write supportive studies which elaborated on a particular topic, such as synopses of social science evidence of racism or historical narratives on race relations in the South. Kenneth Clark joined with Isidor Chein and Stuart W. Cook to craft a lengthy discourse on the psychology of racism, which Marshall appended to the NAACP brief, entitled "The Effects of Segregation and the Consequences of Desegregation: A Social Science Statement." Thirty-two social scientists signed the document, adding weight to its findings. Clark also published substantial portions of the NAACP study in his seminal work, *Prejudice and Your Child* (1955). Harry Ashmore, an Arkansas reporter, also researched and wrote a supplemental work, published as *The Negro and The Schools* (1954). Ashton's study also provided valuable information used in NAACP legal briefs and in the Court's *Brown I* determination, as well. Historians John Hope Franklin and C. Vann Woodward examined slavery and race relations during Reconstruction to provide credible information about the development of segregationist practices in American society. Publication of their now-classic works, *From Slavery to Freedom* (2d ed. 1956), *The Militant South* (1956), and *The Strange Career of Jim Crow* (1956), followed after the conclusion of the school cases. Marshall tapped his pool of scholars throughout the three-year *Brown* litigation, with excellent result. Preparation was critical at each stage in the long campaign to end segregation in public education.[8]

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[6]Scott, interview with Duram, 20-21.

[7]Kluger, *Simple Justice*, 534-537; Correspondence, Robert L. Carter to Dr. Kenneth Clark, Kenneth B. Clark Papers, Box 62, "Correspondence, 1951-1952," 31 October 1951; and Papers of the NAACP, Group II, Series B, Box 42, "Schools-Kansas-Topeka-Brown v. Board-Thurgood Marshall, 1952-1954;"

[8]Kluger, *Simple Justice*, 553-557; Papers of the NAACP, Group II, Series B, Box 42, "Schools-Kansas-Topeka-Brown v. Board-Thurgood Marshall, 1952-1954;" Wilson, *A Time to Lose*, 110; correspondence, Robert L. Carter to Dr. Kenneth Clark, Clark Papers, Box 62, "Correspondence, 1951-1952," 11 January 1952 and 11 June 1952; researchers can find a draft copy of Clark's outline for "The Social Scientific Argument Against Segregation in the Schools," in Clark Papers, Box 62, "Correspondence, 1951-1952," n.d.; correspondence, Kenneth B. Clark to Dr. M. Brewster Smith, Clark Papers, Box 62, "Correspondence 1951-1952," 15 September 1952; and correspondence, Jerome

Compared to other litigants, NAACP staff had the luxury of time during the autumn of 1952. They prepared for oral arguments to begin in October, as scheduled, so had ample time to review their material when the Court pushed the schedule back to add *Davis*, *Gebhart*, and *Bolling* on the docket. Counsel for defendants felt a bit more harried, but all arrived in Washington, D.C. in time to attend congenial, pre-trial meetings and to admit some to the bar of the U.S. Supreme Court. Paul E. Wilson provided a wonderful account of his introduction to the hallowed marble halls in his memoirs, *A Time to Lose.* He also described a "visit to the

Figure 51. Attorneys for *Brown* appellants; including (L-R) Charles Scott, Nabrit, Robinson, Reeves, Greenberg, Marshall, Redding, Tate, and Hayes.

rendezvous of the enemy," an introductory meeting with counsel for the plaintiffs. Wilson had corresponded earlier with LDF staff, in preparation for the hearing, but was quite taken with their sincerity and seriousness on this December day. Two observations stuck in Wilson's mind; firstly, that the setting put him in the racial minority, and secondly, that his opponents actually thought they could win. Both were a bit unsettling for this Kansan. Any uncertainties were swept away, however, in a meeting with his own contingent. Advocates

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S. Bruner to Kenneth B. Clark, 22 September 1952, Clark Papers, Box 62, "Correspondence, 1951-1952;" Kelly, "The School Desegregation Case," 326. N.B. The first edition of Franklin's *From Slavery to Freedom* was published in 1947.

for the segregationist view also expected to win, and presented a strong, united front which drew upon fifty-seven years of constitutional precedent. While state counsel had confidence in the legal strength of their arguments, attorneys viewed changes in contemporary society with some trepidation.[9]

As 1952 came to a close, politicians, civil servants, and jurists in Washington, D.C. readied for a change in presidential administration, from Harry S Truman to Dwight D. Eisenhower, bringing for some a welcome end to thirty-two years of dominance by the Democratic Party. But, Roosevelt and Truman left a legacy which would outlast them, through designees who served on the U.S. Supreme Court. Five of the "nine old men" who served on the Court during the October 1952 Term received their appointments during Franklin Roosevelt's administration and Truman installed four others. While FDR's "court-packing plan" of 1937 earned him no grace with sitting justices, he did succeed in replacing five jurists between 1937 and 1941. Hugo Black (Alabama), Stanley Reed (Kentucky), Felix Frankfurter (Massachusetts), William Douglas (Connecticut), and Robert Jackson (New York) represented the Roosevelt contingent. Constitutional scholars credit the Roosevelt Court with a record of "liberal nationalism" because of its support of many New Deal programs and labor reforms. Justices Black, Frankfurter, and Douglas contributed the most-decidedly liberal elements in the civil rights arena. Through several cases, justices of the Roosevelt Court embraced broader interpretations of the First and Fourteenth Amendments, which meant that they gave wider latitude to civil rights guarantees of free speech, press, assembly, and religion. Truman's appointments included Harold Burton (Ohio), the only Republican, along with Fred Vinson (Kentucky), Sherman Minton (Indiana), and Tom Clark (Texas). These men brought the Court back to a more moderate, centrist composition and dampened some of the liberality of the Roosevelt Court. Cold War fears of communism prompted the Truman Court to tighten First Amendment rights regarding speech and assembly. It was a divided group, however, and Vinson, as chief justice from 1946 to 1953, did little to unite them.[10]

Overall, the Vinson Court tendered a mixed record on civil rights. Several key cases chipped away at restrictive covenants applied to housing and public, interstate transportation, which impeded access for African Americans. Vinson agreed with the majority in a significant opinion which found such covenants within the purview of state powers, and thereby in violation of the Fourteenth Amendment. The Court also struck down judicial enforcement of such covenants in the District of Columbia, providing another good sign. It drew upon interstate commerce law to overturn segregation on buses traveling across state lines and to remove segregated dining cars from public trains. The NAACP also found significant success

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[9]Wilson, *A Time to Lose*, 127-142, the account of meeting can be found on 132; and Wilson, interview with Duram, 8-13.

[10]Kelly and Harbison, *The American Constitution*, 759-765, 801-805, 859-860; Wilson, *A Time to Lose*, 136-138; Kluger, *Simple Justice*, 582-591; and Whitman, *Removing a Badge of Slavery*, 109-111. Further insight into the socio-political orientation of the Court can be gained through C. Herman Pritchett, *The Roosevelt Court: A Study in Judicial Politics and Values, 1937-1947* (Chicago: Quadrangle Books, 1969, repr. of 1948 ed.).

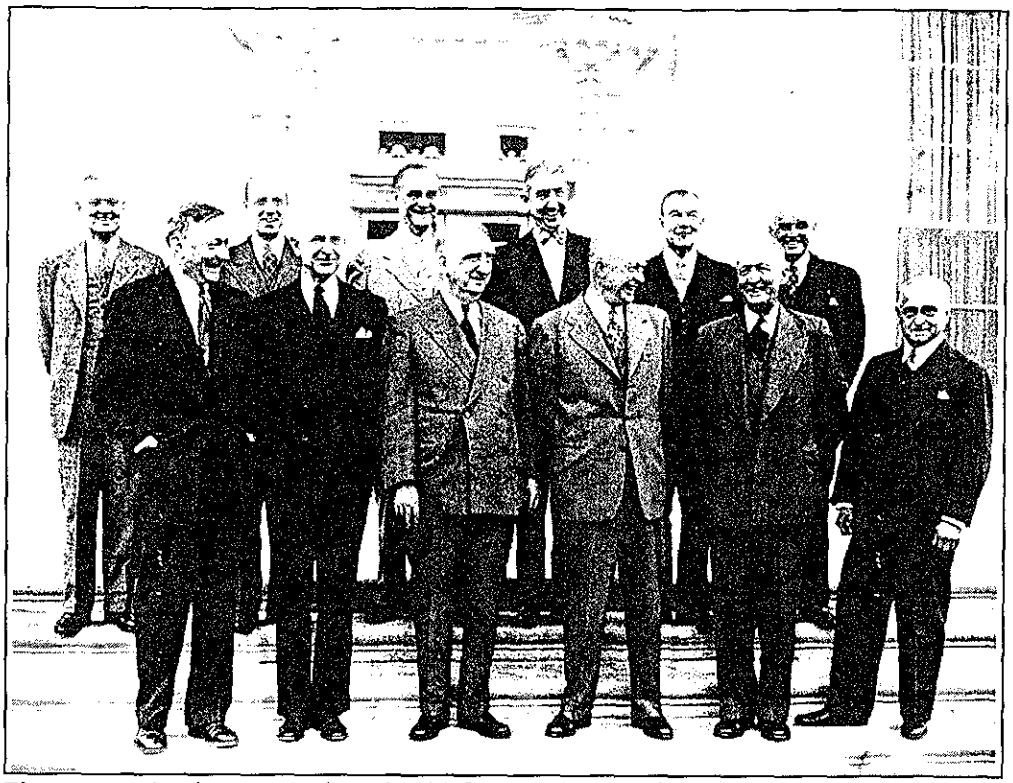

Figure 52. Eisenhower stands with Chief Justice Vinson, fellow justices, and members of the executive branch, 6 February 1953.

before these justices in *Sipuel* (1948), *Sweatt* (1950), and *McLaurin* (1950), but those who opposed segregation feared that Vinson would, again, steer clear of direct confrontation with *Plessy*. In light of the Cold War, Vinson and his cohorts stiffened their views on civil liberties, particularly in cases concerning the rights of Socialists, Communist Party members, and political dissenters. These findings muddied the Court's full record on civil rights. But, counsel for both sides of the school desegregation issue studied this record and mulled over their chances with the nine justices, trying to determine which factors would sway their decisions. Personal and ideological divisions between the justices made matters worse because one had to play the odds when trying to predict future voting patterns. Richard Kluger summed up the situation, by saying,

> From 1949, when Clark and Minton joined the Court, through the 1952 Term, the Vinson bloc of Reed, Burton, Clark, Minton, and the Chief voted together in non-unanimous cases nearly three-quarters of the time. At the other end of the Court, Black and Douglas voted together in 61 percent of the non-unanimous cases. And oscillating between the two poles were Jackson and Frankfurter, who voted together in 69 percent of the non-unanimous cases.[11]

[11]Kluger, *Simple Justice*, 584. Kluger and others remark that Vinson's peers held their Chief Justice in rather low regard. Lack of respect could, and reportedly did, contribute to a lack of collegiality and support among the group.

He, in fact, charged the Vinson Court as being one of the most fragmented judiciaries in U.S. history. Four members hailed from southern states which practiced segregation and five originated in northern or midwestern states which had discarded such practices. The whole picture of a Supreme Court racked by sectional tensions, personality conflicts, ideological differences, and dueling egos made the prospect of oral argument ever more daunting. It was this distinguished panel which would ponder the constitutionality of racial segregation--this Court which Dwight Eisenhower would "inherit" in January 1953.[12]

Opposing counsel and esteemed jurists came together in a crowded courtroom on Tuesday afternoon, December 9, 1952 for oral arguments in the *Brown* v. *Board of Education* school desegregation case. At precisely 1:35 p.m., Chief Justice Vinson called "Case No. 8, Oliver Brown and Others versus the Board of Education of Topeka, Shawnee County, Kansas." Opening arguments fell to Robert Carter, as counsel for appellants in the Kansas case. He gave a brief review of the litigation before luncheon recess at 2:00 p.m. When Court reconvened one half hour later, justices closely questioned Carter about his contention that segregation, *per se*, was unequal because it had a detrimental impact on African American students. Felix Frankfurter kept Carter on the defensive by citing examples from legal precedent and history, but Carter countered by saying the equal protection clause offered safeguards against all discrimination based on race. With that, Carter reserved his remaining time and Paul E. Wilson stepped into the arena. After reviewing pertinent Kansas statutes, he took up the psychological ramifications of segregation. Wilson kept to the law and emphasized the District Court finding of parity between Topeka's black and white schools. He kept the focus on specifics, so as to limit arguments ranging to the practice of segregation, in general. With further questions from the justices and rebuttal from Carter, oral arguments for the Kansas case came to a close at 3:15 p.m.[13]

The "big guns" appeared next, when Vinson called "Case No. 101, Harry Briggs Jr., *et al.* against Roger W. Elliott, chairman, J.D. Carson, *et. al.*, member of Board of Trustees of School District No. 22, Clarendon County, South Carolina, *et. al.*" Thurgood Marshall carefully laid out the case for the appellants. He reviewed all the particulars, but spent most of his time on expert sociological testimony presented before the lower court by Kenneth Clark and others. Marshall argued, therefore, that the legality of segregation should be

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[12]Kluger, *Simple Justice*, 562-588; Whitman, *Removing a Badge of Slavery*, 111-114; and Kelly and Harbison, *The American Constitution*, 919-924. *Shelley* v. *Kraemer* (1948) and *Hurd* v. *Hodge* (1948) struck down restrictive housing covenants. *Morgan* v. *Virginia* (1946) invalidated racial segregation in interstate transportation via public buses and *Henderson* v. *United States* (1950) ended segregation in dining-car facilities. Irving F. Lefberg, "Chief Justice Vinson and the Politics of Desegregation," *Emory Law Journal* 24, no. 2 (Spring 1975): 243-312 provides wonderful insight into the dynamics of the Court during this period. Vinson particularly felt that fundamental, American values were under attack by totalitarian ideologies, and set out to squelch their influences within the United States by restricting civil liberties of some groups. He spoke out strongly against denials of African American rights, however, in majority opinions for *Sweatt* and *McLaurin*.

[13]Wilson, *A Time to Lose*, 142-151; Kluger, *Simple Justice*, 564-569; Friedman, *Argument*, 11-35; and Whitman, *Removing a Badge of Slavery*, 119-132. A schedule of oral arguments has been provided in Appendix I.

overturned and the matter of school policy should fall to individual states to sort out. This caught Frankfurter's attention and a discussion of gerrymandering ensued. NAACP counsel took the position that if school lines were drawn along racial lines, then discrimination would result, but not if the lines merely delineated district boundaries and nothing else. Marshall, quite naively as it turned out, claimed that, "If the lines are drawn on a natural basis, without regard to race or color, then I think that nobody would have any complaint."[14] In this scenario, the NAACP position put the onus on legislatures and federal courts to implement, regulate, and check the policy of equal access. John W. Davis then rose for the appellees. He relied on history as his guide and reaffirmed prior applications of the Fourteenth Amendment. Davis also reviewed the recent progress in South Carolina, stemming from litigation by the NAACP and the resultant District Court order to bring black facilities and teacher salaries up to par. Accomplishments included the construction and repair of black schools, the equalization of teacher salaries, the purchase of new equipment, and the improvement of curricula. As indicated earlier, administrators and politicians in the "Palmetto State" believed that equalization would make the problem go away.

Court adjourned promptly at 4:30 p.m. and Davis resumed his presentation just after noon on December 10. Through exchanges with Justice Frankfurter, Davis concluded that, although conditions and technologies change over time, Congress did not intend for the equal protection clause to prevent racial separation. Separateness, in his mind, did not constitute a form of discrimination. In rebuttal, Marshall redirected the discussion to the heart of the matter, specifically to the fact that law and social policy excluded African Americans from mainstream society for no reason other than race. He cut to the quick of the sociological debate, in sharp contrast to Davis' replay of history. Wilson later recalled, "In the Davis involvement I sensed an element of poignancy--one of the century's greatest advocates employing his wit and eloquence to support a cause that had already been lost, not to Thurgood Marshall and his associates, but to history and the maturing American social conscience."[15] No one yet knew how the justices would view the matter, in a nostalgic context of past practice for its own sake, or in a more modern context of progressive social justice.[16]

Spottswood Robinson followed the *Briggs* presentation with arguments in "Case No. 191, Davis, *et. al.*, against County School Board of Prince Edward County, Virginia, *et. al.*" The hearing began at 1:15 p.m. on Wednesday, December 10, and concluded two hours later. Robinson labored through details of the *Davis* case and called for an end to school assignment based on race. He requested that the Court order Prince Edward County to admit African American students immediately to the white, Farmville High School on the basis of due

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[14]Quoted in Friedman, *Argument*, 50.

[15]Wilson, *A Time to Lose*, 152.

[16]*Ibid.*, 151-152; Kluger, *Simple Justice*, 570-575; Friedman, *Argument*, 36-68; and Whitman, *Removing a Badge of Slavery*, 133-148.

process and equal protection clauses in the U.S. Constitution. T. Justin Moore served as counsel for the appellees. He outlined his clients' attempts to upgrade the black public schools within Prince Edward County and the state's broader program to equalize education across the board. Moore contended that segregationist policies were not prejudicial and had not harmed Virginia's youth. He claimed that segregation functioned as a fundamental, accepted, social institution which sprang from the culture of the "Old Dominion." Pro-segregationists believed it to be a lynchpin of their world and if removed, would lead to fragmentation and possible collapse. Lindsay Almond, Virginia's attorney general, also presented arguments on behalf of Prince Edward County and reaffirmed Moore's position. He spent most of his time on a very selective interpretation of Virginia history. Almond ended his monologue, however, by saying that a desegregation order would "destroy" the state's school system because tax revenues and public funds would dry up. His comments left some observers, and perhaps the Court, itself, with a veiled threat if the justices decided to overturn segregation. During rebuttal, Robinson engaged Justices Jackson, Douglas, and Vinson in a discussion about congressional authority over Fourteenth Amendment protections. Basically, did Congress have to enact legislation in order to implement the Fourteenth Amendment? Could the Supreme Court act upon Fourteenth Amendment issues without law to review or overturn? Robinson argued that because the Constitution, itself, was law, Congress did not have to pass enabling legislation to implement equal protection guarantees. The Court, indeed, had the authority to review Fourteenth Amendment issues because the amendment, itself, amounted to legislation. It was a worthy finale for one of Charles Hamilton Houston's most able scholars.[17]

Bolling v. *Sharpe*, the direct offspring of Houston's own work, came next before the Court. George E.C. Hayes began the presentation for the African American petitioners in "Number 413, Bolling, *et. al.*, versus C. Melvin Sharpe, and others," late in the day on that Wednesday afternoon. He adhered to Nabrit's "all-or-nothing" strategy by making a direct attack on the legality of segregation. Hayes claimed that practices of racial separation were unconstitutional because Congress had never specifically required it through legislation. Justices pointed out that Congress obviously accepted the policy because it funded separate schools in the District of Columbia. The *Bolling* case relied on protections granted in the due process clause of the Fifth Amendment and Hayes explained that these should supersede any discriminatory legislation or policy. James Nabrit, Jr. picked up this same argument during his presentation, which extended into the next morning's session, December 11. Nabrit, however, grounded the legal arguments in a review of U.S. legal history and the record of segregation in Washington, D.C. He used the Bill of Rights and Civil War amendments the authority of constitutional protection over Congressional legislation. The Supreme Court's job, therefore, lay in checking unconstitutional laws which restricted the rights of U.S. citizens. Milton Korman, speaking on behalf of the District board of education, argued that Congress clearly intended separate schools for the capital city. He recited a litany of statutes

[17]Wilson, *A Time to Lose*, 152-153; Kluger, *Simple Justice*, 575-577; Friedman, *Argument*, 69-107; and Whitman, *Removing a Badge of Slavery*, 149-157.

which showed intent to separate the races. Korman seemed credible until he recited a passage from the *Dred Scott* v. *Sandford* (1857) finding, a most notorious Supreme Court opinion which virtually denied the very humanity of African Americans. The precedent was not a good choice. Korman used it to infer that the justices should resist the tide of social change, as their predecessors did, by reaffirming segregation, but the strategy backfired. Nabrit responded with a stirring and eloquent rebuttal. James Nabrit's words captured the essence of the long desegregation campaign. He concluded by saying,

> The basic question here is one of liberty, and under liberty, under the due process clause, you cannot deal with it as you would deal with equal protection of the laws, because there you deal with it as a quantum of treatment, substantially equal.
>
> You either have liberty or you do not. When liberty is interfered with by the state, it has to be justified, and you cannot justify it by saying that we only took a little liberty. You justify it by the reasonableness of the taking.
>
> We submit that in this case, in the heart of the nation's capital, in the capital of democracy, in the capital of the free world, there is no place for a segregated school system. This country cannot afford it, and the Constitution does not permit it, and the statutes of Congress do not authorize it.[18]

With that, oral argument in *Bolling* v. *Sharpe* came to an end.[19]

The time had come for the fifth, and final, school case, "No. 448, Francis B. Gebhart, and others, versus Ethel Louise Belton, and others." Roles were reversed in this suit because Chancellor Seitz had found in favor of the African American plaintiffs. Therefore, Delaware's attorney general, H. Albert Young, opened arguments at 1:27 p.m. on Thursday, December 11. Young reviewed the details of the case and protested the lower court's order that Claymont and Hockessin administrators admit African Americans to white public schools. Jack Greenberg recalls that Young faced a difficult task because he asked the Court to reverse his own state supreme court, which had confirmed the chancellor's finding. Furthermore, Young attacked the method of relief, which was determined by individual judges, rather than the broader issue of equalization. Louis Redding rose first for the defendants. He attached the Delaware suit to the other four school cases, by saying that all dealt with the rights of the individual against capricious government action. Redding stressed that even though the plaintiffs had won in lower court, the state of Delaware threatened to eject the African American students from formerly white schools when the dual systems were equalized. Temporary relief in the form of separate but equal was not acceptable, therefore, the Court should order blanket desegregation. Jack Greenberg, at the ripe old age of 28, finished oral arguments with a review of sociological evidence. Chancery Court had accepted expert

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[18]Quoted in Friedman, *Argument*, 142.

[19]*Ibid.*, 108-142; Kluger, *Simple Justice*, 577-580; and Greenberg, *Crusaders in the Courts*, 172-173.

testimony which showed segregation's harm. The Supreme Court, then, should affirm the chancellor's order by allowing the plaintiffs to remain in integrated facilities.[20]

With that, oral arguments in the school desegregation cases came to an end at 3:50 p.m. on Thursday, December 11, 1952. Counsel and participants on both sides returned home to resume life and other duties while waiting for the Court's opinion. Although the decision would not come until early summer, justices met on the following Saturday, December 13, to review the cases and begin the deliberation process. Although they took no formal vote, the justices realized that they were divided on the issue. Preliminary sentiments divided along predictable lines, with Vinson, Reed, and Clark opposing any reversal of *Plessy* and Black, Frankfurter, Douglas, Burton, and Minton leaning towards a constitutional end to segregation. Justice Jackson seemed to dither on the question, finding justifiable reasons to vote to retain the *status quo* or to strike it down. Justices worried less about the constitutional issue and more about the rippling social effects of desegregation. Most favored integration of Washington, D.C.'s schools because they fell under federal control, but action affecting the states raised serious concerns. Threats by Governor James Byrnes and Attorney General Lindsay Almond about closing public schools in South Carolina and Virginia made a definite impact on deliberations. Felix Frankfurter wanted the Court to have the cases reargued in March 1953, with counsel addressing the original intent of the Fourteenth Amendment and various means of implementing desegregation. Delay and non-action, however, seemed a more plausible strategy at this point, in order to give the Court more time to consider its options and to calm society's fears of change. For the moment, the crux of the matter seemed to lie not in doing what was right, but in doing what was politically expedient in 1952.[21]

B. The politics of civil rights

While the U.S. Supreme Court acts as final arbiter in judicial matters and provides an independent check on the other branches of the federal government, it does not function in a vacuum. These nine people belong to the larger, American society and are not immune to political issues, social tensions, regional differences, and personal foibles. These factors, more than anything, seem to have tempered the Court's decision in December 1952 to delay a final opinion in the *Brown* v. *Board of Education* school cases. Justices put the matter on hold to allow Southern tempers to cool, but found themselves adjusting to changes in their own world during that fateful year. Dwight D. Eisenhower entered the presidency on January 20, signifying a new era of Republican leadership, domestic peace, and Cold War politics. Ike had

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[20]Kluger, *Simple Justice*, 580-581; Friedman, *Argument*, 143-173; and Greenberg, *Crusaders in the Courts*, 173-174.

[21]Kluger, *Simple Justice*, 585-616; and Whitman, *Removing a Badge of Slavery*, 167-172. The personal papers and diaries of those involved provide important information about the Court's deliberations; including the Harold H. Burton Papers, the Felix Frankfurter Papers, the Robert H. Jackson Papers, and the William O. Douglas Papers found in the Manuscripts Division, Library of Congress. These collections are available on microfilm through interlibrary loan.

definite ideas about the function of the presidency and the relationship between federal and state governments. His rather conservative opinions account for Eisenhower's reputation as a staunch moderate, who sometimes acted as stable, reassuring leader, yet at other times seemed to be backward-looking ideologue.

Harry Truman, by comparison, seemed to have had more of the old "rough and ready" spirit when facing new situations. His administration initiated small, but significant, gains for African Americans in the civil rights arena during the 1940s. Walter White, executive secretary of the NAACP, drew Truman's attention to the plight of African Americans in the South and earned his support of an anti-lynching bill. White also asked Truman to call a special session of Congress to address race relations in the United States. Truman bypassed the fractious Congress altogether and created the President's Committee on Civil Rights by executive order to study race relations. The committee's report, *To Secure These Rights* (1947), became a significant document for American civil rights because it outlined key proposals for federal action; calling for, 1) the elimination of segregation in all public venues, schools, and transportation systems; 2) legislation to outlaw discrimination based on race, creed, or national origin; 3) the establishment of fair health practices; and 4) an end to restrictive covenants. Members also asked that the government establish a permanent Fair Employment Practices Commission, a Civil Rights Commission, and a Civil Rights Division within the Justice Department. The administration sent various legislative packages to Congress, to enact some of the committee's proposals as part of Truman's Fair Deal program, with little success. The president, in typical brash manner, worked around Congress by issuing executive orders. In 1948, he called for the integration of the armed forces in Executive Order No. 8981, which also established the Committee on Equality of Treatment and Opportunity in the Armed Services. Action in Korea (1950-1953) expedited matters and facilitated a smooth transition from the old *status quo*. On the domestic front, Truman directed the creation of the Fair Employment Board to function within the Civil Service Commission through Executive Order 9980. Its mandate authorized members to ferret out discriminatory practices in federal agencies. Other recommendations made in *To Secure These Rights* were implemented slowly, but surely, over the next twenty-one years.[22]

Truman's administration made greater inroads through the courts, which in the long run contributed to the strength of the school cases. The president instructed his attorney general and solicitor general to submit legal briefs, as *amici curiae* or "friends of the court," in important civil rights cases. These documents routinely are prepared by non-involved, but interested parties in support or opposition to legal positions expressed in cases heard by the U.S. Supreme Court. Richard Kluger claimed that neither of the two men who filled these slots felt great compassion for African Americans, but carried out their duties as loyal political appointees. Truman tapped Tom Clark to serve as U.S. Attorney General and, in this role,

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[22]Robert H. Ferrell, *Harry S. Truman: A Life* (Columbia: University of Missouri Press, 1994), 285-286, 297-298; Kluger, *Simple Justice*, 249-255; Kelly and Harbison, *The American Constitution*, 953; Greenberg, *Crusaders in the Courts*, 61-62; and Harry S. Ashmore, *Civil Rights and Wrongs: A Memoir of Race and Politics, 1944-1994* (New York: Pantheon Books, 1994), 59, 65-66.

Clark prepared *amicus* briefs calling for an end to restrictive housing covenants and to segregation, itself. Later, when deliberating the *Brown* decisions as a U.S. Supreme Court justice, Clark seemed to be much less supportive of these positions. Philip Perlman, U.S. Solicitor General, also filed *amicus* briefs, many of which were written by Philip Elman, his assistant. Perlman took a personal stance in the school cases, however, against the mixing of the races in public schools and refused to authorize a supportive brief. Elman prepared an outstanding brief on his own initiative, with the blessing of the new attorney general, James P. McGranery, but was asked not to file it until after the 1952 election. Elman's brief stated that legal segregation was unconstitutional in the United States. More importantly, it suggested a possible strategy for Court action, whereby justices could strike down *Plessy*, but implement desegregation on a slow, gradual scale. Philip Elman had clerked for Justice Frankfurter at one time and, perhaps through that experience, had gained a particularly insightful perspective on the Court's mood. In the role of assistant solicitor general, Elman represented the Truman administration with a strong stance on the school desegregation cases. This position, combined with those opposing restrictive covenants, provide evidence that Truman's administration adopted an affirmative stand on civil rights during his presidency.[23]

Despite many restrictions, political and economic power increased overall for African Americans during the late 1940s and 1950s. As the old saying goes, "a rising tide lifts all boats," and the post-war economic boom benefited blacks and whites. After World War II, average incomes of African Americans rose and more voted in national elections. Financial stability and confident post-war attitudes of former servicemen and defense industry workers contributed to these trends. Black migration to northern states, where there were fewer restrictions on franchisement, led to broader participation in the electoral process. Adept politicians realized that African Americans could form a strong voting block which could either support them or vote for their opponents. Democratic support for African American interests certainly garnered votes in November 1952, just as it also brought the wrath of Southern conservatives who formed the core of the upstart Dixiecrats. Eisenhower easily defeated Adlai Stevenson and assumed the presidency in January 1953. Many factors contributed to the change in the White House, including Harry Truman's stand for expanding civil rights for African American citizens. Relative prosperity increased through Ike's term and Republican domination of the White House and both houses of Congress brought hopes of greater domestic harmony. Military might and Cold War tensions put the U.S. in the world spotlight throughout this period. Its brilliance showed a number of positive aspects of American life, but it also exposed some negative ones like discrimination and racial intolerance.

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[23]Kluger, *Simple Justice*, 251-255, 558-561; Greenberg, *Crusaders in the Courts*, 62; Ferrell, *Harry S. Truman*, 298-299; and Michael S. Mayer, "With Much Deliberation and Some Speed: Eisenhower and the *Brown* Decision," *The Journal of Southern History* 52 (no. 1) (February 1986): 46-47. N.B.: J.H. McGrath succeeded Tom Clark as U.S. Attorney General when Truman appointed Clark to the U.S. Supreme Court. James P. McGranery held the post after McGrath was forced out by scandal. McGranery wanted to participate in oral arguments in the school cases during the 1952 term, but Chief Justice Vinson refused his request.

It was now up to Eisenhower to move beyond the rhetoric to flesh out what life in this democracy really meant.[24]

Figure 53. A charming and affable President Eisenhower.

As a man who previously had avoided political entanglements, Ike presented an enigma to the Washington power brokers in 1953. He seemed to act as a foil for his supporters because he had no political track record and so could represent whatever they wanted. The affable Ike, a Kansan, carried four southern states in the election. These voters wanted Eisenhower to reduce the administration's involvement in civil rights issues. The Justice Department now came under the direction of Attorney General Herbert Brownell. William P. Rogers and J. Lee Rankin served as assistant attorneys general. Simon Sobeloff became the new solicitor general, with Robert Stern and Philip Elman assisting. These men would figure prominently in future *Brown* proceedings because they would present the administration's position through *amicus* briefs. Eisenhower, members of his cabinet, and White House staff believed that the administration should stay out of the school desegregation issue. A position either for or against portended serious political ramifications. Ike believed that each branch served a specific, separate function in the federal system of government, meaning that the executive branch should not influence the judiciary. Furthermore, he believed that the court system should avoid social issues because those matters were beyond its scope. They were best left for states and local communities to work out through reform activity or legislation. Eisenhower believed in boundaries; that is, between private citizen and the role of the government, between state and federal authority, and between the three branches of government.[25]

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[24]Ferrell, *Harry S. Truman*, 292-299. N.B.: Interestingly enough, South Carolina Governor James Byrnes, who staunchly opposed desegregating the public schools, served as Truman's secretary of state.

[25]Kluger, *Simple Justice*, 650-652.

Dwight Eisenhower was harder to pin down on the issue of segregation, itself. He grew up in a segregated society and enjoyed the comforts provided by African American staff and personal valets for most of his military career. This lifestyle did not change once he entered the White House, but perhaps his perceptions of African Americans did. He appointed an African American to his executive staff, E. Frederic Morrow, the first to work in the White House in an administrative role. Morrow functioned as the administrative officer of a Special Projects Group, which dealt with race relations. He fielded correspondence about the president's position on desegregation and civil rights issues, gave speeches, and maintained contact with interest groups and black leaders. In an oral interview given in 1977, Frederic Morrow explained that while he dealt primarily with African American concerns, "However, the administration was very careful to give me an across-the-board assignment, to make sure that there was never any suspicion that I was merely there as some king of window dressing to advise the President on what to do about black affairs."[26] Morrow tried to convince the Eisenhower administration and the Republican Party to embrace African Americans as ordinary citizens, not keep them at arms length as a separate group. Things did not progress the way he wanted, however, and Morrow believed that contemporary attitudes and Ike's close relationships with Southerners interfered with true racial advancement. One significant friend, Governor James Byrnes, had Ike's ear and used his influence to discuss all of the horrors which surely would rain down on the South if full integration became a reality.[27]

Eisenhower viewed segregation in very subjective and conditional ways. The president was not exactly opposed to desegregation, he merely believed that such drastic social change should occur slowly and should correspond to community standards. In theory, he felt that government could not legislate social attitudes. He accepted desegregation in the military, after openly opposing it at first, and understood the benefits of integrated professional and graduate schools. Eisenhower seemed to agree with those who feared mixing young children, but felt that adults could handle close contact. Washington, D.C., however, presented a separate case because conditions in the capital reflected federal policy. In his first state of the union address, the president clearly came out against segregation in Washington. "I propose to use whatever authority exists in the office of the President to end segregation in the District of Columbia,"

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[26]E. Frederic Morrow, oral interview with Dr. Thomas Soapes, Oral History Collection, Dwight D. Eisenhower Library, Abilene, Kansas, 23 February 1977, 9-10.

[27]Morrow, interview with Dr. Thomas Soapes, 23 February 1977, 16-23; E. Frederic Morrow, *Black Man in the White House: A Diary of the Eisenhower Years by the Administrative Officer for Special Projects, the White House, 1955-1961* (New York: Coward-McCann, Inc., 1963); and Mayer, "With Much Deliberation and Some Speed," 49. Maxwell Rabb also worked as a key advisor on civil rights matters, please refer to his papers in the Eisenhower Library and Maxwell Rabb, oral interview with Steven Lawson, Oral History Collection, Eisenhower Library, October 1970. Additional materials on Eisenhower and race relations may be found in Central Files, Official Files, folders labeled as "Everett Frederic Morrow," "RE: Negro Matters," "Segregation," etc., Eisenhower Library. The Ann Whitman Series and Dwight D. Eisenhower Diary Series in this same repository may also be very useful.

he promised, "including the Federal Government, and any segregation in the Armed Forces."[28] Desegregation of federal offices, government contractors, schools on military posts, and in the branches of the military, all initiated during Truman's administration, proceeded during the 1950s with little problem. Action regarding school desegregation in Washington, D.C., however, was tied specifically to the *Bolling* v. *Sharpe* case, now pending before the Supreme Court. Eisenhower's attitude about integration in the District again points to the rather subjective nature of his views. He made a distinction between policy for schools in Washington and those operated by the various states, expressly rejecting federal involvement in education beyond the District's boundaries. Desegregation seemed appropriate for Washington because those schools operated according to federal policy, but Ike generally sided with the more conservative view that children of separate races should not be brought together in public schools. This situation reflects three primary strands of thought in Eisenhower's mind: firstly, that the federal government should not continue segregationist policies; secondly, that state and federal actions should remain separate; and thirdly, that community standards and attitudes bear significant weight in social matters.[29]

The administration waited through the spring of 1953 for the Supreme Court to announce its decision in the five school cases. Other cases came and went during this time, but the justices sorted out their concerns through private notes and deliberations. Felix Frankfurter set one of his clerks, Alexander Bickel, to work on a research project which would trace state use of the Fourteenth Amendment immediately after the Civil War. Such information could provide clues on the intent of the constitutional statute and reveal potential loopholes that might be used to outlaw segregation. Frankfurter realized that his colleagues were divided in their resolution of *Brown* v. *Board of Education* and believed that a delay for reargument of key issues would provide time for the justices to reach a consensus. Process, and unanimity, seemed as important as outcome at this point. In late May, Frankfurter proposed that the Court ask counsel and the U.S. Attorney General to answer five questions about the original intent of the Fourteenth Amendment. Bickel's research paid off because it formed the basis for the inquiry. He and Frankfurter drafted the questions, which the Court accepted with little revision; as follows,

> 1. What evidence is there that the Congress which submitted and the state legislatures and conventions which ratified the Fourteenth Amendment contemplated or did not contemplate, understood or did not understand, that it would abolish segregation in public schools?
>
> 2. If neither the Congress in submitting nor the states in ratifying the Fourteenth Amendment understood that compliance with it would require the immediate abolition of segregation in public

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[28]Robert L. Branyan and Lawrence H. Larsen, eds., *The Eisenhower Administration, 1953-1961: A Documentary History*, Vol. I (New York: Random House, 1971), 2 February 1953, 103.

[29]Chester J. Pach, Jr., and Elmo Richardson, *The Presidency of Dwight D. Eisenhower*, American Presidency Series, Rev. ed. (Lawrence: University Press of Kansas, 1991), 137-141; James C. Duram, *A Moderate Among Extremists: Dwight D. Eisenhower and the School Desegregation Crisis* (Chicago: Nelson-Hall, 1981), 53-64, 69-71; and Mayer, "With Much Deliberation and Some Speed," 48-49.

schools, was it nevertheless the understanding of the framers of the amendment (a) that future Congresses might in the exercise of their power under Sec. 5 of the amendment, abolish segregation, or (b) that it would be within the judicial power, in light of future conditions, to construe the amendment as abolishing such segregation of its own force?

3. On the assumption that the answers to questions 2(a) and (b) do not dispose of the issue, is it within the judicial power, in construing the amendment, to abolish segregation in public schools?

4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment,
(a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or
(b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

5. On the assumption on which questions 4(a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4(b),
(a) should this Court formulate detailed decrees in these cases;
(b) if so, what specific issues should the decrees reach;
(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;
(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?[30]

Vinson instructed counsel for each school case to address these issues through an "Intermediate order of the Supreme Court" issued on June 8, 1953. He ordered the Court clerk to restore the five cases to the docket and scheduled reargurnents for October 12, 1953. After waiting through the spring for some final resolution, counsel now faced preparations for a second round of arguments before the High Court. This time, the chief justice specifically invited the attorney general to file a new brief and participate in oral arguments, leaving Eisenhower's staff in a quandary over whether to get involved in the growing debate over school desegregation or to leave the politically-sensitive issue alone.[31]

As attorney general, Herbert Brownell had to determine what position the Justice Department would take, if, indeed, it did submit a brief in response to the five questions for reargument. He realized that participation in the *Brown* hearing would put the administration in a tough situation because it could bind the administration to a publicly-stated opinion. Eisenhower also felt uncomfortable with the Court's request because he believed it invited the executive branch to step over the line into the judiciary's territory. Brownell convinced Ike that a legal brief from the Justice Department would not compromise the integrity of either party and, besides, the administration could not rightly refuse the Court's "request." Brownell won Eisenhower over to his position, but faced further opposition from members of his own

[30]Friedman, *Argument*, 177-178. Friedman provides the full text of Miscellaneous Order, 345 U.S. 972.

[31]Kluger, *Simple Justice*, 598-600, 614-616, 652-655; and Whitman, *Removing a Badge of Slavery*, 172-177.

staff. He moved the case from the solicitor general's office to his own and set his staff to work by late July. Brownell, Lee Rankin, and Philip Elman believed that the department should take a strong stand against segregation. William Rogers expressed reservations, but followed the attorney general's lead in support of the brief. Given the scope of the Court's assignment, Brownell asked the justices to delay arguments and they agreed to move the *Brown* hearing back two months, to December 7, 1953. Most of the work fell to Rankin and Elman as they prepared a supplemental brief, attached to Elman's 1952 document as an addendum which responded to the Fourteenth Amendment inquiry. The government's brief claimed that nothing in the historical record gave clear direction on the question at hand, but said that the Fourteenth Amendment espoused the principle of equality for all, regardless of race. The 1953 brief came down squarely on the side of desegregation, but asked that the Court require a transitional period to allow states to gradually integrate the public schools. Eisenhower quickly reassured his Southern friends that the administration would move cautiously if desegregation, indeed, became a reality.[32]

Counsel in each case also benefitted from the delay because preparation for reargument involved intensive research into action by the Thirty-ninth Congress during the Civil War era, as well as reactions by the, then thirty-seven, state legislatures upon the Fourteenth Amendment's ratification in 1868. The NAACP called on its supporters to provide documentary evidence of the Radical Republicans' more benevolent actions; including, the Civil Rights Act of 1866, the Freedmen's Bureau Bill, the "Civil War Amendments," and congressional plans for Reconstruction. As before, the LDF enlisted scholars and academics in their cause to ferret out the true meaning of these events. Alfred H. Kelly, a renowned constitutional historian, made significant contributions to the briefs submitted for reargument. Marshall, co-counsel, and legal staff brought researchers and attorneys together at regional conferences where they could discuss their findings and present cogent information in response to the Court's queries. All in all, they found that the post-war era offered a mixed assortment of civil rights advocates who endeavored to give African Americans an equal chance and strict constructionists who thought social matters were better left out of the legislative arena. While there was evidence that framers of the Civil Rights Act and the Fourteenth Amendment believed they incorporated equal standing in these laws, direct control over school administration and social policy lay in the reserve powers of the states, and, needless to say, Southern states had no intention of granting equal status to African Americans. Original intent, then, varied among those involved in drafting and ratifying the Fourteenth Amendment, meaning that divergent motives of Republicans, Democrats, Northerners,

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[32]Kluger, *Simple Justice*, 650-652; Mayers, "With Much Deliberation and Some Speed," 48-51; Duram, *A Moderate Among Extremists*, 59-64; and Kelly, "The School Desegregation Case," 329-330. Case File #144-16-84 (Brown v. Board of Education), Freedom of Information/Privacy Act Office, Civil Rights Division, United States Department of Justice, Washington, D.C. contains intra-agency correspondence which discusses the role the government should play in the school cases and possible ramifications of its involvement.

Southerners, congressmen, and state legislators all came into play. "This foray into original intent," Jack Greenberg divined, "posed seemingly unanswerable questions."[33]

The pro-segregation interpretation of these historical events hinged on the maintenance of separate schools in Washington, D.C., by the same Congress which approved the Fourteenth Amendment. In this view, segregation was not barred by either the Civil Rights Act of 1866 or the Fourteenth Amendment. Counsel sorted through the historical record in systematic fashion. They divided research tasks and shared results, but submitted separate briefs for each school case. The attorneys general of segregated states also joined forces to scour the legislative record for evidence that racial separation, indeed, was acceptable to the framers of the statute. Lindsay Almond, of Virginia, sent a detailed questionnaire to his counterpart in each of the thirty-seven states which in 1868 comprised the United States. At Almond's request, Paul Wilson, of the Kansas Attorney General's Office, routed a similar survey to school superintendents in twelve cities of the "first class," asking for specific information about the establishment of their schools systems, administrative policy, and the use of segregation. The response from Topeka showed that a total of 836 African American children, divided among twenty-eight teachers, attended the city's four black schools during the 1953-1954 academic year. John Davis, Moore, and Almond fit the statistical data into the broad strategy for the segregationist position. They relied primarily on the historical precedent of the Southern way of life, where discrimination and racial separation prevailed. When faced with the Court's question on implementation, counsel retreated to the old, reliable states' rights defense against federal incursion. They asked the Court's indulgence to handle the process at their own pace.[34]

Even as preparations continued, changing political winds in the Kansas capital denoted that the board of education had second thoughts about pursuing the *Brown* litigation in order to maintain segregation. As early as March 1953, Superintendent Wendell Godwin sent letters to six African American teachers who lacked continuing contracts, but were employed on a yearly basis. He informed them that a Supreme Court order to desegregate Topeka's schools

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[33]Whitman, *Removing a Badge of Slavery*, 182-191; Greenberg, *Crusaders in the Courts*, 177-189, quote taken from 182; Kluger, *Simple Justice*, 634-646; Kelly, "The School Desegregation Case," 324-329; and Whitman, *Removing a Badge of Slavery*, 219-234. Examples of inquiries made to scholars may be found in Correspondence Files, Box 61, and "Notes & Drafts, 1946-1954," Box 62 in the Kenneth B. Clark Papers, Manuscripts Division, Library of Congress. Bernard Schwartz, ed., *The Fourteenth Amendment: A Century in American Law and Life* (New York: New York University Press, 1970) provides a more comprehensive look at the broad scope of Fourteenth Amendment protections.

[34]Wilson, *A Time to Lose*, 157-159, 161-166 (he states (158) that 729 black students attended the elementary schools during the 1952-1953 year, and were taught by twenty-seven African American teachers); and Kluger, *Simple Justice*, 646-650. Copies of Almond's surveys may be found in Case File #144-16-84 (Brown v. Board of Education), Freedom of Information/Privacy Act Office, Civil Rights Division, United States Department of Justice, Washington, D.C. The Department of Justice files also contain correspondence between the U.S. Attorney General's Office and its counterpart in various states. Kansas surveys and correspondence may be found in "Printed Reference Material," "Letters/Surveys/Notes, 1953-1954," and "Questionnaires Regarding School Survey, 1953-1954," in Records of the Attorney General, Center for Historical Research, Kansas State Historical Society, Topeka, Kansas.

would result in a loss of jobs because "our Board will proceed on the assumption that the majority of people in Topeka will not want to employ negro teachers next year for white children."[35] Any forthcoming plans for the integration of the elementary schools, therefore, would not include the black faculty. A school board election in April ejected the last remaining members who, in 1950, had refused McKinley Burnett's pleas for full integration. The new members now broached the subject, in light of the continuing litigation and perceptions that segregationist policies were easing throughout the country. If they integrated the elementary schools, the case could be declared moot and removed from the Court docket. While Wilson waited for the board's decision, Justin Moore and John W. Davis encouraged him to continue preparations for reargument, in hopes that the Court would not find the Kansas case to be moot. The board decided that it would not contribute to the state's legal brief, nor would they withdraw the case, but instead would submit a separate brief which answered the Court's questions regarding implementation, in the event that segregation were overturned. Surprisingly, Topeka jumped ahead of the Court and adopted a resolution to change school policy. It read, "Be it resolved that it is the policy of the Topeka Board of Education to terminate the maintenance of segregation in the elementary grades as rapidly as is practicable."[36] The 1953-1954 school term apparently seemed a "practicable" time, for administrators slowly began to integrate two elementary schools, Randolph and Southwest.

THE PUBLIC SCHOOLS OF TOPEKA
Topeka, Kansas

Wendell Godwin
Superintendent

March 13, 1953

Miss Darla Buchanan
623 Western Avenue
Topeka, Kansas

Dear Miss Buchanan:

Due to the present uncertainty about enrollment next year in schools for negro children, it is not possible at this time to offer you employment for next year. If the Supreme Court should rule that segregation in the elementary grades is unconstitutional, our Board will proceed on the assumption that the majority of people in Topeka will not want to employ negro teachers next year for white children. It is necessary for me to notify you now that your services will not be needed for next year. This is in compliance with the continuing contract law.

If it turns out that segregation is not terminated, there will be nothing to prevent us from negotiating a contract with you at some later date this spring. You will understand that I am sending letters of this kind to only those teachers of the negro schools who have been employed during the last year or two. It is presumed that, even though segregation should be declared unconstitutional, we would have need for some schools for negro children and we would retain our negro teachers to teach them.

I think I understand that all of you must be under considerable strain, and I sympathize with the uncertainties and inconveniences which you must experience during this period of adjustment. I believe that whatever happens will ultimately turn out to be best for everybody concerned.

Sincerely yours,

/s/ Wendell Godwin

WG/la

Wendell Godwin
Superintendent of Schools

cc: Mr. Whitson
Dr. Theilmann
Mr. Caldwell

Figure 54. Sample letter informing one teacher of her tenuous status.

[35]"Record of Minutes, August 1953 through February 6, 1956," Office of the Board of Education, City of Topeka, 15.

[36]*Ibid.*

The action affected only fifteen children, none participating in the *Brown* case. Most African American children returned to segregated schools in the autumn and life went on as before. Wilson, therefore, forged ahead with his brief for reargument because segregation still existed in Kansas and the attorney general wanted the question settled once and for all.[37]

As to be expected, counsel representing both sides in the school cases felt that their findings contained evidence which confirmed their particular position. Only the Supreme Court could determine which side held the correct interpretation. The justices also had reviewed the record of history and precedent in preparation for the new October 1953 term. Bickel finished his report on the origins of the Fourteenth Amendment in August, with the basic conclusion that while specific references to civil rights had been stricken from the amendment, Congress hoped that future legislation would add definition to some of the vague language. His research seemed to suggest that the Supreme Court could justify a decision either for or against segregation, as it saw fit. Justice Frankfurter was delighted with its scope, had it printed as a formal memorandum, and sent a copy to his colleagues. All seemed on schedule for the December reargument when, on September 8, 1953, Chief Justice Vinson suffered a massive heart attack and died. According to form, all of Washington publicly mourned his loss, but few grieved deeply over his passing. The conservative pall which Fred Vinson had cast over the Court was now lifted. In its place, blame for the mistrust and fragmentation among the justices heaped silently on his memory. Felix Frankfurter, sources reveal, held a rather optimistic view of the change which Vinson's death would bring to the Court. At last, the justice hoped, a new era of consensus could begin, but not even he could anticipate the revolution which was about to occur.[38]

C. Earl Warren fosters consensus through *Brown I*

Attention now focused on Eisenhower and his choice for a replacement. The president received unsolicited advice from many quarters, but sought more expert guidance from his brother, Milton, and Attorney General Brownell. Milton Eisenhower functioned as an unofficial advisor to the president throughout his administration, and on September 11, 1953, Ike asked for Milton's input on two political appointments, one to the Supreme Court and one to the Department of Labor. He wrote,

> As far as the Supreme Court vacancy is concerned, my problem is to get a man (a) of known and recognized integrity, (b) of wide experience in government, (c) of competence in the law, (d) of

[37]Wilson, *A Time to Lose*, 157-159, 166-180; Speer, "Trial of the Century," 23-25; and "Record of Minutes, August 1953 through February 6, 1956," Office of the Board of Education, City of Topeka, 16 (8 September 1953).

[38]Whitman, *Removing a Badge of Slavery*, 189-191, 234-243; and Kluger, *Simple Justice*, 653-656.

national stature in reputation so as to be useful in my effort to restore the Court to the high position of prestige that it once enjoyed.[39]

Ike wanted to expunge the tenets of the New Deal and Fair Deal programs which endured through the Roosevelt and Truman appointees. He wanted a chief justice with broad, practical experience, impeccable personal integrity, common sense, and middle-of-the-road political views. Ike found these qualities in Earl Warren, three-term governor of California. Warren had proven himself to be an efficient administrator and good manager who could get results. Although many questioned Eisenhower's quick decision, Warren took his place on the bench by the beginning of the October 1953 term and made the Court his own.

Earl Warren, the son of a Norwegian immigrant, earned his law degree at the University of California at Berkeley and, after World War I, became assistant district attorney for Alameda County. His success led him to higher office in 1938, as attorney general of California. Warren became nationally famous as an effective prosecutor, who took a tough stance against crime, but had a humanitarian's heart. He tumbled from the pedestal during World War II, when he advocated the confinement of Japanese-Americans because he felt they posed a threat to internal security. By 1943, Earl Warren had settled into the governor's mansion in Sacramento. As governor, he streamlined state agencies and implemented a rather liberal social agenda. Warren survived the Japanese internment episode and became a major player in the Republican Party on a national scale. Thomas E. Dewey tapped the governor to be his vice-presidential candidate on the 1948 Republican ticket. After the narrow defeat by Harry Truman and Alben Barkley, Warren returned to California, but remained in the national limelight. He met Eisenhower at the 1952 Republican convention and competed with him for the opportunity to run for the presidency. General Eisenhower carried the convention, however, and Warren graciously delivered California's delegates to seal the nomination. Some claim that, in return, Eisenhower

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THE PRESIDENT

THE WHITE HOUSE

DEAR MR PRESIDENT: YOUR DESIGNATION OF ME TO BE CHIEF JUSTICE OF THE SUPREME COURT HAS JUST BEEN ANNOUNCED OVER THE AIR WITH FULL APPRECIATION OF YOUR CONFIDENCE AND OF THE RESPONSIBILITY IMPOSED I GRATEFULLY AND HUMBLY ACCEPT YOU MAY BE SURE THAT I WILL DO MY BEST TO INTERPRET THE CONSTITUTION FAIRLY AND TO DEFEND IT FAITHFULLY AGAINST EVERY ENCROACHMENT. SINCERELY

EARL WARREN.

Figure 55. A telegram from Warren, accepting the appointment.

[39]Dwight D. Eisenhower to Dr. Milton S. Eisenhower, September 11, 1953, Box 3, Dwight D. Eisenhower Diary Series, Whitman File, Papers of Dwight D. Eisenhower as President, 1953-1961, Eisenhower Library.

guaranteed Warren a place on the Supreme Court, but no evidence indicates that the president perceived the appointment merely as political pay-back. He defended the choice in an October 1, 1953 letter to Milton Eisenhower, in which Ike rails against complaints that Warren had no judicial experience. Ike explained,

> I believe that we need statesmanship on the Supreme Court. Statesmanship is developed in the hard knocks of a general experience, private and public. Naturally, a man occupying the post must be competent in the law--and Warren has had seventeen years of practice in public law, during which his record was one of remarkable accomplishment and success, to say nothing of dedication. He has been very definitely a liberal-conservative; he represents the kind of political, economic, and social thinking that I believe we need on the Supreme Court. Finally, he has a national name for integrity, uprightness, and courage that, again, I believe we need on the Court.[40]

One wonders if Eisenhower interpreted "liberal-conservative" to mean moderate because he later expressed disappointment over some of the more progressive decisions that came from the Warren Court. He seemed to have no reservations in 1953, however, for Ike hustled the new chief to Washington *post haste* and instated Warren during a congressional recess prior to his Senate confirmation. Earl Warren uttered the oath of office at noon on Monday, October 4, and a few moments later took his seat at the center of the bench, ready to begin the 1953 term.[41]

The new chief justice raised the ire of Southerners who wanted to maintain a segregated society. Governor James Byrnes, Lindsay Almond, and Justin Moore felt Ike's choice portended hard times ahead. They were convinced that the Eisenhower administration meant to destroy segregation, particularly when Brownell released the government's brief which declared the practice unconstitutional. Paul Wilson, on the other hand, believed that Warren's long career in state government meant that he would be favorable to states' rights arguments. NAACP members and supporters dared not embrace too much optimism, but hoped the Southerners were right. The parties met for the second showdown after noon on Monday, December 7, 1953. This time, the Court combined reargurnents in the South Carolina and Virginia cases, so at 1:05 p.m., Spottswood Robinson began speaking for the plaintiffs in Case No. 2, *Briggs* v. *Elliott*. Eleven hours of debate continued into the next day. Robinson and

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[40]Dwight D. Eisenhower to Dr. Milton S. Eisenhower, October 9, 1953, Box 3, Dwight D. Eisenhower Diary Series, Whitman File, Papers of Dwight D. Eisenhower as President, 1953-1961, Eisenhower Library.

[41]Pach and Richardson, *The Presidency of Dwight D. Eisenhower*, 141-142; Ashmore, *Civil Rights and Wrongs*, 100-101; Kluger, *Simple Justice*, 657-667; and Chief Justice Earl Warren, *The Memoirs of Earl Warren* (Garden City: Doubleday & Company, Inc.), 276-280. Pach and Ashmore claim that Ike had promised the first opening on the Court to Warren, as repayment for political debts. This is not corroborated by other sources, which discuss Eisenhower's decision-making process. Mayer, in "With Much Deliberation and Some Speed," 52-53, says that Ike commented that he intended to offer the first Court appointment to Warren, but the bargain was not sealed, so Eisenhower shopped around before settling on the California governor. Researchers may also consult Eisenhower's memoir, *The White House Years: Mandate for Change, 1953-1956* (Garden City: Doubleday & Company, 1963) and Stephen Ambrose, *Eisenhower: The President*, Vol. II (New York: Simon and Schuster, 1984). The Senate finally confirmed Earl Warren on March 1, 1954.

Marshall, when debating *Davis* v. *County School Board of Prince Edward County*, maintained that the framers of the Fourteenth Amendment intended to ban segregation because it smacked of social restriction based solely on race. After the Civil War, members of the Thirty-Ninth Congress sought to rid this nation of the vestiges of slavery, including segregation and black codes which communities imposed to control and subjugate African Americans. Marshall called upon the guarantees of due process and equal protection as justification for declaring segregation unconstitutional. The doctrine of "separate but equal" was fundamentally flawed because, as he put it, "it assumes that two things can be equal." The Court had concocted a legal fiction in its *Plessy* ruling, which allowed state and local governments to implement statutes on the order of black codes, which the Thirty-Ninth Congress had specifically rejected.[42]

John W. Davis, at eighty years of age, summarized the segregationist position in response to the Court's five questions. He and colleagues Justin Moore and Lindsay Almond, who spoke on behalf of Virginia in the *Davis* case, believed that Congress acknowledged and accepted race-specific practices in 1868. They carefully reviewed the ratification process, data compiled from Almond's surveys, recognized that inequitable conditions had prevailed, but would be corrected in the future. These men repeatedly emphasized the view that local conditions, community standards, and accepted principles should prevail. Davis specifically represented the state in *Briggs*, but gave an emotional oration in defense of the mores of Southern society. He likened African Americans to the dog in an Aesop fable who carried a bone in his mouth and, upon seeing his reflection, dropped it, and reached for the bone carried by the dog in the image. Aesop warned that the dog lost his bone and his life because he threw away what he had for something better. Instead of profiting, he came away with nothing. In dramatic fashion, Davis mused, "Here is equal education, not promised, not prophesied, but present. Shall it be thrown away on some fancied question of racial prestige?"[43] Thurgood Marshall, while respecting Davis' distinguished career, snapped back in rebuttal the following day. Indeed, the question was a matter of racial prestige, as well as personal pride and justice under the law. One could not take race out of it, he argued, because separate treatment was based on race. This, in turn, must indicate that white society, as a whole, believed the African American race to be inferior. Segregation could only be sustained if the Court agreed.[44]

Assistant Attorney General J. Lee Rankin appeared next, presenting the federal government's position as a "friend of the court." Paul Wilson explains that,

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[42]Wilson, *A Time to Lose*, 171-172, 181-184; Kluger, *Simple Justice*, 667-671; and Friedman, *Argument*, 179-206, Marshall's quote taken from 205.

[43]Quoted in Friedman, *Argument*, 216.

[44]Wilson, *A Time to Lose*, 184-188; Kluger, *Simple Justice*, 671-674; Rowan, *Dream Makers, Dream Breakers*, 212-214; Friedman, *Argument*, 206-240; and Whitman, *Removing a Badge of Slavery*, 244-259.

> The position of the friend of the court is that of a participation in litigation who has no substantial stake in the immediate case. At the same time, the *amicus* is seldom an uninterested bystander but usually has a strong interest in the outcome and enters the case to suggest a rationale consistent with its views.[45]

In this instance, the Department of Justice supported Wilson's opponents. Rankin claimed that the Court should not interpret Congressional management of segregated schools in Washington, D.C. as evidence of the government's position on the broader issue at hand. Several justices closely questioned Rankin in order to pin him down on the government's specific determination. Justice Reed asked, "... does this Court through its own power have the right--is that the belief of the Government--have the power to declare segregation unconstitutional?" Rankin responded, "The position of the government is that the Court does have the power and that it has the duty."[46] This being the case, he recommended that remedy for the appellees take the form of a gradual program to implement desegregation. Lower courts could deal with specific situations on the state and local levels through litigation on a case by case basis. Rankin explained, "We suggest a year for the presentation and consideration of the plan, not because that is an exact standard, but with the idea that it might involve the principle of handling the matter **with deliberate speed.**"[47] Questioning continued as the Court considered the logistical problems of unending legal battles by those who would resist desegregation. "I foresee a generation of litigation if we send it back with no standards," Justice Jackson declared, "and each case has to come here to determine it standard by standard."[48] But, the government could offer no further recommendation.[49]

The fireworks ended after the *Briggs* and *Davis* arguments. The Kansas, Delaware, and District of Columbia cases followed in quick succession. Robert Carter presented reargument of Case No. 1, *Brown* v. *Board of Education*, on Tuesday afternoon, December 8. Felix Frankfurter immediately questioned the status of the case, given Topeka's action to desegregate its elementary schools. He wanted to know whether or not the city's new desegregation policy had voided the plaintiff's grievance. Wilson elaborated in a 1970 interview, saying, "The courts, the Supreme Court, decides only cases in controversy and when the matter is no longer in controversy, the court doesn't want to waste its time with it. It doesn't decide

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[45]Wilson, *A Time to Lose*, 189.

[46]Quoted in Friedman, *Argument*, 250.

[47]*Ibid.*, 253, emphasis added on the phrase used later by Warren in the Court's *Brown I* ruling. Rankin later used the term, "all diligent speed," see Friedman, 256.

[48]*Ibid.*, 255.

[49]*Ibid*, 240-258; Kluger, *Simple Justice*, 674-676; Mayers, "With Much Deliberation and Some Speed," 58; Whitman, *Removing a Badge of Slavery*, 260-271; and Liva Baker, "With All Deliberate Speed," *American Heritage* 24 (no. 2) (February 1973): 45-46.

academic questions."[50] Counsel for both sides claimed that their case was not moot because integration had begun in only two schools and the Kansas statute still prevailed in state law. Carter wanted some guarantee, however, that Topeka school board would continue the desegregation process in good faith. "Bob, after perhaps ten minutes," Jack Greenberg later recalled, "said, 'I certainly have no real desire to proceed with an argument,' and sat down."[51] Wilson then rose to explain that *Brown* was not moot because city policy and state law operated separately. "Although the chief justice had given me the signal to discuss the issues," Wilson later wrote in his memoirs, "I soon sensed that most of the justices did not regard my argument as vital."[52] He condensed his presentation and spoke about segregation in sixteen Kansas communities, pursuing the broad reasoning already presented by Davis, Moore, and Almond that the framers of the Fourteenth Amendment condoned segregation. The full debate of *Brown* v. *Board* on reargument lasted a mere fifty minutes.[53]

The final two cases also followed familiar lines with great efficiency. The crux of Case No. 8, *Bolling* v. *Sharpe*, hinged on proper interpretation of the Fifth, not the Fourteenth, Amendment. George Hayes, Jim Nabrit, and Milton Korman trod over familiar ground through the remaining hours of December 8 and into the afternoon of December 9. As in Topeka, a school board election held in Washington, D.C. during the preceding year had changed the composition of the appellee group. Hayes and Nabrit asked the Court if Korman possessed legal standing in light of the new situation; specifically whether or not the new board retained Korman as counsel and maintained interest in the case. Indeed it did, even though some members realized that integration was imminent. President Eisenhower had publicly challenged the D.C. policy, giving good indication that federal authority would prevail here as it did in the armed forces, government contracts, and federal employment. Reargument of *Bolling* proceeded like an obligatory exercise, with one flash of brilliance. During his rebuttal, James Nabrit reviewed the constitutional merits of due process as the means for ordering desegregation in Washington, to begin in September 1954. Nabrit concluded his argument, by recalling the fictional society represented in George Orwell's *Animal Farm*. After the animals overthrew Farmer Jones,

> [a] dictatorship was set up and the sign set up there that all animals were equal, was changed to read "but some are more equal than others."
>
> Our Constitution has no provision across it that all men are equal but that white men are more equal than others.

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[50]Wilson, interview with Duram, 24.

[51]Greenberg, *Crusaders in the Courts*, 192.

[52]Wilson, *A Time to Lose*, 192.

[53]*Ibid.*, 189-193; Kluger, *Simple Justice*, 676; and Friedman, *Argument*, 259-272.

> Under this statute and under this country, under this Constitution, and under the protection of this Court, we believe that we, too, are equal.[54]

The reference to Orwell's allegory of Soviet history hit home. On-going competition between communism in the U.S.S.R. and capitalism in the U.S. provided an excellent backdrop to Nabrit's appeal for the Court to extend the full benefits of democracy to young African Americans.[55]

Pro forma reargument of Case No. 10, *Gebhart* v. *Belton* and *Gebhart* v. *Bulah*, rounded out the school cases. Delaware Attorney General Young led with a summary of the record of litigation, the lower court opinion, and post-Civil War debate on civil rights. The two districts in Hockessin and Claymont had integrated the public schools, but segregation prevailed in other communities. Jack Greenberg pointed out that Delaware had stated that it intended to re-segregate these students once the black and white schools were equalized. This point kept the case alive. Louis Redding did not participate in these proceedings. Greenberg intended to argue the case alone, but at the last minute, asked Thurgood Marshall to conclude. Marshall briefly linked all five school cases, reiterating the Court's authority, nay, duty, to confirm the Supreme Court of Delaware's ruling that segregation was unconstitutional. Attorney General Young offered nothing in rebuttal.[56]

The second round of arguments in the comprehensive *Brown* v. *Board of Education* case came to a close at 2:40 p.m. on Wednesday, December 9, 1953. Several participants later commented that the experience left them rather flat. The intensive pace and comprehensive scope of preparations for the Court's questions on original intent and implementation seemed completely separate from the argument phase. Greenberg later wrote,

> It all seemed rather curious. They had turned our world upside down with a demand for the most exhaustive historical research ever conducted for a Supreme Court case, and with inordinately difficult questions about implementation. Then they gave most of their attention to whether we had live lawsuits or issues.[57]

Paul Wilson had similar perceptions. He believed that "collateral issues," such as the condition of mootness, overshadowed the fundamental evidence presented in the cases. He, and others, felt that the justices showed little interest in the answers to the five questions posed for reargument. Davis and Marshall, however, defined the rudimentary interpretations at the

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[54]Friedman, *Argument*, 308.

[55]*Ibid.*, 273-308; and Kluger, *Simple Justice*, 676-677.

[56]Greenberg, *Crusaders in the Courts*, 192-193; Kluger, *Simple Justice*, 677-678; and Friedman, *Argument*, 309-324. Young explained that nineteen of twenty-two black students attended the integrated school in Claymont and six of forty-six African American students attended the formerly white school in Hockessin (Friedman, 318).

[57]Greenberg, *Crusaders in the Courts*, 193.

outset through reargument of the South Carolina and Virginia litigation. There was no need to reiterate the same arguments for each of the three remaining cases because they dealt with the same basic issues, and the communities involved had desegregation plans which were pending or were already underway. Therefore, the second round before the Court ended rather quietly. Counsel turned to other work during the spring of 1954 while the justices waded through the briefs, documentary evidence, and oral testimony.[58]

Kansans, for the most part, kept a low profile during the entire process. "Except for members of boards of education and employees of school districts where segregation was practiced," Paul Wilson observed, "most non-black Kansans had little interest in the case, and few were able to appreciate its significance."[59] On January 20, 1954, members of the Topeka school board announced a second step in its desegregation program. They ended segregation at twelve additional schools and allowed five white schools to continue on a segregated basis. The new policy also eliminated transportation for African American children within designated areas because they could now attend schools located close to their homes. Those who lived near integrated schools, but preferred to finish their education at one of the former black schools, could do so, but transportation responsibilities were left to the parents. Bus service continued through 1954-55 only for those who were assigned to and attended Monroe, Washington, and Buchanan. The board implemented this plan in September 1954. It affected 123 of 824 African American students in the elementary grades by moving them into schools

Figure 56. Briggs, Belton, Davis, Brown, and Bolling represented fellow plaintiffs in national media coverage.

[58]Wilson, *A Time to Lose*, 194.

[59]*Ibid.*, 194.

previously reserved for white students, but did not transfer white students into the former black schools. At this early stage, integration in the capital city went in only one direction, whereby black students could attend formerly white, neighbor-hood schools. More Topekans took notice of the significance of NAACP's desegregation campaign in the autumn of 1954, when the desegregation plan moved into its second phase because it began to affect their lives on a very fundamental level.[60]

National press coverage of the lead plaintiffs in each of the five cases began in earnest during the spring of 1953 and escalated the following year, as the nation again waited for a Supreme Court decision. Media coverage quickly elevated the lead plaintiffs and chief counsel above their compatriots and began the process of shifting the lesser-known participants into the background. Linda Brown, Harry Briggs, Dorothy Davis, Ethel Louise Belton, and Spottswood Bolling represented each of the five cases in print articles, photographs, and early television reports. Photographers Hank Walker and Carl Iwasaki captured some of the most lasting images associated with the landmark desegregation campaign for *LIFE* magazine. The Associated Press and United Press International wire services broadcast the specifics of each school case to newspapers and magazines throughout the country. Thurgood Marshall and John W. Davis represented dozens of attorneys who contributed to the litigation. In like manner, Oliver Brown and his daughter Linda moved to the forefront because they topped the slate of plaintiffs in the lead school desegregation case, the one which gave its name to the five consolidated actions. Linda Brown's experience particularly captured public attention. Her experiences epitomized those of her compatriots in civil rights, clearly illustrating the fallacies of the "separate

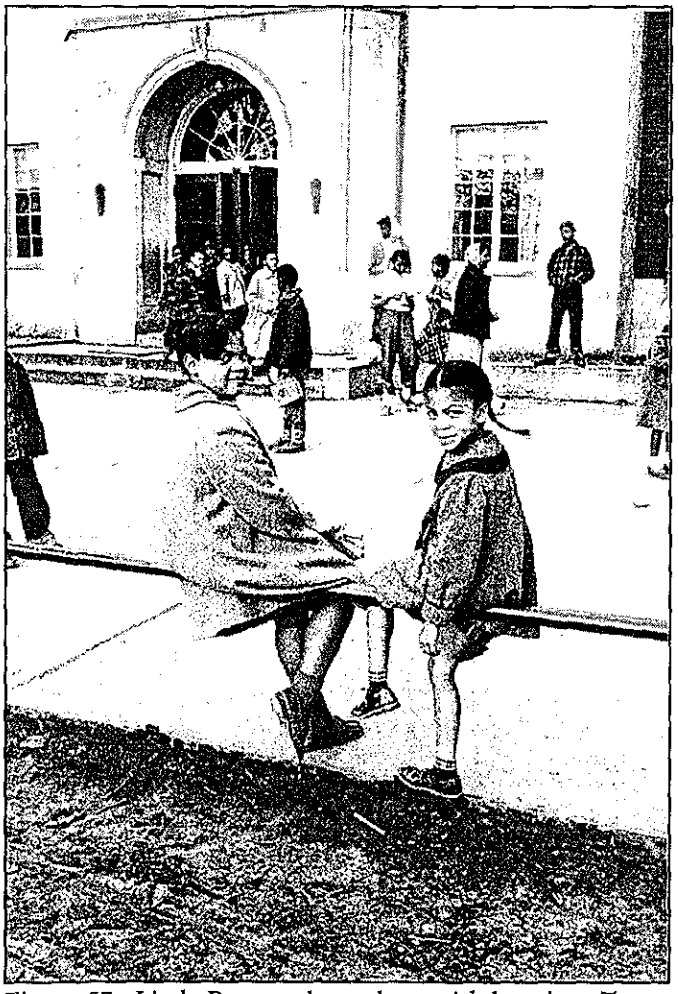

Figure 57. Linda Brown, shown here with her sister Terry, ultimately represented all the plaintiffs in the consolidated school cases.

[60]"Record of Minutes, August 1953 through February 6, 1956," Office of the Board of Education, City of Topeka, 55 (20 January 1954) and 158-160 (7 September 1954). Lafayette, Lincoln, Lowman Hill, Parkdale, and Van Buren remained segregated.

but equal" argument. Linda provided substance and form for the media campaign for school desegregation. When the Kansas case joined the others before the U.S. Supreme Court in 1953-54, national media coverage attached Linda Brown's face to the issue of school desegregation, thus personalizing an otherwise anonymous and unknown threat to white authority. Fellow plaintiffs in the Topeka suit, and those in the other four school cases, increasingly were pushed aside as the nation settled in to watch the outcome of *Brown* v. *Board of Education*. Poignant photographs and personal stories elevated the school desegregation campaign to the national level and imbedded the history of its bold participants into national consciousness.[61]

The U.S. Supreme Court reserved judgement on *Brown* v. *Board of Education* until mid-May 1954. Justices met on Saturday, December 12, 1953, three days after oral arguments. Chief Justice Warren spoke first, saying that no vote should be taken at this meeting, but should be delayed until the May 15 conference, when all had reached a final opinion on the merits of the cases. He believed the question of the legality of segregation to be a relatively simple one. Warren explained his views during the 1970s, when he said,

> It seemed to me a comparatively simple case. Just look at the various decisions that had been eroding *Plessy* for so many years. They kept chipping away at it rather than ever really facing it head-on. If you looked back--to *Gaines*, to *Sweatt*, to some of the interstate-commerce cases--you saw that the doctrine of separate-but-equal had been so eroded that only the *fact* of segregation itself remained unconsidered. On the merits, the natural, the logical, and practically the only way the case could be decided was clear. The question was *how* the decision was to be reached.[62]

Justice Hugo Black missed the December conference because of a family emergency, but the seven associates present each gave their views in turn. The question of relief seems to have topped most of their concerns, with little doubt that segregation must end. They agreed that a reversal of *Plessy* must be accompanied by some plan for implementation. Warren convened a second conference on January 16, 1954 to address potential remedies for ending racial separation. All participants feared hasty action which would threaten stringent segregationists in the South. A third conference, held in February, brought the first official tally on both questions. Warren wrote in his memoirs that, "On the first vote, we unanimously agreed that the 'separate but equal' doctrine had no place in public education." The group decided that the opinion should be issued *per curiam*, with the opinion written by the Chief Justice. Marcus Whitman and Richard Kluger disputed Warren's account of the Court's unanimity by claiming that the February vote resulted in a distinctly non-unanimous 8:1 count. Others supported Whitman's contention that Justice Reed disagreed with his colleagues and worked on a dissenting opinion through the spring. Warren worked on Reed during this same period,

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[61]Contemporary popular magazines contain wonderful coverage of the school cases. Some of the *LIFE* images also illustrate chapter 4. Other may be obtained from *LIFE* Picture Sales, *TIME/LIFE*, Inc., Rockefeller Center, New York, New York. Images owned by United Press International and Associated Press may be found in their picture collections, in collections held in the Prints and Photographs Division of the Library of Congress, or the Still Picture Branch of the National Archives and Records Administration located in College Park, Maryland.

[62]Quoted in Kluger, *Simple Justice*, 678.

finally bringing him into the fold by May. Justice Reed's support made the opinion unanimous. In late April, Warren provided a draft of the final opinion, with specific wording, to his law clerk, Earl Pollock, who fleshed out the *Brown* decision. Meanwhile, Clerk William Oliver worked on a separate opinion for *Bolling* v. *Sharpe* because the District's schools fell under federal jurisdiction.[63]

Implementation remained the sticking point. Against Warren's wishes, Justices Jackson and Frankfurter drafted separate, concurring opinions. Both men drew upon interpretations of original intent and recognized that social change sometimes directed law and policy, believing that it should do so in this instance. Justice Frankfurter circulated his views among the other justices in the form of a memorandum, prompting further discussion of implementation strategies, and perhaps inducing Warren to work harder to achieve unanimity among the Court. In it, he suggested that the Court define the process by which "*integration*" could be achieved in ways which would limit future litigation. Justice Jackson questioned the use of federal power in this matter, but health problems hampered work on the separate finding. He suffered a heart attack on March 30, 1954 and remained in the hospital during this time. Warren's draft opinion, circulated in early May, found favor with his fellow justices. They approved it during the regular Saturday conference on May 15 and agreed to announce it on the following Monday, May 17, 1954.[64]

Eisenhower waited for the Court's ruling with the rest of the nation. Herbert Brownell periodically updated the president on the status of the school cases during the months of deliberation. As early as January 25, 1954, Brownell told Ike that the Court may split its ruling on the practice of segregation from possible action to reverse the policy. Notes from their telephone conversation recall that,

> Brownell told President he had heard (strictly between them) that the Supreme Court might decide constitutionality point of segregation this spring, put off remedies for fall. President said, "I don't know where I stand, but I think I stand that the best interests of the U.S. demand an answer in keep [sic] with past decisions." Supreme Court apparently wants to defer matter long as possible– President laughingly said perhaps they would defer it until problem no longer Administration's.[65]

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[63]*Ibid.*, 678-695; Warren, *The Memoirs of Earl Warren*, 282-287; Chief Justice Earl Warren, interview with Jerry N. Hess, Oral History Collection, Harry S Truman Library, Independence, Missouri, 11 May 1972; Whitman, *Removing a Badge of Slavery*, 279-285; and S. Sidney Ulmer, "Earl Warren and the Brown Decision," *The Journal of Politics*, Vol. 33, no. 3 (1971): 689-702. Notes from the Court's deliberations survive in the Harold Burton and Felix Frankfurter Papers, Manuscripts Division, Library of Congress.

[64]Kluger, *Simple Justice*, 686-699; and Whitman, *Removing a Badge of Slavery*, 284. Many, including Baker, "With All Deliberate Speed," 46, attribute the term, "integration," to Justice Frankfurter, as coined during this round of discussions on implementation.

[65]"Monday, January 25, 1954," Telephone log, Dwight D. Eisenhower Diary Series, Box 9, Whitman File, Eisenhower Library.

Ike did not get his wish and failed to stay out of the fray despite his strong support for the separation of powers. Eisenhower took a jab at Chief Justice Warren during a White House "stag dinner" held in the spring of 1954, which was also attended by John W. Davis. Warren later recalled that Ike praised Davis throughout the meal and afterward, expressed empathy for southern concerns. The chief justice did not take kindly to Ike's attempt at persuasion and later expressed general disappointment in the president's handling of race relations after *Brown*. The president stayed in close contact with Governor Byrnes, Senator James Eastland of Mississippi, and Georgia Governor Herman Talmadge throughout 1953 and 1954. He and Brownell soothed fears and unruffled feathers, trying to maintain harmony before the siege.[66]

On May 17, 1954, the last day of the October 1953 term, the U.S. Supreme Court announced the landmark ruling, later known as *Brown I*, which overturned the 1896 *Plessy* v. *Ferguson* finding. Justice Jackson left his hospital bed to participate in the historic event. News spread among key participants that the announcement would be made when the Court

Figure 58. Spectators gather outside the U.S. Supreme Court on May 17, 1954, awaiting announcement of the *Brown* decision.

[66]Warren, *The Memoirs of Earl Warren*, 290-292; Pach and Richardson, *The Presidency of Dwight D. Eisenhower*, 142; Duram, *A Moderate Among Extremists*, 64-71; and Stephen E. Ambrose, *Eisenhower: The President*, Vol. II (New York: Simon and Schuster, 1984), 189-190.

convened for its regular Monday session. Reporters who routinely covered Court proceedings noticed Attorney General Brownell, former Secretary of State Dean Acheson, Thurgood Marshall, John W. Davis, James Nabrit, and George Hays among the spectators packed in the courtroom. At 12:52 p.m., Chief Justice Warren said, "I have for announcement the judgement and opinion of the Court in No. 1, *Oliver Brown, et. al.* v. *Board of Education of Topeka*."[67] The Court deemed that the Fourteenth Amendment "proscribed all state-imposed discriminations against the Negro race." *Plessy* v. *Ferguson*, not the U.S. Constitution, instituted segregation and several precedents had stripped its authority. "In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when *Plessy* v. *Ferguson* was written," Warren continued. "We must consider public

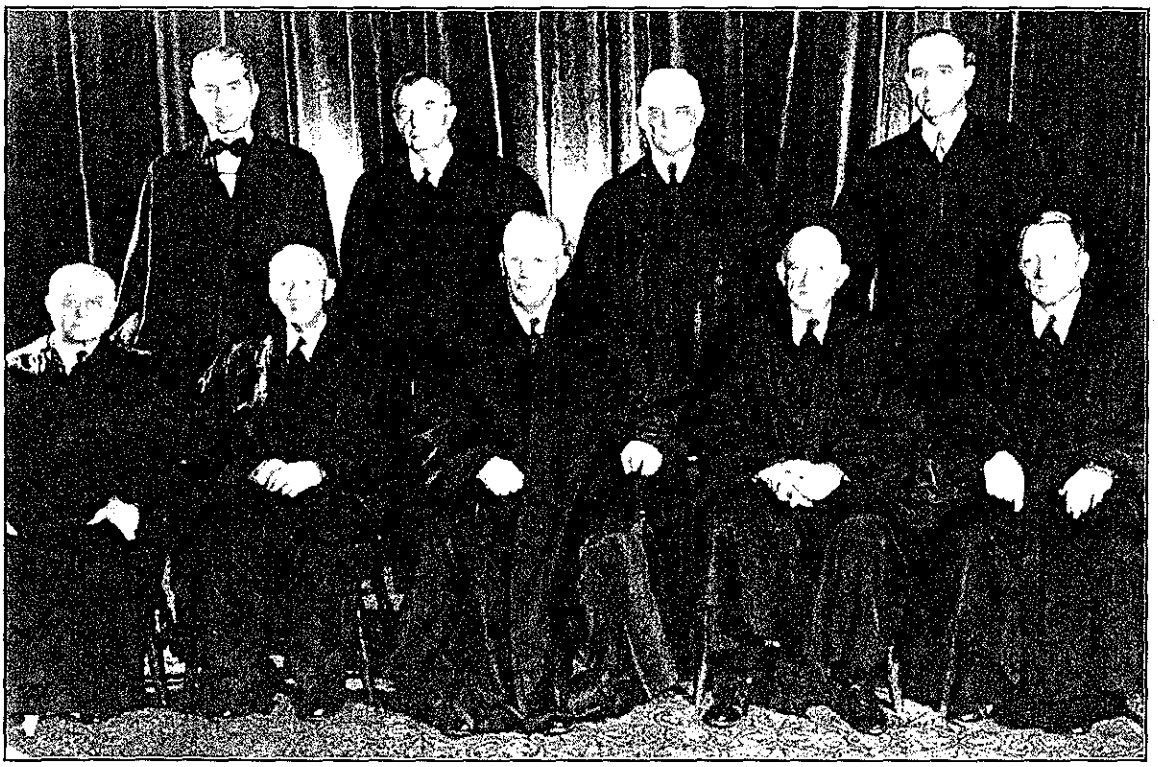

Figure 59. The Warren Court, 14 December 1953: (front row, L-R) Frankfurter, Black, Warren, Reed, Douglas; (back row, L-R) Clark, Jackson, Burton, Minton.

education in the light of its full development and its present place in American life throughout the Nation." The Court found that segregation, indeed, constituted a denial of equal protection and did psychological harm to students who were subjected to it. It drew upon testimony of experts from the South Carolina, Virginia, and Kansas cases which documented its ill effects. In fact, Warren listed significant studies completed by Kenneth Clark, Isidor Chein, Harry Ashmore, Gunnar Myrdal, and others in a footnote to the *Brown* opinion. The

[67]Quoted in Rowan, *Dream Makers, Dream Breakers*, 216.

famous ruling announced, "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." Therefore, segregation no longer bore the weight of law.[68]

A separate opinion for *Bolling et. al.* v. *Sharpe, et. al.* reaffirmed the judgement that segregation violated the equal protection clause of the Fourteenth Amendment and announced that it also deprived guarantees of due process found in the Fifth Amendment. In the words of the Court,

> Segregation in public education is not reasonably related to any proper governmental objective, and thus it imposes on Negro children of the District of Columbia a burden that constitutes an arbitrary deprivation of their liberty in violation of the Due Process Clause.
>
> In view of our decision that 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.[69]

Both opinions deferred the question of relief and ordered appellants to reargue questions four and five, regarding strategies for implementation. Warren again asked for input from the U.S. Attorney General and invited briefs from the attorneys general of the seventeen states which currently allowed segregation. In the space of thirty minutes, the Court handed the NAACP its magnanimous victory over *Plessy*, but the players now had to analyze the meaning of that conquest. Adversaries would meet yet again for round three in the fall, during the October 1954 term.[70]

Warren instituted the practice of providing copies of each opinion upon its announcement to the media. News of the *Brown* decision flew across the wires as soon as the chief justice finished reading the first opinion. Kansas Attorney General Harold Fatzer and Paul Wilson received word in Topeka from reporters who called for their reaction to the news of *Plessy*'s defeat. They explained that they had no love for segregation, but had stood for the right of states to regulate school policy. A banner headline in the *Topeka Daily Capital* proclaimed, "School Segregation Banned." One thing was certain, Topekans no longer would ignore the importance of the Supreme Court action. Paul Brady remembers the "great joy" in the home of his aunt and uncle, Lucinda and Alvin Todd, upon hearing the news. Their early activism in the Topeka NAACP and involvement in the *Brown* litigation had paid off.

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[68]*Ibid.*, 216-219; Kluger, *Simple Justice*, 700-708; Greenberg, *Crusaders in the Courts*, 197-199; Friedman, *Argument*, 325-331; and Whitman, *Removing a Badge of Slavery*, 305-309. Quotations taken from the *Brown I* ruling, which may be found in Friedman or Whitman. Readers may also refer to a copy of the unanimous opinion in Appendix J.

[69]Friedman, *Argument*, 333.

[70]*Ibid.*, 332-333; Kluger, *Simple Justice*, 708-710; Kelly and Harbison, *The American Constitution*, 925-926; and Whitman, *Removing a Badge of Slavery*, 335-341. The term, *Brown I*, incorporates the separate finding for *Bolling*.

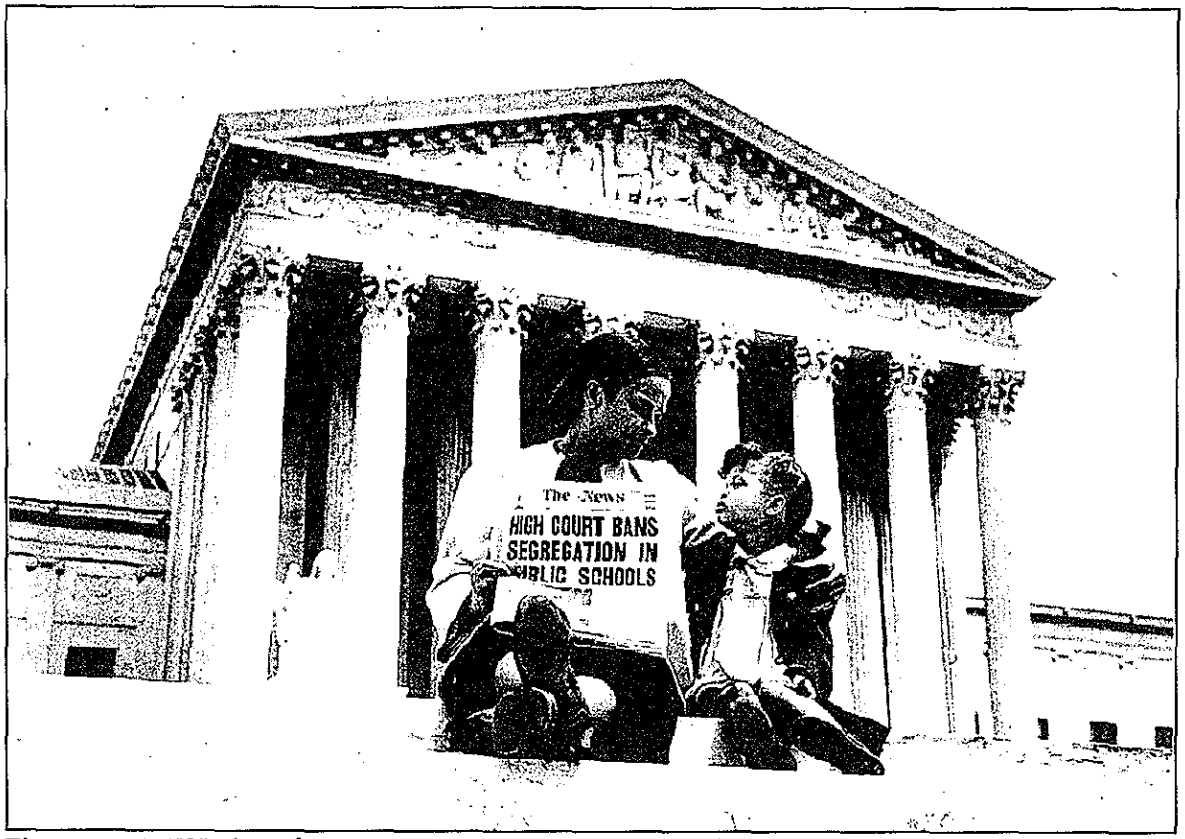

Figure 60. A UPI photo frames Mrs. Nettie Hunt explaining the *Brown* ruling to her daughter, Nikie.

That evening, fellow NAACP members, plaintiffs, and supporters gathered in the Monroe Elementary gymnasium to celebrate their hard-won accomplishment. Charles Scott, who tended the case all the way to the Supreme Court, recalled, "I don't think there's any question the black community was over rejoiced as I was able to discern because they felt that this was a step toward equality. They felt that once again the power structure was willing to yield to some of the demands that were made from the black community, moving down the path to equality."[71] Just how far society would venture down that path was yet to be determined.[72]

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[71]Scott, interview with Duram, 33-34.

[72]Warren, *The Memoirs of Earl Warren*, 285; Wilson, *A Time to Lose*, 194-198; Montgomery, interview with Crowder, 50; Brady, *A Certain Blindness*, 137; "Segregation Already Ending Here, Say School Officials," *Topeka State Journal*, 17 May 1954, "Topeka-Schools-Public-Segregation" clipping file, Topeka [Research] Room, Topeka-Shawnee County Public Library, Topeka, Kansas; and "The Nation: 'To All on Equal Terms,'" "National Affairs" Section, *TIME* Vol. 63, no. 21 (May 24, 1954): 21-22.

D. *Brown II* sets a new world in motion

The Warren announcement shocked most Americans, even though they realized that the NAACP legal campaign had weakened the foundation of the "separate but equal" precedent. *Brown* v. *Board of Education* toppled the *Plessy* finding according to plan. Some critics charged that the Warren Court had stretched beyond its constitutional limits by engaging in judicial legislation. Whatever the immediate reaction, the Court had acted and the nation now needed an equitable policy which would integrate the races into one community. The Supreme Court hoped to develop a strategy after reviewing suggestions for implementation of its desegregation decree. Justices also may have hoped that the White House would provide some direction, or at least support, for states that needed to reorganize their education programs. Earl Warren certainly did. But, Eisenhower maintained a low profile on the subjects of race relations and school desegregation immediately after the *Brown I* decision. Curt comments which broke the public silence on occasion cast the impression that Ike sided with Southern politicians in their support of segregation, but realized that the policy had to end.

Against the advice of his staff, Eisenhower held a press conference on the following day, May 18, to address a variety of issues. When asked if he had any advice for the South, in light of the Court decree, he gruffly refused, saying "Not in the slightest. The Supreme Court has spoken and I am sworn to uphold the constitutional process in this country; and I will obey."[73] James Hagerty, White House press secretary and close advisor, kept a diary during the first years of the presidential term. His entry for Tuesday, May 18, 1954, mentioned Ike's concern about the effects of the ruling. Governors of key Southern states had threatened to shift white students to quasi-private schools and close public facilities in order to avoid desegregation. Such a dire strategy, the president commented, would hurt both African Americans and poor whites. The Southern reaction to *Brown I* led Eisenhower to believe that the Supreme Court had reversed progress in race relations. The only course now could be a slow, deliberate one. Sources often quote the former general as saying, "We can't demand ***perfection*** in these moral questions. All we can do is keep working toward a goal and keep it high. And the fellow who tries

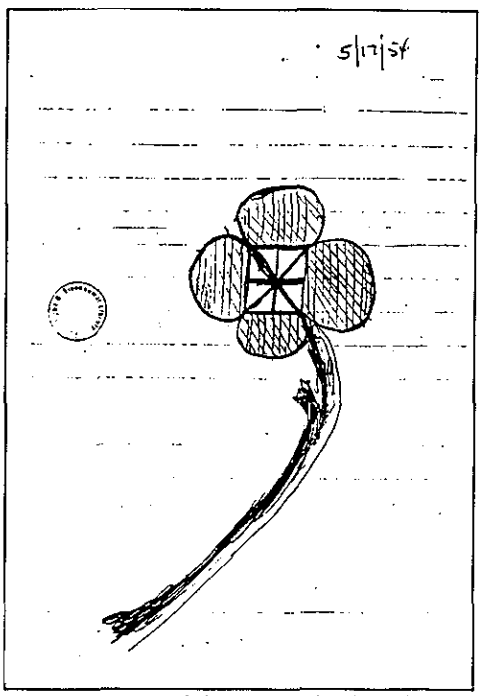

Figure 61. One of Ike's many doodles, this one drawn on May 17, 1954.

[73]Quoted in Ambrose, *Eisenhower*, Vol. II, 190.

to tell me that you can do these things by ***force*** is just plain ***nuts.***"[74] Like many, Ike revealed mixed feelings about this turn of events. Historians, as well as contemporary observers, usually criticize the president for sparing his personal charm and charisma in a situation which called for national leadership. His broad appeal could have been used to sway public opinion to accept desegregation as morally correct. Instead, Ike's inaction denoted anger and disappointment that the Court had tampered with the natural order of things.[75]

Protocol and constitutional law, however, dictated that Dwight Eisenhower follow the Court's direction. He resolved to enforce the *Brown* decision, whether or not he personally agreed with it. At the Department of Justice, Herbert Brownell, Lee Rankin, and Philip Elman felt elated over Warren's ability to unite the Court in such a just, albeit portentous, decision. Brownell, the most liberal member of the Eisenhower cabinet, supported integration wholeheartedly. He had overseen the administration's legal agenda thus far, but now the president had selected Simon E. Sobeloff to serve as U.S. Solicitor General. This office, located within the Justice Department, usually determines which course the government will take in legal actions before the Supreme Court, either to participate fully, to avoid action, or to function as an *amicus curiae.* Attorney General Brownell had taken responsibility for federal involvement in *Brown* v. *Board* because this position had been in a state of flux until Sobeloff's appointment. The new solicitor general assumed responsibility for the government's participation in the third round of arguments of the school cases. Sobeloff's position on segregation was well-known. His career, thus far, featured active lobbying for the anti-lynching bill and vigorous opposition to racial discrimination in housing, school segregation, and other public facilities. Any assessment of Eisenhower's position on segregation should take Sobeloff's appointment into account. The government's brief on implementation, drafted by Sobeloff and Elman, called for desegregation to be enacted as quickly as possible, but on a gradual scale. It encouraged the Court to set guidelines which lower courts could follow when adjudicating the pace and progress of integration. These courts would bear the responsibility for ensuring that local school boards formulate and execute viable desegregation plans.[76]

Co-counsel for the original defendants took on several new members when they began work on the implementation questions. The leading advocate for segregation, John W. Davis, felt that his work terminated with the Court's unanimous rejection of racial exclusion. He

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[74]This instance, with emphasis as written, is taken from Mayer, "With Much Deliberation and Some Speed," 60.

[75]*Ibid.*, 59-62; Robert H. Ferrell, ed., *The Diary of James C. Hagerty: Eisenhower in Mid-Course, 1954-1955* (Bloomington: Indiana University Press, 1983), 53-54; Tindall and Shi, *America,* 1312; Ambrose, *Eisenhower,* Vol. II, 189-192; and Herbert Brownell, interview with Thomas Soapes, Oral History Collection, Eisenhower Library, 24 February 1977, 29-33. Primary documents are intriguing for what they do and do not contain. The school desegregation cases get very little mention in Ike's press conference briefings from May 1954 to June 1955; see Press Conference Series, Box 2, Dwight D. Eisenhower Papers as President, Whitman File, Eisenhower Library.

[76]Mayer, "With Much Deliberation and Some Speed," 47, 63-72; and Simon E. Sobeloff Papers, Manuscripts Division, Library of Congress.

had appeared 140 times before the U.S. Supreme Court and looked forward to retirement. Davis resigned from the team in late-May 1954 and died, at the age of eighty-one, approximately ten months later. Robert McCormick Figg, Jr. and S.E. Rogers stepped into the breach for South Carolina. Joseph Craven replaced Albert Young as Delaware attorney general during this year and appeared for the state during the second reargument hearing. Lindsay Almond and Archibald Robertson, who replaced Justin Moore, formed the Virginia delegation. Governors and attorneys general who opposed desegregation met to discuss their options, devise strategy, and prepare arguments for their briefs as either participants or *amicus* in the next hearing before the Court. Warren had invited representation from each state affected by the Court order, seventeen in all, but only Florida, North Carolina, Arkansas, Oklahoma, Maryland, and Texas submitted *amicus* briefs. Harold Fatzer, of Kansas, skipped the meetings and conferences held among his cohorts. He disagreed with their caustic reactions to the *Brown* decision and, in contrast, accepted his responsibility to abide by the decree as the state's chief law enforcement officer. The Topeka school board again filed a separate response to the Court, regarding implementation, and proceeded with its desegregation plan. As before, Paul Wilson prepared the state's brief, supplemented by surveys of segregated systems in Kansas. This time, Fatzer, would accompany him to Washington, D.C. for a final appearance before the High Court.[77]

In contrast, the NAACP corps maintained solidarity throughout preparations for the remedy hearing. Momentum from the May 17th victory helped sustain optimism among the litigation team as they dug in for another round. "The most gratifying thing," Thurgood Marshall declared, "in addition to the fact it was in favor of our side is the unanimous decision and the language used. Once and for all, it's decided, completely decided."[78] The court had determined the constitutional status of segregation, but nothing beyond that. The NAACP still had a tough fight ahead to change the *status quo*, with segregationists resisting the whole way. Marshall rallied his troops in June 1954 for another evaluation of implementation strategies. The team was particularly gratified that the chief justice specifically mentioned several sociological studies in the majority opinion. He again convened assemblies of social scientists, psychologists, legal scholars, and historians during the summer to discuss the application of desegregation strategies. NAACP chapters also contributed information for the appellant responses to questions four and five. The LDF coordinated a national survey, conducted by the local chapters, to locate successful examples of desegregation, spots of resistance, and attitudes about integration in order to gain more information about the status of and impediments to racial equity. The collection of historical precedent, sociological data,

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[77]Kluger, *Simple Justice*, 730; Friedman, *Argument*, 6-7, 337-338; Wilson, interview with Duram, 13, 26-17; and Wilson, *A Time to Lose*, 203-210, 215. Justin Moore had a heart attack in late 1954 and convalesced during an extended European vacation. "Letters/Surveys/Notes, 1953-1954," and "Questionnaires Regarding School Survey, 1953-1954," Records of the Attorney General, Center for Historical Research, Kansas State Historical Society, Topeka, Kansas. Mayer said twenty-one states, rather than seventeen, enforced segregationist policies, in "With Much Deliberation and Some Speed," 70.

[78]Quoted in "To All on Equal Terms," *TIME*, 24 May 1954, 22.

and local conditions bolstered the NAACP's appeal for immediate desegregation throughout the United States.[79]

Brown v. *Board of Education* fell rather high on the docket for the October 1954 term. Supreme Court Clerk Wiley scheduled oral arguments for December 6, 1954 and counsel filed supplemental briefs accordingly. As in the previous hearings, nothing occurred as planned. Justice Jackson, weakened by heart problems in the spring, suffered a second, fatal attack on October 9. President Eisenhower filled the opening in barely a month's time, appointing New York Circuit Judge John Marshall Harlan. The name carried weight among those involved in *Brown,* for his grandfather had earned fame as the lone dissenter in the 1896 *Plessy* v. *Ferguson* finding. The junior Justice Harlan had impeccable credentials in his own right. He graduated from Princeton, studied abroad as a Rhodes scholar, and established a national reputation as a sharp, Wall Street corporate lawyer. Harlan also served in a variety of public positions in New York, as counsel for the New York Board of Higher Education and New York State Crime Commission, among others. Although Harlan held rather conservative views, his lineage may have led Southern senators to delay his confirmation hearing for several months. Joseph McCarthy's shenanigans and resultant censure by the full Senate also intervened during winter 1954. Harlan's appointment finally cleared the Senate on March 18, 1955. The work of the Court had been delayed through it all, but the clerk finally restored *Brown* v. *Board* to the schedule for Monday, April 11, 1955.[80]

Eleven months passed between Warren's request for further reargument of implementation and the presentation of oral arguments on questions four and five. In the interim, the Topeka school board announced the third stage of its desegregation plan, on February 23, which would begin with the 1955-1956 school year. The plan ended segregation in all public schools, closed McKinley Elementary, and adjusted geographic boundaries to incorporate Buchanan, Monroe, and Washington in school assignments for both races. The USD-501 system employed twenty-four African American teachers, but only needed twenty after reorganization. Quite predictably, teachers worried about their futures, despite reassurances from the board that they would be retained during 1955-1956. Two other events

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[79]Kluger, *Simple Justice*, 710, 718-723; Clark Papers, Box 61, *Manuscripts Division, Library of Congress;* and Papers of the NAACP, Group II, Series B, Library of Congress. Several scholars published the findings of studies used in the NAACP desegregation campaign, in book and article form. This study has already mentioned many of the larger works. *The Journal of Negro Education* featured many essays and articles throughout the litigation of the school cases, but particularly during the Supreme Court appeal (1953-1955). Several important essays which originated from related sociological research on desegregation and *amicus* briefs appear in Volume 23 (1954); including Kenneth B. Clark, "Some Principles Related to the Problem of Desegregation," 339-347, Ira De A. Reid, "Integration: Ideal, Process, and Situation," 348-354, Phineas Indritz, "The Meaning of the School Decisions: The Break-Through on the Legal Front of Racial Segregation," 355-363, Charles S. Johnson, "Some Significant Social and Educational Implications of the U.S. Supreme Court's Decision," 364-371, and Harry J. Walker, "Some Basic Factors Involved in the Development of Community Acceptance of Desegregated Schools," 372-383.

[80]Kluger, *Simple Justice*, 714-716; Wilson, *A Time to Lose*, 213; Mayer, "With Much Deliberation and Some Speed," 72; and Kelly and Harbison, *The American Constitution*, 917.

transpired during the spring of 1955 which shook the core of the NAACP. Sadly, Thurgood Marshall's wife, "Buster," died on February 11. She had kept her illness a secret from Thurgood until after the Court ruled on *Brown* v. *Board of Education*. When Marshall learned of its gravity, he dropped work on the reargument brief to care for her during the last months of her life. After a brief respite, Marshall plunged back into the school cases. A second tragedy, however, struck the NAACP. Its executive secretary, Walter White, sustained a fatal heart attack on March 21, 1955. The association selected Roy Wilkins to succeeded White and rallied behind him for its next battle before the Supreme Court.[81]

The contingents gathered in Washington in mid-April for final litigation of the school cases. In *Brown I*, the Court specifically asked counsel to readdress the following,

> 4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment,
> (a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or
> (b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?
>
> 5. On the assumption on which questions 4(a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4(b),
> (a) should this Court formulate detailed decrees in these cases;
> (b) if so, what specific issues should the decrees reach;
> (c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;
> (d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?[82]

Advocates for each school case provided answers in the form of supplemental legal briefs, intended to function as attachments to those submitted in 1952 and 1953. The Court's rejection of *Plessy* set a new tone for this hearing, of course, but each side's basic position varied very little from prior viewpoints. Attorneys who represented states and school boards suggested the Court leave the business of integration to local and state governments. Counsel for the original plaintiffs, on the other hand, urged the Court to order swift action and set guidelines which resistant communities could not evade indefinitely.[83]

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[81]Wilson, *A Time to Lose*, 214; Rowan, *Dream Makers, Dream Breakers*, 224-228; Greenberg, *Crusaders in the Courts*, 202; and "Record of Minutes, August 1953 through February 6, 1956," Office of the Board of Education, City of Topeka, 202-203, 206 (7 February 1955 and 15 February 1955). Minutes provide an estimate of students to be transferred from the traditionally black schools and the number of enrollments for ten elementary schools during the 1955-1956 year, see 203 (7 February 1955).

[82]Provided in Friedman, *Argument*, 331.

[83]Wilson, *A Time to Lose*, 210-212; and Kluger, *Simple Justice*, 722-723.

Court convened at 12:00 noon on Monday, April 11. Oral presentations by the twenty-two participants lasted four days. Chief Justice Warren called Case No. 1, *Brown* v. *Board of Education*, first. This time, Harold Fatzer led arguments on behalf of Kansas and the Topeka Board of Education. He spent considerable time discussing integration plans that were already underway in the capital city and that would continue in the autumn. Justices also expressed interest in the conditions of eight other Kansas cities where segregation still existed. Fatzer assured the Court that Kansas would remedy these situations by incorporating the forthcoming implementation decree in its public school policies. On rebuttal, Robert Carter offered some objection to the Topeka plan, saying that the new districting scenario would assign some African Americans students to one of the three traditional black schools, while it allowed white students to remain in formerly all-white schools. Carter disagreed with Fatzer's claim that Topeka schools would be integrated because only African Americans would attend Buchanan, Monroe, and Washington. In his mind, the situation remained the same. Arguments for *Gebhart* v. *Belton*, Case No. 5, followed. This case involved the desegregation of high schools, so some of the original plaintiffs had graduated by this time. Nevertheless, the issue remained current because the desegregation order in *Brown I* presented problems for the people of Delaware. Joseph Craven, the state's attorney general, asked for time to sort through these problems. In opposition, Louis Redding reminded the Court that the Delaware Supreme Court had determined that each child had a personal right to equal opportunity through integrated education. The attorney general, however, had extended this right only to specific plaintiffs mentioned in *Gebhart* and other, subsequent, litigation. As class actions, the policy should apply to all African American students in Delaware.[84]

Discussion of Case No. 4, *Bolling* v. *Sharpe*, centered around desegregation plans already underway in the District of Columbia. The new plan assigned students to schools within their districts and some retained student bodies composed of one race. Mr. Hayes wanted the Court to allow students and their parents to exercise some choice, or option, in school selection. Counsel for the original plaintiffs noted that while African American students had moved into previously all-white schools, no white students attended former black schools--echoing concerns expressed by Robert Carter about the situation in Topeka. James Nabrit followed with specific details about District of Columbia schools and the desegregation efforts in progress. He also advocated a system where choice prevailed in school selection, but objected to the board's plan which used a system of sub-districts to assign students to specific schools. Nabrit argued that this, in effect, denied choice. Milton Korman, counsel for the District, defended the desegregation plan because district assignments corresponded to residential patterns and did not assign students based on race. Critical points in this debate presaged obstacles to

[84]Greenberg, *Crusaders in the Courts*, 202-205; Wilson, *A Time to Lose*, 216-218; Kluger, *Simple Justice*, 729; Rowan, *Dream Makers, Dream Breakers*, 228-232; and Friedman, *Argument*, 337-362.

integration which would emerge during the next two decades; namely, school choice programs, redistricting, and "white flight" to suburban areas.[85]

For the present, any implementation action issued by the Court would carry most relevance for the final two cases, No. 3, *Davis* v. *County School Board of Prince Edward County* and, No. 2, *Briggs* v. *Elliott*, because neither Virginia nor South Carolina had begun any move towards integration. Quite the opposite loomed, in fact, since state officials in both had threatened to close the public school systems completely rather than desegregate them. Spottswood Robinson and Thurgood Marshall combined their presentations on questions four and five in these actions. They gave emotional appeals for the immediate implementation of desegregation orders on the grounds that any delay constituted a denial of equal protection. Marshall reminded the Court of dire predictions of social upheaval made in the past during civil rights litigation. Firm action by courts and law enforcement officers had prevented much of it from coming true. He said that the same was true for school desegregation. The Court could not back away from its constitutional duty simply because Southerners felt threatened. Marshall pushed for September 1955 as a deadline for local schools boards to effect viable integration policies. As expected, S. Emory Rogers, Robert McCormick Figg, and Archibald Robertson pressed for some consideration of local attitudes and local authority. They claimed that social tradition which had endured for generations could not be reversed so easily. Rogers pressed for an open decree, which would leave the proper time and method to the will of South Carolinians. State arguments which called for moderation conveyed not-so-subtle threats of defiance of court action which intruded into the reserve powers of the states. South Carolina had called on the theory of interposition/nullification in the past to evade federal policy, and would do so again if challenged by the Court. With the gauntlet down, counsel closed arguments in the school cases.[86]

Following the formal litigants, attorneys general from Virginia, Florida, North Carolina, Arkansas, Oklahoma, Maryland, and Texas rose, one by one, as *amicus curiae* in support of the conservative position. Simon Sobeloff provided the last statement, given on behalf of the federal government. He recommended that the justices refrain from issuing a specific decree that either set a deadline for integration or established criteria which would guide lower court action in future desegregation cases. Sobeloff asked the Court to remand the school cases to their respective district courts so that integration could begin as soon as it was "feasible." The solicitor general made a distinction between the situations in Washington,

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[85]Friedman, *Argument*, 362-383; Kluger, *Simple Justice*, 729; and "In the Supreme Court of the United States, October Term, 1954, No. 4, *Spottswood Thomas Bolling, et. al.*, Petitioners, v. *C. Melvin Sharpe, et. al.*, Respondents, "Brief for Petitioners on Further Reargument," copy in Box 26, Simon Sobeloff Papers, Library of Congress. Please refer to correspondence about integration of Washington, D.C. public schools for specifics on Superintendent Corning's desegregation plan; see "71-U-Segregation in District of Columbia," Box 282, Central Files, Official Files, Eisenhower Library. Researchers may also find copies of relevant correspondence and desegregation plans in Case File 144-16-147, "Bolling v. Sharpe," Civil Rights Division, Department of Justice.

[86]Friedman, *Argument*, 383-439; and Kluger, *Simple Justice*, 729.

D.C. and Topeka, where integration had begun, and those in Clarendon and Prince Edward Counties, where the majority resisted it. This, he said, provided a rationale for allowing lower courts to play more direct roles in local desegregation efforts. Briefs submitted by the *amici* overwhelmingly emphasized the importance of local control and sensitivity to local conditions in the restructuring of Southern school systems. While the Justice Department clearly endorsed *Brown I*, it recommended a measure of judicial restraint and a rather broad decree about the course of implementation.[87]

Justices met in conference on April 16, 1955 to review arguments in this latest round of the school cases. Warren outlined two basic ground rules before discussion began on possible implementation procedures. First, justices should keep in mind that these were class actions, which meant that the named plaintiffs represented everyone affected by segregation. He also stressed that lower courts should consider physical aspects, rather than psychological attitudes, when addressing legal action pertaining to integration procedures. The chief justice opened discussion of the cases with his own opinion that the Court avoid setting a deadline for implementation as well as any strict procedure for integration. In other words, the Supreme Court should not function as a "super school board," but should give wide latitude and support to U.S. district courts. Members of the Court, most of all, agreed that the decision on implementation must be unanimous. Each justice gave his impressions of the school cases and challenges to integration in order of seniority. They discussed class action status at length because some felt that the final decree should apply only to the named plaintiffs and not to their communities, at large. The issues of condition and time had led the Court to defer final adjudication; they could not prolong the cases any further. The cases constituted class action suits, period. Justice Frankfurter offered a solution for the time problem. He recalled the phrase, "with deliberate speed," used by Philip Elman in the Justice Department's 1952 brief and in others. This phrase turned on one used in a 1918 ruling by Justice Oliver Wendell Holmes, "with all deliberate speed." Frankfurter suggested it for the *Brown* v. *Board* implementation decree and Warren agreed. As before, Earl Warren drafted the Court's finding, circulated it among the brethren for their review, and made it public on the final day of the term.[88]

The chief justice announced the Court's unanimous ruling on May 31, 1955. Later known as *Brown II*, the "Final Decision on Relief, *Brown et. al.* v. *Board of Education of Topeka, et. al.*," reviewed the lengthy progress of litigation and specifically addressed the issue of relief. Justices recognized that "Full implementation of these constitutional principles may require solution of varied local school problems." They left resolution of these problems to

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[87]Friedman, *Argument*, 439-532; Mayer, "With Much Deliberation and Some Speed," 72-73; and Kluger, *Simple Justice*, 733-736.

[88]Baker, "With All Deliberate Speed," 47-48; Kluger, *Simple Justice*, 736-744; and Warren, *Memoirs*, 288-289. Earl Warren assigned six clerks to analyze the school desegregation process during the October 1954 Term and report their findings to the full Court. Kluger includes a comprehensive look at this on pp. 736-738. The phrase, "with all deliberate speed" may derive from English Chancery law, please see discussion in Kluger, 743.

local school authorities and courts. "Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner," Warren declared. "But it should go without saying," he continued, "that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them."[89] The May 17, 1954 ruling stood as law, therefore, lower courts would have to determine whether or not local school boards acted in good faith to implement it. *Brown II* stipulated that "Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date."[90] Rather than establishing a set timetable, the Warren Court reversed the decisions of four of the school cases and returned them to their respective district courts with a mandate "to admit to public schools on a racially nondiscriminatory basis with all deliberate speed."[91] The Court left the original *Belton* v. *Gebhart* ruling as Chancellor Seitz had crafted it, in favor of the African American plaintiffs, but the justices referred to the Delaware Supreme Court for final adjudication.[92]

With its standard directive, "It is so ordered," the U.S. Supreme Court set in motion a chain of events that continues to unfold. *Brown II* represents a concerted effort to deal with logistical problems associated with bringing two races together on equal standing in communities which had little interest in altering the white-dominated *status quo*. Some believed that the High Court used the ruling on implementation to bring the balance of justice back to center because it tempered *Brown I*, which held the promise of equal treatment for African Americans. Critics viewed *Brown II* as an accommodation to white separatists who could use its vague "with all deliberate speed" decree to stall integration indefinitely. During initial arguments of *Briggs* v. *Elliott*, presented in December 1952, Justice Felix Frankfurter said, "I think that nothing would be worse than for this Court--I am expressing my own opinion--nothing would be worse, from my point of view, than for this Court to make an abstract declaration that segregation is bad and then have it evaded by tricks."[93] His comments, again, illustrate Frankfurter's insight into the complexities of integration. Whereas the *Brown I* decree striking down segregation can never be described as "abstract," *Brown II* may be. Thurgood Marshall feared this scenario, as well, and asked the Supreme Court to impose a one-year deadline on integration plans in order to force compliance with the May 17, 1954 ruling. When it failed to do so, he expressed initial disappointment, but viewed the

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[89]Quoted in "Final Decision on Relief, *Brown et al.* v. *Board of Education of Topeka et al.*," published in Friedman, *Argument*, 534.

[90]*Ibid.*

[91]*Ibid.*, 535.

[92]*Ibid.*, 533-535; and Kluger, *Simple Justice*, 744-745.

[93]Quoted in case transcripts, 9 December 1952, Friedman, *Argument*, 48.

school desegregation rulings optimistically because they signified real, constitutional progress for African Americans. The inherent contradiction of "all deliberate speed," however, left enforcement of *Brown I* open to several loopholes. Despite deferring a final decree for further analysis of implementation strategies, the Court contributed little direction in *Brown II*. The burden, instead, fell to local school boards, who were instructed to carry out integration "in good faith." Justices relegated oversight responsibilities to U.S. district courts, which had to discern between good faith effort gone astray and calculated indifference to the goals of racial equality.[94]

E. Conclusion

The *Brown* decisions denoted overwhelming success in the national campaign against segregation in public education. The Warren Court confirmed the constitutional rights owed to millions of African Americans who had been separated from mainstream society as a result of the 1896 *Plessy* v. *Ferguson* opinion. The Supreme Court, under Chief Justice Vinson's leadership, granted *certiorari* to the school desegregation cases during the October 1952 term. The lengthy appellate process mirrored the slow tempo of equalization efforts, overall. Proceedings dragged on for three years, through a series of events which led to three rounds of arguments, scheduling delays, personnel changes among the justices and legal advocates, and indecision. Oral arguments of *Briggs* and *Davis* revealed racism that underlay rationalizations to equalize, rather than integrate, public schools in South Carolina and Virginia. Politicians, community leaders, and private citizens in these and other Deep South states threatened to boycott local public schools if the Court ended *de jure* segregation in the United States. Debate in the Topeka, Delaware, and Washington, D.C. cases foreshadowed some of the most critical stumbling blocks to integration, that being, evasion by school choice programs and selective desegregation. Both scenarios, one more overt than the other, would develop further as the decade advanced.

African Americans celebrated the hard-won victory over *Plessy* because it represented a major step towards real social progress. These rulings provided the catalyst for a new era of African American activism. The year, 1954, often signifies the advent of a modern civil rights movement because the *Brown* v. *Board of Education* decisions ended legal segregation in the United States. Several factors facilitated activism in the late-1950s and 1960s. These included strong advocacy for African American equality, outstanding leadership within and beyond the NAACP, and experiences encountered during World War II, both for those at home and abroad. Financial assistance for home loans and college tuition provided by the "GI Bill" aided veterans and boosted the economic status of many African Americans. Steady incomes during the 1950s brought enhanced buying power to more Americans. Accordingly,

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[94]Mayer, "With Much Deliberation and Some Speed," 74-76; Baker, "With All Deliberate Speed," 48. Kluger, *Simple Justice*, 746-747; Rowan, *Dream Makers, Dream Breakers*, 232-233; and Archibald Cox, *The Warren Court: Constitutional Decision as an Instrument of Reform* (Cambridge: Harvard University Press, 1968), 24-27.

blacks could choose to patronize or boycott businesses as they chose, with very effective results. Television inaugurated the "information age" by spreading news about injustices against blacks, resistance to desegregation in many venues, equitable treatment, constitutional rights, and reactions by governmental leaders. Such widely-available data influenced the viewpoints and actions of African Americans as the movement grew stronger. The Cold War emphasis on the concepts of democracy and freedom also contributed to growing dissatisfaction among black Americans and to anxiety among the white majority. Rhetoric which touted the benefits of representative government and the comfort of a democratic society brought attention to glaring inconsistencies in the treatment of each race.

Within this context, the school cases provided an important forum for a broad discussion of race relations in the United States because they sparked close examination of the "separate but equal" doctrine. Each school case contributed to the debate, largely through findings of historical, psychological, and sociological scholarship. The Kansas case, in particular, targeted this analysis because conditions in Topeka came closest to the equal mark, exposing commonly-held perceptions and attitudes which bolstered racial separation for its own sake. The implications of "separate but equal" were clear: separateness negated any sense of equality. Logically, a race truly perceived as equal would be allowed **equal** treatment. Two phenomena merged during this "period of consensus;" namely, redress of constitutional injustice and a maturing social conscience. Many Americans felt pangs of conscience when juxtaposing racial segregation with the canon of representative government, Earl Warren notwithstanding. As governor of California, this man had called for the incarceration of Japanese-Americans during World War II because he mistrusted their loyalty. Years later, however, he crafted unanimity among a very fractured group, for the purpose of restoring equity status to African Americans. His appointment to the Supreme Court added another important quantity to the complicated equation for social justice. Earl Warren built upon the precedents issued by the Vinson Court, but ushered in a new, more liberal era of American jurisprudence.

The new Chief Justice contributed to a long chain of events by rallying his brethren to address contemporary social dynamics and to use the Court's authority to end unconstitutional practices. The outcome of the consolidated *Brown* v. *Board of Education* case signified a moderating of views held by members of the Supreme Court and among society, at large. Although the Court stands as last adjudicator in U.S. jurisprudence, it does not function in isolation. Members on the bench selectively hear cases which deal with critical issues, resolve long-standing controversies, or redress society's wrongs. Topeka attorney Charles Scott later commented that during the *Brown* proceedings, counsel considered the interplay between the Court and society, saying,

> *There had been many efforts made to resolve the issue [of school desegregation], and we felt* eventually that perhaps that they would reverse themselves in accordance and keeping abreast with the mood of the times perhaps. Because we felt that the social climate was changing somewhat or

> would change or at least the Supreme Court would... help institute a change of the social climate to some degree.[95]

Advocates were correct on both counts, the social climate had changed and would continue to evolve as the civil rights movement gained momentum. The landmark Supreme Court action resulted from decades of discriminatory treatment, the long record of NAACP legal victories, a rather conducive social environment, the labor of many individuals, and Earl Warren's leadership. Few Americans missed the significance of the desegregation ruling. The broad-sweeping implications of the *Brown* decisions prompted critics to flail the Court for enacting a piece of judicial legislation. Most praised Warren for coming to terms with past injustices. The method of relief, however, raised questions about the Court's sincerity and authority to end segregation in the United States. The historical record clearly illustrated past patterns of discrimination, but the way to rectify them remained murky. The contradictory correlation in *Brown II* between deliberation and speed only complicated things further.

Eisenhower, too, presented a frustrating paradox because he preferred a moderate course of action and did not embrace change very easily. During his presidency, Ike showed himself to be a quite capable politician, despite the lack of formal experience in that particular arena. With the 1956 election approaching, he assessed public sentiment in light of the *Brown* decisions, recognized his legal obligation to abide by the Court's decrees, and advocated a legalistic approach. The moderate course lay in supporting, but not endorsing, the *Brown* decisions. Ike had lobbied heavily for a gradual approach to racial equality, but apparently did not find satisfaction in the moderation of *Brown II*. He apparently felt great disappointment in Warren's liberal leanings and believed that the school desegregation rulings portended tremendous social unrest. Southern reaction confirmed the president's fears. Politicians from the region crowed loudly about the Supreme Court's interference with state powers, and Ike tried his best to smooth over ruffled feelings. When vocal complaints gave way to open defiance, however, Eisenhower had to deal squarely with serious threats to federal authority.

[95]Scott, interview with Duram, 25 June 1970, 18.

My eight friends and I paid for the integration of Central High with our innocence. During those years when we desperately needed approval from our peers, we were victims of the most harsh rejection imaginable. The physical and psychological punishment we endured profoundly affected all our lives. It transformed us into warriors who dared not cry even when we suffered intolerable pain.[1]

-- Melba Patillo Beals, one of the "Little Rock Nine"
Warriors Don't Cry, 2

[1]Melba Pattillo Beals, *Warriors Don't Cry: A Searing Memoir of the Battle to Integrate Little Rock's Central High* (New York: Washington Square Press, 1994), 2.

CHAPTER SIX

THE SLOW PACE OF "DELIBERATE SPEED," 1955-1975

The second *Brown* decision strengthened the original, 1954 U.S. Supreme Court finding and prompted action on the part of local school systems across the country to either implement or reject desegregation orders. Educators in Topeka, Kansas, and Wilmington, Delaware, initiated steps to integrate their classrooms prior to the actual resolution of the school desegregation cases. The decision hastened integration overall, but, for many school systems, it also brought harsh repercussions because administrative boards often closed formerly black, neighborhood schools and terminated many African American teachers. The public school systems of Clarendon County, South Carolina, and Prince Edward County, Virginia, closed their facilities, refusing to integrate them. The situation kindled to crisis stage before federal authorities stepped in to enforce the Supreme Court action. Governors and mayors, alike, stood in school doorways and made pronouncements rejecting the authority of the federal government to determine the mixture of their school populations. Eisenhower's fear of social upheaval rang true until he clarified the federal government's position by interceding in the desegregation of Little Rock's Central High School. Federal troops failed to end local dissension, however, and the "era of consensus" ended with the promise of further civil rights gains amidst ominous warnings of race-based terrorism and retaliation. From the 1950s on, the nation's school systems have wrangled with the issue of desegregation and the very complex strategies which strive for full racial integration. The significance of the 1954 U.S. Supreme Court ruling, however, swept far beyond the classroom. It marked the beginning of the modern civil rights movement, by providing a foundation for efforts to end segregated public accommodations, modes of interstate travel, restrictions of due process, and denial of African American voting rights.

A. Impedance versus implementation

Through this volatile period of diplomatic warring abroad and mistrust at home, national leaders coped with a very complex political landscape where civil dissent countered state and federal authority. As chief executive, Dwight D. Eisenhower was bound to enforce the U.S. Supreme Court ruling, regardless of his own opinion about the prudence of such a mandate. Desegregation proceeded at varying rates in the mid-Atlantic region, Deep South, and Midwest. Opponents of integration formed citizens groups across the country which advocated local control over school policy. Although the racial climate in Topeka had been much less tense than that in towns throughout the South, segregation in public facilities persisted into the 1960s in this and other Kansas communities. As promised, governmental leaders in South Carolina and Virginia took drastic steps to avoid federally-enforced integration. They enacted a policy of "massive resistance," which closed public schools and subsidized the education of white students at private academies. The power struggle between

implementation and impedance of the desegregation order raised old debates about the federal system of government, itself. Pro-segregationists clouded the issue of educational equity by couching it in broader constitutional issues. Politicians from the Deep South, in particular, dredged up pre-Civil War doctrines of nullification and interposition in an attempt to use states' rights arguments to stave off equalization in U.S. classrooms. Their protests compelled President Eisenhower to act on the behalf of all Americans, to ensure the full realization of their fundamental civil rights.

In early June 1954, only two weeks after the initial *Brown* decree, Dr. Kenneth Clark wrote a very brief "Statement on the Meaning of the Supreme Court Decision," in which he explained its significance as opening the way for democracy to flourish. "The decision itself cannot fulfill these dreams of youth," Clark explained. "In order to attain these goals, we must have faith in their attainment. We must have men and women of good will, clarity, intelligence and courage who believe in democracy--enough to train our children in the ways of democracy and to continue to work for democratic goals."[2] Optimism and hope justified Clark's observations in 1954, but the events in the aftermath of *Brown* engendered dissension and mistrust, rather than pride, on the grassroots level. Earl Warren lay some of the blame on Dwight Eisenhower for widespread reticence to comply with the integration order. Although Ike chose not to exercise his charismatic leadership to break down racial barriers, he used the power of the executive branch to facilitate gradual integration. Publicly, he took an impartial position and delegated administrative responsibility to the Department of Health, Education, and Welfare, Department of Justice, and Special Assistants Frederic Morrow and Maxwell Rabb. Michael Mayer explained the importance of judicial appointments made during the Eisenhower administration, largely engineered by Herbert Brownell, but approved by the president. Federal judges on circuit courts functioned on the front lines, as it were, enforcing and monitoring integration plans. Ike also sponsored two civil rights bills during his presidency, those of 1957 and 1960, successfully maneuvered them through Congress, and instituted the Civil Rights Commission. The later 1964 Civil Rights Act garners more attention because of its long-term impact, but civil rights legislation during the Eisenhower administration signified the first since Reconstruction, a span of eighty-two years.[3]

Washington, D.C., provided one opportunity where Eisenhower wholeheartedly supported integration. Upon taking office, Ike had promised to end segregation in the District in order to ensure "that this Capital provide an honored example to all communities of our

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[2]Clark, "Statement on the Meaning of the Supreme Court Decision," Box 61, Kenneth B. Clark Papers, Library of Congress, n.d., 2.

[3]Mayer, "With Much Deliberation and Some Speed," 74-76; Duram, *A Moderate Among Extremists*, 105-120; and Pach and Richardson, *The Presidency of Dwight D. Eisenhower*, 137-149. Robert L. Branyan and Lawrence H. Larsen, eds., *The Eisenhower Administration, 1953-1961: A Documentary History*, Vol. II (New York: Random House, 1971), contains extensive documentary evidence and discussion of the administration's civil rights activities.

Nation."[4] School desegregation began during the litigation of *Bolling* v. *Sharpe* and proceeded slowly during the late-1950s. The District outlawed segregation in housing in 1947 and legal action in June 1953 brought about equal access to restaurants and hotels in the city. In 1954, the superintendent of schools, Dr. Corning, drafted a plan for integration to be implemented the following year. It allowed students to complete their education in their present school or transfer to schools near their homes. Many complained that the plan's option for school selection meant that little would change. The school board implemented the "Corning Plan" in fall of 1954 and dealt with public demonstrations, high rates of absenteeism, and student strikes. Things calmed down as the weeks passed because the police and school officials

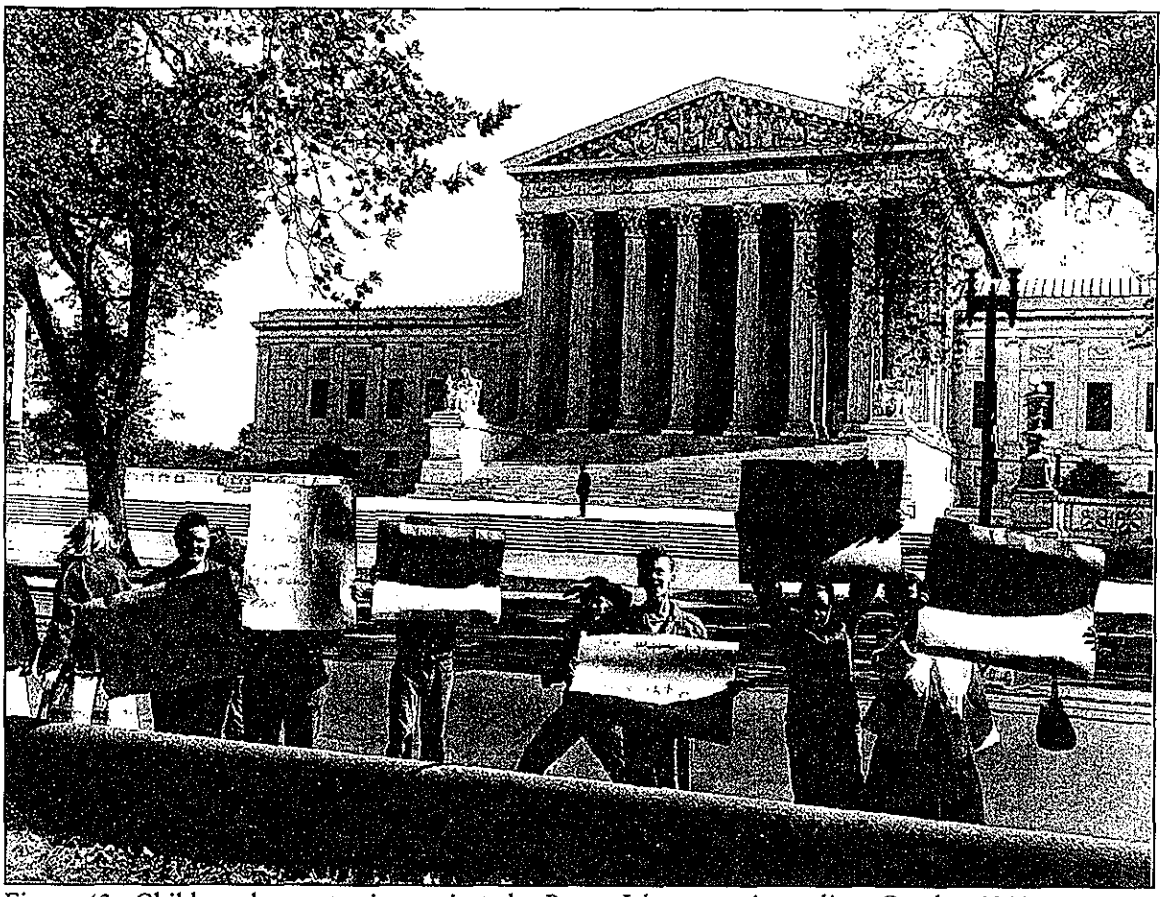

Figure 62. Children demonstrating against the *Brown I* desegregation ruling, October 1954.

enforced the new policies in a consistent manner. The schedule for full integration proved unworkable, however, and attempts to consolidate Washington, D.C. schools dragged on for several years. The District Board of Commissioners kept in close contact with the White

[4]Dwight D. Eisenhower, "State of the Union Message," 2 February 1953, in Branyan and Larsen, eds, *The Eisenhower in Administration, 1953-1961*, Vol. I, 103.

House, through Maxwell Rabb and the president, himself, during the lengthy process.[5]

The third stage of the Topeka school board's desegregation plan went into effect during the 1955-56 academic year. Public elementary schools in the USD-501 system had opened their doors, on a gradual basis, to African American children during the lengthy litigation of *Brown* v. *Board.* The capital city experienced a dramatic growth spurt during the 1950s, which resulted in new school construction and annexation of areas outside of the city limits. The Kansas state legislature passed a special bill in 1953 which allowed local school boards to purchase sites outside of their district boundaries for new school construction. Topeka USD-501 added school districts to the south and west of the capital, and on the northern edge of North Topeka. Student population grew from 10,183 in 1950 to 12,811 in 1955, requiring the construction of eight new buildings. Some of these replaced older structures, such as Lowman Hill and Lafayette, but additional schools also helped relieve the burden of the growing student population. Articles in the local press from 1952 to 1956, appearing in the *Topeka Daily Capital* and *Topeka State Journal*, emphasized the progress made in the school board's integration plan. Reporter Anna Mary Murphy wrote on June 26, 1956 that "With the exception of about 140 older students, who may choose to remain in their original elementary school throughout the first six grades, Topeka will have complete integration next fall of its nearly 9,000 elementary youngsters."[6] The quandary lay in the definition of "integration." The school board and many white residents believed that open access to enrollment in local elementary schools signified the accomplishment of integration. African Americans, on the other hand, looked for a **convergence** of the races. Townspeople expected school populations to be mixed, with white children joining their cohorts in the former black elementary schools, just as black students entered formerly white ones.[7]

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[5]"Puzzling Legacy of 1954: Historic Decisions' Effects Debated," *Washington Post*, A1, 17 May 1979; correspondence, Samuel Spencer, President, Board of Commissioners of the District of Columbia, to President Dwight D. Eisenhower, 25 November 1953 and 26 May 1954, in "71-U–Segregation in District of Columbia" file, Box 282, Central Files, Official Files, Eisenhower Library; and correspondence, Samuel Spencer, President, Board of Commissioners of the District of Columbia, to President Dwight D. Eisenhower, 22 October 1955, in "Re: School Desegregation" file, Box 916, Central Files, Official Files, Eisenhower Library (boxes 282 and 916 contain additional correspondence between the District government, the Board of Education, and the White House); "Office Memorandum," Warren E. Burger, Assistant Attorney General to the Attorney General, "Racial Integration Suit in D.C.," Case file 144-16-147, "Bolling v. Sharpe," Freedom of Information/Privacy Act Office, Civil Rights Division, United States Department of Justice; and Branyan and Larsen, eds., *The Eisenhower Administration, 1953-1961*, Vol. II, 1057-1072. N.B. *District of Columbia* v. *John R. Thompson Co.* [344 U.S. 102] opened eating establishments and hotels in the District.

[6]Anna Mary Murphy, "No Integration Problems in Topeka," *Topeka Daily Capital*, 26 June 1956, n.p., in "Topeka Schools-Public-Segregation" clipping file, Topeka Room, Topeka-Shawnee County Public Library. Those interested can follow the step-by-step progress of annexation in the "Record of Minutes" for the Board of Education, City of Topeka.

[7]Dot Taylor, "How Elementary School Buildings are Located in Cities," A Series of Six Illustrated Articles Reprinted from the *Topeka Daily Capital*, 11, Center for Historical Research, Kansas State Historical Society, Topeka, Kansas; Anna Mary Murphy, "School Bond Issue Part of City Growth," *Topeka Daily Capital*, 6 April 1956 and "No Integration Problems in Topeka," *Topeka Daily Capital*, 26 June 1956, n.p., in "Topeka Schools-Public-Segregation" clipping file, Topeka Room, Topeka-Shawnee County Public Library.

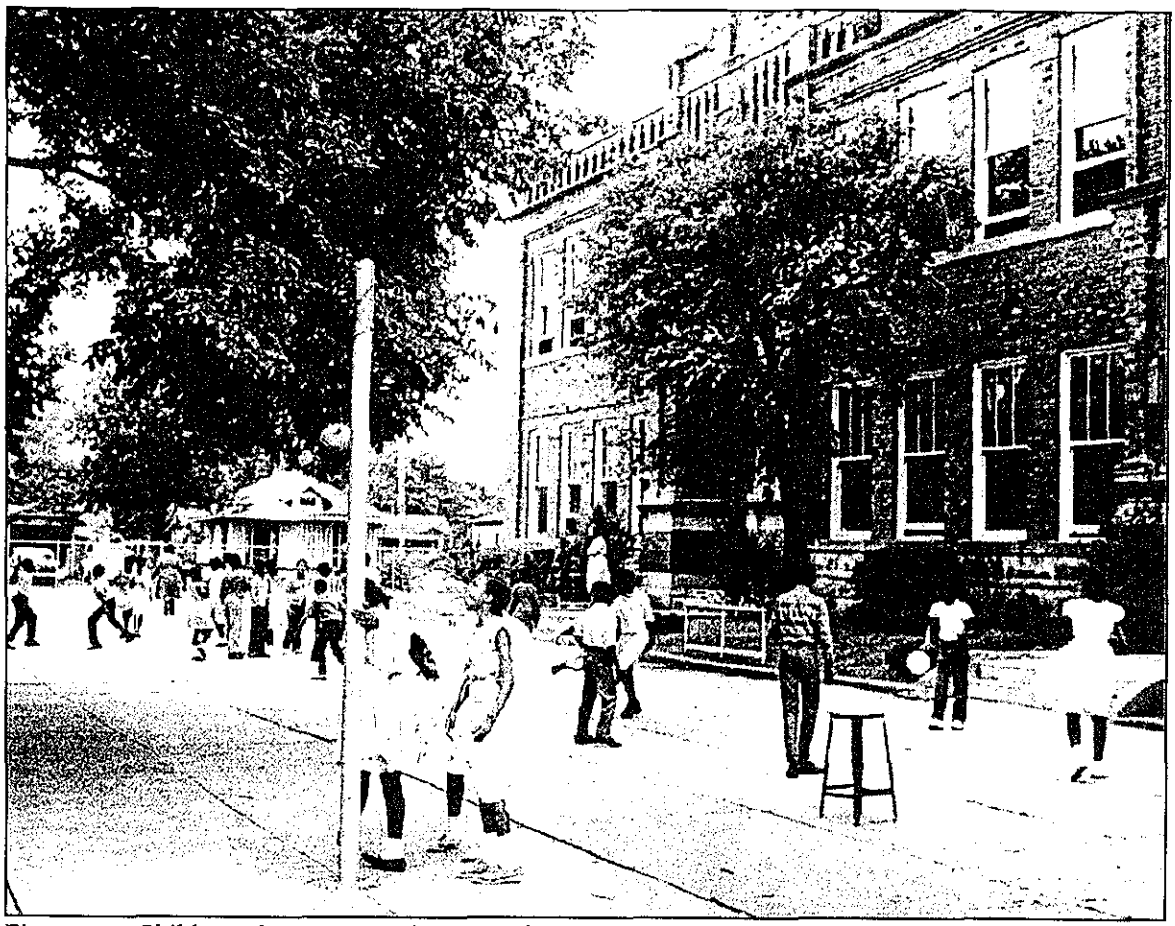

Figure 63. Children playing at Washington Elementary, ca. 1959.

Where some perceived progress, others saw the same patterns of interaction. African Americans had been admitted to neighborhood schools, but white students continued to attend predominantly white schools. An analysis of enrollment for Topeka's twenty-four primary schools from 1952 to 1955 shows an increase in the number of African Americans attending facilities formerly restricted to them. Relatively little change occurred, however, in the racial composition of student bodies at Buchanan, Washington, McKinley, and Monroe. The total number of students in attendance declined because they transferred to neighborhood schools, but through this period, Buchanan, McKinley, and Monroe remained one hundred percent black. McKinley closed at the end of the 1954-55 academic year and all of its sixty-seven students transferred to Grant School. During the fall of 1955, one white child enrolled in Washington Elementary, a statistically insignificant event. Movement went in only one direction, whereby black students moved to predominantly white schools. LDF Counsel Robert Carter drew upon similar examples of desegregation in Topeka for oral arguments presented to the U.S. Supreme Court in April 1955. These enrollment patterns help explain

some of the frustration felt by the NAACP with USD-501's claim of progress toward full integration.[8]

One cause of frustration stemmed from revised goals, as evidenced by new terms and meanings in the national debate about race relations. Across the country, the term "integration" began to replace "desegregation" in common usage during this period. This signified a lesser emphasis on opening access to formerly segregated schools, placing much greater importance on a proportionate racial composition. The term "integration," which Felix Frankfurter coined in 1953, served to define a new standard for the achievement of true racial progress in the late-twentieth century. African Americans in Topeka now had full access to neighborhood schools. Expectations went beyond that, however, because parents envisioned classrooms filled with children of both races, in numbers corresponding to the racial composition of Topeka's population. This led to another cause of frustration. Heretofore, the school board's program tried to equalize opportunity rather than ethnic ratios among students. The local NAACP chapter, still led by McKinley Burnett, opposed several "options" stipulated in earlier stages of the Topeka desegregation plan because they had allowed parents to enroll their children in formerly segregated schools. The group successfully blocked this option on September 15, 1955, in U.S. District Court, forcing USD-501 to craft Step IV, in an attempt to break segregated attendance patterns. Superintendent Godwin presented the fourth stage in USD-501's desegregation plan at a December 1955 board of education meeting. The plan linked school assignment to the location of one's residence. Step IV removed the option for kindergartners to attend formerly segregated schools and restricted attendance to schools within a specific residential district. Some districts overlapped, thereby creating an "optional district" where parents could select one school over another. Full integration, as outlined in the board's proposal, would take seven years to accomplish.[9]

It actually took much longer than that. Federal judges continued to oversee the integration of Topeka public schools, as prescribed in *Brown II*, through the next four decades. McKinley Burnett and the NAACP monitored actions by the superintendent and board of education for the immediate future. Members of the organization criticized USD-501 administrators for the lengthy timetable, believing that residents of both races would accept an immediate end to racial segregation. He also called for the integration of teachers, who had been left to teach dwindling classes at the three remaining black schools. Superintendent Godwin and members of the board seemed reluctant to place African American teachers in predominantly white classes. J.B. Holland, one-time principal at Monroe Elementary School, became a test case when he was assigned as a half-day teacher at two formerly all-white schools. To ease the transition, USD-501 administrators polled the parents of white students, requesting permission for their children to be placed under Holland's instruction. Other steps

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[8]"Description of School Boundaries [Topeka], For School Year 1955-1956" and "Report to Board: Third Step in Terminating Segregation in the Public Schools of Topeka" (7 February 1955) in "Schools-Kansas-Topeka-Brown v. Board-Background Material 1955," Box 138, Papers of the NAACP, Group II, Series B, Library of Congress.

[9]Kluger, *Simple Justice*, 686; and "Record of Minutes, August 1953 through February 6, 1956," Office of the Board of Education, City of Topeka, 342 (21 December 1955).

in the equalization process would take even longer to achieve. In 1962, after Godwin had left his post, Merrill Ross became the city's first African American principal of a formerly white school, Avondale West Elementary. Ida Norman also became one of the first to cross the color line. She had served USD-501 as a school nurse for the African American schools and, after *Brown*, added East Topeka and Polk to her rotation. After some initial tensions, these transitions eased some of the misunderstanding between the races and denote significant contributions to the achievement of racial equality in Topeka.[10]

Because the Kansas suit led the docket of five school cases before the U.S. Supreme Court, it has garnered more attention than the companion cases over the years. The original plaintiffs had continued with their lives during the three years of litigation. Apparently, none, in this or the other cases, attended the Supreme Court hearings. Most of the children of the petitioners in the Topeka case moved on from elementary to junior high school during the proceedings. They never gained admission to neighborhood primary schools, but some of the younger participants benefitted from the USD-501's desegregation program. The most well-known plaintiff, Oliver Brown, moved his family to North Topeka in 1953, upon receiving a full-time position as pastor of St. Mark's AME Church. By this time, the chance for Linda Brown to attend Sumner Elementary School had passed.[11]

During oral arguments on implementation, Delaware Attorney General Joseph Craven reported that high schools in Claymont and Hockessin had admitted the plaintiffs represented in *Bulah* and *Belton*. Desegregation began in New Castle County in 1952 and proceeded rather smoothly in the towns of Claymont and Hockessin. Shirley Bulah, the lead plaintiff in the Delaware case, enrolled in Hockessin School No. 29 and began making new friends. Raymond Wolters, in his concise study of the impact of desegregation, reports that most of Mrs. Bulah's opposition lay not with white parents, but among her African American neighbors. Some black students complained of racist treatment at the now-integrated high school and some parents criticized Mrs. Bulah for causing disruption in the African American community. Desegregation also proceeded in Wilmington, being phased in the city's elementary schools in 1954, junior highs during the next year, and integrating senior high schools in 1956. The plan contained a profound flaw, however, because the school board continued to offer a transfer policy, whereby students could enroll in another school located within an assigned district, if

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[10]"Record of Minutes, August 1953 through February 6, 1956," Office of the Board of Education, City of Topeka, 350-351 (18 January 1956); Merrill and Barbara Ross, interview with author, 4 August 1995; Roger Aeschliman, "He Watched Racism Go, Success Come," *The Topeka Capital-Journal*, 17 May 1985, 1-2; Ida Norman, interview with Ralph Crowder, 26-27; and interview with Stanley Stalter, Brown Foundation Oral History Collection.

[11]Leola Brown Montgomery, interview with Ralph Crowder, 50-52; Masters, "The Life and Legacy of Oliver Brown," 98-107; Leola Brown Montgomery and Linda Brown Thompson, interviews with author, 2 August 1995; Michael Ginsberg, "30 Years After Brown Rulings Effects Linger in Kansas," *The Wichita Eagle Beacon*, 17 May 1984, n.p., clipping in Charles Scott Collection, Kansas Collection, University of Kansas Libraries.

space were available. This provided an outlet for those who preferred not to enroll in historically black schools.[12]

African Americans comprised approximately twenty-seven percent of the school population in Wilmington in the mid-1950s. This percentage increased as integration proceeded because white Americans began to move from the city into surrounding suburbs. Fears of declining educational standards contributed to the phenomenon of "white flight." Whatever the precise cause, Raymond Wolters, who studied the immediate progress of

Figure 64. Bryant Bowles, shown here leading a rally in Delaware, led the "National Association for the Advancement of White People," formed to counter integration efforts.

desegregation in the five communities represented in the School Cases, reports that, "Total enrollment in the Wilmington public schools varied between 13,000 and 16,000 students, but the percentage of whites steadily decreased from 72.9 in 1954 to 9.7 in 1976."[13] The

[12]Raymond Wolters, *The Burden of Brown: Thirty Years of School Desegregation* (Knoxville: The University of Tennessee Press, 1984), 176-180.

[13]*Ibid.*, 181.

population shift transpired slowly during this twenty-year period and caused a dramatic revision of Wilmington's integration program during the 1970s and 1980s.[14]

While Wilmington schools became predominantly African American, districts "downstate" retained an essentially white racial composition. Mrs. Brenda Evans, an African American in the Clayton School District filed suit in 1956 on behalf of her nine-year old daughter to protest the lack of action in Clayton. Under the direction of the venerable Louis L. Redding, *Evans* v. *Buchanan* inaugurated a renewed attempt to take desegregation beyond urban areas in Delaware. The pertinent issue now concerned *responsibility* for desegregation, rather than the desegregation process, itself. After lengthy proceedings and appeals, the Third Circuit Court of Appeals determined in 1958 that the state should develop a plan for gradual desegregation of Delaware's schools, to be implemented by local school boards by Fall 1961. As this example shows, residents in the southern part of state experienced the most difficulty with desegregation. Many attempted to block integration by rallying support for various "citizens' groups." Bryant W. Bowles, a non-resident, led the state's most belligerent protest in 1954, in Milford, on behalf of the "National Association for the Advancement of White People." The local school board drew the ire of its residents by implementing its desegregation plan without informing parents. Instigators, like Bowles, added fuel to the political inferno by playing on irrational fears of miscegenation and violence. The Milford incident seemed to reflect the broader climate of downstate Delaware. The state board of education pushed ahead with its broad integration policy during the early 1960s. It called for mixed enrollment and closed all remaining African American schools by 1967, thereby effectively integrating Delaware's rural school systems.[15]

Activists in South Carolina and Virginia achieved greater success in their efforts to stop the integration of the races in public educational facilities. Those holding office in Virginia embraced a segregationist stance and promised to make good on Attorney General Almond's threat to close, rather than integrate, the state's public schools. The more agitated segment of the "Old Dominion" dredged up the theory of interposition, whereby a state could "interpose" itself between federal authority and law. Such an act functioned to countermand the authority of the federal government within state boundaries. South Carolina used nullification, an expression of this political concept, during the nineteenth century to block federal orders. In 1956, Virginia followed its lead. The general assembly adopted an anti-integrationist position and passed an interposition resolution, which, as Robbins Gates explains, said "The 'sovereignty of Virginia' had been interposed 'against encroachment upon the reserved powers of this State,' and appeal had been made 'to sister states to resolve a question of contested

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[14]*Ibid.*, 180-197.

[15]*Ibid.*, 198-204; and Jeffrey A. Raffel, *The Politics of School Desegregation: The Metropolitan Remedy in Delaware* (Philadelphia: Temple University Press, 1980), 39-44.

power.'"[16] Local communities stepped in with their own ordinances to block the Supreme Court decrees. Spottswood Robinson, Oliver Hill, and Robert Carter, on behalf of the NAACP, countered by petitioning federal courts to order desegregation in Farmville and other communities by September 1956. School boards in Newport News, Norfolk, Charlottesville, and Arlington soon found themselves in the midst of the fray, stuck between desegregation orders issued by federal district courts, NAACP attorneys pushing for implementation, and the white community that balked at any notion of race mixing.[17]

In 1956, two federal judges issued desegregation orders in two separate actions, effectively throwing down the gauntlet before resistant school boards and parents across the state. During the next year, segregationists, who dubbed themselves the "Defenders of State Sovereignty and Individual Liberties," adopted the policy of "massive resistance." Even as desegregation plans were drafted, Governor Thomas B. Stanley vowed to withhold state funds from public school systems that proceeded with integration. Little came of this threat, however, for in September 1958, his successor, Lindsay Almond, closed nine public schools. "In order to avoid the integration of what might have been as many as seventy-one Negro students," Robbins Gates explains, "12,700 white students had their public school education suspended."[18] Approximately six months later, U.S. district court determined that state's denial of funding for public schools violated the equal protection guarantee of the Fourteenth Amendment. This action ended the official period of "massive resistance" and led to the reopening of schools in selected communities. Thereafter, Governor Almond softened his position by blocking additional segregationist legislation, amending tuition grant laws to remove mention of race, and adopting a statute against violence. Yet, at the same time, Almond also supported the repeal of compulsory school attendance, which indirectly aided those school systems that kept their facilities closed.[19]

The people of Prince Edward County bore the brunt of the assault on the Supreme Court's integrity because the school board was the subject of the *Davis* suit. Prince Edward County closed its schools in September 1959 by refusing to collect taxes needed to run them. Nevertheless, administrators raised funds, through contributions and tuition grants, to sponsor white students enrolled in "private" academies. The Prince Edward School Foundation, in effect, replaced the board of education and sponsored classes through the Prince Edward Academy for approximately 1,260 white children. The brand new Robert Russa Moton High School, built to provide a separate and equal facility for blacks, sat empty throughout this episode. The American Friends Service Committee, a Quaker organization, relocated

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[16]Robbins L. Gates, *The Making of Massive Resistance: Virginia's Politics of Public School Desegregation, 1954-1956* (Chapel Hill: The University of North Carolina Press, 1964), 114.

[17]*Ibid.*, 108-128; Benjamin Muse, "Virginia *versus* the Court," *The New Republic* 133 (26 December 1955): 14-15; and Benjamin Muse, "Virginia's Children," *The New Republic* 135 (17 September 1956): 14-16.

[18]Gates, *The Making of Massive Resistance*, 210.

[19]*Ibid.*, 125-135.

approximately fifty African American students from Farmville to communities in the North and Midwest so that they might continue their educations. Those who remained received no formal education until the fall of 1963, when parents, with the backing of the U.S. Justice Department, formed the Prince Edward Free School Association to educate approximately 1,567 black and eight white students. The Virginia Supreme Court of Appeals reaffirmed the policy of "massive resistance" in 1963 through a ruling which stated that the state **did not** carry a constitutional duty to provide public education in every city and county in Virginia. The episode finally ended on May 25, 1964 with a U.S. Supreme Court order in *Griffin, et. al.* v. *County School Board of Prince Edward County, et. al.* that the county Board of Supervisors comply with federal authority and reopen the public schools. When schools opened in the fall of 1964, the student population consisted of more than two thousand African American and two white children. *De facto* segregation continued in Farmville through the next ten to fifteen years, with most African American students graduating from the county's public schools and most white children attending the Prince Edward Academy.[20]

Unlike its sister to the north, South Carolina shied away from interposition and "massive resistance" in the 1950s. Clarendon County, by no means, accepted the Supreme Court decree to integrate, but residents evaded the order in a less blatant manner. Throughout the litigation of *Briggs* v. *Elliott*, Governor James Byrnes had lobbied the Eisenhower administration for relief from potential Supreme Court action. He wanted Ike to temper judicial interference with state authority and to alleviate the hardships on South Carolina's patriarchy which Byrnes feared would result from desegregation. Through *Brown II*, the Supreme Court returned Briggs to federal district court in South Carolina, which would enforce the desegregation of Clarendon County public schools. Judges Parker, Timmerman, and Dobie, who had heard the complaint three years previously, carefully interpreted the Supreme Court's ruling as meaning that, whereas schools could no longer deny the enrollment of African Americans, neither could they force pupils to attend specific facilities. NAACP attorneys, led by Robert Carter, complained that the High Court's ruling implied that states must go beyond lifting enrollment restrictions, and instead strive to **integrate** schools. *De facto* racial separation harmed students just as much as *de jure* segregation had. The NAACP lost this round. Schools in Clarendon County, South Carolina, remained open after *Brown* v. *Board*, but they also remained segregated. As in Farmville, Virginia, African Americans in the Summerton, Manning, and Greeleyville districts of Clarendon County attended all-black public schools and their white counterparts attended the private, Clarendon Hall Academy. Although intimidation and subjugation characterized race relations in these communities, they escaped blatant confrontation over desegregation, like that seen in Virginia's "massive resistance" strategy. This may be due to the fact that the players in this drama, Governor

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[20]*Ibid.*, 210-213; Wolters, *The Burden of Brown*, 81-95, 106-116; Allen Freeman, "Farmville: A Burden of History," *Historic Preservation* 48, no. 1 (January/February 1996): 62-67; Kenneth Freed, "The Struggle Continues Where It All Began: Change Comes Slowly, Painfully in Prince Edward County, Va.," *The Los Angeles Times*, 14 May 1979, 15, 18; and Haldore Hanson, "No Surrender in Farmville, Virginia," The New Republic 133 (10 October 1955): 14-15. Bob Smith, *They Closed Their Schools: Prince Edward County, Virginia, 1951-1964* (Chapel Hill: The University of North Carolina Press, 1965) provides a wonderful, comprehensive account of the events associated with the *Davis* suit and the county's response to *Brown II*.

Byrnes, state legislators, federal judges on the Charleston circuit court, local officials, and white parents, all maintained the same position. They pledged to maintain the *status quo* and were prepared to close the state's public schools, but avoided doing so by devising a desegregation plan which allowed African American access only to single-race, *de facto* black, schools. This situation continued until 1963, when eleven African American students enrolled in predominantly white schools in Charleston. Two years later, five black students integrated Summerton High School, bringing the post-*Brown* chapter of the *Briggs* story to a close.[21]

Governor Byrnes promoted his segregationist agenda on a national scale during the 1950s. He, Virginia Governor Lindsay Almond, and Mississippi Senator James Eastland led the charge against federal interference in Southern social traditions immediately after the Court announced the *Brown* decisions. One hundred and one members of Congress, nineteen senators and eighty-two representatives, expressed their support for the segregationist position in March 1956 by signing the "Southern Manifesto." This unofficial compact recorded their opposition to the Supreme Court's action and apparently did little else. It signified a powerful voting block, however, which could thwart Eisenhower's domestic agenda. His administration kept a relatively low profile immediately following the *Brown* decisions until after Ike had secured a second term in the 1956 presidential election. Eisenhower then used the re-election momentum to push civil rights legislation through Congress, at first against the opposition of Majority Leader Lyndon Johnson and later with his help. In their study of the Eisenhower presidency, Pach and Richardson claimed that, "Johnson realized that he could raise his national stature and advance his presidential aspirations by guiding a compromise bill through the upper house."[22] After lengthy and contentious debates which lasted several months, Johnson guided the Civil Rights Bill of 1957 into law. While heated debate had stripped the final version to bare bones, the 1957 law did establish a civil rights commission, a civil rights division within the Department of Justice, extended federal jurisdiction over discrimination and racial injustice, and spelled out new conditions for jury trials in criminal contempt cases. Perhaps most importantly, it signified the first piece of civil rights legislation passed since Reconstruction and established an important precedent for the more-widely renowned Civil Rights Act of 1964.[23]

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[21]Wolters, *The Burden of Brown*, 138-141, 149-150; Julian Scheer, The White Folks Fight Back," *The New Republic* 133 (31 October 1955):9-12; John Margolis, "Integration Hasn't Happened in Areas of 'Black Belt,'" and Wayne King, "Greatest Desegregation Strides Made in South," *The Wichita Eagle Beacon*, 13 May 1979, 1F, 6F. Correspondence between Byrnes and Eisenhower can be viewed in several collections at the Dwight D. Eisenhower Library; including the Administration Series, the Dwight D. Eisenhower Diary Series, and Names Series located in the Ann Whitman File, Papers of Dwight D. Eisenhower as President, as well as in Central Files, Official Files Collections.

[22]Pach and Richardson, *The Presidency of Dwight D. Eisenhower*, 147.

[23]*Ibid.*, 145-148; Eisenhower, *Waging Peace*, 152-161; and Branyan and Larsen, *The Eisenhower Administration*, Vol. II, 1084-1117. The "Southern Manifesto" can be found in the *U.S. Congressional Record*, 84th Congress, 2d Session, 12 March 1956, 4460. Eisenhower made several references to the Civil Rights Bill during the lengthy legislative process, please see transcripts of press conferences, 1956-1957 in Boxes 3 and 5, Press Conference Series, Dwight D. Eisenhower Papers as President, Ann Whitman File, Eisenhower Library.

During this pivotal ten-year period, from 1954 to 1964, segregationists mobilized their forces through grassroots organization, successful political campaigning, and harsh rhetoric. A meeting of concerned citizens in Indianola, Mississippi, sparked the formation of a loosely-organized confederation known as the White Citizens' Councils of America. Its president, Roy Harris, summarized its dire, reactionary sentiment, saying "We are engaged in the greatest struggle and the greatest crusade in the history of mankind. If you're a white man, then it's time to stand up with us, or black your face and get on the other side."[24] Citizens' Councils spread across the lower U.S. and did their best to block integration. Members gave notice to moderate Southerners to follow the segregationist position or suffer the consequences. They used economic intimidation, consumer boycotts, electioneering, and physical violence to bring local residents in line. Earl Black conducted a very thorough analysis of the use of segregation in campaign strategy from 1950 to 1969. He found that segregation, quite predictably, became the pivotal issue in gubernatorial elections held immediately after the *Brown* decisions. Fifty-nine percent of the elections between 1954 and 1961 went to strong segregationists, whereas moderates won thirty-three percent of available offices. The viability of the pro-segregation stance declined significantly from 1966 to 1969, largely because of the stronger federal presence after the passage of the 1964 Civil Rights Act, greater economic security among African Americans, increased political participation by African American voters, and the broad social revolution of the 1960s and 1970s, which transformed U.S. society during the turbulent Vietnam War era. The configuration of both grassroots organization and participation shifted significantly, from white to black, during this period.[25]

The cause of civil rights, in fact, made significant gains during the late-1950s despite Ike's reticence and Southern resistance. Although the brunt of the modern civil rights movement lay ahead, the constitutional success of *Brown* v. *Board of Education* opened the way for an aggressive push to change discriminatory conditions in virtually all segments of society; including transportation, voter registration, housing, and public accommodations. The African American community of Montgomery, Alabama, and their Montgomery Improvement Association (MIA) escalated the momentum of the desegregation decisions. The successful 1955 Montgomery bus boycott propelled Rosa Parks and Martin Luther King, Jr., onto the national scene. The civil rights struggle benefitted from the talents of a new generation of African American leaders who broke on the national scene during the 1950s and 1960s. NAACP Secretary Roy Wilkins, New York Congressman Adam Clayton Powell, Jr., Martin Luther King, Jr., Joseph Lowry, and many others built upon the accomplishments of their predecessors, A. Philip Randolph, Walter White, Lester Granger, and Thurgood Marshall, to name only a few. Eisenhower recognized the political importance of these talented mavericks and reluctantly agreed to meet with Randolph, Granger, Wilkins, and King in the White

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[24]Quoted in J. Harvie Wilkinson, III, *From Brown to Bakke: The Supreme Court and School Integration: 1954-1978* (New York: Oxford University Press, 1979), 73.

[25]Ashmore, *Civil Rights and Wrongs*, 112-115; and Earl Black, "Southern Governors and Political Change: Campaign Stances on Racial Segregation and Economic Development, 1950-1969," *The Journal of Politics* 33, no. 3 (1971): 703-734.

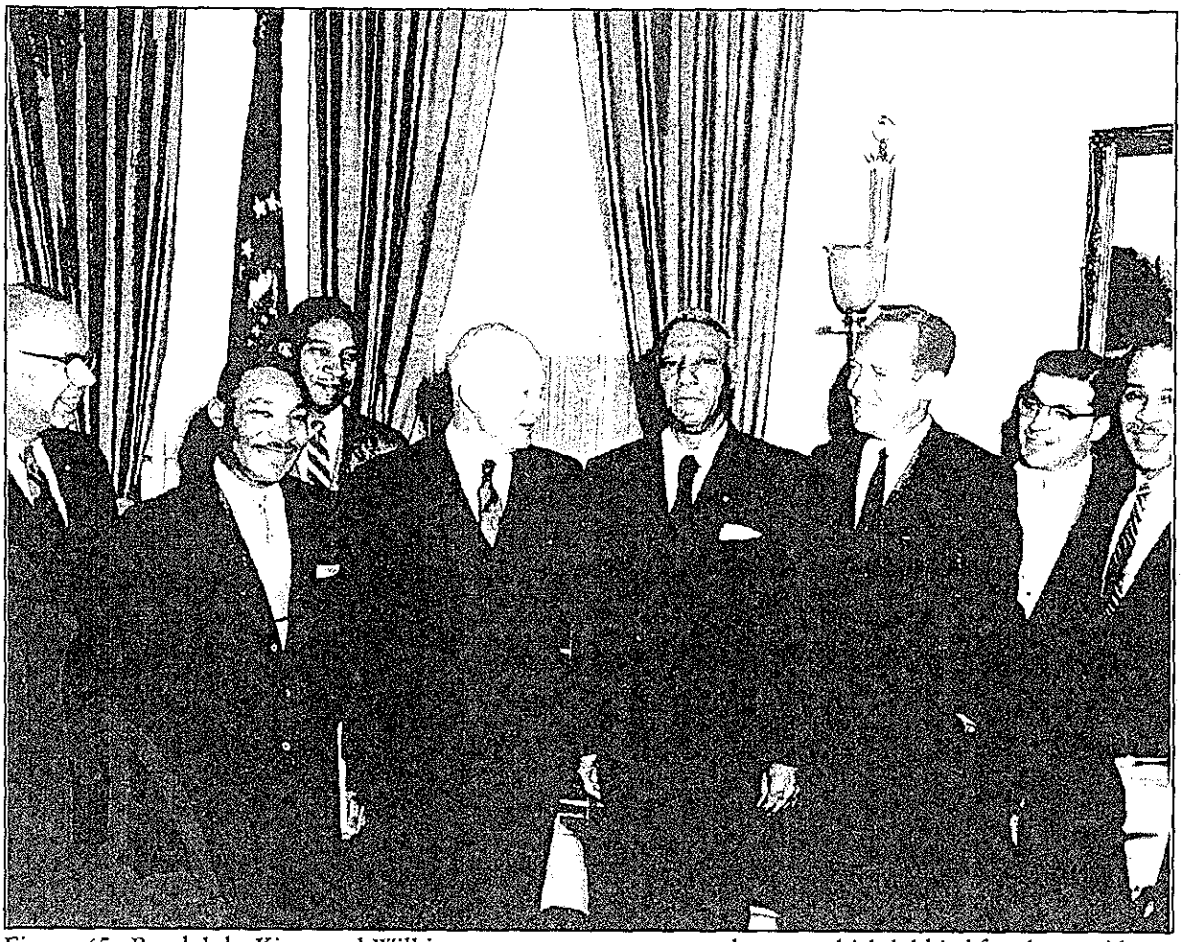

Figure 65. Randolph, King, and Wilkins were among an esteemed group which lobbied for the president's support of desegregation in the South, 23 June 1958.

House on June 23, 1958 to discuss the administration's stance on desegregation. Despite high expectations, the men left disappointed because the president uttered his usual palliatives and asked for patience with the slow rate of change. African Americans, by and large, had little patience with Eisenhower's approach, and instead took the initiative, themselves. The NAACP and Southern Christian Leadership Conference (SCLC), organized in 1957, provided a regional network for the organization of non-violent activities throughout the South. Integration in education provided only one outlet for non-violent action. Groups like the Congress of Racial Equality (CORE) and the Student Non-Violent Coordinating Committee (SNCC) promulgated civil rights on a national scale during the 1960s, tackling discrimination in all facets of society with notable success.[26]

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[26]John Hope Franklin and August Meier, eds., *Black Leaders of the Twentieth Century*, Blacks in the New World Series (Chicago: University of Illinois Press, 1982), 259-303; Pach and Richardson, *The Presidency of Dwight D. Eisenhower*, 155-156; and Duram, *A Moderate Among Extremists*, 175-178. Harvard Sitkoff, *The Struggle for Black Equality* (New York: Hill and Wang, 1981) provides a comprehensive overview of the modern civil rights movement. A second edition, published in 1993, extends the study to 1992. Those interested should also refer to Henry Hampton and Steve Fayer, eds, *Voices of Freedom: An Oral History of the Civil Rights Movement from the 1950s Through the 1980s* (New York: Bantam Books, 1990), companion text to the "Eyes on the Prize" video series.

In the meantime, President Eisenhower had to face African American activism on the one hand and southern intransigence on the other. His responded by doing nothing publicly, thus exercising his "capacity for caution," as Stephen Ambrose puts it.[27] Perhaps historians have viewed Ike too harshly, though, because his was the first administration to deal with race relations on a continuing basis. Although he advocated a moderate course, Dwight Eisenhower used his powers of persuasion through private correspondence with some of the most adamant segregationists. He cautioned men like James Byrnes, Herman Talmadge, and Orval Faubus to adhere to federal authority and asked the Reverend Billy Graham to encourage southern ministers to exert leadership in this time of change. Many in his administration also worked for social progress. The Department of Justice, first under Brownell's direction and then under William P. Rogers, strongly recommended that the Supreme Court overrule *Plessy* during the litigation of the school cases and thereafter pursued civil rights violations through the Federal Bureau of Investigation (FBI) and the department's new Civil Rights Division. Secretary Oveta Culp Hobby and her successor, Arthur S. Flemming, directed programs in the Department of Health, Education, and Welfare (HEW) which promoted desegregation, and also channeled federal support to school systems which implemented integration plans. Funding for the construction of new public schools, technical assistance for the improvement of existing buildings, curriculum development, and testing ranked highly among Ike's priorities. His administration facilitated the desegregation process by selectively providing funds, through grants and federal outlays, to districts which followed federal desegregation guidelines, and by withholding funds from those which evaded them.[28] By 1957, the president had secured civil rights legislation and had appointed members to the newly-created Civil Rights Commission, which addressed the status of race relations in the United States. Ike recognized that *Brown* had ushered in a new era for social relations and, along with it, a more active role for the federal government. In a personal letter to his close friend, Swede Hazlett, Dwight Eisenhower commented,

> I think that no other single event has so disturbed the domestic scene in many years as did the Supreme Court's decision of 1954 in the school segregation case. That decision and similar ones earlier and later in point of time have interpreted the Constitution in such fashion as to put heavier responsibilities than before on the Federal government in the matter of assuring to each citizen his guaranteed Constitutional rights.[29]

These words, written on July 22, 1957, foreshadowed some of the most grave events associated

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[27]Ambrose, *Eisenhower*, 306.

[28] *School Life*, the official publication of HEW, also provides an interesting spin on the federal role in promoting school integration and progress, both perceived and real, made through the years. Researchers should also refer to James Duram, "The Beginnings of Ambivalence: Dwight D. Eisenhower and the Federal Aid to Education Issue, 1949-1953," *Kansas History* 13, no. 3 (Autumn 1990): 166-177; and Robert F. Burk, "Dwight D. Eisenhower and Civil Rights: Reflections on a Portrait in Caution," *Kansas History* 13, no. 3 (Autumn 1990): 178-189.

[29]Correspondence, Dwight D. Eisenhower to Swede Hazlett, 22 July 1957, Box 25, Dwight D. Eisenhower Diary Series, Papers of Dwight D. Eisenhower as President, Whitman File, Eisenhower Library, 4.

with the struggle to integrate the nation's schools. Little did Ike know just how involved he would become in the school desegregation crisis.[30]

B. Showdown in Little Rock

In his study of Eisenhower and the school desegregation episode, James Duram examined the president's tendency to waffle, dither, and evade when asked about his position on key events, such as *Brown I* or the closing of schools in Virginia. "The president maintained his position that when court orders were defied in desegregation cases," Duram explains, "the major point was not a question of integration but obedience to the law."[31] His administration made some progress towards greater equality for African Americans, but hardly enough. The Little Rock episode, instigated by Arkansas Governor Orval Faubus, forced Dwight Eisenhower to act like the general he once was and lead the American people. Publicly, Ike took his role as chief executive seriously, but evidence of leadership in the civil rights arena had been scarce. Most of the work to facilitate desegregation came from the judiciary, the legislature, cabinet members, White House staff, and employees of the Departments of Justice and HEW. Now the spotlight turned to Dwight Eisenhower. He took the path of least resistance, until he perceived that federal authority was in jeopardy. Ike ultimately endorsed the policy of racial integration in 1957 by calling upon federal troops to ensure the admission of black students to Central High School in Little Rock, Arkansas. He did so to affirm the integrity of the presidency and the authority of federal jurisdiction over the many states.

Other states had presented ample situations where Eisenhower could have taken a defining stand against segregation, Virginia and South Carolina, notwithstanding. White House staff had encouraged Ike to speak out against the 1955 murder of Emmett Till, an African American teen from Chicago who was shot while living with relatives in Mississippi. He felt it was a local matter that would be sorted out. The president referred the Autherine Lucy case to the newly-formed Civil Rights Commission. The University of Alabama had turned away Ms. Lucy and Polly Anne Myers after granting them admission for the fall semester of 1952. When the women arrived for matriculation, university officials retracted the offer of acceptance because Alabama law forbad the admission of African Americans to the state university. They turned to the NAACP for help, which it provided even while entrenched in the litigation of the school cases. Thurgood Marshall represented the women in U.S. District Court in Birmingham, but did not gain relief until 1955 when the Supreme Court confirmed a lower court order to admit Lucy. Segregationists prevailed, however, because they pummeled Autherine Lucy with eggs and racist epithets when in February 1956

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[30]Correspondence with Byrnes, Faubus, and Graham, and notes of phone conversations and meetings, are reposited in the DDE Diary Series and Names Series, Whitman File, Eisenhower Library. Missives between Hobby, Flemming, and Eisenhower can be found in Box 15, Administration Series, DDE Diary Series, and in the Names Series, Whitman File, Eisenhower Library.

[31]Duram, *A Moderate Among Extremists*, 181.

she tried to enroll in the university. President Eisenhower kept quiet through the ordeal, even when Alabama Governor Jim Folsom asked him to send the National Guard to assist with the restive population. Ike also maintained a non-interventionist stance when individually Georgia, Louisiana, Kentucky, Texas, and Mississippi declared the *Brown* mandate unconstitutional and flaunted restrictions which prevented African American attendance of predominantly white institutions.[32]

Orval Faubus finally prompted Eisenhower to act, perhaps because of the brazen manner in which he defied federal jurisdiction. Interestingly, the people of Arkansas had made significant progress toward integrating public school systems throughout the state. At least ten districts had drafted desegregation plans by 1955 and African Americans enrolled in five state universities in that same year. All seemed peaceful for the implementation of an integration plan in Little Rock scheduled for the 1957-58 academic year. Politics, unfortunately, intervened. Arkansas' governor, Orval Faubus, had served two terms with no hint of racial animosity. In July, he rejected a demand by the local chapter of the Citizens' Council that he use the interposition/nullification strategy to halt the desegregation of the city's high school. But, staunch segregationists throughout the Deep South flooded the governor's office with telegrams and telephone calls which condemned his moderate position. Amidst the flurry of criticism, Faubus prepared for a tough reelection fight against two hard-line segregationists. He needed a strong response if he hoped to retain any chance of winning a third gubernatorial term. "A populist Democrat, Faubus appeared to be a moderate among southern governors on race relations," write Chester Pach, Jr. and Elmo Richardson. "Actually he was an opportunist."[33]

Figure 66. A guard prepares to defend the Little Rock students.

[32]Rowan, *Dream Makers, Dream Breakers*, 252-255. Greenberg, *Crusaders in the Courts*, 225-226. N.B. Autherine Lucy stood alone against Alabama segregationists in 1956 because Ms. Myers married during the intervening years, and so was ineligible for admission in 1956 on that basis.

[33]Quote taken from Pach and Richardson, *The Presidency of Dwight D. Eisenhower*, 150; Wilkinson, *From Brown to Bakke*, 88-90; Rowan, *Dream Makers, Dream Breakers*, 240-243; and Ashmore, *Civil Rights, Civil Wrongs*, 124-129.

Faubus announced his decision to forestall the integration of Little Rock's Central High School on September 2, 1957, the night before nine African American students were scheduled to enroll for the 1957-58 academic year. The group, later dubbed the "Little Rock Nine," included Melba Pattillo (Beals), Elizabeth Eckford, Ernest Green, Gloria Ray (Karlmark), Carlotta Walls (LaNier), Minnijean Brown (Trickey), Terrence Roberts, Jefferson Thomas, and Thelma Mothershed (Wair). These students were recruited and selected by the local NAACP for their strong academic achievement, personal character, and willingness to attend Central High. For his part, the governor claimed that it would be difficult to maintain order if "forcible integration" were carried out as planned. In actuality, Faubus staged a protest, replete with National Guard troops, as a political ploy. Apparently few in Little Rock took notice at first. A legal brief filed against Faubus for these actions summarizes the scene, by stating that on the following morning, "Little Rock arose to gaze upon the incredible spectacle of an empty high school surrounded by National Guard troops called out by Governor Faubus to protect life and property against a mob that never materialized."[34] His wishes prevailed, despite this false start, because several people turned out on the second day, September 4, to berate the African American children who tried to enter the building. Federal district court ordered the Little Rock school board to proceed with its integration plan regardless of the governor's opposition. Faubus had the upper hand though, and ordered the National Guard troops to remain at Central High in order to prevent the nine African American students from entering the public facility.[35]

Days passed and the stalemate continued. White public officials and business owners exerted economic pressure on African Americans, by eliminating credit and threatening job loss in order to force NAACP officials to back down. Governor Faubus became concerned about his tenuous legal position and solicited assistance from Arkansas Representative Brooks Hays. He and Sherman Adams, Ike's chief of staff, arranged a meeting on September 14, 1957 between Faubus and President Eisenhower in Newport, Rhode Island. The two men met privately for fifteen minutes and were later joined by Hays, Attorney General Brownell, and members of the White House staff. Eisenhower wanted to respect Faubus' authority as governor of Arkansas, but believed that federal court orders superseded state powers. For his part, Oral Faubus recognized the supremacy of federal authority and sought an honorable retreat from his predicament. Eisenhower believed that Faubus would return to Little Rock and modify his order to the National Guard such that troops would maintain order **when** the nine African American students entered Central High. His expectation proved to be false, however, and the stalemate continued. When Faubus returned to Little Rock, he expressed a desire to cooperate with the president's wishes, but did not modify his orders to the troops. The gauntlet was thrown down on Friday, September 20, federal District Judge Ronald Davies issued an injunction which ordered Faubus to end all actions which prevented the integration

[34]The statement, taken from a legal brief filed in *Cooper* v. *Aaron*, is quoted in Wilkinson, 90.

[35]Wilkinson, *From Brown to Bakke*, 90-91; Rowan, *Dream Makers, Dream Breakers*, 243-247; Melba Pattillo Beals, *Warriors Don't Cry: A Searing Memoir of the Battle to Integrate Little Rock's Central High* (New York: Washington Square Press, 1994), 33-65; and Eisenhower, *Waging Peace*, 162-167.

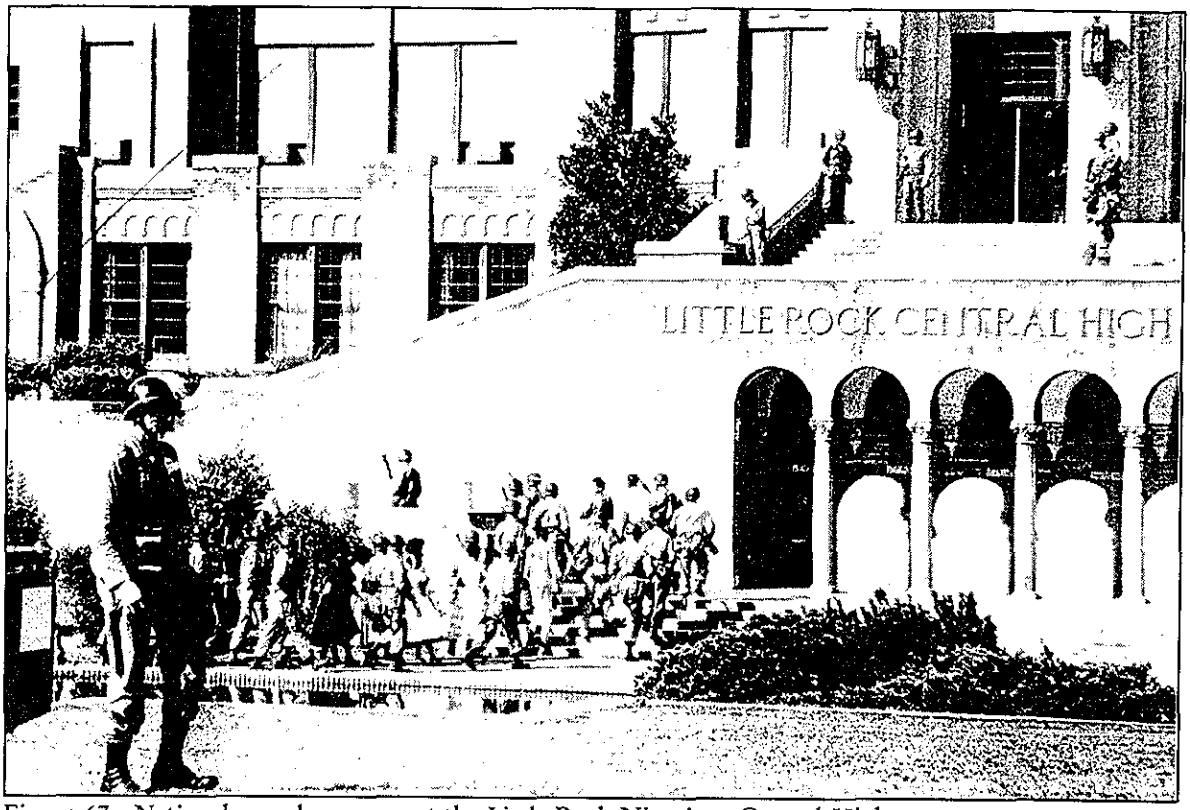

Figure 67. National guardsmen escort the Little Rock Nine into Central High.

of the high school. That evening, the governor ordered the Arkansas National Guard to step down.[36]

Ike worried through the weekend about the response in Little Rock to this latest decree which would open Central High School to integration on Monday morning, September 23. A crowd of approximately one thousand segregationists, assembled from across the Deep South, gathered outside of the school that morning. Melba Pattillo Beals, one of the "Little Rock Nine," has written a gripping memoir of the experience. "The shouts came closer," she recalls. "The roar swelled, as though their frenzy had been fired up by something. It took a moment to digest the fact that it was the sight of us."[37] Whites in the crowd pelted the black students with rocks, bricks, and insults, and severely beat three African American reporters who were covering the day's events. The students entered Central High without

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[36]Pach and Richardson, *The Presidency of Dwight D. Eisenhower*, 150-152; and Beals, *Warriors Don't Cry*, 76-105. Much internal correspondence about the Faubus-Eisenhower meeting and reports of incidents that followed may be found in "Little Rock" files, Box 23, Administration Series, Box 9, Whitman Diary Series, Eisenhower Library. Attorney General Herbert Brownell wrote an extensive legal opinion on the matter, dated 7 November 1947, which reviewed the background context and critical concerns, see "Brownell, 1953-1958" files, Box 8, Administration Series, DDE Papers as President. The Central High stand-off received attention in press conferences, as well; please refer to Press Conference Series, Whitman File, DDE Papers as President.

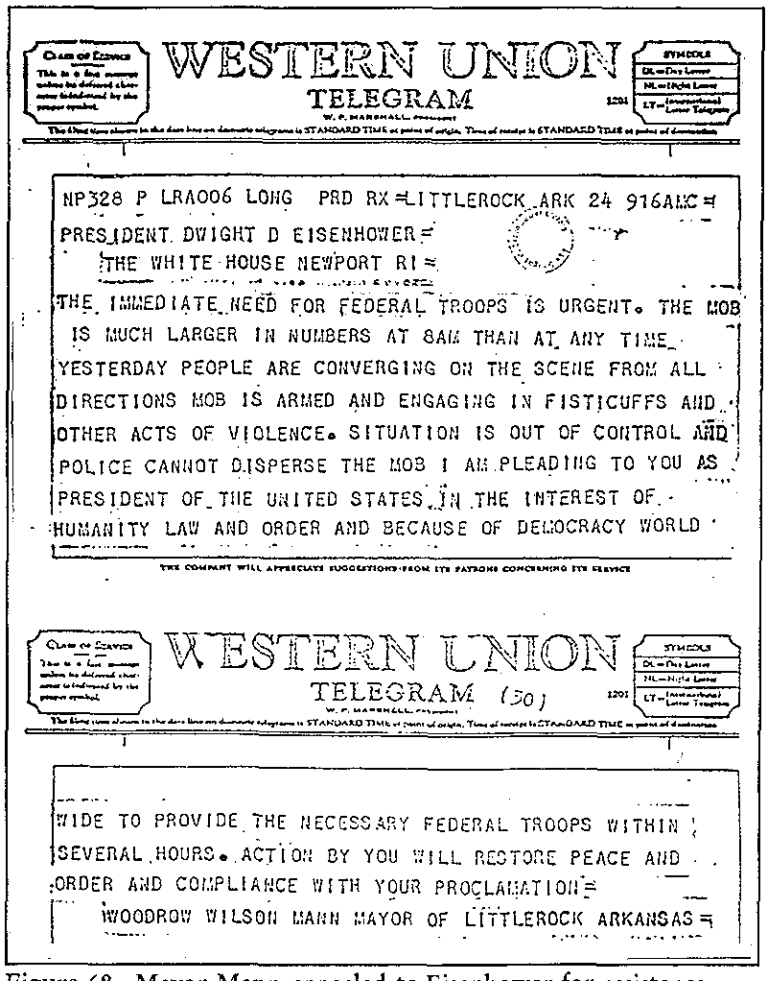
[37]Beals, *Warriors Don't Cry*, 108.

injury and attended morning classes, but administrators sent them home at midday in an attempt to protect the young people from the intractable mob. Eisenhower watched the situation closely from Newport, Rhode Island, and issued a proclamation regarding the "Obstruction of Justice in The State of Arkansas." In a public statement accompanying this action, Ike explained,

> I will use the full power of the United States, including whatever force may be necessary to prevent any obstruction of the law and to carry out the orders of the Federal court.
>
> Of course, every right-thinking citizen will hope that the American sense of justice and fair play will prevail in this case. It will be a sad day for this country--both at home and abroad--if school children can safely attend their classes only under the protection of armed guards.[38]

Perhaps this would lead segregationists to accept the integration of Central High.[39]

But, it didn't. On the following day, September 24, protestors showed up in even greater numbers, and it seemed that the situation would not be abated. Woodrow Wilson Mann, mayor of Little Rock, sent an urgent telegram to the White House asking for immediate assistance with crowd control and Ike responded accordingly. The president called upon General



WESTERN UNION
TELEGRAM

NP328 P LRA006 LONG PRD RX=LITTLEROCK ARK 24 916AMC=
PRESIDENT DWIGHT D EISENHOWER=
THE WHITE HOUSE NEWPORT RI=
THE IMMEDIATE NEED FOR FEDERAL TROOPS IS URGENT. THE MOB IS MUCH LARGER IN NUMBERS AT 8AM THAN AT ANY TIME YESTERDAY PEOPLE ARE CONVERGING ON THE SCENE FROM ALL DIRECTIONS MOB IS ARMED AND ENGAGING IN FISTICUFFS AND OTHER ACTS OF VIOLENCE. SITUATION IS OUT OF CONTROL AND POLICE CANNOT DISPERSE THE MOB I AM PLEADING TO YOU AS PRESIDENT OF THE UNITED STATES IN THE INTEREST OF HUMANITY LAW AND ORDER AND BECAUSE OF DEMOCRACY WORLD

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

WESTERN UNION
TELEGRAM (50)

WIDE TO PROVIDE THE NECESSARY FEDERAL TROOPS WITHIN SEVERAL HOURS. ACTION BY YOU WILL RESTORE PEACE AND ORDER AND COMPLIANCE WITH YOUR PROCLAMATION=
WOODROW WILSON MANN MAYOR OF LITTLEROCK ARKANSAS=

Figure 68. Mayor Mann appealed to Eisenhower for assistance.

[38]Text reproduced in "Around the Capitol" section of *The Congressional Quarterly* for the week ending 27 September 1957, 1144. Copy obtained from "Little Rock" files, Box 23, Administration Series, DDE Papers as President, Eisenhower Library.

[39]Beals, *Warriors Don't Cry*, 106-124; and Pach and Richardson, *The Presidency of Dwight D. Eisenhower*, 152-153. The administration's actions may also be followed through documents in the "Little Rock" files, Administration Series, DDE Papers as President, Diary Series, and Press Conference Series, and Names Series in the Eisenhower Library.

Maxwell Taylor, chief of staff of the U.S. Army, to send 1200 paratroopers from the 101st Airborne Division, stationed at Ft. Campbell, Kentucky, and federalized the Arkansas National Guard to enforce integration in Little Rock. Eisenhower returned to the White House and delivered a televised address that evening from the Oval Office to comment on these drastic steps. He explained,

> The proper use of the powers of the Executive Branch to enforce the orders of a Federal Court is limited to extraordinary and compelling circumstances. Manifestly, such an extreme situation has been created in Little Rock. This challenge must be met and with such measures as will preserve to the people as a whole their lawfully-protected rights in a climate permitting their free and fair exercise.[40]

Predictably, public opinion split along regional lines, with citizens in the North supporting Eisenhower's strong stance while those in the South condemned it. Governor Faubus claimed that the city had been turned into an occupied territory, but Ike refused to rescind his order until things changed in Little Rock.[41]

Troops of the 101st Airborne Division guarded the "Little Rock Nine" during the next two months, until November 27, 1957. The administration reduced their numbers gradually through this period and ultimately replaced them with members of the still-federalized National Guard. Although discussions continued, the stand-off in Little Rock lasted for the rest of the 1957-1958 academic year. Orval Faubus, bolstered by the support of other Southern governors, refused to give in. His reelection strategy had worked and he won a third term in November 1957. Still, Faubus refused to back down from his anti-integration platform and, when federally-enforced integration ended at the close of the school year, he shut down the Little Rock public school system. Facilities remained closed for entire 1958-59 session. Throughout the entire Little Rock episode, Orval Faubus had pursued relief from the original desegregation order through several appeals to federal district court and two high-profile actions before the U.S. Supreme Court. *Aaron* v. *Cooper* pitted John Aaron and other defendants against William G. Cooper, Jr., president of the Little Rock Board of Education, and his colleagues. Like previous desegregation suits, the original action, *Aaron* and subsequent petitions dragged on from 1957 to 1959. Thurgood Marshall and fellow LDF counsel represented the "Little Rock Nine" and other African American plaintiffs in the spate of litigation. The school board retaliated with *Cooper* v. *Aaron*, the Supreme Court appeal which ultimately found for the African American defendants who sought the racial integration of Little Rock's public schools. Courts repeatedly reasserted the precedence of the original *Brown*

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[40]"Text of the Address by the President of the United States, Delivered from his Office at the White House, Tuesday," September 24, 1957, at 9:00 P.M., EDT, 3, copy in "Little Rock" files, Box 23, Administration Series, DDE Papers as President, Eisenhower Library.

[41]Beals, *Warriors Don't Cry*, 124-134; Pach and Richardson, *The Presidency of Dwight D. Eisenhower*, 153-155; Duram, *A Moderate Among Extremists*, 156-164; and Eisenhower, *Waging Peace*, 168-176. Executive Order No. 10730 authorized the use of troops in Little Rock.

I decree during this three-year period of litigation. Rather than undermine its credibility, Faubus' scheme reaffirmed the constitutionality of the landmark school desegregation ruling.[42]

The clash between Dwight Eisenhower and Orval Faubus signified a turning point for desegregation in the United States. Mid-way through his second term, Eisenhower took a firm stance in support of racial integration. Most scholars point out that Ike acted primarily to uphold the authority of the chief executive and of the U.S. Supreme Court, concluding that this discounted any consequences which accrued for the cause of racial integration. This judgement may be too harsh, however, for the president clearly recognized the broader implications of equitable treatment for African Americans. In statements to the press and to the nation, at large, he criticized the obstruction of justice and reiterated the sanctity of individual rights and freedoms in this country for all citizens. Ike could do no less in this era of Cold War conflict. The propaganda campaign conducted by Congress and the executive branch highlighted the privileges of democracy against the restrictions of communism. The federal government could no longer deny the legitimate benefits of American citizenship to a broad segment of society in this climate. During the height of the Little Rock crisis, United Nations Representative Henry Cabot Lodge reminded Ike of the international implications of racial discrimination, saying,

> Here at the United Nations I can see clearly the harm that the riots in Little Rock are doing to our foreign relations. More than two-thirds of the world is non-white and the reactions of the representatives of these people is easy to see. I suspect that we lost several votes on the Chinese communist item because of Little Rock.[43]

"I realize, with you, the harm that our prestige has suffered," Eisenhower responded, "and if you have any ideas as to how we might try to repair the damage, after the situation calms down, I would be most interested."[44] Despite his apprehension, President Eisenhower left final resolution of the Little Rock situation to the courts and did not intervene when Faubus closed the city's public schools. He, instead, relied on the framework established in the 1957

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[42]Duram, *A Moderate Among Extremists*, 156-164; Beals, *Warriors Don't Cry*, 134-203, 306-308; Greenberg, *Crusaders in the Courts*, 229-243; Wiley A. Branton, "Little Rock Revisited: Desegregation to Resegregation," *Journal of Negro Education*, 52, no. 3 (1983): 250-269; and "Eisenhower Administration Project: William G. Cooper, Jr.," oral interview conducted by John Luter, 28 December 1970, Oral History Research Office, Columbia University, 1971. A copy of the U.S. Supreme Court ruling in *William G. Cooper, et. al.*, v. *John Aaron, et. al.*, August Special Term, 1958, may be found in Box 31, Administration Series, William P. Rogers Papers, Eisenhower Library. Those interested also can follow the details through correspondence retained in the various collections held in the Eisenhower Library. Relevant legal citations are as follows: *Aaron* v. *Cooper*, 143 F. Supp. 855 (E.D. Ark. 1956), 156 F. Supp. 220, 225, 243 F.2d 361 (8th Cir. 1957), 163 F. Supp. 13 (E.D. Ark. 1958), 257 F.2d 33 (8th Cir. 1958), 261 F.2d 97 (8th Cir. 1958), 357 U.S. 566, 567; *Faubus* v. *United States*, 254 F. 2d 797 (8th Cir. 1958); *Cooper* v. *Aaron*, 358 U.S. 1 (1958), 78 S.Ct. 1401 (Special August Term, 1958); *Faubus* v. *Aaron*, 361 U.S. 197 (1959).

[43]Correspondence, Henry Cabot Lodge to Dwight D. Eisenhower, 25 September 1957, "Henry Cabot Lodge" files, Box 24, Administration Series, DDE Papers as President, Eisenhower Library.

[44]Correspondence, Dwight D. Eisenhower to Henry Cabot Lodge, 27 September 1957, "Henry Cabot Lodge" files, Box 24, Administration Series, DDE Papers as President, Eisenhower Library.

Civil Rights Act to check discriminatory practices and on federal jurists to negotiate through the impassioned feud over full desegregation.

C. Creative strategies for desegregation

Dwight D. Eisenhower turned to other matters during the remaining years of his administration. He fought persistent rumors of poor health because Ike suffered a startling number of small strokes, episodes of coronary angina, and at least two major heart attacks during his presidency. The president's attention also was increasingly drawn to international issues, relating to construction of the Suez Canal, the spread of communism, and the looming presence of the Soviet Union. As in the early twentieth century, legislation and litigation became the most reliable tools for combatting segregationist strategies which, thus far, successfully had derailed the implementation of the *Brown* decisions in the Deep South. The 1957 Civil Rights Act, although significant for providing a federal mandate to end discrimination, lacked strong enforcement. A second, weaker, law followed in 1960 and a third, and most important one, was drafted four years later. Private initiative complemented and surpassed these limited congressional actions during the decade of the 1960s. The modern civil rights movement blossomed through non-violent demonstrations aimed to equalize access to public transportation, housing, restaurants, and other facilities. At the same time, the NAACP pursued litigation in the 1960s and 1970s which significantly modified desegregation strategies for public education. After a hiatus that bridged the late 1950s and early 1960s, the U.S. Supreme Court whittled away at mechanisms designed to limit African American access to predominantly white, largely suburban, schools. Five key cases led to an increased federal presence in the administration of the nation's public schools during this period. Through them, the Court mandated aggressive strategies to counter the effects of school choice programs and the phenomenon of "white-flight," which took white students away from inner-city schools.

Civil rights legislation passed in 1957, 1960, and 1964 targeted discrimination in federal employment and established bureaucratic mechanisms to monitor race relations in the United States. The Eisenhower administration had announced the 1957 law with great optimism, but as time passed, it led to few real gains. White House staff joined with colleagues in HEW, the Justice Department, and members of Congress in 1959 to craft stronger legislation designed to protect African American voting rights and end interference with school desegregation. The Civil Rights Act of 1960 mandated the preservation of state records of federal elections for at least twenty-two months, and provided for the appointment by federal courts of voter-referees who would consider grievances from any person allegedly denied the right to vote. The law also designated arson and bombing as federal crimes, authorized schools for members of the armed forces when local facilities were not available to them, and levied a $1000 fine and year's imprisonment for obstructing the orders of a federal court. Unfortunately, the 1960 Civil Rights Act proved to be weaker than intended. Voting rights provisions contained in Title VI of the law seemed promising, but required case-by-case enforcement, and so were rather tedious and unworkable. These early steps towards designing bureaucratic and legislative civil

rights protections were perhaps the most important accomplishments of the Eisenhower administration.[45]

Provisions of the Omnibus Civil Rights Act of 1964, passed during the Johnson administration, garnered greater authority than had these prior statutes. Harry Ashmore, a long-time civil rights activist, explains that "The measure transferred the burden of initiating action in school desegregation cases from black plaintiffs to the attorney general, and authorized the Justice Department to initiate class-action suits. This became the principal means for ending discrimination in housing, employment, and public accommodations, now specifically outlawed by act of Congress."[46] Portions of the law also eliminated specific voting restrictions, long used by Southern states to restrict the African American franchise. Title I prohibited anyone from applying any discriminatory standard to a prospective voter that differed from those applied to other voters. Any test, such as for literacy or comprehension, had to be administered in writing and required of all registrants. Furthermore, states were required to conduct elections under a "rebuttable presumption" that anyone with a sixth-grade education possessed sufficient "literacy, comprehension, and intelligence to vote in a federal election." Arguably, the heart of the 1964 act lay under its Title II provision, which declared all persons to be entitled to "the full and equal enjoyment" of inns, hotels, motels, restaurants, theaters, concert halls, and other venues, "without discrimination or segregation" because of "race, color, religion or national origin." Other provisions of the 1964 law gave greater authority to the attorney general, the Commissioner of Education, and Civil Rights Commission to safeguard against racial discrimination in specific instances and to prosecute those who denied equal protection under the law. Title VI of the 1964 Civil Rights Act ordered HEW to withhold federal funds from public schools that discriminated against African American students. The following provision, Title VII, created a five-person Equal Employment Opportunity Commission which banned discrimination in employment on account of race, color, religion, or national origin by employers, labor unions, and employment agencies, and empowered the new commission to enforce the law. The Civil Rights Act of 1964 signified a mammoth, comprehensive step by the federal government to ensure equal protection for African Americans citizens of the United States.[47]

More specific laws, such as the Voting Rights Act of 1965, and federal mandates calling for equal access to housing and employment closed some important loopholes in the omnibus

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[45]Duram, *A Moderate Among Extremists*, 182-192; Kelly and Harbison, *The American Constitution*, 955-956; and John H. McCord, ed., *With All Deliberate Speed: Civil Rights Theory and Reality* (Urbana: University of Illinois Press, 1969), 30-33.

[46]Ashmore, *Civil Rights and Wrongs*, 171-172.

[47]Quoted portions of the 1964 law taken from Kelly and Harbison, *The American Constitution*, 956-960; and McCord, ed., *With All Deliberate Speed*, 35-55. For a more in-depth analysis of the 1964 law, please see Stephen C. Halpern, *On the Limits of the Law: The Ironic Legacy of Title VI of the 1964 Civil Rights Act* (Baltimore: The Johns Hopkins University Press, 1995). According to Halpern, Title VI, which banned discrimination in programs that received federal funds, became one of the most controversial features of the legislation. Recent debates about the use of incentives when awarding federal contracts may stem from this provision, i.e. *Adarand* v. *Pena* (1995).

bill. School desegregation, however, which had served as an important catalyst for this flurry of civil rights legislation, remained elusive. Subsequent litigation pursued by the LDF during the 1960s and 1970s sought to confirm the end of racial segregation in public education and equalize access to opportunity for African Americans. To this end, counsel set out to eliminate "school choice" plans, which became very popular in the early- to mid-1960s as a strategy for avoiding full, immediate integration. "Freedom of choice" plans theoretically allowed any child to attend any public school within his or her school district. In practice, districts largely remained predominantly black or white, and so restricted student choice to historically single-race schools. These plans relied on the force of local custom, economic conditions, and *de facto* segregation to restrict African American choices to predominantly black, segregated schools. By 1963, federal judges viewed "freedom of choice" plans as an acceptable stage in a very lengthy process of gradual desegregation, thereby giving them the full sanction of law and allowing school districts to defer full integration indefinitely. The LDF attacked school choice in *Goss* v. *Board of Education of Knoxville* (1963). Residential zoning, not race *per se*, dictated school attendance in this Tennessee community. The case arose when one student gained permission to transfer out of a predominantly black school where he fell in the minority and into another where he joined a majority of white students. Lower courts upheld the validity of the transfer, but the U.S. Supreme Court determined it to be unconstitutional because it used race as a determining factor in school attendance. Justice Tom Clark wrote the majority opinion, which reaffirmed *Brown I* by declaring that transfers based on the criterion of race, as in this case, were "no less unconstitutional than its use for original admission or subsequent assignment to public schools."[48] While this decision banned plans which used race to determine school attendance, justices indicated that other factors would be permissible. Language in the *Goss* opinion warned of growing impatience with the slow pace of desegregation, but the Court did little to speed it along.[49]

Jack Greenberg instead credited Title VI of the 1964 Civil Rights Act for most of the accomplishments toward integration in the late 1960s. The segment of African Americans comprising the student populations of formerly white schools in the South grew from 10.9 to 15.9 percent during the 1965-1966 academic year, alone. Percentages were smaller in the Deep South, but grew from less than one percent in 1962-1963 to 6.01 percent in 1965-1966. Predictably, border states had the highest integration rate, with 68.9 percent of formerly all-white student populations comprised by African Americans.[50] Nevertheless, "freedom of choice" held these numbers down by allowing white students to avoid attending predominantly black schools. The LDF sounded the death knell for such programs by obtaining a definitive legal finding against pupil placement in *Green* v. *County Board of New*

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[48]Quoted material taken from Lino A. Graglia, *Disaster by Decree: The Supreme Court Decision on Race and the Schools* (Ithaca: Cornell University Press, 1976), 42.

[49]Greenberg, *Crusaders in the Courts*, 380-382; Kelly & Harbison, *The American Constitution*, 936-937; and Wilkinson, *From Brown to Bakke*, 95. Please see *Goss* v. *Board of Education of Knoxville*, 373 U.S. 683 (1963).

[50]Greenberg, *Crusaders in the Courts*, 380.

Kent County (1968). New Kent County, Virginia, had only two public schools, both of which combined elementary and secondary grades for white and African American students. One, in New Kent, lay on the eastern side of the county and the other, in Watkins, was located on the western side. The population throughout New Kent County was proportionately mixed in rural areas and residential neighborhoods, but the composition of the two student bodies fell along racial lines. Prior to *Brown I*, the county school board had assigned African American students to Watkins and sent white students to the school in New Kent. This pattern of attendance remained for more than ten years after the Court struck down *de jure* segregation in *Brown* v. *Board of Education*. Attorneys representing the county school board defended its policies, however, in light of criticism that it had done nothing to bring the races together. Administrators had enacted a policy which allowed the parents of children in Grades K-8 to make annual school selections, choosing between the Watkins and New Kent schools. The school board argued that the plan's provision for choice fulfilled constitutional requirements because it allowed African American students to attend either school, as they wished. Greenberg, as primary counsel in the litigation, attacked the *de facto* continuation of the pre-*Brown* conditions and community inaction to end segregation. The Supreme Court agreed.[51]

The Court, through Justice Brennan, rejected the argument based on the mandate of *Brown II* that school systems should pursue desegregation "with all deliberate speed." Brennan's majority opinion affirmed the constitutionality of *Brown II*, which had placed the responsibility on school boards to dismantle dual educational systems and bestowed them "with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch."[52] The *Green* finding held that New Kent County had not complied with a desegregation plan because it failed to aggressively mix students of different races. Hereafter only "freedom of choice" plans which aided integration would be acceptable. In practice, *Green* v. *New Kent County* invalidated "freedom of choice" plans because, fourteen years after *Brown*, courts began to look more closely at the intentions and outcomes of desegregation strategies. The High Court established, furthermore, that racially-identifiable schools were suspect for lacking a proportionate blend of students from diverse backgrounds. Acts of omission now equalled those of commission, meaning that administrators no longer could stand back and let *de facto* segregation prevail, but instead had to take action to bring the races together.[53]

Green served as an important turning point in the history of educational equity in the United States. This case converted "a prohibition of racial discrimination to a requirement of

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[51]*Ibid.*, 383-384; Kelly & Harbison, *The American Constitution*, 937-938; Wilkinson, *From Brown to Bakke*, 108-111; and Wolters, *Disaster by Decree*, 67-74.

[52]Quoted in Kelly and Harbison, *The American Constitution*, 937.

[53]William M. Gordon, "School Desegregation: A Look at the 70s and 80s," *Journal of Law & Education* 18, no. 2 (Spring 1989): 191; and Wilkinson, *From Brown to Bakke*, 108-111. Please see *Green* v. *County Board of New Kent County*, 391 U.S. 430 (1968).

racial discrimination," Lino Graglia explains, "while purporting to enforce the prohibition."[54] It created a new litmus test for compliance with desegregation mandates of the *Brown* decisions and signified a new era in public school administration. The question now lay not in whether the school board was merely in compliance with *Brown I*, but whether a specific school board had taken sufficient action to balance enrollment between the races. This fine point indicated a sharper interpretation of *Brown II*, calling for results rather than cautious deliberation. As Lino Graglia's polemical work indicates, this change constituted a shift from a **prohibition** of racial discrimination to a **requirement** of it. After *Green*, the harbinger of a dual system was now defined by insufficient racial mixing rather than assignment by race. Indeed, school systems now began to assign students to specific schools, by race and ethnic origin, in order to achieve a proper, proportional balance among students of diverse cultural and economic experiences. For this reason, Graglia argues that *Green* brought the *Brown* era to a close because, through it, the Court made racial labeling a prerequisite for school assignment in order to achieve integration.[55]

De facto segregation was the nemesis of those who sought equality of opportunity and access in public education. As Dwight Eisenhower often warned, one cannot change feelings, perceptions, or attitudes through legislation or federal intervention. The government can, however, use its powers to end the legal standing of discriminatory practices, such as *de jure* segregation, and bring diverse peoples together so that they might correct and avoid mistaken perceptions. This became a major line of defense against *de facto* segregation. *De jure* discrimination, characterized by unconstitutional practices couched in law, was rapidly ending during the modern civil rights era of the 1960s. *De facto* segregation, however, was more deeply ingrained in social mores, customs, and practices which belied racist motivations and misinformed prejudices. After disbanding the legal framework of segregation, justices on the Warren Court had targeted the less tangible practices in an attempt to eliminate discrimination, "root and branch." The Court's resolute stance wavered a bit late in the decade and aggressive desegregation efforts carried out by the Department of Justice lost some support during the Richard Nixon administration. The new president, who had served as second in command during the Eisenhower years, appointed Warren Burger as chief justice of the U.S. Supreme Court upon Earl Warren's retirement in June 1969. Nixon criticized the Warren Court for legislating from the bench and promised to appoint federal judges who would undo the damage it had done during its sixteen-year existence. He played to the fears and frustrations of white Southerners, who, in turn, fed Nixon's political influence as part of the "silent majority." The president, however, could not roll back the progress made for the cause of civil rights. While Chief Justice Burger lacked Warren's liberal bent, he did not, and could not, derail desegregation.[56]

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[54]Graglia, *Disaster by Decree*, 69.

[55]*Ibid.*, 67-74.

[56]Kelly and Harbison, *The American Constitution*, 971-973; and Ashmore, *Civil Rights and Wrongs*, 242-246.

When two significant cases came before the Court in the early 1970s, Burger affirmed the practice of pupil assignment, but curbed the scope of redistricting plans and busing as strategies to attain integration. The first, *Swann* v. *Charlotte-Mecklenburg Board of Education* (1971), involved a challenge to the North Carolina school system's desegregation plan. In 1962, the school board voluntarily instituted a policy to divide the city into districts, thereby making school assignments according to geographic location rather than race. The area consisted of 550 square miles, with 84,000 students in at least one hundred schools. Administrators implemented the districting plan and built additional facilities where necessary over the course of the next five years. Although whites held the majority, by 1965 more than two thousand African Americans attended Charlotte public schools. African Americans amounted to twenty-nine percent of the total student population, but schools remained predominantly black or white according to geographic location. Plaintiffs, represented by the LDF, filed *Swann* in 1965, claiming that the districting plan promulgated the continuation of dual systems in the Charlotte-Mecklenburg metropolitan school system. Judge James McMillan heard their arguments and found for the plaintiffs in federal district court based on the precedent established in *Green* v. *New Kent County*. The "rules of the game have changed," McMillan said, "and the methods and philosophies which in good faith the School Board has followed are no longer adequate to complete the job which the courts now say must be done 'now.'"[57] In 1969, he ordered county administrators to transport approximately 13,300 students to achieve a more balanced ratio of African American and white students. Parents and school officials balked at the busing order and appealed the case to the U.S. Supreme Court even as it was implemented.[58]

They found no relief there, however, for the justices sided with McMillan's lower court ruling. Chief Justice Burger addressed the key points in the Court's unanimous opinion. School administrators had asked the Court to restore some segregated neighborhood schools to the district plan, in hopes that residential integration would solve the matter. Burger refused, saying that desegregation plans cannot protect the neighborhood school because they must ensure a integrated, non-racial system. His opinion read,

> The remedy for such segregation may be administratively awkward, inconvenient and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems.[59]

Swann, in effect, pushed aside districting plans in favor of busing to effect racial integration. The Court's finding authorized the transportation of students for the specific purpose of

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[57]Quoted in Wilkinson, *From Brown to Bakke*, 137.

[58]*Ibid.*, 134-139; Graglia, *Disaster by Decree*, 104-132; William Trombley, "A Southern Judge Gets an Education," *The Los Angeles Times*, 14 May 1979, 15-16, 19; and Gary Orfield, *Must We Bus?: Segregated Schools and National Policy* (Washington, D.C.: The Brookings Institution, 1978), 329-332.

[59]Quoted in Orfield, *Must We Bus?*, 331.

desegregating individual schools. Although considered discriminatory in *Brown* v. *Board* and *Bulah* v. *Gebhart*, busing became the primary tool in the 1970s for ending *de facto* segregation. Just as the very meaning of desegregation had been reinterpreted during this period, the issue of attending the neighborhood school was side-stepped in favor of racial symmetry. Location and access to schools in close proximity no longer mattered because racial composition, or balance, within classrooms had become the goal. Many residents of Charlotte and Mecklenburg County fumed about the turn of events which fixed busing as part of each child's life. But, they could not turn back, for *Swann* instituted the practice of using mathematical quotas for assessing distribution patterns of specific racial and ethnic groups. Through the next two decades, cities and towns across the nation wrestled with desegregation plans which relied upon the practice of busing. One by one, Austin, Nashville, Richmond, Norfolk, Charlottesville, Boston, and countless others, modified their attendance policies and implemented busing programs to bring class composition in line with population apportionment.[60]

For his part, President Nixon vowed to fight busing and incorporated it in his "Southern Strategy" to win the support of the disgruntled. Opposition flared in all regions of the United States, often regardless of specific opinions about race. Busing encompassed other difficult issues, as well; namely, those concerning the character of the neighborhood school, the well-being of children bussed over long distances, and the relevance of single-race or single-sex schools. *Swann* endorsed a busing program which included the city of Charlotte, North Carolina, and areas adjacent to it in Mecklenburg County. The inclusion of students from districts beyond the city limits raised specific objections elsewhere. Parents and administrators in Detroit, Michigan, challenged the practice of busing students across district and city boundaries in *Milliken* v. *Bradley* (1974). The complaint did not question the need for busing to integrate the metropolitan area's public schools, but rather the inclusion of students from suburban Detroit in the city's desegregation plan. In legalese, it contested the form of remedy, not the remedy, itself. Litigation began when Ronald Bradley's parents sued the Detroit school board in 1968 because he was assigned to a predominantly African American kindergarten class. After a six-year court battle, young Bradley attended a sixth grade composed wholly of African American students. Detroit's desegregation plan had no effect, in other words, on the racial composition of its schools. From the administration's point of view, it could hardly guarantee mixing races in a city fast losing its white residents. "White flight" to the more affluent suburbs left the inner-city with a predominantly African American composition. Those who remained largely included the middle-aged and elderly, whose children had completed their educations. Significantly, the proportion of African Americans of school age rose from 45.8 percent in 1961 to 69.8 in 1973. *De facto* segregation persisted, with blacks living within Detroit city limits and whites residing beyond them.[61]

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[60]*Ibid.*, 329-332. Please see *Swann* v. *Charlotte-Mecklenburg Board of Education* 401 U.S. 1 (1971). Bernard Schwartz outlines the chain of events and judicial analysis in *Swann's Way: The School Busing Case and the Supreme Court* (New York: Oxford University Press, 1986).

[61]Graglia, *Disaster by Decree*, 203-204; and Orfield, *Must We Bus?*, 26.

The LDF represented the plaintiffs in the initial rounds of litigation in *Bradley* v. *Milliken* and upon appeal in *Milliken* v. *Bradley*. Several proposals, counter-proposals, plans, and policies came about during the six years of litigation as participants struggled to resolve the desegregation dilemma. It presented a rather ironic dilemma, for *de jure* segregation had never been applied in Detroit schools, but the city now wrestled with the very real predicament of *de facto* segregation. Could a desegregation plan be required of a school district that had never been segregated? Indeed, it could. Early in the process, Federal District Judge Stephen Roth determined that the Detroit Board of Education had evaded integration. He ordered school administrators, in cooperation with a citizen panel, to devise a viable plan to correct the situation. They created a strategy to bus white students into the inner city from the suburbs to achieve a greater racial balance among students. The plan viewed the entire metropolitan area as one huge school system, linking fifty-three suburban districts with those in Detroit. It, then, contained a total of 780,000 students and bused 310,000 of them each day. A busing plan which only included the city of Detroit, proper, would accomplish nothing because the schools would remain seventy-five to ninety percent black. A plan which included suburban schools, however, brought protests from parents that the city had no authority to annex outlying schools in order to integrate its own. Although lower courts reaffirmed Roth's initial decision to cross political boundaries, the Supreme Court struck it down. In a five to four decision, the Court ruled that the problems of Detroit stopped at its boundaries. Suburbs had not been part of the problem and they did not have to be part of the remedy. In doing so, justices disregarded the finding in *Swann*, which allowed cross-over between the city of Charlotte and Mecklenburg County.[62]

The reversal occurred in a year which marked the twentieth anniversary of the *Brown I* decision. For the first time since *Gaines* (1938), the U.S. Supreme Court rejected the legal position taken by the NAACP in a desegregation case. Now a member of the Court, Thurgood Marshall said, "After 20 years of small, often difficult steps toward that great end, the Court today takes a giant step backwards."[63] He insisted that his colleagues recognize and address the problem of "white flight" because it threatened to undo the progress made thus far towards racial integration. The encroachment of *de facto* segregation would prove to be a much more enigmatic and elusive adversary than had been the fight for equal justice under law. Over the course of this lengthy struggle, the mark of a segregated system changed from the use of race to aggressively control and confine, to the simple **existence** of racially-identifiable schools. The language and meaning of the words, "desegregation," and "integration," changed accordingly. The term, "desegregation," which had targeted enrollment restrictions, gave way to "integration," which implied a blending of the races, as coined by Justice Felix Frankfurter during the *Brown* proceedings. Modern usage of the term, "integration," implies not only racial mixing, but sometimes requires school administrators to forge a precise numerical balance of racially and ethnically-identifiable persons. While the debate about racial equity continues,

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[62]Wilkinson, *From Brown to Bakke*, 217-224; Graglia, *Disaster by Decree*, 205-255; and Orfield, *Must We Bus?*, 31-37. Please refer to *Milliken* v. *Bradley*, 418 U.S. 717 (1974).

[63]Quoted in Wilkinson, *From Brown to Bakke*, 225.

some communities are retreating from aggressive strategies, such as busing and pooling students in subject-area magnet school programs. Citizens question whether the goal of integration now lies in the removal of restrictions, the creation of opportunities, or in the delicate balancing of students in correct demographic proportions. The answer need not rely on only one of these options, but it must address all of them.

D. Conclusion

Conclusions about this episode in the history of desegregation in public education are elusive and premature. There are only observations, findings, and judgements at this point because the line between history and current events is blurred. From this contemporary vantage point, *Brown* v. *Board of Education* lies midway in a long continuum in which people continually strive for parity. The pace of "deliberate speed" certainly has been slow. Although the Court struck down the legality of segregation and ordered communities to eradicate it, a number of factors hindered the process of desegregation. Fear and anxiety over such dramatic change led communities in all regions of the country to dally until confronted by the NAACP, local advocacy groups, or individual citizens with evidence of their inaction. Not all engaged in "massive resistance" to the Court's orders, but most equivocated because they had little motivation or desire to achieve true integration. Some, like Orval Faubus, played the race card for political purposes; others employed it to alarm and intimidate. Diverse groups, from J. Edgar Hoover's FBI to southern citizens' councils, linked civil rights activism, including desegregation, to communism during the height of the Cold War.

Few children who served as plaintiffs in the school cases were able to attend integrated schools because the legal process dragged on for more than four years and implementation took even longer, depending upon the will of the local school board. Districts in Virginia and South Carolina directly confronted and evaded the *Brown* rulings. Those in Kansas, Delaware, and Washington, D.C., formulated desegregation plans during the course of litigation and enacted new policies in a faster, but rather piecemeal, fashion. School administrators in Topeka, Wilmington, Hockessin, and the District wrestled with the desegregation dilemma, first by redistricting and assigning students to nearby schools, then busing, and ultimately building magnet schools to achieve a proportional blend among the city's school populations. The pattern became typical in most communities during the 1960s, 1970s, and 1980s, marked by the successive pattern of segregation, desegregation, resegregation, court-ordered busing, and magnet school programs. Even the best intentions to integrate students fully during this period faltered because plans relied on residential patterns. "White flight" from inner cities, and self-segregation through other means, skewed the distribution of white and minority populations.

Educational systems on all academic levels still grapple with the goals of full racial integration, inasmuch as integration, itself, is the abiding objective. Whereas, in the past, school systems used racial categorization to exclude, they now use it as a tool to merge. Although communities continually strive to grant equal access to high-quality education, many

citizens across the United States question the need to statistically balance racial and ethnic populations. There have been some ironic twists in the history of desegregation in the United States. Busing, once the onus of African Americans denied access to neighborhood schools, became, in the 1970s, the most widely used tool to bring students together. It appeared to be a good solution at the time, but it quickly complicated the integration process because white parents moved their families to desirable districts, often beyond the authority of inner-city desegregation plans, or enrolled their children in private schools. The trend occurred in most communities across the United States, raising the specter of self-, or *de facto*, segregation. Residential patterns, shaped by attitudes and economics, directly influenced public school policy and these could not be regulated.

A more recent device, that of magnet schools, strove to entice, rather than force, white students to attend schools in predominantly ethnic, minority neighborhoods. In a 1989 study of school desegregation, William Gordon proclaimed magnets as "the easy way out," requiring dual commitments of money and good faith. He found that they work best in small communities, such as Tulsa, Oklahoma, and achieve less when used in larger cities like New York, Chicago, St. Louis, and Kansas City. Nevertheless, magnets are still viewed as the most viable option, even after more than twenty years of mixed success. Topeka now takes a turn at the magnet school solution, as mandated by a 1994 order from the United States Court of Appeals for the Tenth Circuit. The action resulted from continuing litigation brought under the rubric of the initial *Brown* v. *Board of Education of Topeka, Shawnee County* suit. Attorneys involved in the suit, dubbed *Brown III*, claimed that Topeka never fully complied with the Supreme Court's desegregation decrees issued in *Brown I* and *II*. The remedy plan calls for the elimination of all racially-identifiable schools through the closure of four elementary schools, redistricting, and construction of four magnets, which will bring students together for specific curriculum-based programs. Topeka implemented the plan during the 1996-97 academic year, with hopes that the distinguishing characteristics of minority and majority schools will be eradicated over the next few years.[64]

All of the investments of time, energy, and money in desegregation plans prove that the people of the United States value racial and ethnic integration. This applied not only to public education, but to all social interaction. Gary Orfield answered his query, "Must We Bus?" in this way

> The choice before the nation is not **whether** its urban schools should be desegregated–that issue has been settled by the findings of unconstitutional segregation in most cities, judicial recognition of the

[64]William M. Gordon, "School Desegregation: A Look at the 70's and 80's," *Journal of Law & Education* 18, no. 2 (Spring 1989): 197-203; and "Memorandum and Order: In the United States District Court for the District of Kansas, Case No. T-316," "*Oliver Brown, et. al.*, Plaintiffs, and *Charles and Kimberly Scott, minor children by their mother and next friend, Linda Brown Smith, et. al.*, Intervening Plaintiffs, v. *Unified School District No., 501, Shawnee County, Kansas*, Defendants." Readers interested in the on-going litigation in Topeka may consult "Education: The Heirs of Oliver Brown: In Topeka, a Landmark Equality Case is Still Before the Courts," *TIME* (6 July 1987):88-89; and "Brown vs. Board of Education of Topeka Remedy Plan," 16 June 1994. The "*Brown* v. *Board of Education*" clipping file, Law Library, Washburn University, Topeka, Kansas, contains articles from many editions of the *Topeka Capital Journal* (1984-1989, 1994-1996) and other regional newspapers. Chris Hansen, oral interview with Jean VanDelinder, Brown Foundation Oral History Project, also sheds some light on the series of events.

> right to desegregation, and insistence by civil rights groups on enforcing this right. The choice is whether we will integrate in a peaceful, beneficial, and lasting way.[65]

Progress towards this end, indeed, has been slow and halting, but did occur during this twenty year period, 1955 to 1975, as highlighted by the modern civil rights movement. The success of *Brown* v. *Board of Education* sparked a whole wave of activism, designed to break down barriers in housing, interstate transportation, voting rights, and access to public accommodations. The movement spread first across the South, then branched into the northern and western regions of the country. While the civil rights movement relied on its strong grassroots base, the federal government proved to be a crucial ally in the struggle to gain constitutional rights for African Americans. Their success, in turn, led other groups, such as women, the elderly, Hispanics, gay/lesbian Americans, and those with disabilities to reach for civil rights guaranteed to them, as well, in the Fourteenth Amendment. All of these groups relied on the federal government to enforce the letter of the law and to craft legislation which would apply it. Civil rights acts, voting rights acts, equal opportunity protections, and safeguards of civil liberties woven into the legal code now provided greater assurances of "equality" and "freedom" for a larger number of people than at any time previously in U.S. history. "Equality is not absolute;" warns Stanley Katz, "as social norms change so do societal and legal conceptions of equality."[66] The history of *Brown* v. *Board of Education* demonstrates this very well. The course of events during this volatile period imbued the concept of constitutional equality with broader social and political meaning. Law and policy now carried the **presumption** of equality and fundamental rights were no longer prizes which had to be won. Equality became the rule, rather than the exception.

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[65]Orfield, *Must We Bus?*, 454, emphasis added.

[66]Stanley N. Katz, "The Strange Birth and Unlikely History of Constitutional Equality," *The Journal of American History* 75 (Dec. 1988): 762.

Architecture, striding down the ages, was evolved, moulded, and adapted to meet the changing needs of nations in their religious, political, and domestic development. A glance along the perspective of past ages reveals architecture as a lithic history of social conditions, progress, and religion, and of events which are landmarks in the history of mankind: for as architecture is in all periods intimately connected with national life, the genius of a nation is unmistakably stamped on its architectural monuments, whether they are Egyptian, Greek, Roman, Medieval, or Renaissance.[1]

– Sir Banister Fletcher, 1931
in his *magnum opus*, *A History of Architecture*

[1]Sir Banister Fletcher, *A History of Architecture, on the Comparative Method for Students, Craftsmen, & Amateurs*, 9th ed. (New York: Charles Scribner's Sons, 1931), 4.

CHAPTER SEVEN

MONROE SCHOOL: FROM SEGREGATION TO PRESERVATION, 1975-1999

Twenty years after its heyday, the Topeka Board of Education closed Monroe Elementary School because of structural deterioration and declining enrollment. For the next five years, the school system used the building as a storage facility and then sold it at public auction. From 1975 to 1991, the school functioned alternately as warehouse, church, and shelter for the needy. Its useful days seemed at an end by 1991, when Monroe's owner offered it for sale and potential demolition. After active lobbying by the Brown Foundation for Educational Equity, Excellence and Research, the Trust for Public Lands acquired Monroe Elementary School and sold the property to the National Park Service in 1992 for the establishment of a national historic site commemorating the school desegregation campaign and continuing struggle for racial equity. Although the constitutionality of *de jure* racial segregation ended with the reversal of *Plessy* v. *Ferguson*, *de facto* segregation still prevails. Sociological factors prolong the full accomplishment of educational equity and true integration. Forty years after the initial *Brown* decision, many public schools remain segregated by racial or ethnic classification even though they educate a broader spectrum of students, of Asian, Hispanic, African American and other cultures. The real accomplishment of *Brown v. Board of Education*, however, lies beyond the specific communities that brought suit in the 1950s. *Brown* opened opportunities for African American youth in towns, small and large, across the country and this is what the historic site celebrates. The Supreme Court, in finding that segregated school systems violated the constitutional rights of these Americans, created the most valuable precedent for the eradication of segregated facilities and the broadening of equal opportunity and just treatment for all United States citizens. *Brown* v. *Board of Education* provided the final constitutional battle in the long war to break down segregation in the United States. The segregated schools of Topeka, including Monroe Elementary provided crucial evidence for the Kansas case. While it no longer functions as a school, *per se*, Monroe

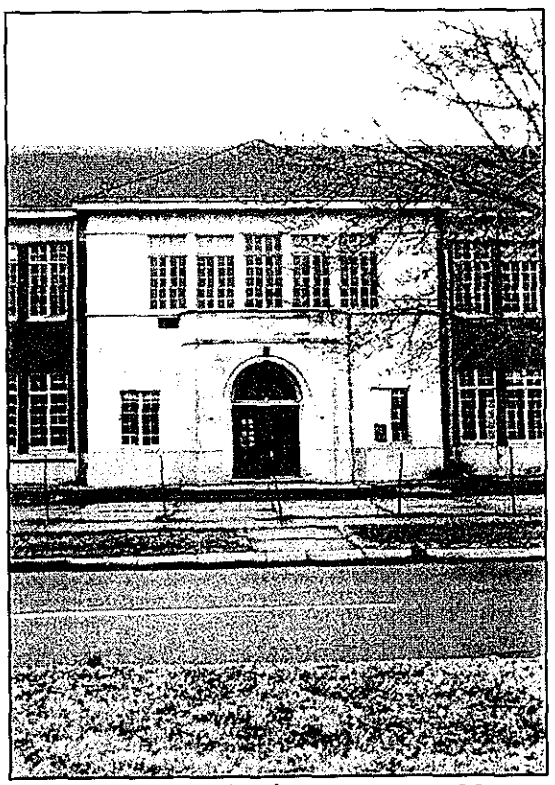

Figure 69. Detail of entrance to Monroe Elementary.

stands as a monument to honor those who labored for racial equality and to educate all Americans about the importance of their work.[2]

A. School's out forever

Built in 1926 as one of Topeka's four segregated black elementary schools, Monroe served its community well. It functioned as an educational facility and community center for a broad segment of Topeka's African American population from 1927 to 1975. For most of this period, its constituency was segregated, first by law and then by custom. The African American community, however, formed loyal ties to Monroe School and took great pride in the skill and dedication of its faculty. Citizens boasted the city's first parent-teacher association here and used the facility as a community center. The Topeka board of education closed Monroe Elementary in 1975 because enrollment had declined. This launched a second period of service, from 1975 to 1992, when its various owners used Monroe as a maintenance facility, church/mission, and warehouse. The building's useful life seemed at an end by 1991, but leading members of Topeka's African American community rallied to save the school because of its historical significance. Monroe Elementary bears distinction as a National Historic Landmark (NHL) as a result of its association with the *Brown* v. *Board of Education* school desegregation case and correlation to the broader civil rights movement of the twentieth century. This designation initiated its third phase, as a national historic site.

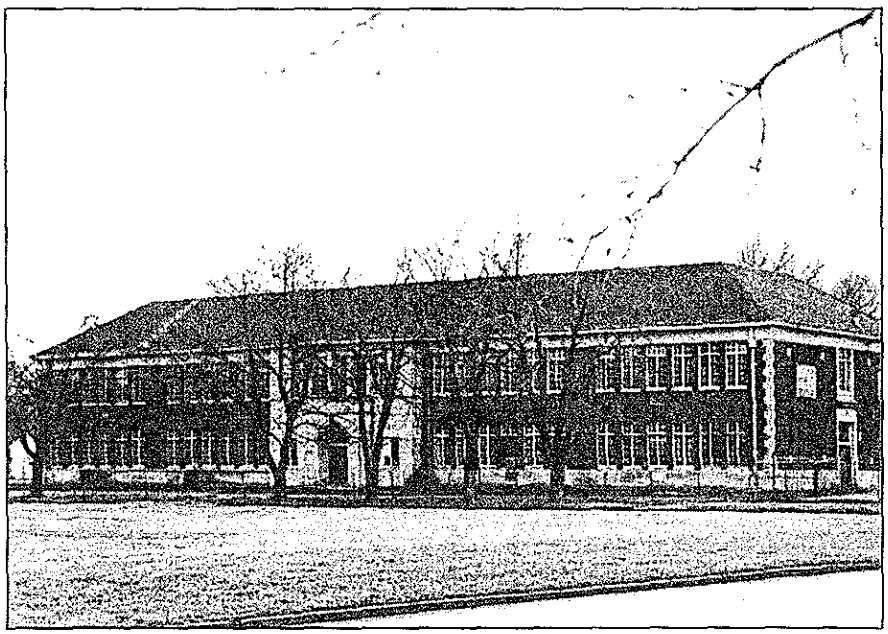

Figure 70. Monroe Elementary School.

Thomas Williamson's classical Italian Renaissance design provided a wonderful setting for the education of Topeka's youth. From 1927 to 1975, Monroe's faculty offered core

[2]The transition of Monroe's evolution from school, to warehouse, to historic site is also recounted in "From Segregation to Preservation: Monroe Elementary School," *CRM* 20, no. 2 (February 1997): 37-40.

curricula in nine classrooms, in addition to kindergarten, manual arts training, and instruction in home economics. While its architectural components and styling are a bit understated when compared to schools built for white students during the same period, it was touted upon completion in 1927 as one of Topeka's "million dollar schools." The architect sited the new facility on Lots 517, 519, 521, and 523, immediately south of its predecessor at Fifteenth and Monroe Streets. The old Monroe Elementary was razed soon after the completion of the new building and the cleared area of Lots 505 through 509 enlarged the playground on the northern side of the new school. The board of education later acquired Lots 525 through 531 to be used as a playground to the south of Monroe School. In 1934, administrators added a vacant lot on Monroe Street, which lay across from the grade school, to the complement of playground facilities. This triangular parcel was bounded by Monroe,

Figure 71. The ball field across from Monroe was added to its playgrounds in 1934.

Fifteenth Street, Seventeenth Street, and the rail line of the Atchison, Topeka, and Santa Fe Railroad. Apparently, students had used this field since 1927, and a "land swap" officially incorporated it as part of Monroe's playground facilities.[3]

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[3]"A Million in New Schools," *Kansas City Times*, 15 November 1927, n.p; Roland Smith, Sarah Heath, Denise Hopkins, Scotney Fenton, and David Hurley, "Monroe Elementary School, Shawnee County, Kansas," Historic American Buildings Survey (HABS), HABS No. KS-67, United States Department of the Interior, National Park Service, 1992 (reposited in the Prints and Photographs Division, Library of Congress); Quinn/Evans, Architects, "Historic Structure Report: Monroe Elementary School," draft report, 1997; and Sherda Williams and David Barnes, "Monroe Elementary School, Topeka, Kansas," Cultural Landscape Inventory (CLI), Levels I and II, United States Department of the Interior, National Park Service, Midwest Regional Office, February 1995, 8-14. The CLI provides

Monroe Elementary School served several generations of Topekans, largely those of the African American community, who attended under the system of segregation. Nevertheless, they received a quality education from teachers and administrative staff who were dedicated to providing the best instruction possible. Former students laud the professionals who taught at Monroe. Joe Douglas, a former pupil who went on to serve as Topeka's first African American fire chief, recalled, "The teachers here exuded love and trust, which was inductive to learning. The idea that separate is inherently unequal is correct, but here, there was a very strong substitute for what we didn't have."[4] Many faculty members boasted high academic achievement, themselves, including Bachelor and Master of Arts degrees. They engendered a strong sense of community with the residents who lived near the school and among Monroe alumni, which, in turn, led to deep loyalty to this institution. Although it became famous for its association with the 1954 Supreme Court decision regarding school desegregation, Monroe Elementary School represented much more to its students, parents, and faculty. It functioned as an institution of learning which fostered successful accomplishment, in spite of the social stigma of exclusion and racial separation. This helps explain some of the disappointment felt by friends and alumni when Monroe's integrity was challenged, first by desegregation, itself, and second, by declining enrollments. While African Americans in Topeka celebrated the *Brown* decisions, they felt some concern about the future of black,

Figure 72. Abandoned right-of-way for the Atchison, Topeka, and Santa Fe Railroad.

wonderfully detailed information about the genesis of the cultural landscape associated with Monroe Elementary, as documented in the record of School Board Minutes available in the USD-501 Administration Building, Topeka, Kansas. Williamson's architectural drawings for the extant Monroe School are deposited in a closed collection in the Kenneth R. Spencer Research Library, University of Kansas, Lawrence, Kansas. The Historic Structures Report, produced by Quinn/Evans, provides additional information about Williamson's designs and an analysis of contemporary, early twentieth century school construction in Topeka.

[4]Quoted in Kristen Hays, "Dedication Recalls Era of Segregation, *Topeka Capital Journal*, 18 May 1992, A-1.

neighborhood schools. "I think some of the people were sad," recalls Leola Brown Montgomery. During an oral interview about the school desegregation campaign, she said, "I think it didn't hit them for awhile that, why my goodness, these schools are just going to be gone. I mean we are not going to have any schools."[5] Indeed, administrators closed McKinley immediately and shifted their focus away from the three remaining black elementary schools. Instead of integrating these facilities, the plan devised by the board of education focused on building new schools and moving African American children into formerly white facilities. As a result, Monroe's student population remained predominantly African American and slowly declined until 1975, when Topeka USD-501 administrators decided to close the facility.[6]

For Monroe, the twenty-year anniversary of *Brown II* marked the end of its days as a grade school. Administrators used the facility as a warehouse for the next six years, 1975 through 1980. Maintenance staff with USD-501 transformed Monroe's playgrounds into parking lots for buses and maintenance vehicles. They immediately cleared the property of playground equipment, water fountains, and mud scrapers. A basketball backboard was the

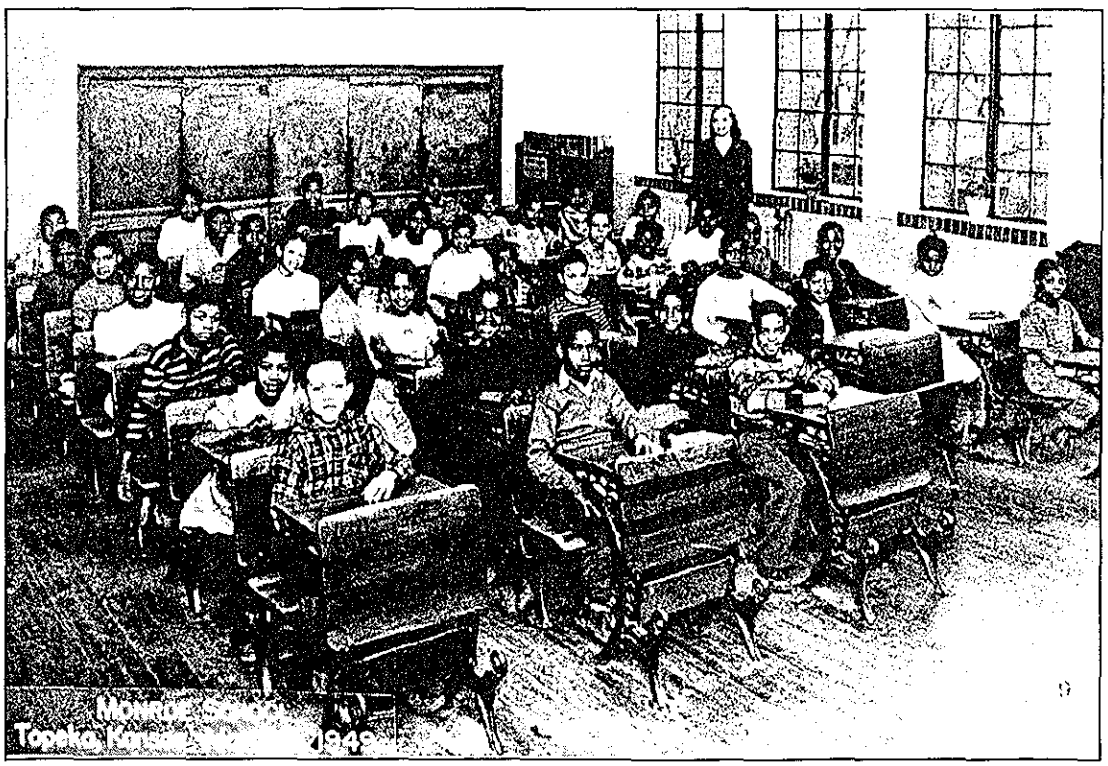

Figure 73. The fourth/fifth-grade class of 1949.

[5]Leola Brown Montgomery interview with Ralph Crowder.

[6]The deep regard for Monroe is revealed in oral history interviews conducted as part of the Brown Foundation Oral History Project and in various newspaper articles deposited in the "Monroe School" file, Topeka Room, Topeka-Shawnee County Public Library, such as "School's Out...Forever," *Topeka Capital Journal*, 8 June 1975, n.p.

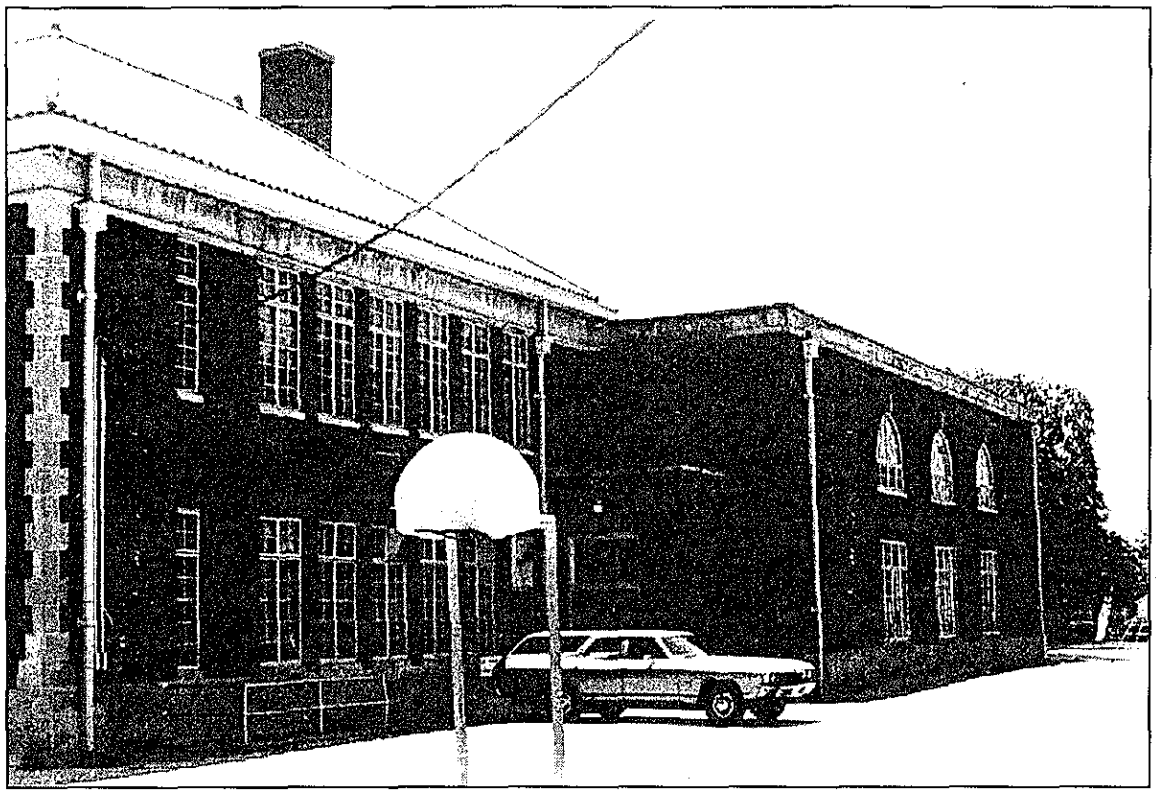

Figure 74. Documentary photographs, ca. 1974, show the rear parking area and some playground equipment.

only feature that remained on playgrounds adjacent to the building. Maintenance staff also left intact the baseball field located on the eastern side of Monroe Street. The school board entertained the idea of selling Monroe School, as surplus property, as early as December 1978, but lacked a suitable buyer until 1980. Richard C. Appelhans purchased the property on June 27 of that year for $100,000. By this time, the city of Topeka had rezoned the area for light industrial/commercial use, which led to a significant change in the character of the neighborhood surrounding the former school. Commercial warehouses, businesses, and parking lots replaced residential housing throughout the next decade.[7]

The available source material provides contradictory information about Appelhans' intentions for the building. He, ostensibly, acquired Monroe for use as either an office building or private school. Neither venture worked as expected and he, and partner Richard

[7]Williams and Barnes, CLI, 27; "Monroe Elementary School" file, USD-501 Administrative Building, Topeka, Kansas; and letter of inquiry, *Topeka Capital Journal*, 25 May 1980, n.p., clipping located in "Monroe School" file, Topeka Room, Topeka-Shawnee County Public Library. David Barnes, Seasonal Landscape Architect Technician, traced the property transfers during Summer 1994, as follows: property conveyed to Richard C. Appelhans on 27 June 1980 by USD-501, Deed Book 2096, 91; property conveyed to Monroe School, Inc. on 27 June 1980 by Richard C. Appelhans, Deed Book 2096, 93; property conveyed to Richard C. Appelhans and Richard L. Plush, Jr. on 10 December 1980 by Monroe School, Inc., Deed Book 2120, 161.

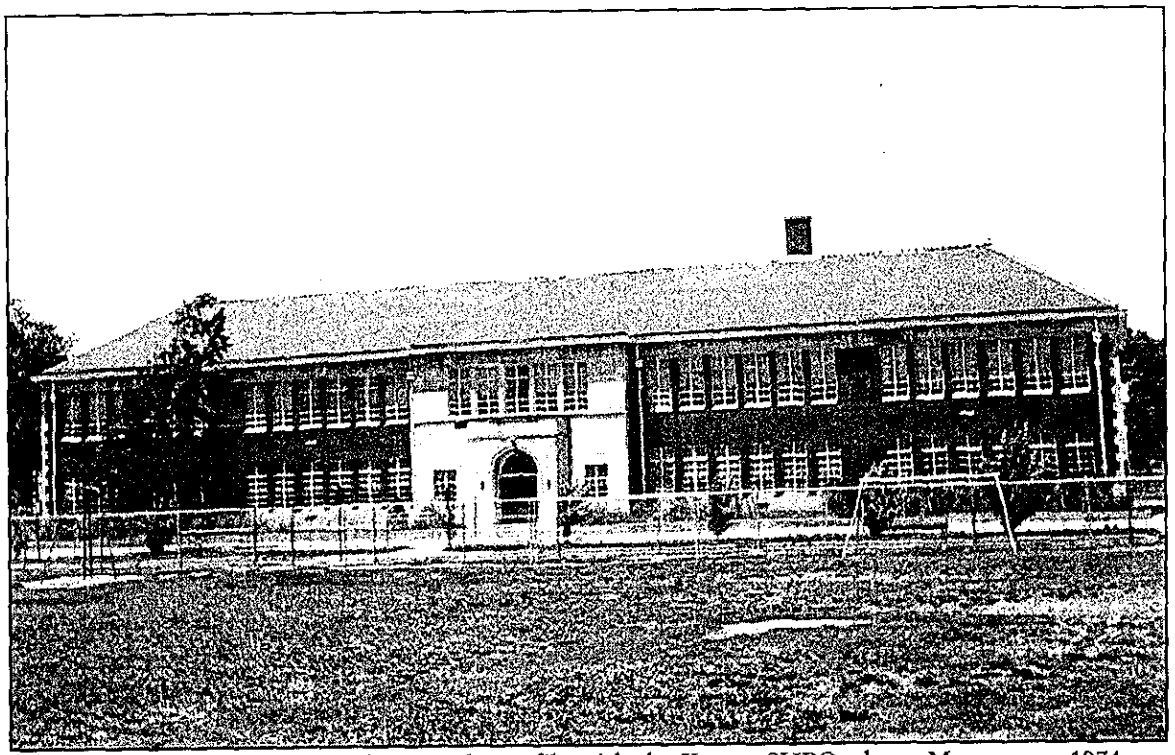

Figure 75. This documentary photograph, on file with the Kansas SHPO, shows Monroe, ca. 1974.

L. Plush, Jr., sold the building to the Church of the Nazarene two years later. From 1982 to 1988, the building functioned as a church, serving religious and humanitarian functions for the community. Members removed walls and renovated Monroe's interior to accommodate several charitable services which the church provided. The building housed congregational meetings, a dental clinic, and a clothing bank. Leaders hoped to devote some of the interior space for use as a halfway house/dormitory, but this project was never fully implemented. Apparently disappointed with the limited impact of their work, the Church of the Nazarene sold the property in 1988 to S/S Builders, Inc., owned by Mark A. Steuve. Monroe again became a warehouse for construction materials and equipment. At some point during the late 1980s, a fire damaged the interior of the old school, marring some rooms on the southeastern, front, side of the first floor. It did limited harm, however, to the structure, itself. Steuve erected a chain-link fence around the property, but made few other changes during his brief ownership. As others had found, Monroe required relatively high maintenance costs and did not accommodate the needs of the construction firm, so in 1990, S/S Builders offered the property for sale at public auction.[8]

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[8]Williams and Barnes, CLI, 27, 29; Smith, *et. al.*, "Monroe School," HABS Draft Report No. KS-67, 2; and Anne Elizabeth Powell, "Unfinished Business," *Historic Preservation* 46, no. 3 (May/June 1994):101. Deed records show the following: property purchased from Appelhans and Plush on 29 November 1982 by the Advisory Board, Kansas City District, Church of the Nazarene, Deed Book 2458, 123; property conveyed to S/S Builders, Inc. on 4 August 1988 by Church of the Nazarene, Deed Book 2490, 247. These records reveal some errors in the building chronology contained in the HABS report.

By doing so, Steuve put the former Monroe School in a very vulnerable position. It opened the possibility of demolition as never before because the building proved to be unsuitable for commercial use and the surrounding neighborhood increasingly had gained an industrial character. For the first time, it seems, people began to recognize the building's historical significance, structural integrity, and design qualities. The Kansas State Historic Preservation Office (SHPO) had surveyed the property in 1974 for possible inclusion on the National Register of Historic Places (NRHP), but did not proceed with the nomination.[9] From 1975 to 1990, Monroe's role in the *Brown* v. *Board of Education* desegregation suit received little, if any, attention. When the property was threatened with potential demolition, however, Brown family members, Monroe alumni, and others rallied to save the building. The cause drew upon their appreciation for the quality education received in the segregated elementary school and its significance to the reversal of discriminatory policies across the United States. Concerted action to underscore the importance of these intangibles would launch the third phase of Monroe's existence, that as a national historic site.

B. Monroe joins the Service

Through the next two years, the Brown Foundation, led by Cheryl Brown Henderson, spearheaded the campaign to save Monroe Elementary School and draw attention to its history. The foundation received aid from many individuals and organizations; namely, among former *Brown* plaintiffs and other supporters, the Black Historical Society of the Topeka Metropolitan Area, the Kansas SHPO, the Trust for Public Lands (TPL), Senators Robert Dole and Nancy Kassebaum, Representatives Dan Glickman, Jim Slattery, and Jan Meyers, and the National Park Service (NPS). Upon learning of Monroe's connection to *Brown* v. *Board of Education*, Mark Steuve agreed to retain the building until an alternate plan could be devised. In relatively quick succession, the property received historic designation on the NRHP as an NHL and was transferred through the TPL to the NPS. NHL designation inaugurated a new era for Monroe, perhaps its most important, because it launched the property into service as a national historic site. In 1992, the U.S. Congress authorized the establishment of the Brown v. Board of Education National Historic Site, established to honor the contributions of those who participated in all five school desegregation cases, their predecessors in civil rights activism, and successors who sustained the quest for equal justice in the broad civil rights movement of the twentieth century.

Jerry Jones, a Brown Foundation board member, first called attention to the "For Sale" sign posted on the fence at Monroe Elementary in June 1990. It announced Steuve's plans to auction the 22,000 square foot building and adjacent tracts of land. Jones informed Cheryl Brown Henderson, president of the Brown Foundation, of the impending sale and, in doing

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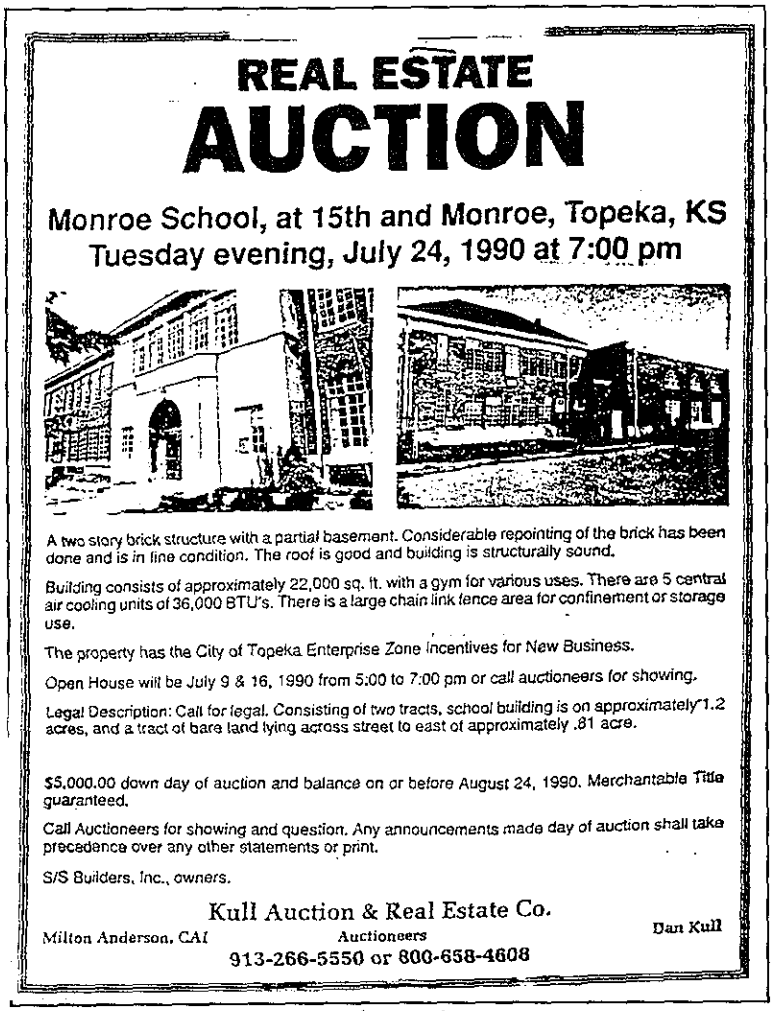
[9]Raymond Lewman, "Monroe School," incomplete National Register of Historic Places nomination form, 30 July 1974. The incomplete form and documentary photographs can be found in SHPO files, Kansas State Historical Society, Topeka, Kansas. Since the photographs show some playground equipment, it seems that the survey was completed before USD-501 turned Monroe into a maintenance facility.



REAL ESTATE
AUCTION

Monroe School, at 15th and Monroe, Topeka, KS
Tuesday evening, July 24, 1990 at 7:00 pm

A two story brick structure with a partial basement. Considerable repointing of the brick has been done and is in fine condition. The roof is good and building is structurally sound.

Building consists of approximately 22,000 sq. ft. with a gym for various uses. There are 5 central air cooling units of 36,000 BTU's. There is a large chain link fence area for confinement or storage use.

The property has the City of Topeka Enterprise Zone incentives for New Business.

Open House will be July 9 & 16, 1990 from 5:00 to 7:00 pm or call auctioneers for showing.

Legal Description: Call for legal. Consisting of two tracts, school building is on approximately 1.2 acres, and a tract of bare land lying across street to east of approximately .81 acre.

$5,000.00 down day of auction and balance on or before August 24, 1990. Merchantable Title guaranteed.

Call Auctioneers for showing and question. Any announcements made day of auction shall take precedence over any other statements or print.

S/S Builders, Inc., owners.

Kull Auction & Real Estate Co.
Milton Anderson, CAI Auctioneers Dan Kull
913-266-5550 or 800-658-4608

Figure 76. Flyer announcing the auction.

so, unofficially began the campaign to save Monroe. Henderson had three points of connection to Monroe Elementary; first, as a member the Brown family, secondly, as a former teacher at the elementary school, and thirdly, as an African American. Along with family and friends, Mrs. Henderson formed the Brown Foundation for Educational Equity, Excellence and Research in 1988, as a non-profit organization dedicated to honor the work of those involved in the *Brown* case, aid minority students, support educational research, and promote multicultural awareness.[10] Members now added a more immediate cause to their broad agenda. The foundation formed a community coalition and organized a national letter-writing campaign to wealthy individuals, politicians, and governmental leaders in an attempt to purchase the building. Mrs. Henderson, who led the charge, concisely expressed the importance of their cause. "Monroe elementary school, the other half of the equation in the Brown vs. The Board of Education of Topeka," she wrote, "is going on the auction block. If sold chances are great that the building will be destroyed or forever changed and therefore lost to present and future generations who know it to be a symbol of what we

[10]Powell, "Unfinished Business," 58-59; "Position Paper: Brown vs. The Board of Education Management Alternative," submitted for consideration by the National Park Service, Planning Files, National Park Service, Midwest Regional Office, Omaha, Nebraska, 25 June 1991; "Cooperative Agreement Between the National Park Service and the Brown Foundation for Educational Equity, Excellence and Research," Agreement No. CA6000-3-8050, Planning Files, National Park Service, Midwest Regional Office, Omaha, Nebraska, September 1993; Randall Baynes, et. al., "Brown v. Board of Education of Topeka: Sumner and Monroe Elementary Schools," Management Alternatives Study and Environmental Assessment, United States Department of the Interior, National Park Service, Midwest Region, March 1992, 32; and "Brown Foundation," informational brochure, n.d.

have overcome."[11] The coalition of concerned citizens suggested that the former school be used as a museum and resource center for African American history, but first they had to safeguard Monroe. Appeals for private patronage met with little success, so the Brown Foundation turned to public sources of support.[12]

Preservation of the building as a historic property hinged on official designation to the NRHP, preferably as an NHL. Monroe's historical significance seemed unquestionable, even though the SHPO had not filed a nomination after completing evaluations of the property in 1974 and 1987. Sumner, on the other hand, also had been evaluated and listed on the NRHP

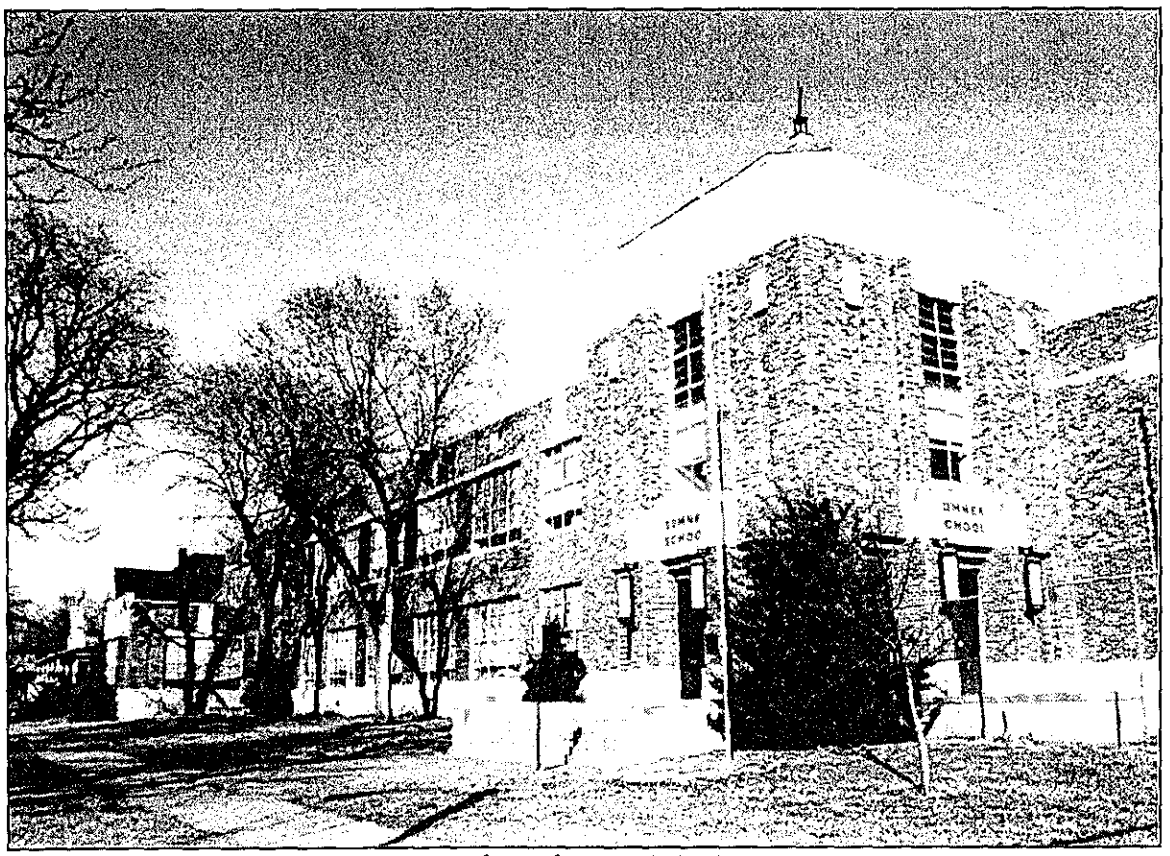


Figure 77. Sumner Elementary, also significant for its role in *Brown*.

[11]Correspondence, Cheryl Brown Henderson to Congressman Dan Glickman, 26 July 1990, Brown Foundation Collection, Kansas Collection, University of Kansas Libraries.

[12]Powell, "Unfinished Business," 101; Kristen L. Hays, "Unchaining History," *Topeka Capital Journal*, 13 February 1994, 1-E; Leslie Guild Moriarty, "Former Pupils Hope to Preserve Monroe School, *Topeka Capital Journal*, 4 September 1990, 1-A, 2-A; Kristen Hays, "Dedication Recalls Era of Segregation, *Topeka Capital Journal*, 18 May 1992, A-1; Kristen L. Hays, "Effort Would Restore Monroe of '54," *Topeka Capital Journal*, 15 June 1994, 3-A; and Cheryl Brown Henderson, "Brown v. The Board of Education of Topeka: Strategies for Schoolhouse Restoration/ Rehabilitation/Reuse," synopsis, "Preserving the Recent Past!" 1995 Conference Notebook, ed. Deborah Slaton and Rebecca A. Shiffer (Washington, D.C.: Historic Preservation Education Foundation, 1995), III-125-III-128.

in 1987 as an NHL as part of an NPS constitutional theme study conducted by Dr. Harry Butowsky. It had been the school Oliver and Linda Brown walked to as part of the NAACP plan to attempt enrollment of African American children in white schools. Sumner had functioned as the white complement to Monroe during the school desegregation suit because Linda Brown would have attended Sumner if segregation policy had not forced her to commute to Monroe Elementary. In essence, each functioned as foil to the other, playing important, but opposing, roles in the litigation of the Kansas case. "By denying Linda Brown the right to enroll in the Sumner Elementary School," the nomination states, "the Board of Education of Topeka, Kansas, started the chain of events that led to the Supreme Court and the case of *Brown* v. *Board of Education of Topeka*."[13] It seemed logical, therefore, that the segregated school, which Linda attended, merited equal status. At the urging of the Brown Foundation, Dr. Butowsky, who had written the Sumner nomination, amended the NHL in 1991 to include Monroe Elementary School. The sixty-five-year-old property retained a high degree of integrity and possessed historical significance on a national level for its association with *Brown* v. *Board of Education*.[14]

Although the idea already had been broached, advocates now had sufficient ammunition to request the addition of Monroe Elementary to the National Park System. Henderson had contacted the Trust for Public Lands (TPL) while the historic nomination ensued. This non-profit organization purchases land threatened by development in order to protect natural and cultural resources. In this case, TPL functioned as a "holding company" by relieving Mark Steuve of the financial burden required to maintain Monroe Elementary and facilitating the subsequent real estate transfer. Kathy Blaha, former assistant director of TPL's midwest office, later explained, "We worked with S&S Builders to secure the site with an option agreement and put up the dollars for the real estate assessment and put some option money down to help him meet some of his costs."[15] Timing was critical in this preservation process, but each step fell in line. The Brown Foundation petitioned governmental leaders in Kansas and the state's congressional delegates in Washington, D.C. to save the property as a historic site. They

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[13]Harry Butowsky, "Sumner Elementary School," Topeka, Shawnee County, Kansas, National Register of Historic Places Nomination, United States Department of the Interior, National Park Service, 1987, 8:2.

[14]Lewman, "Monroe School," incomplete NRHP nomination, 30 July 1974; correspondence, Ramon Powers to Randall K. Baynes, 26 July 1991 in "Monroe School" file, Kansas SHPO; Dr. Harry A. Butowsky, "The U.S. Constitution: A National Historic Landmark Theme Study," United States Department of the Interior, National Park Service, History Division, Washington, D.C., December 1986; Roger Aeschliman, "Sumner Named National Landmark," *Topeka Capital Journal*, 23 July 1987, 18; "Historic Designation Earned by Sumner," *Topeka Capital Journal*, 13 May 1988, 7-C; Leslie Guild, "Sumner Dedicated as Historic Landmark," *Topeka Capital Journal*, 18 May 1988, 1-A; and Dr. Harry Butowsky and Martha Hagedorn-Krass, "Sumner Elementary School and Monroe Elementary School," Topeka, Shawnee County, Kansas, National Register of Historic Places Nomination, United States Department of the Interior, National Park Service, History Division, 6 November 1991. Readers may find copies of the Sumner nomination and dual NHL in Appendix D. Topeka USD-501 closed Sumner Elementary in the spring of 1996 and subsequently sold the property to the Topeka-Shawnee County Public Library.

[15]Quoted in Powell, "Unfinished Business," 101.

readily concurred and expedited its acquisition by the National Park Service (NPS). Preliminary suitability and feasibility studies, conducted in 1991, confirmed Monroe's national significance and potential contribution to the NPS. President George Bush signed the enabling legislation on October 26, 1992 which established the Brown v. Board of Education National Historic Site. Ownership officially transferred to the NPS in December 1993 and work began in earnest to fulfill the mandates of its legislation:

> 1) to preserve, protect, and interpret for the benefit and enjoyment of present and future generations, the places that contributed materially to the landmark United States Supreme Court decision that brought an end to segregation in public education; and
>
> 2) to interpret the integral role of the Brown v. Board of Education case in the civil rights movement;
>
> 3) to assist in the preservation and interpretation of related resources within the city of Topeka that further the understanding of the civil rights movement.[16]

The park unit is composed of 1.85 acres; including the former school, adjacent playgrounds, parking areas, and the baseball field located to the east of Monroe Street. The 1991 NHL designation for Monroe Elementary addressed issues of integrity and significance for the building, only, but a Determination of Eligibility (DOE) completed in 1995 provided an assessment of the cultural landscapes associated with the property.[17]

Within a relatively short time, the former Monroe Elementary School went from the auction block to national historic site. The Brown Foundation played an instrumental role in this transition, largely through the hard work of its president, Cheryl Brown Henderson. Its work will continue long after the official designation of the new park unit. "The Brown Foundation," Henderson proclaimed, "is working cooperatively with the NPS and has the unique distinction of being one of a handful of non-governmental agencies that provide researchers, educators, museums, etc., with primary source information about the *Brown* case."[18] It will aid the NPS in implementing congressional directives for the site when it opens to the public. Work currently proceeds to rehabilitate the facility for its multiple functions; as visitor center, interpretive center, and administrative office. This park is an

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[16]Public Law 102-525, "An Act to provide for the establishment of the Brown v. Board of Education National Historic Site in the State of Kansas, and for other purposes," One Hundred Second Congress of the United States of America at the Second Session, 26 October 1992. A copy of the enabling legislation may be found in Appendix C.

[17]*Ibid*; Baynes, *et. al.*, "Brown v. Board of Education of Topeka;" Sherda Williams, "Cultural Landscape Inventory, Level II and Determination of Eligibility for Brown v. Board of Education National Historic Site, Topeka, Kansas" United States Department of the Interior, National Park Service, Midwest Regional Office, July 1995; and Robert A. Pratt, "Segregation Overruled," *National Parks* 67, no. 9-10 (September/October 1993), 34-39. The property conveyed to the United States on 16 December 1993 by S/S Builders, Inc., Deed Book 2857, 227.

[18]Cheryl Brown Henderson, "The Brown Foundation Story: Developing Resources to Interpret Public History," *CRM* 19, no. 2 (1996): 8.

important addition to the National Park System because it is one of few units which honor the achievements made by and for African Americans. Park staff hope to inform, challenge, and inspire visitors to look beyond stereotypes and pat stories. In particular, the Brown v. Board of Education NHS will focus its interpretive programs on all five school cases, their participants, local histories, and the broader, national context of the modern civil rights movement. This new park symbolizes the long, hard fight to gain civil rights for African Americans, first, and by extension, the attainment of human rights for all peoples throughout the world.[19]

C. The cultural resources of civil rights

Monroe Elementary School joins a growing number of cultural resources significant for their association with the civil rights movement of the twentieth century. This constitutes only one category of historic resources affiliated with the legacy of African Americans in the United States, but it is an extremely important one. Sites, structures, landscapes, and

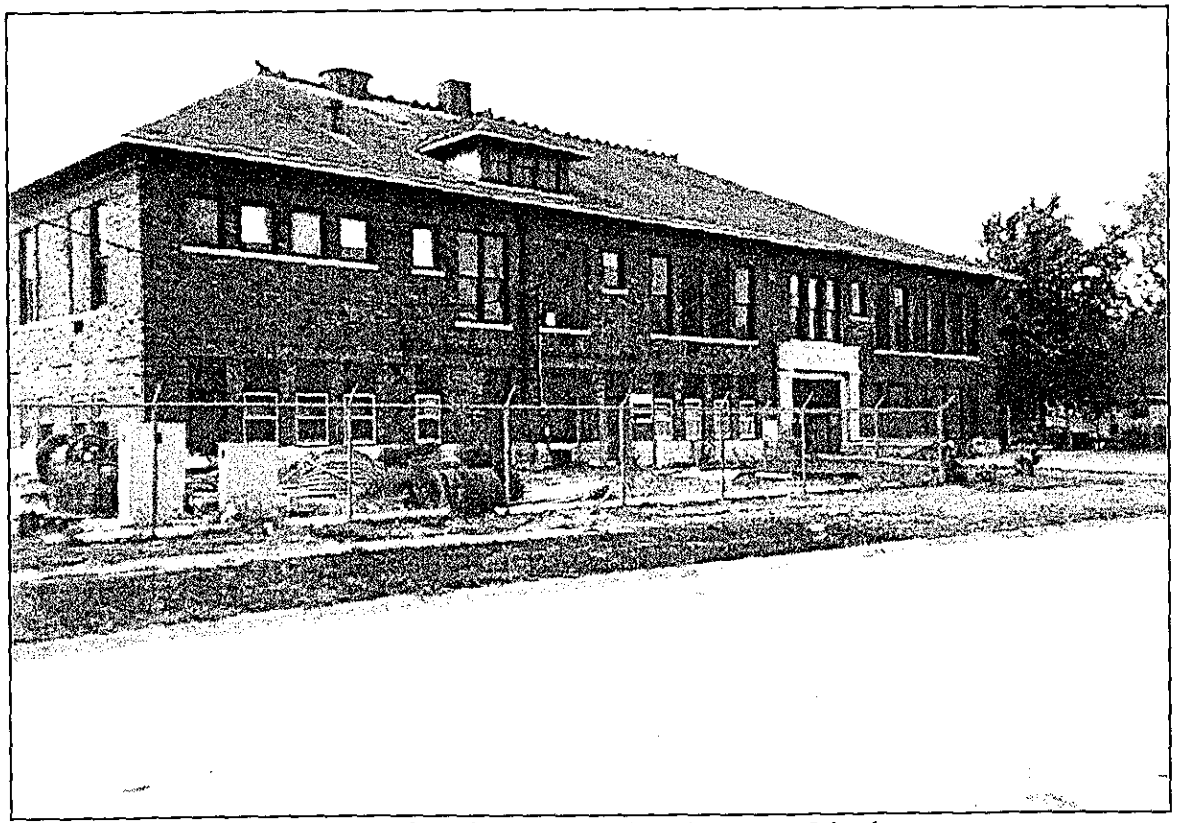

Figure 78. A contemporary view of the former McKinley Elementary School.

[19]A team of NPS professionals, led by Mike Bureman, has also completed the "General Management Plan, Development Concept Plan, Interpretation and Visitor Experience Plan, Brown v. Board of Education National Historic Site," United States Department of the Interior, National Park Service, Denver Service Center, August 1996.

monuments which document this theme may possess historical significance and integrity on local, state, and national levels. They may fall within several sub-categories relating to social, cultural, intellectual, and political history, as well as those pertaining to the study of architecture, cultural landscapes, and material culture. The medium actually may be the message, in some cases, or convey it. It is important to remember that the point of all these lists of themes, property types, and sub-categories is African American history. This field traditionally has been under-represented in the National Park System, but in recent years, the NPS has placed greater emphasis on its contribution to the study of U.S. history. Agency policy reiterates the importance of physical evidence, in general, by noting that, "Cultural resources constitute a unique medium through which all people, regardless of background, can see themselves and the rest of the world from a new point of view. Access to cultural resources means that people can learn not only about their own immediate ancestors but about other traditions as well."[20] The potential value of these resources can only be realized if they are protected and interpreted. This does not mean that they must be under public ownership, for many remain in private hands. Extant cultural resources associated with *Brown* v. *Board of Education* and the broader civil rights movement are safeguarded by the NPS, state historic preservation offices, local governments, and private groups who want to share the momentous accomplishments which they represent.

The Brown v. Board of Education NHS represents an urban park which will be accessible to local residents and distant visitors. The unit is composed only of Monroe Elementary School, its adjacent playgrounds, and ball field. It will provide a focal point for the interpretation of events in Topeka, the full school desegregation campaign, and the comprehensive civil rights movement. This means that related resources in public, but non-NPS, and private ownership will ensure a comprehensive analysis of these historic events.[21] Monroe represents a traditional black elementary school in Topeka and Sumner, a school restricted to white students only. Of the four segregated schools, Washington is no longer extant, McKinley functions as a warehouse, and Buchanan serves as a training center/food bank. The historical significance of the two surviving buildings remains strong, but their integrity has been severely impaired. Some of the white elementary schools associated with the case were razed and replaced during the 1950s and 1960s; including Lowman Hill, Parkdale, Quincy, and Lafayette. Gage, Clay, and Randolph remain in use as educational facilities, although Clay now functions as a private, rather than public, school. Monroe and Sumner symbolize all of Topeka's segregated schools during the pre-*Brown* era, but most particularly for the period, 1950 to 1955, and the legal proceedings which abolished them.

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[20]*Fundamental Concepts of Cultural Resource Management Guideline*, NPS-28: Cultural Resource Management, United States Department of the Interior, National Park Service, Release No. 4, July 1994, 5.

[21]Appendix A contains documentary photographs of related sites in Topeka and their locations are plotted on an Historic Base Map, which may be found in Appendix B.

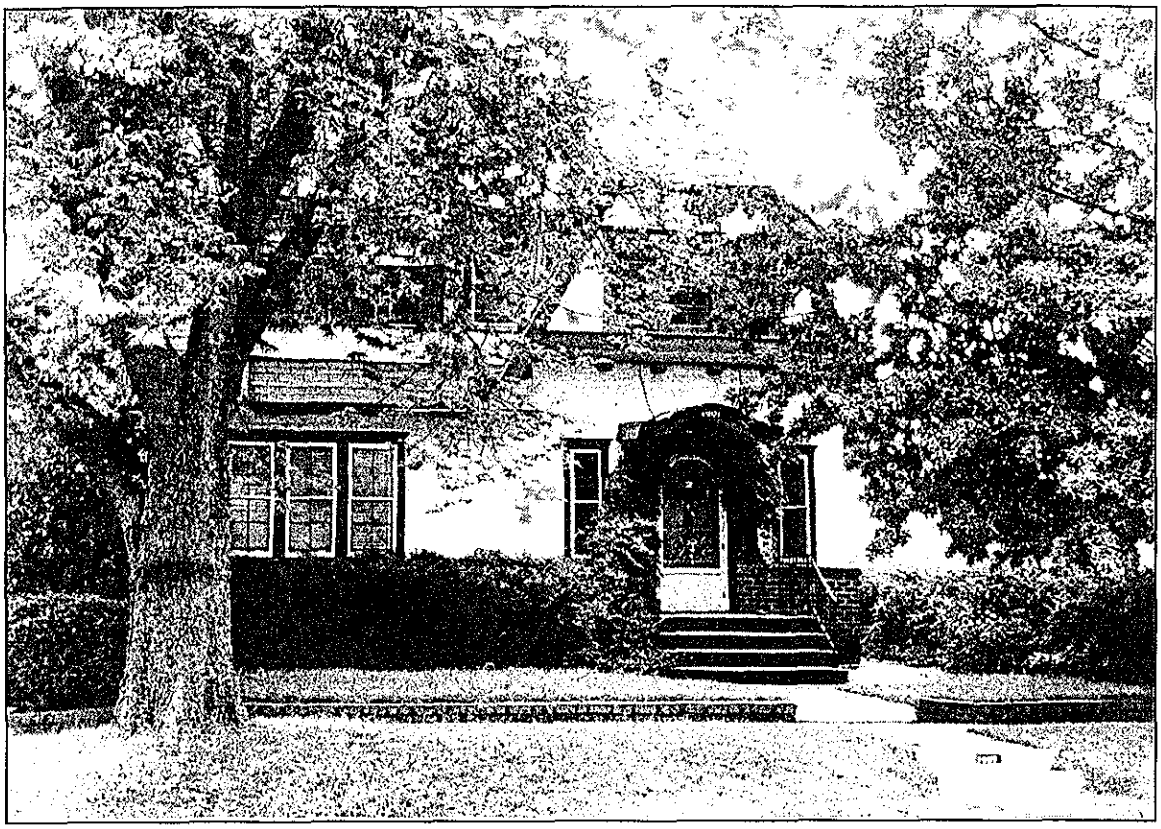

Figure 79. The former Todd residence.

Private residences also bear significance through association with the Topeka plaintiffs and grassroots efforts of local NAACP workers. Alvin and Lucinda Todd's former residence is associated with the Topeka desegregation case because of their activity in the local NAACP chapter and participation in the legal action, itself. Mrs. Todd served as secretary of the local branch chapter in the early 1950s and volunteered to be one of twenty plaintiffs in the Topeka suit. Her husband worked diligently within the organization to desegregate schools and public facilities in Topeka. The couple hosted NAACP meetings in their home on many occasions. In subsequent interviews, Mrs. Todd recalled meeting with McKinley Burnett and others around her dining table to draft correspondence requesting technical assistance from the LDF.[22] Even though first contact between the local and national NAACP offices originated elsewhere, important contributions were made in this dwelling. The later relevance of these events accords a high level of significance to the Todd home and may make it eligible for nomination to the NRHP. This reasoning also applies to the residences of other plaintiffs, that is, their domiciles during the litigation, 1950-1955. Extant resources associated with these plaintiffs also bear potential NRHP eligibility, including the homes of Mrs. Richard Lawton, Sadie Emmanuel, Iona Richardson, Lena Carper, Marguerite Emerson, Shirley Hodison, Mrs.

[22]"...The Campaign was Managed from a Dining Room Table," *Topeka Capital Journal*, 14 May 1989, 1-D, 8-D, among other sources previously cited.

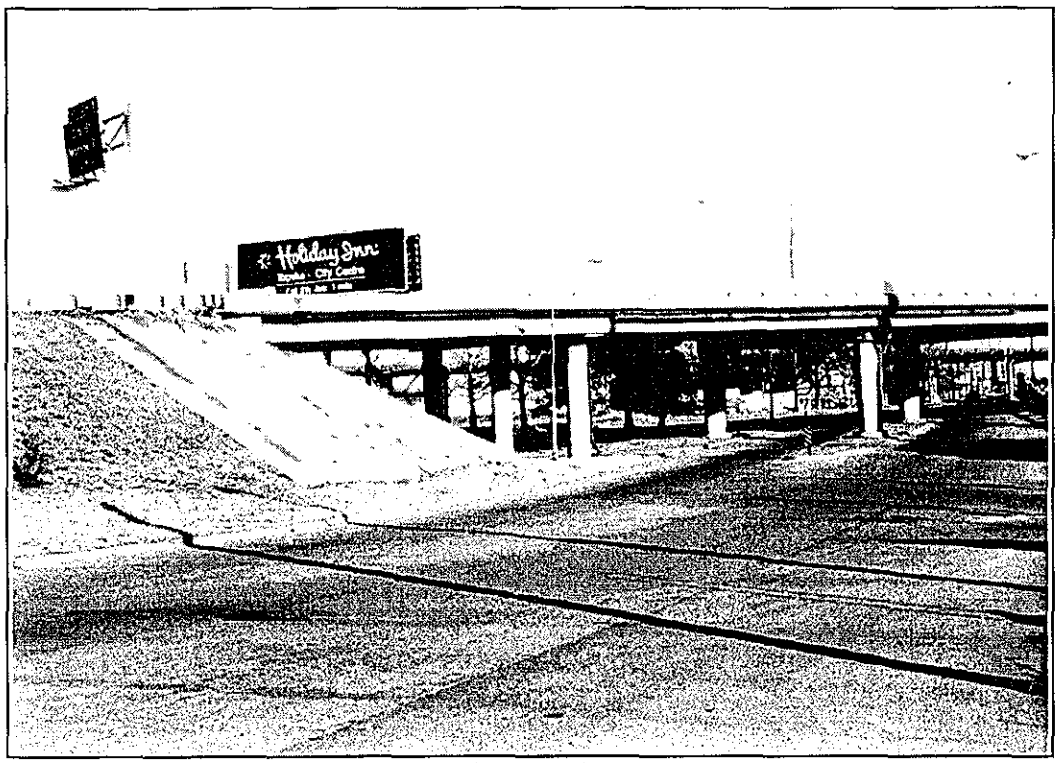

Figure 80. Construction of Interstate 70 brought down the Brown residence.

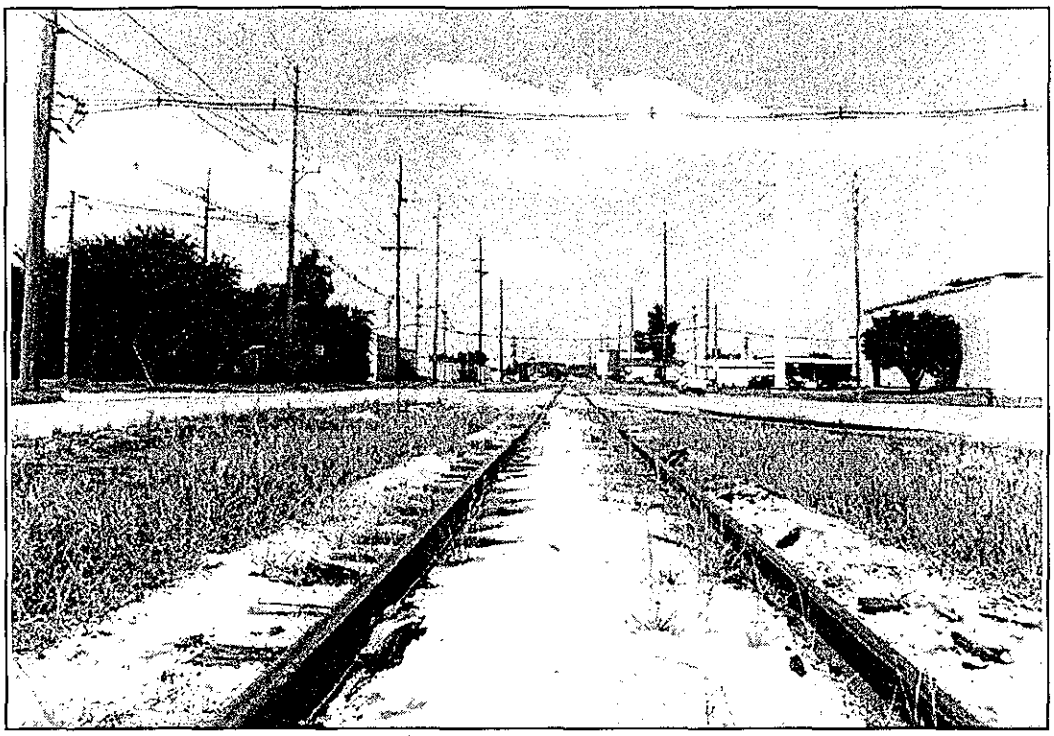

Figure 81. A contemporary view of the cultural landscape corridor.

Allen Lewis, Darlene Brown, Shirla Fleming, Mrs. Andrew Henderson, and Vivian Scales. The homes, schools, and churches of NAACP staff, counsel, and plaintiffs merit consideration for their historical significance, as well.

The Brown residence, occupied during the period of significance, was razed in the 1970s for federal highway construction. Its former site bears some logistical significance because of its spatial relationship to the locations of Sumner and Monroe Schools. The transportation corridor between the Brown home site and the segregated schools provided important ammunition for the legal action to strike down segregation. National media used Linda Brown's experiences to represent those of her compatriots in Topeka and in other communities. The path along First Street which she, her sister, Terry, and other African American children walked, specifically between Topeka Boulevard and Kansas Avenue, still bears a great degree of historical integrity for the period of significance and merits designation on the NRHP. In similar fashion, the routes taken by other "infant" plaintiffs carried great importance in the case prepared by LDF and local counsel because they illustrated a major difference in the experiences of African American versus white youngsters.[23] These cultural landscape corridors, therefore, possess historical significance which may make them eligible

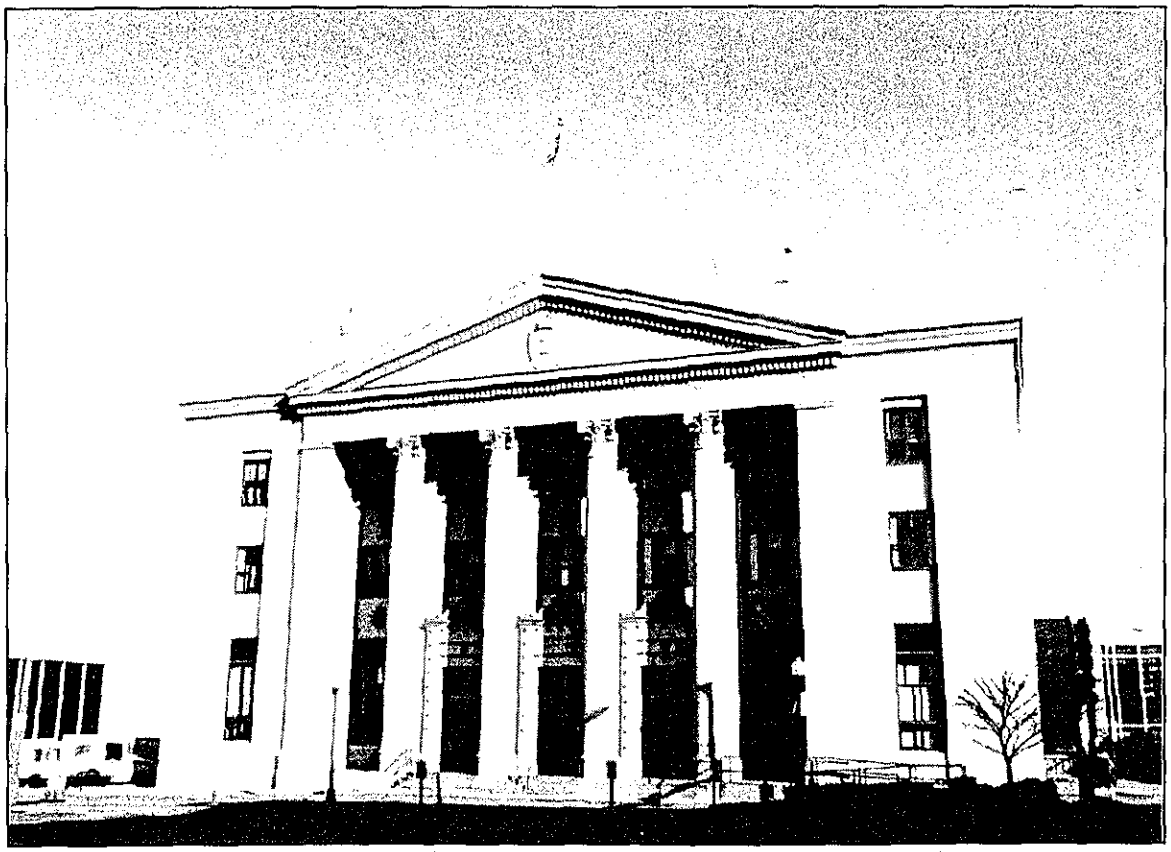

Figure 82. Former U.S. district courthouse, where the Kansas case was first argued.

[23]These are outlined in the chart in Appendix H.

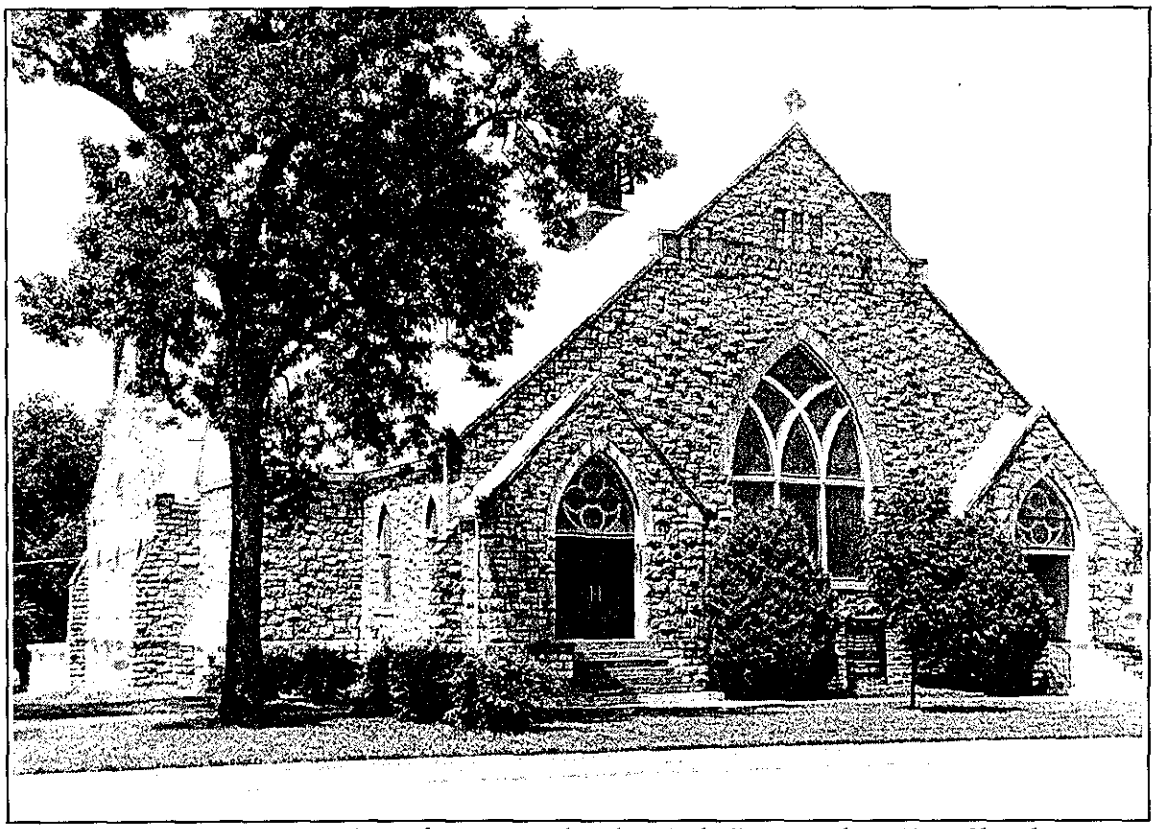

Figure 83. Local NAACP members often met in churches, including St. John's AME Church.

for nomination to the NRHP. The Santa Fe "shops" and St. Mark's AME Church provide two extant properties which bear association to Oliver Brown and his participation in the school desegregation case. He worked for the railroad when the case began and when it ended, he held the ministerial position at St. Mark's.

Public buildings, such as churches, offices, and governmental agencies, also retain significance for association with the successful desegregation campaign. Members of the Topeka NAACP chapter held meetings in churches, including St. John's and St. Mark's AME Churches. The importance of these resources is enhanced by association with Oliver Brown and other plaintiffs who belonged to their congregations. The legal offices of the Scott firm, located during the course of the litigation at 410 Kansas Avenue, are no longer extant. The Washburn University Law School, however, as alma mater to local attorneys on both sides of the issue, bears recognition. The Topeka State Capitol, listed on the NRHP in 1971, housed the office of the attorney general and law library used during the preparation of the state's brief.[24] The federal district courtroom which provided the forum for the lower court hearing

[24]The Capitol, constructed from 1866 to 1903, bears significance for architecture and political history, rather than association with the landmark *Brown* v. *Board of Education* case. Please refer to Richard D. Pankratz, "Kansas State Capitol," Topeka, Shawnee County, Kansas, National Register of Historic Places Nomination, United States Department of the Interior, National Park Service, 3 September 1971. Readers can find a copy of the nomination in

remains intact in the United States Post Office Building, located at 424 South Kansas Avenue. The courtroom and judges chambers retain a high degree of integrity and historical significance for the Kansas proceedings in June 1951.

Cultural resources associated with the specific legal actions in South Carolina, Virginia, Delaware, and the District of Columbia also pertain directly to the aggregate *Brown* v. *Board of Education* case. Those affiliated with *Briggs* v. *Elliott* include Summerton High School, Scotts Branch High School, Summerton Elementary School, Liberty Hill Elementary School, Rambay Elementary School, Liberty Hill AME Church, and St. Marks AME Church. Of these, only Summerton High School has been listed on the NRHP.[25] Robert Russa Moton High School, in Farmville, Virginia, stands as the most well-known resource associated with *Davis* v. *County School Board of Prince Edward County.* This property has been designated an NHL and the Branch-Moton Historical Society seeks to follow the Monroe model, to some extent, in order to use the historic school building as a museum and/or interpretive center for the *Davis* case. The organization's goals for the development of the Robert R. Moton High School Museum are being achieved, largely through private initiative and tremendous support among the national preservation community. The complementary private facility, Prince Edward Academy, bears significance because it served as the segregated, white, school during the period of massive resistance in Virginia. The congregation of the First Baptist Church in Farmville followed its pastor, Rev. L. Francis Griffin, in the fight to desegregate Prince Edward County schools. The building possesses significance by virtue of the numerous meetings, rallies, and services held during this difficult period in Farmville's history.[26]

In similar fashion, advocates in Delaware are working to save the schools associated with the *Belton* v. *Gebhart* and *Bulah* v. *Gebhart* actions. These include Howard High in Wilmington, Claymont High School, and two formerly segregated facilities in Hockessin, School No. 29 (white) and School No. 107 (black). The Delaware SHPO and others seek to preserve and restore the Wilmington and Claymont buildings, in particular, because of their relationship with the larger *Brown* v. *Board of Education* litigation. Howard High School, which educated African Americans under Delaware's segregation policies, was added to the NRHP in 1985, for local significance. This secondary school was renowned for association

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Appendix E.

[25]J. Tracy Power and Andrew W. Chandler, "Summerton High School," Summerton, Clarendon County, South Carolina, National Register of Historic Places Nomination, United States Department of the Interior, National Park Service, 26 August 1994. Appendix E contains a copy of the nomination. Benjamin F. Hornsby, Jr., surveyed *Briggs* resources in "Stepping Stone to the Supreme Court: Clarendon County, South Carolina," Topics in African American History I, (Columbia: South Carolina Department of Archives and History, 1992).

[26]Allen Freeman, "Farmville: A Burden of History," *Historic Preservation* 48, no. 1 (January/February 1996): 62-67; and Jarl K. Jackson and Julie L. Vosmik, "Robert Russa Moton High School," Farmville, Prince Edward County, Virginia, National Register of Historic Places Nomination Form, United States Department of the Interior, National Park Service, DOE completed December 1994. Please refer to Appendix E for a copy of this document. Moton functioned as the Mary E. Branch Elementary School until 1995.

with some of the state's most skilled African American professionals, including Louis Redding. Its significance broadens to the national level, however, through association with the school desegregation victory. Preservationists hope to secure NHL status for Howard High School and possibly for other related resources, as well, based on the overwhelming national significance of selected properties. The Redding House has been determined eligible for inclusion on the NRHP, but has not been placed on the Register. Its primary significance traces to the contributions of siblings, J. Saunders, Louis, and C. Gwendolyn Redding. Louis Redding earned distinction as the first African American attorney in the state and as primary counsel for the Delaware school cases. This structure, as well as law offices, private homes, and other facilities, contribute to the physical record of civil rights struggle in the Mid-Atlantic region.[27]

Cultural resources in Washington, D.C. which bear relevance to *Bolling* v. *Sharpe* and the comprehensive *Brown* "package" fall into the same categories. John Philip Sousa Junior High School, formerly reserved for white students, and former black schools, namely, Browne Junior High, Shaw Junior High, and Benjamin Cardozo High School, should be assessed for inclusion in the NRHP for their connection to these events. All continue as functioning schools and their historical significance seems apparent, but integrity and condition bear inspection. Although religious properties normally are excluded from nomination to the NRHP, the Jones Memorial Church should be recognized as the meeting place for the Consolidated Parents Group, Inc., which met and coordinated strategy for the desegregation of public education in the District of Columbia. Federal properties which bear NHL status for architecture, significant persons, and a broad range of historical events, also contribute to the physical legacy of *Brown* v. *Board of Education*, civil rights legislation, and the broader movement, at large. The U.S. Supreme Court building, the U.S. Department of Justice building, the White House, the U.S. Capitol, and the Lincoln Memorial fall into this category.[28]

The NAACP's desegregation victory spawned specific battles over the control of public education which raised questions about the relationship between federal and reserve powers, the jurisdiction of the U.S. Supreme Court, and the regulation of implementation strategies. Central High School, known historically as Little Rock High School, stands as a principle resource associated with these issues. It received NHL status in 1977, for association with

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[27]Patricia A. Maley, "Howard High School," Wilmington, New Castle County, Delaware. National Register of Historic Places Nomination, United States Department of the Interior, National Park Service, 21 February 1985; and J. Ritchie Garrison, "Under an Armistice: A Report on the Redding House," Prepared for the State of Delaware, Department of State, Division of Historical and Cultural Affairs, June 1992. Copies of these have been placed in Appendix E.

[28]For reference, some examples are included in Appendix E; namely, Harry A. Butowsky "Supreme Court Building," *District of Columbia, National Register of Historic Places Nomination, United States Department of the* Interior, National Park Service, December 1986; and Donald C. Pfanz, "Lincoln Memorial," District of Columbia, National Register of Historic Places Nomination, United States Department of the Interior, National Park Service, documentation of existing NRHP property, listed on 15 October 1966, accepted 24 March 1981.

Orval Faubus' stand against the enrollment of nine African American students twenty years earlier, and the use of federal troops to guarantee their safe admittance.[29] Battles arose in other states as desegregation proceeded. Cultural resources associated with the struggle for educational equity are abundant, even if not specifically recognized, in communities across the country.

The reversal of *Plessy* opened a floodgate for the desegregation of all public venues and is evidenced by a plethora of cultural resources relating to this theme. The broader civil rights movement followed on the heels of *Brown* v. *Board*, with concerted efforts to equalize voting rights, as well as access to interstate transportation and public facilities of all types. Civil rights constitutes an important segment of African American history and is well-represented on the local, state, and national levels. The study of social history during the late twentieth century brought much greater awareness of individual players who helped bring about social gains for African Americans. Some of these accomplishments are represented by units in the National Park System, such as the Frederick Douglass NHS, the Mary McLeod Bethune NHS, the Brown v. Board of Education NHS, the Martin Luther King, Jr. NHS, and the Selma to Montgomery National Historic Trail. These units complement private concerns, such as the Birmingham Civil Rights Institute, the National Civil Rights Museum in Memphis, and the National Afro-American Museum and Cultural Center in Wilberforce, Ohio, dedicated to African American history. Individual properties listed on the NRHP also document the physical record of civil rights, including the Dexter Avenue Baptist Church and pastorium in Montgomery, and the Brown Chapel AME and First Baptist Churches in Selma, Alabama. Together, facilities like these provide a complete interpretation of pivotal events in the late twentieth century.[30]

Cultural resources provide the backdrop to otherwise intangible deeds by linking them to their human agents and placing them within the contexts of time and space. At a minimum, property types associated with the modern civil rights movement include schools, residences, office buildings, churches, federal courthouses, restaurants, bus depots, theaters, and cultural landscapes. The NHL program was established by the Historic Sites Act of 1935 for the recognition of properties which possess national significance. The NRHP, on the other hand, was established by the National Historic Preservation Act of 1966 to enable states to

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[29]Dan Chapel and Dianna Kirk, "Little Rock High School," Little Rock, Pulaski, Arkansas, National Register of Historic Places Nomination, United States Department of the Interior, National Park Service, 19 August 1977 NHL. Please refer to Appendix E to view a copy. In 1996, the National Park Service deemed the historical integrity, and thus the NHL status, of Central High School to be endangered.

[30]Robert R. Weyeneth drafted an important survey of cultural resources relevant to this theme, see "Historic Preservation and the Civil Rights Movement of the 1950's and 1960's: Identifying, Preserving, and Interpreting the Architecture of Liberation," Applied History Program, Department of History, University of South Carolina, Columbia, South Carolina, February 1995. Dr. Weyeneth also addressed these issues in "Historic Preservation and the Civil Rights Movement, *CRM* 19, no. 2 (February 1996): 26-28. John E. Fleming discusses the role of museums in transmitting cultural objectives in "African American Museums, History and the American Ideal," *The Journal of American History*, 81, no. 3 (December 1994): 1020-1026.

designate properties of state and local significance as important cultural resources. NHL designation bestows automatic listing on the NRHP. The Secretary of the Interior bears ultimate responsibility for the maintenance of each, but routine monitoring of each falls under the purview of the NPS. At present, only three properties associated with *Brown* v. *Board of Education* bear NHL designation, some are listed on the NRHP for state or local significance, and others are eligible for inclusion based upon association with the school desegregation cases or later civil rights activism. The NHL and NRHP programs are by no means the sole judges of historical significance and integrity, but they provide a widely recognized system for recording, documenting, and protecting notable buildings, landscapes, structures, and objects. Presently, Monroe Elementary School, Sumner Elementary School (Kansas), Moton High School (Virginia), Summerton High School (South Carolina), and Howard High School (Delaware) are the only representative resources currently listed on the NRHP for association with the *Brown* litigation. Central High School bears NHL designation for events associated with the 1957 Little Rock crisis and is a new addition to the National Park System. The Redding House (Delaware) has been deemed eligible for inclusion, but, thus far, has not been formally nominated. Churches, private residences, and law offices associated with participants and supporters of the school cases, such as J.A. DeLaine, Jr., Francis Griffin, Jr., Barbara Johns, Oliver Hill, Spottswood Robinson, Shirley Bulah, Gardner Bishop, and others, may also merit consideration for inclusion on the National Register. Representative cultural resources provide physical vestiges of these critical events and contribute to a more comprehensive understanding of their place in U.S. history.

D. Conclusion

Students of all ages can learn the important lessons of the NAACP school desegregation campaign through primary documents, secondary monographs, oral histories, and physical resources. Units within the National Park System are expanding the scope of interpretive programming to facilitate a more accurate view of events and people who previously were pushed aside by traditional "stories." The Brown v. Board of Education NHS, composed of the former Monroe Elementary School, exemplifies the agency's new emphasis on social and African American history. It will function as a symbol for the school desegregation campaign and serve as a nucleus for the interpretation of events in Topeka and related communities. The site represents a direct link between the school desegregation campaign and the subsequent civil rights movement.

The record of events leading to Monroe's preservation also provides a model for the protection of relevant cultural resources. This venerable building has had three lives: first, as an elementary school for African American children; secondly, as a warehouse and storage facility; and thirdly, as a national historic site in the National Park System. After its closure in 1975, most were unaware of its significance as one of Topeka's four segregated elementary schools and the one represented in the landmark litigation. Mark Steuve, of S/S Builders, reportedly had no idea of the building's role in the landmark *Brown* v. *Board of Education* decision until he put Monroe on the auction block. The Brown Foundation, under Cheryl

Brown Henderson's guidance, drew attention to the historical significance of the abandoned school and garnered national support for its preservation. Her actions led to its designation in October 1992 as a new unit of the National Park Service. As mandated by Congress, this 1.85-acre site exemplifies properties which contributed to the landmark United States Supreme Court decision that ended *de jure* segregation in public education. Through it, NPS staff will interpret the integral role which *Brown* v. *Board of Education* case played in launching the modern civil rights movement and will assist in the preservation and interpretation of related resources located within the city of Topeka.

Measures to stabilize and rehabilitate the building are currently underway, with its formal opening scheduled for the year 2000. As the park's only building, Monroe must serve several capacities; primarily, as administrative headquarters, visitor center, interpretive media center, and as an educational/research facility. The park will fulfill its mission to explore the contributions and accomplishments of those who fought to secure African American rights in the United States through exhibitry, video presentations, interactive conferencing, and more traditional interpretive programming.[31] While linked to other NPS sites associated with the civil rights theme, the Brown v. Board of Education NHS will provide a specialized focus on desegregation in public education and endeavors to bring dual, segregated societies together. Like its juridical namesake, this historic site harkens to past injustices, praises hard-won accomplishments, and presages future attainments left for others to mark.

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[31]Bureman, *et. al.*, "General Management Plan, Development Concept Plan, and Interpretation and Visitor Experience Plan," August 1996.

The last stretch of this long hard pull could possibly be the toughest. Certainly the other side will hold nothing in reserve. Yet, as we look at the picture, once they unlimber their big guns and their ingenious plans, they will run out of defenses, and it is but a matter of time before the good people in the South of both races realize that segregation is not only unlawful and unconstitutional, it is downright immoral; that seeking to maintain the unlawful and immoral position is impossible in the face of our principles of government. And then, there being no future in opposition, we will then get the rights we have been struggling for.[1]

– Thurgood Marshall, 16 July 1959
NAACP Freedom Fund Report Dinner

[1]Excerpts of address, "The Fifty Year Fight for Civil Rights," Presented at the NAACP Freedom Fund Report Dinner, 16 July 1959, Thurgood Marshall Papers, Box 579, Folder 16, Manuscripts Division, Library of Congress, 10.

EPILOGUE

While Topeka, Kansas, is well-known for its prominent role in the *Brown* v. *Board of Education* litigation to effect desegregation in public education, most attention has focused on the suit's lead plaintiff, Oliver Brown and his daughter, Linda, rather than on the full record of events. This historic resource study seeks to separate and identify those symbolized by popular images and relate the documented history of the landmark school desegregation cases of the mid-twentieth century. Ever since the Browns walked to Sumner Elementary School in the fall of 1950, the nation has been captivated by the image of a little girl turned away from the neighborhood grade school that her friends attended. By freezing this seminal event in time, the powerful image became a popular American icon that characterized the prejudice conveyed by racial segregation and some degree of the discrimination endured by African Americans. The record of United States history contains lessons about several popular figures whose names and faces have become synonymous with momentous events in U.S. history, including Crispus Attucks, Dred Scott, Homer Plessy, Rosa Parks, and Oliver and Linda Brown. Such important figures have achieved symbolic status over time, representing far more than the single historical event in which they participated. Like myths and fables, historical icons serve valuable social purposes because they represent broad-sweeping trends and movements, serving as readily identifiable forms for a wide spectrum of actions and feelings. They are used to commemorate and celebrate a collection of important events. The image of young Linda Brown came to represent a national revolution for the equalization of civil liberties and equal justice; in other words, for the end of a society that based status and opportunity on race.[2]

More than sixty years ago, W.E.B. DuBois asked, "do we need separate schools?" He pondered the value of integration relative to the risks of exposing African American youth to prejudice and discrimination. Early in its organizational history, members of the NAACP decided that constitutional equality was worth potential personal risks and proceeded to challenge *de jure* segregation. While African American communities valued their rich social institutions of family, church, and school, they wanted to enjoy the full opportunities enjoyed by those in the mainstream, as well. Because law encoded these socio-political restrictions, the legal defense wing of the NAACP aimed to change it through litigation. And, the strategy worked because several factors coalesced; namely, opportunity, talent, timing, and dedication. The talent and drive of LDF co-counsel, the commitment of plaintiffs, and the hard work of NAACP supporters sustained the lengthy endeavor to overturn *Plessy* v. *Ferguson*. Although Charles Hamilton Houston and others began formulating the attack earlier, the context, or social environment, of the mid-twentieth century proved to be somewhat conducive to the school desegregation cause. World War II and the Cold War clearly elucidated the stark contrast between the jingoist rhetoric and racist reality whereby dual societies operated in this democratic nation. American citizens were directly faced with the inconsistencies of the black

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[2]Some of these thoughts were more fully expressed in "Image and Icon: History's Bounty at the Brown v. Board of Education National Historic Site," *CRM* 19, no. 2 (February 1996): 36-38.

experience in the United States. Desegregation provided a solution because it would knock out the braces which separated the races. The school cases of the 1950s accomplished that, but they also made people realize that there was more to segregation than its legal trusses. Personal attitudes, fears, and stereotypes sustained the practice.

The glorious announcements of *Brown I* and *II* signified the hope and fulfillment of full constitutional equality. With the hard-fought victory won, however, Americans of both races began to realize that the real work of altering policies and attitudes had barely begun. Little changed, little happened immediately, except organization and militance by staunch segregationists. Real reform needed aid from those in power, and after a few years of silence, only began when the combined authority of the executive, legislative, and judicial branches of the federal government began to craft and enforce desegregation codes. Paul Wilson best articulates repercussions of *Brown* in his memoirs, explaining,

> One impression stands out–law and litigation do not supply all of the answers to human problems. Law provides minimum standards of conduct and defines basic human rights and responsibilities. Litigation provides the means to determine and enforce what the law requires. The resolution of human conflict requires more–understanding, compassion, and mutual respect.[3]

By the 1970s, private citizens and public institutions, albeit with some resistance and much litigation, implemented regulations aimed to effect full integration through racial balancing. Despite good intentions, results often have not met expectations. Although *Swann* (1971) sanctioned the use of busing to counteract *de facto* segregation, proactive integration policies of the past two decades have failed to guarantee racial balance among students in the nation's public schools. Jonathan Kozol, educational specialist and critic, conducted a study of inner-city schools across the country in 1988, finding that ninety-five to ninety-nine percent of them had non-white populations. "What seems unmistakable, but, oddly enough, is rarely said in public settings nowadays," Kozol remarks, "is that the nation, for all practice and intent, has turned its back upon the moral implications, if not yet the legal ramifications, of the *Brown* decision."[4] As usual, Kozol's sharp criticisms are on target. If racial barriers have been eliminated, why is *de facto* segregation and inequity so widespread?

Another concern, first raised on the national level in *Regents of the University of California* v. *Bakke* (1978), pertains to the issue of "reverse discrimination" which has led to a reevaluation of affirmative action policies carried out by both governmental agencies and private businesses in the United States. The concept of "affirmative action" was first introduced during Lyndon Johnson's administration, as part of his broad "Great Society" program. The Civil Rights Act of 1964, the Voting Rights Act, and other civil rights legislation signified a proactive stance, taking affirmative action, to open opportunities to

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[3]Wilson, *A Time to Lose*, 226.

[4]Jonathan Kozol, *Savage Inequalities: Children in America's Schools* (New York: Crown Publishers, Inc., 1991), 4.

African Americans which, in the long run, would bring about greater representation by women and blacks in the workplace. Jurists and policy-makers tried to accomplish this through the use of busing and equal opportunity programs, and through the use of quotas to achieve a proportional representation of individuals from specific racial and ethnic groups. This raised the ire of some white citizens, including Allen Bakke, who cried "reverse discrimination" because they now felt excluded. Bakke applied to the University of California-Davis medical school, but was denied admission in 1973 and 1974 even though his grades and test scores ranked higher than some applicants who were accepted. The university reserved sixteen of one hundred spaces for "disadvantaged" members of racial minorities, some of whom ranked lower than Allen Bakke. He sued the institution, claiming that the use of racial quotas violated his right to equal protection of the laws under the Fourteenth Amendment.[5]

Although professional schools use other criteria, in addition to test scores, when assessing candidates for admission, some form of discrimination had occurred. The crux of *Bakke* lay in whether or not preferential treatment was justified and whether or not the form of discrimination was constitutional. In 1978, a divided Court declared the use of quotas in this instance as being unconstitutional and ordered Bakke's admission. It also found, however, that the U.S. Constitution allows "race-conscious" admissions programs designed to benefit minorities in order to remedy past injustices. "Government may take race into account when it acts not to demean or insult any racial group," the majority opinion read, "but to remedy disadvantages cast on minorities by past racial prejudice, at least when appropriate findings have been made by judicial, legislative, or administrative bodies with competence to act in this area."[6] Although remembered for striking down a quota system, *Bakke* actually reinforced the legitimacy of affirmative action programs. Thurgood Marshall, then a member of the esteemed Court, bolstered the overarching effect of the suit, saying, "It is because of a legacy of unequal treatment that we now must permit the institutions of this society to give consideration to race in making decisions about who will hold the positions of influence, affluence, and prestige in America."[7] More recent litigation concerning minority contracting and hiring now threatens affirmative action incentives and forces a reevaluation of these policies, particularly in regards to guarantees of open access and equal opportunity in the United States.

There is also another side to this debate, one which questions the validity of integration and racial balancing as the panacea for the race issue. As generations of young people go through the process of desegregation, more return to Dr. Dubois' prescient concerns. Apprehensions about local control, quality education, equal opportunity, and equitable treatment under the law prolong the debate raised more than forty years ago by parents and

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[5]Ashmore, *Civil Rights and Wrongs*, 311-313.

[6]Quoted in Peter Irons and Stephanie Guitton, *May It Please the Court: The Most Significant Oral Arguments Made Before the Supreme Court Since 1955* (New York: The New Press, 1993), 317. Readers may find an edited version of the transcript and opinion of *Regents of the University of California* v. *Bakke*, 438 U.S. 265 (1978), on pages 306-320.

[7]*Ibid.*, 305.

leaders in communities like Summerton, Farmville, Topeka, Hockessin, Wilmington, and Washington, D.C. All agree we need educational equity, opportunity, and fairness. But, is integration the only way to achieve these goals? As the quality of public education declines and "minority" populations increase, more and more parents wonder if integration should garner so much attention. Cities and counties which possess predominantly African American populations question the need to continue busing programs, which merely shift students from one school to another. While Topekans still strive to create an integrated school system, some in the broader, national African American community advocate the right to maintain historically black schools, particularly on the elementary and post-secondary levels. These institutions could strengthen African American culture, celebrate its heritage, and retain control over the education of the nation's black youth. Local control is an important ingredient in the educational debate because it concerns the regulation of curriculum content and teaching excellence. As the quality of public education declines, parents of all ethnic and racial origins consider abandoning the system in favor of private institutions.

Even though Americans must continually deal with racial tensions and divisions, the record of school desegregation and broader civil rights activism confirm the importance of racial unity. Segregation was a galvanizing issue because the practice was wrong. Contemporary educational issues are not as clear-cut as they were fifty years ago because *de jure* segregation has ended, desegregation programs have been implemented, and public educators try to meet the needs of all children. Despite efforts to broaden instruction, however, the ramifications and logistics of doing so raise broader social issues. And, there are still no solutions. Concerns over the lack of full racial integration in the public schools of Topeka led to the resumption of the original *Brown* v. *Board of Education* litigation in the 1970s to achieve full desegregation, largely through *Brown III*. In 1994, the U.S. Supreme Court ordered the case to be sent back to the U.S. District Court of Kansas, which in turn ordered the Topeka USD-501 to implement a viable desegregation plan. In 1996, the school board did so by closing several elementary schools and constructing three magnet schools dedicated to specific curricula in an attempt to centralize educational facilities for all qualified students, regardless of race or ethnic origin. With these actions, perhaps issues which fueled *Brown* v. *Board of Education* fifty years ago finally will be laid to rest.

APPENDICES

A. Historic and Contemporary Site Photographs
B. HRS Historical Base Map
C. Park Enabling Act
D. National Historic Landmark Nominations of Sumner and Monroe Elementary Schools
E. National Register of Historic Places and National Historic Landmark Nominations of Related Cultural Resources
F. Relevant Litigation
G. Chronology of Significant Events, 1789-1995
H. Profiles of Topeka Plaintiffs
I. The School Cases: Schedule of Argument Before the U.S. Supreme Court
J. Text of the *Brown* Decisions
K. Additional Historical Research Needs

APPENDIX A

Historic and Contemporary Site Photographs of Extant Related Resources

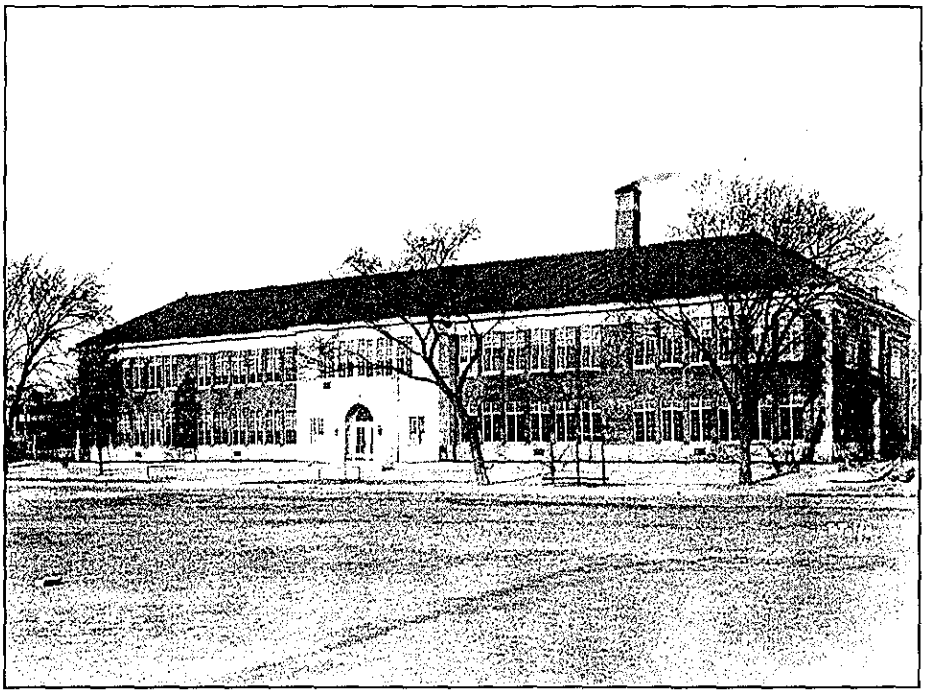


Figure A-1. Monroe Elementary School, upon completion in 1926.

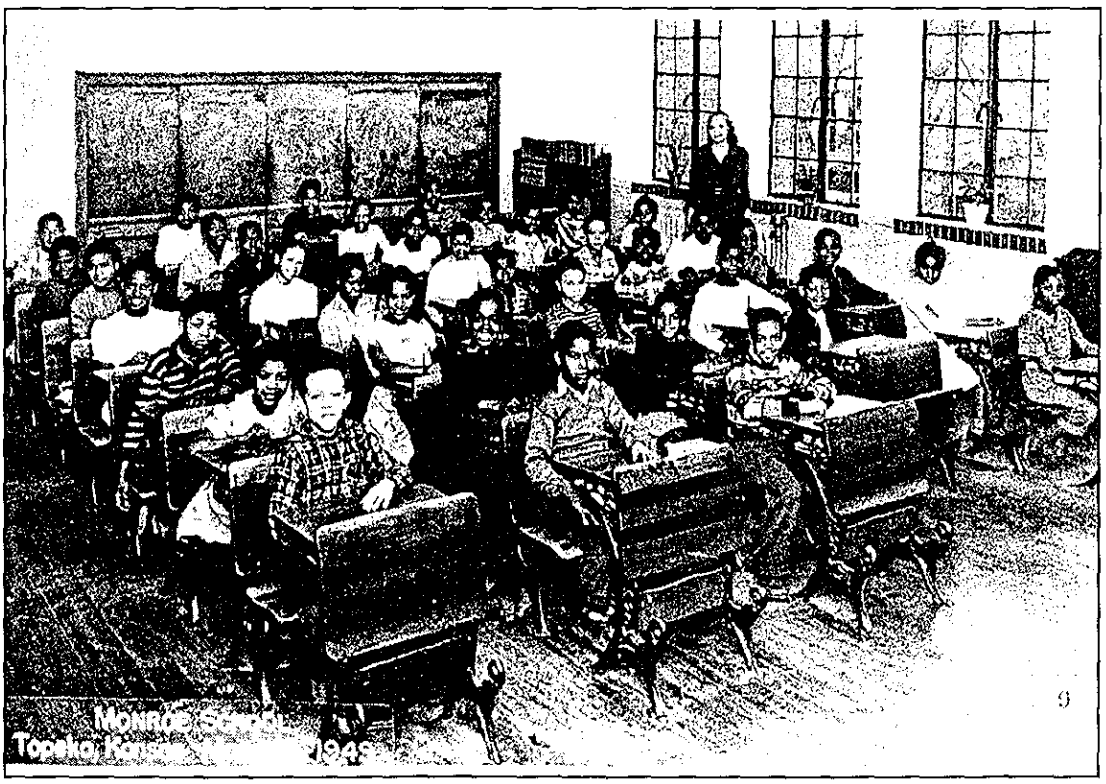


Figure A-2. This 1949 class picture shows the interior of a typical classroom.

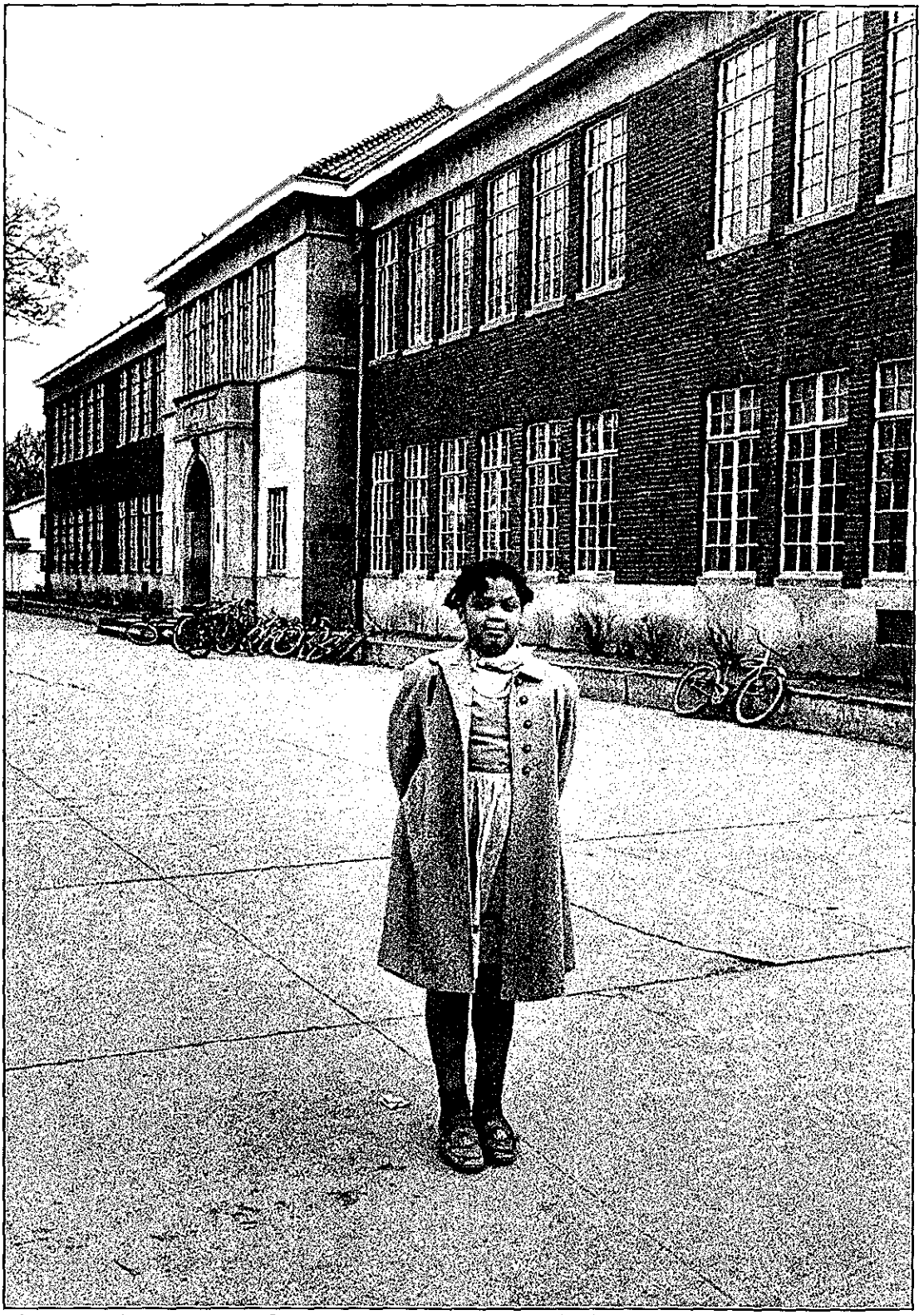


Figure A-3. Monroe Elementary, as photographed in March 1953.

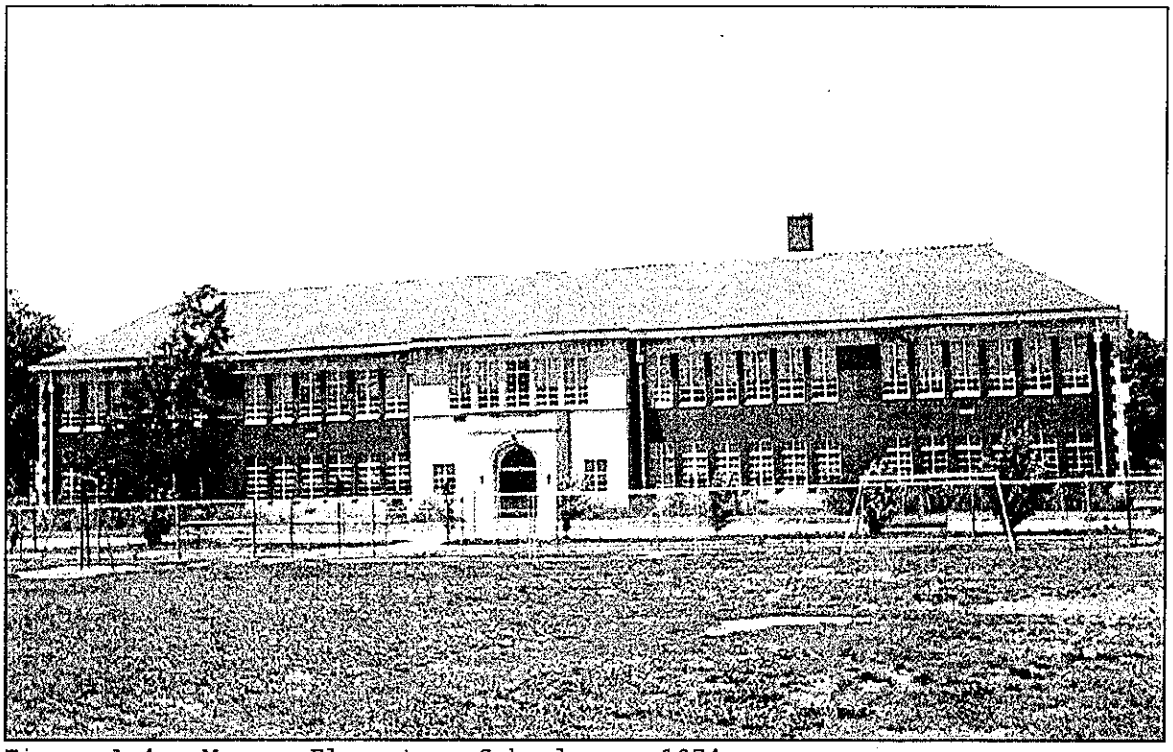


Figure A-4. Monroe Elementary School, ca. 1974.

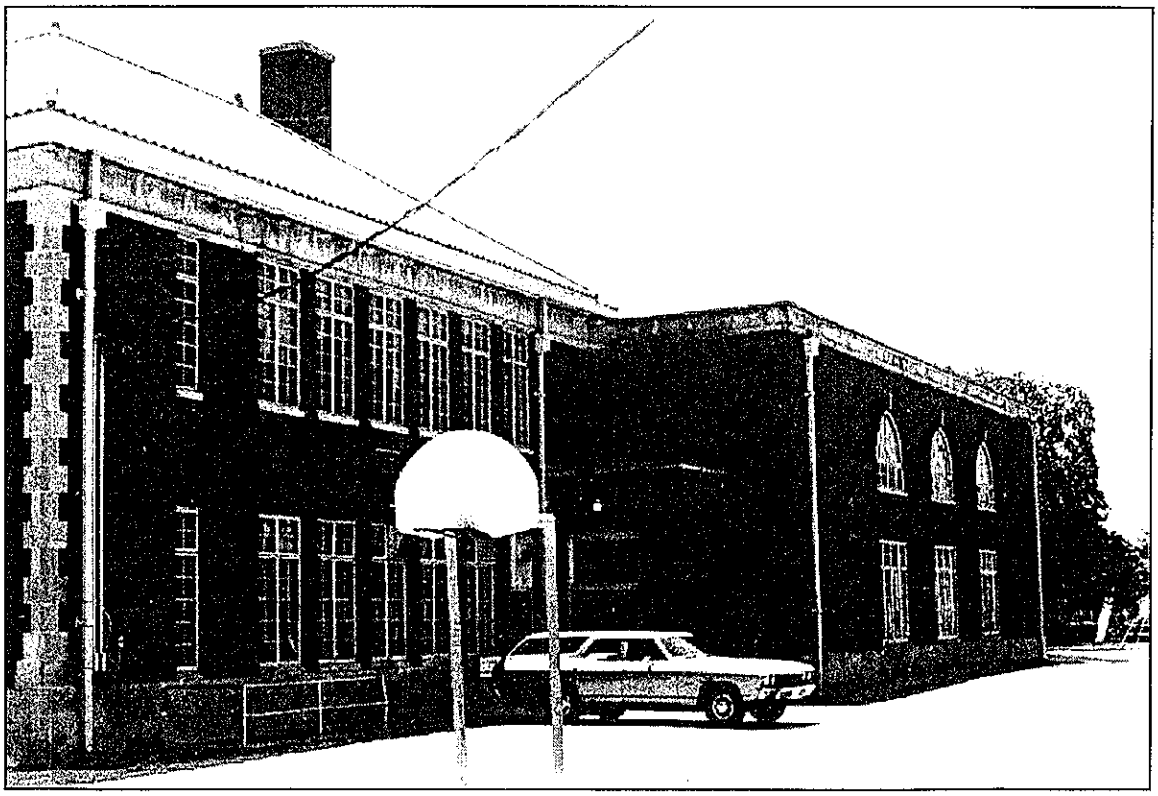


Figure A-5. A rear view of the school, ca. 1974.

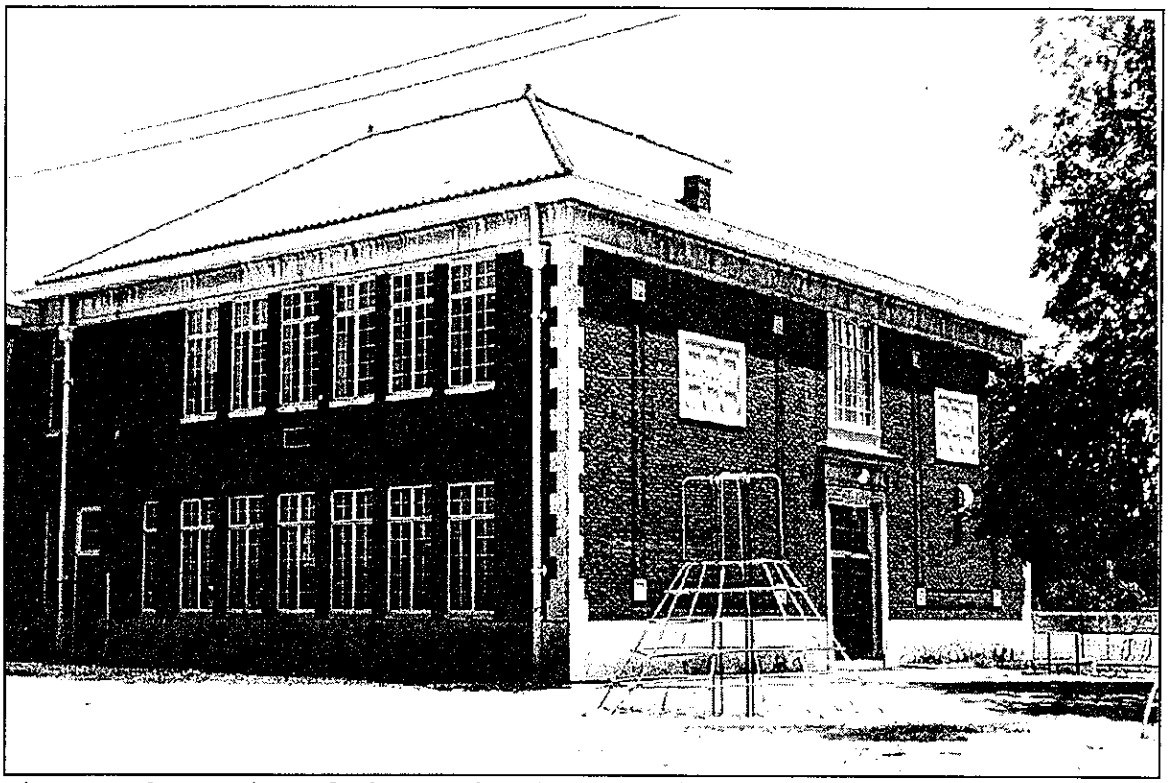


Figure A-6. A view of the south wall and adjacent playground, ca. 1974.

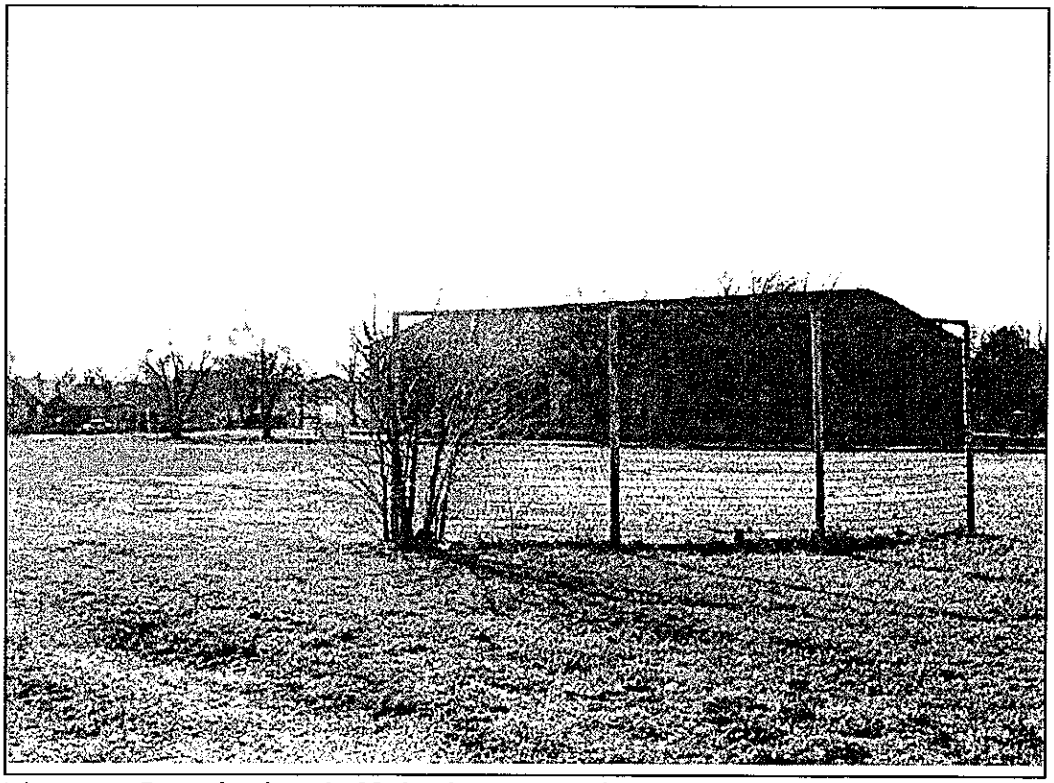


Figure A-7. The baseball backstop may be the only landscape feature that dates to the period of significance.

Figure A-8. The ball field is located on Fifteenth Street, across from the school.

Figure A-9. Abandoned railroad line, adjacent to the baseball field.

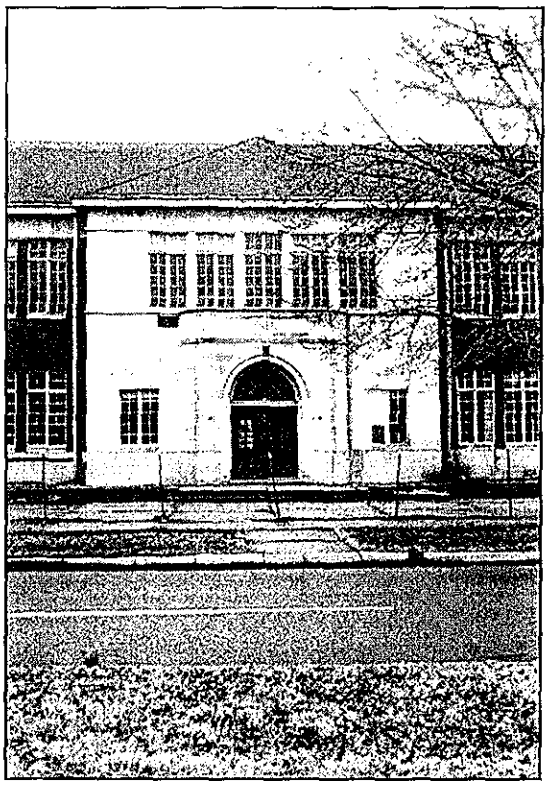


Figure A-10. Entry detail.

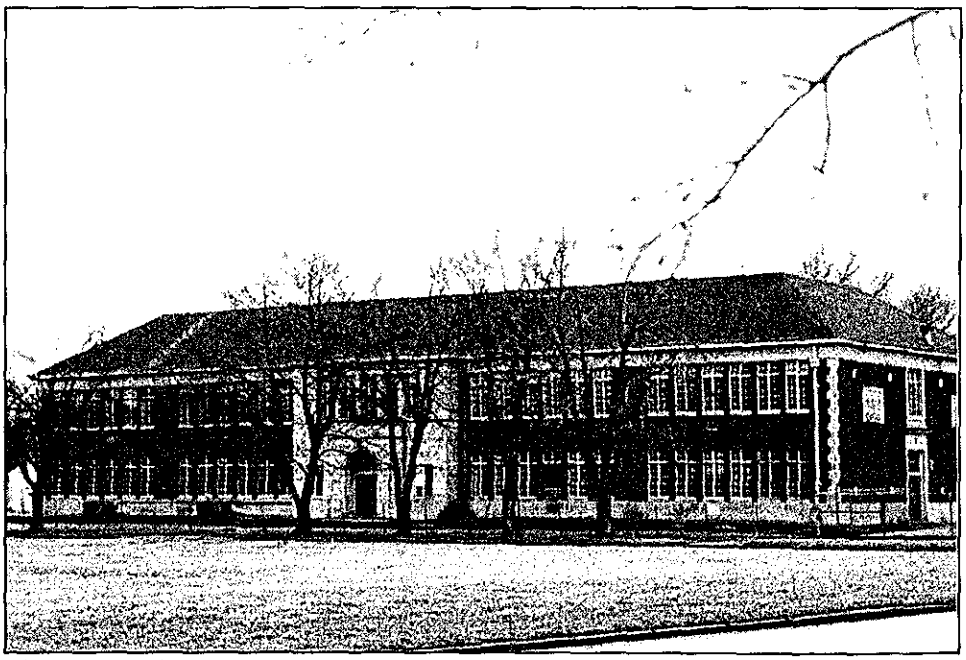


Figure A-11. A contemporary view of Monroe.

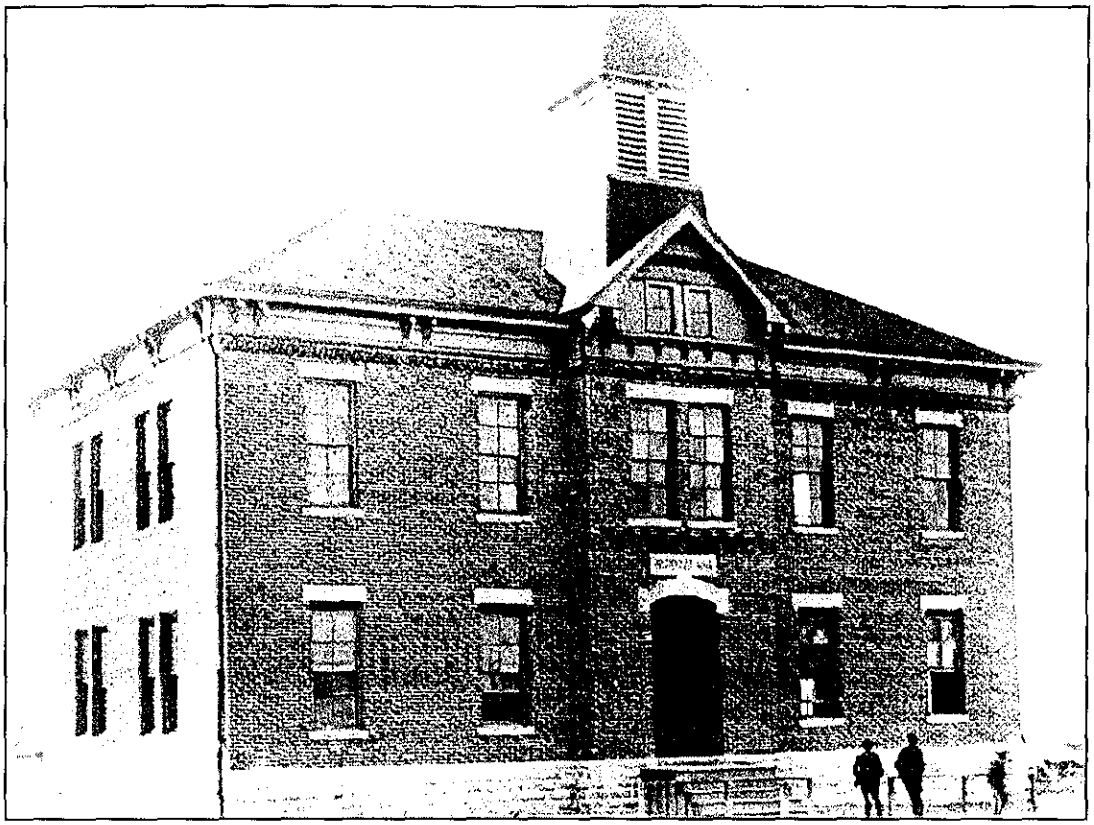


Figure A-12. Historic photo of Buchanan Elementary School, 1885.

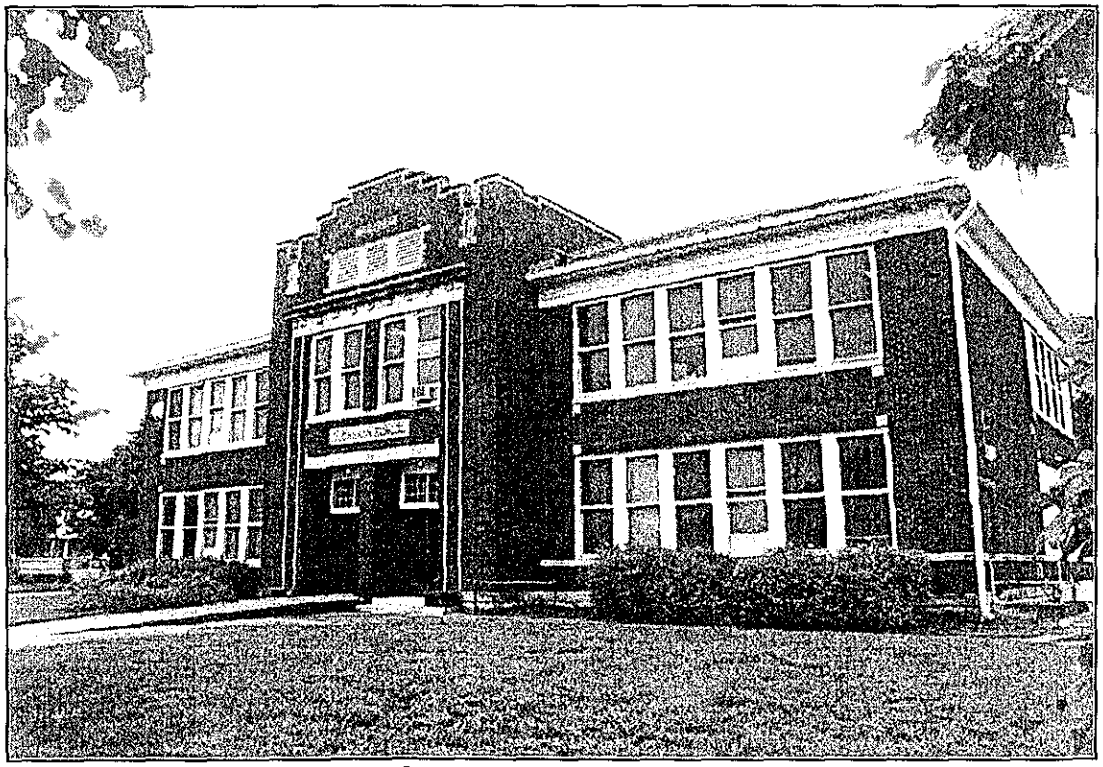


Figure A-13. Buchanan Elementary, significantly renovated in 1920, currently serves as community center.

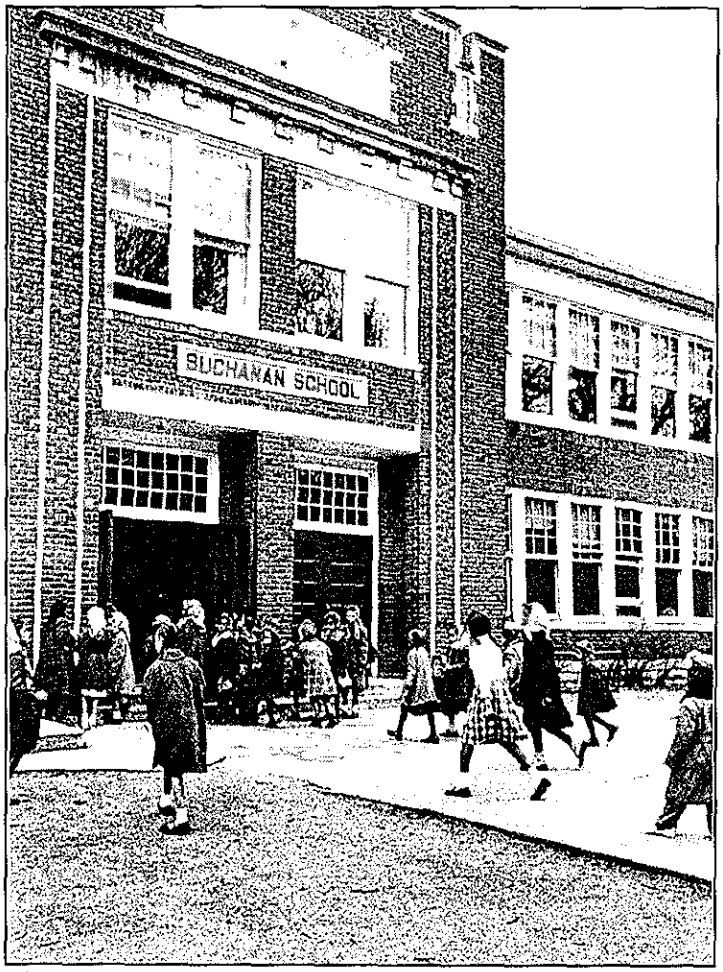


Figure A-14. Entry detail of Buchanan in March 1953, during the period of significance.

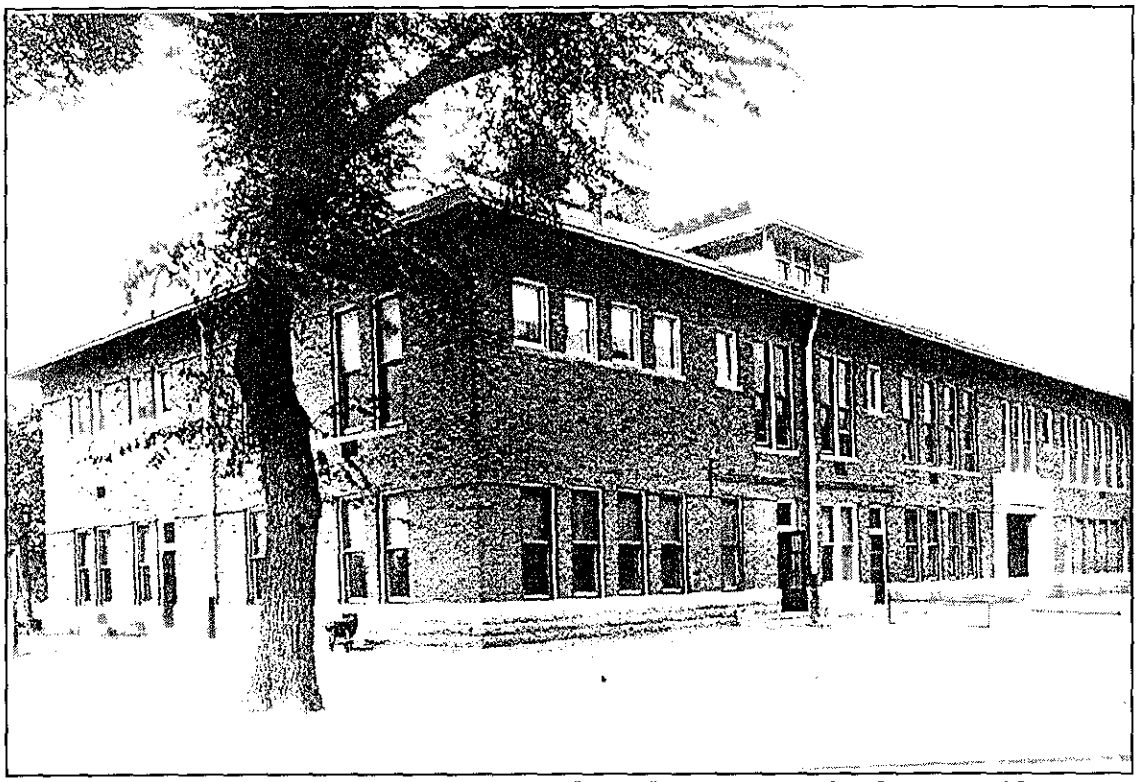


Figure A-15. Historic photo of McKinley Elementary School, ca. 1920s.

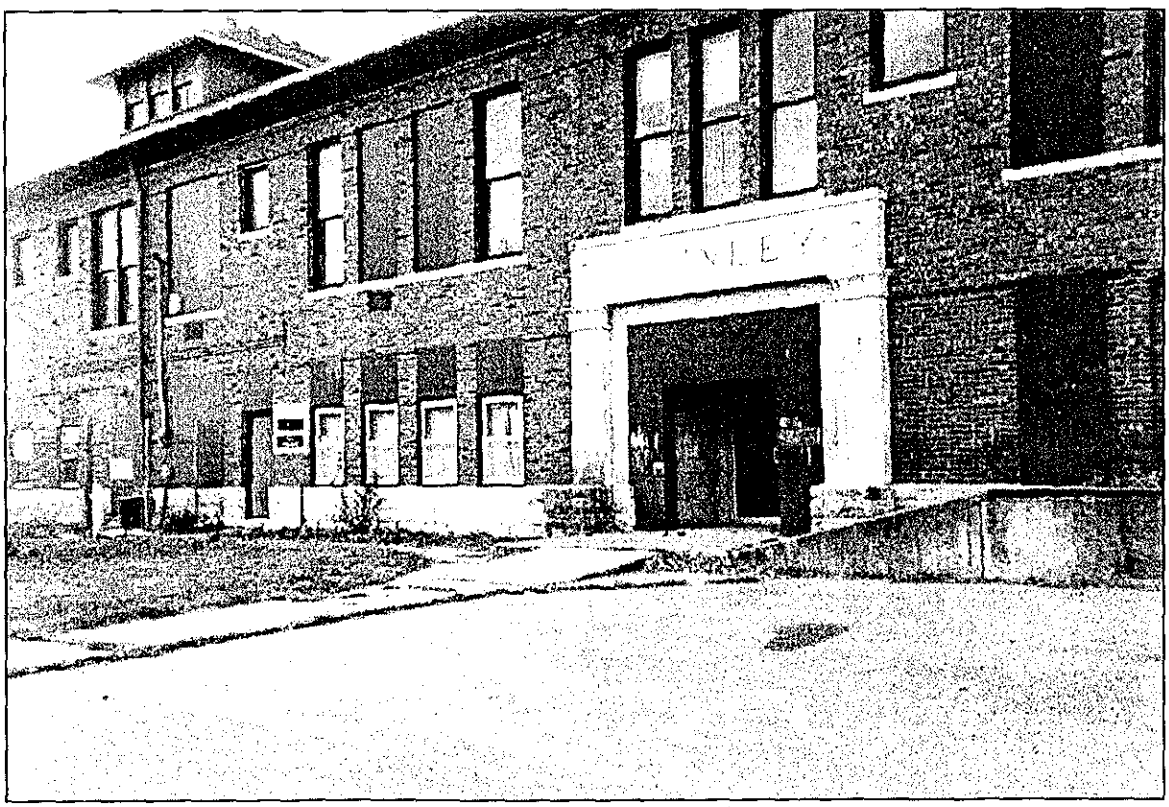


Figure A-16. Entry detail, seventy-five years later.

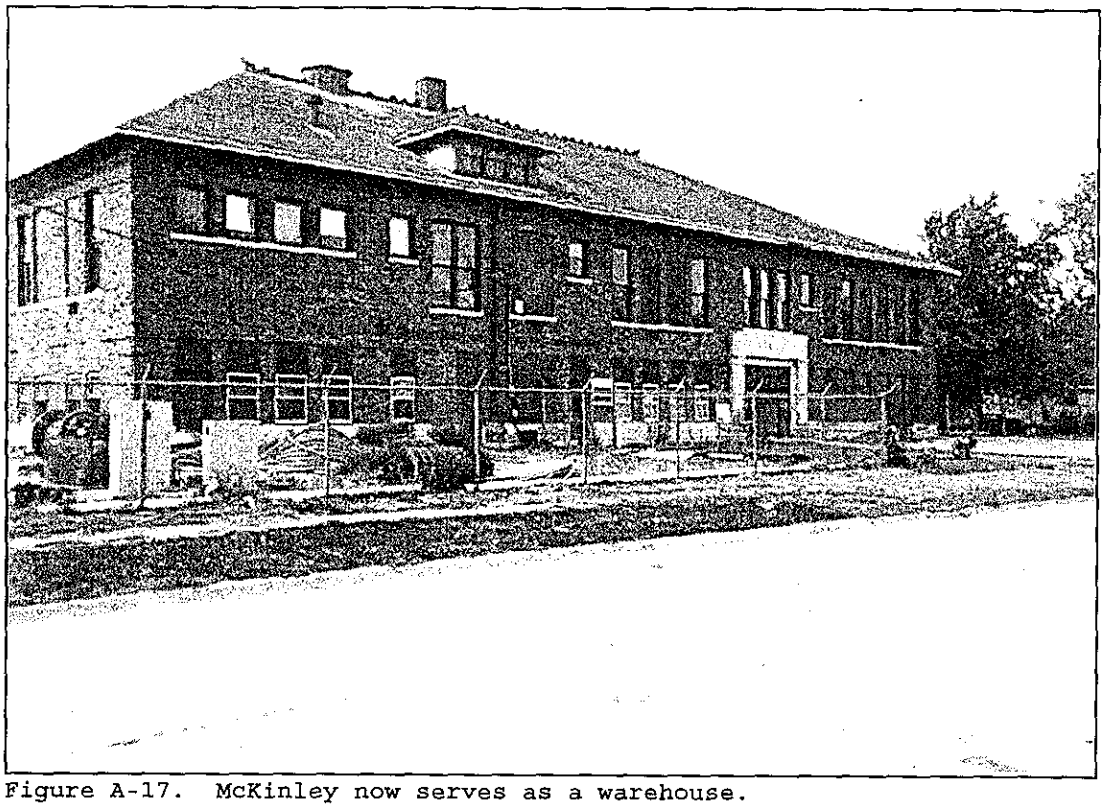


Figure A-17. McKinley now serves as a warehouse.

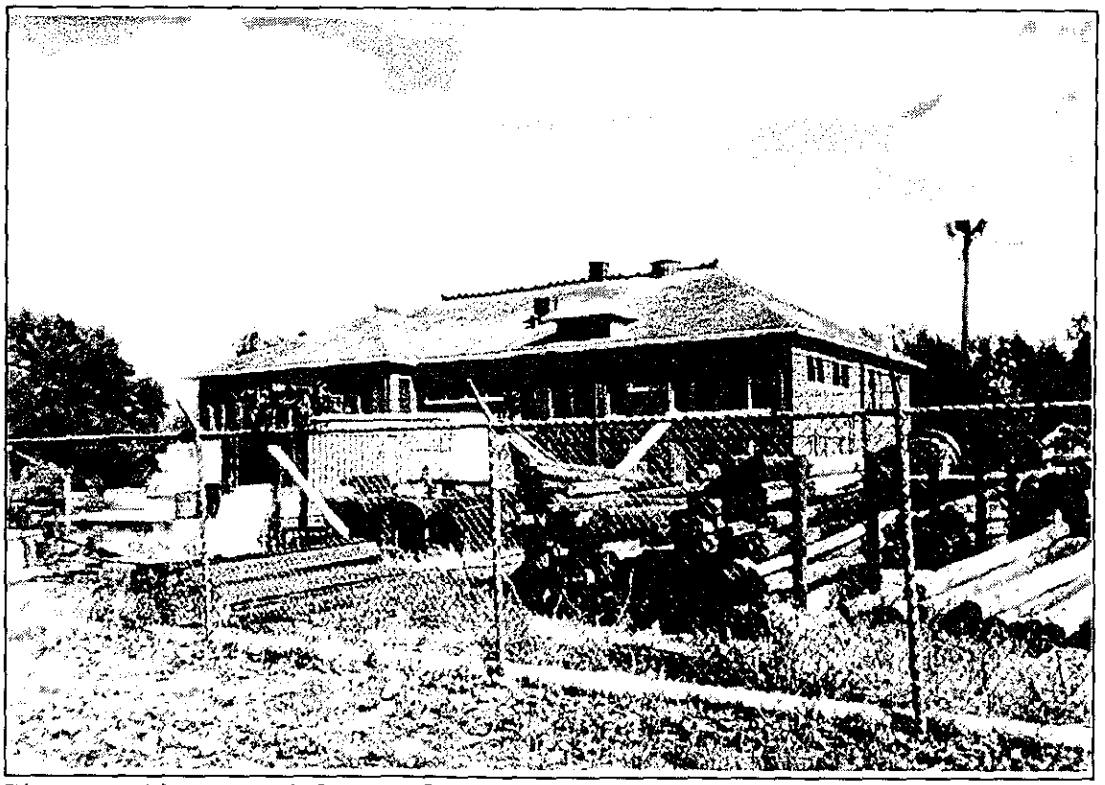


Figure A-18. McKinley's former playgrounds are now used to store construction materials.

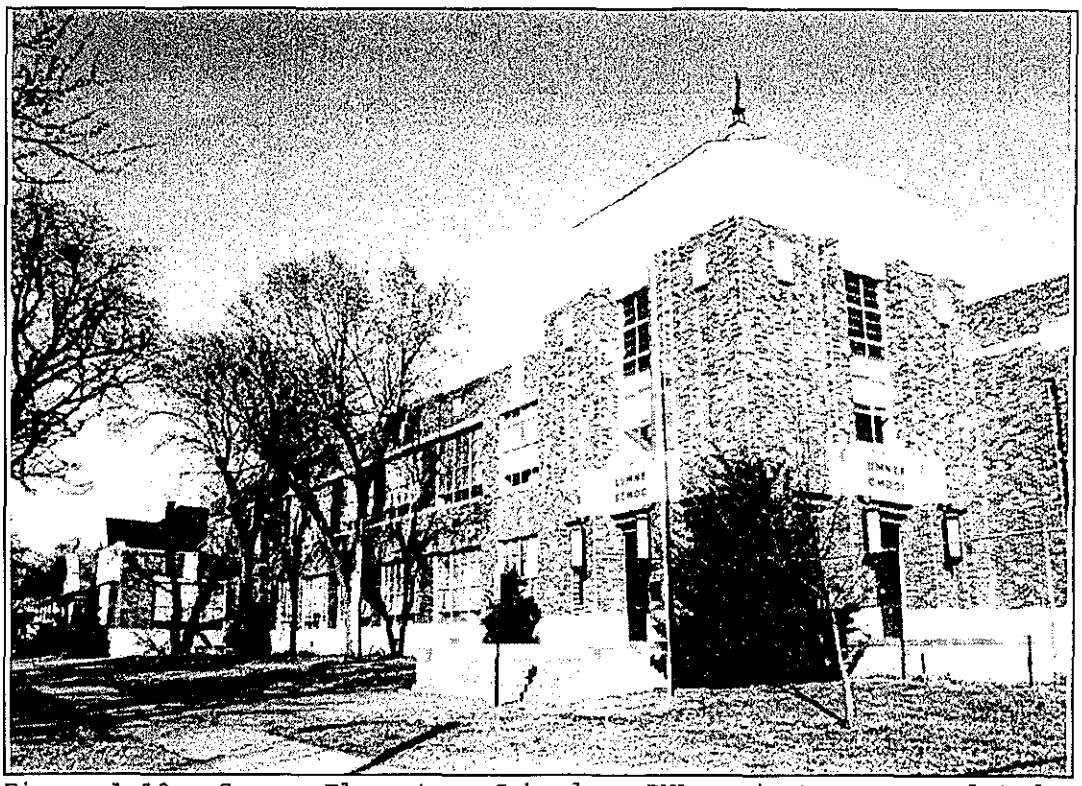


Figure A-19. Sumner Elementary School, a PWA project, was completed in 1935.

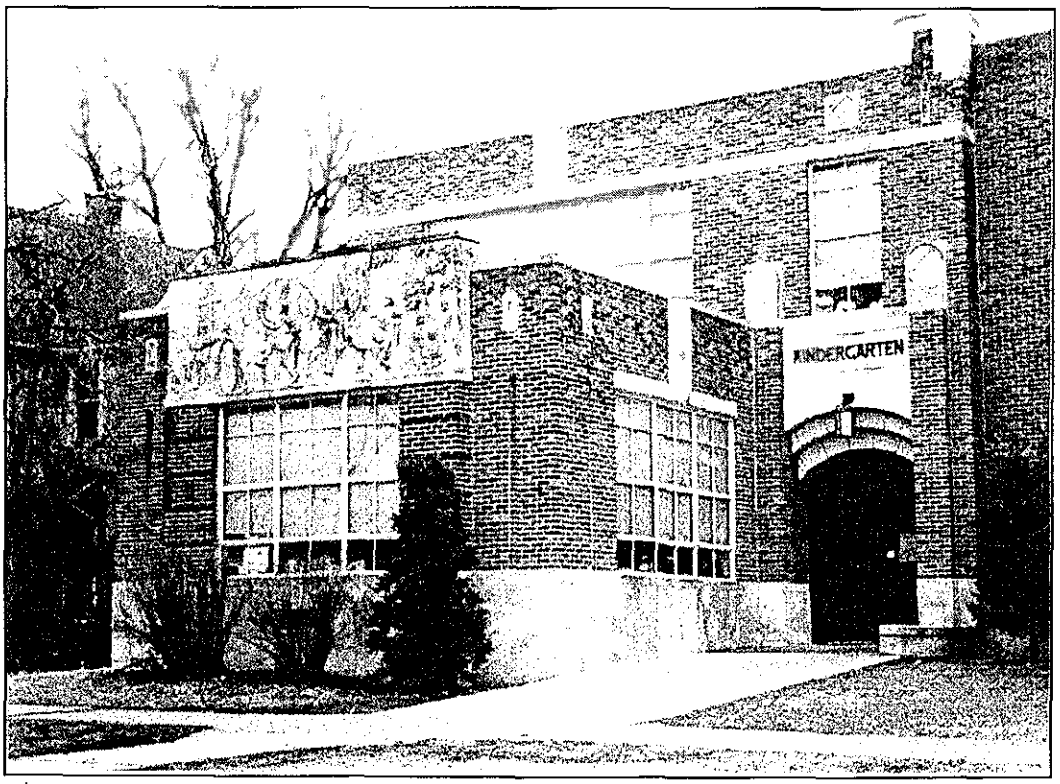


Figure A-20. Exterior view of the kindergarten room and entrance.

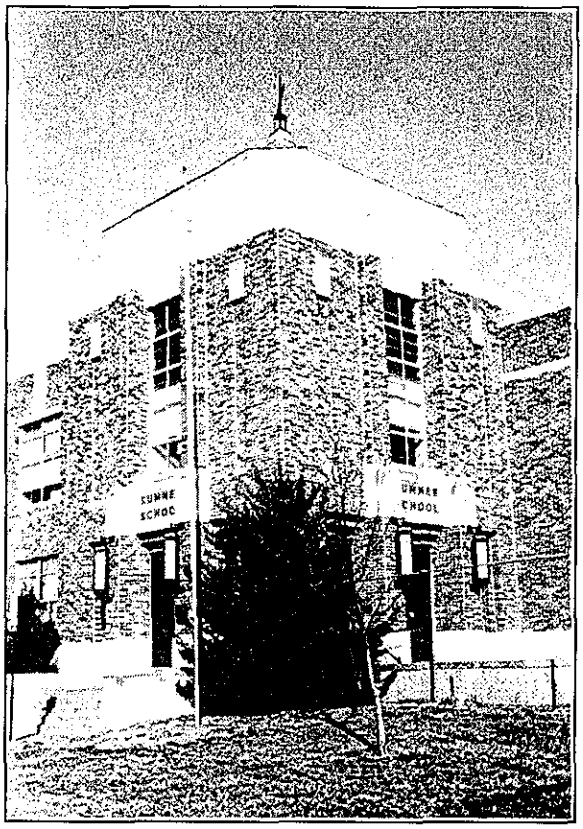


Figure A-21. Tower detail.

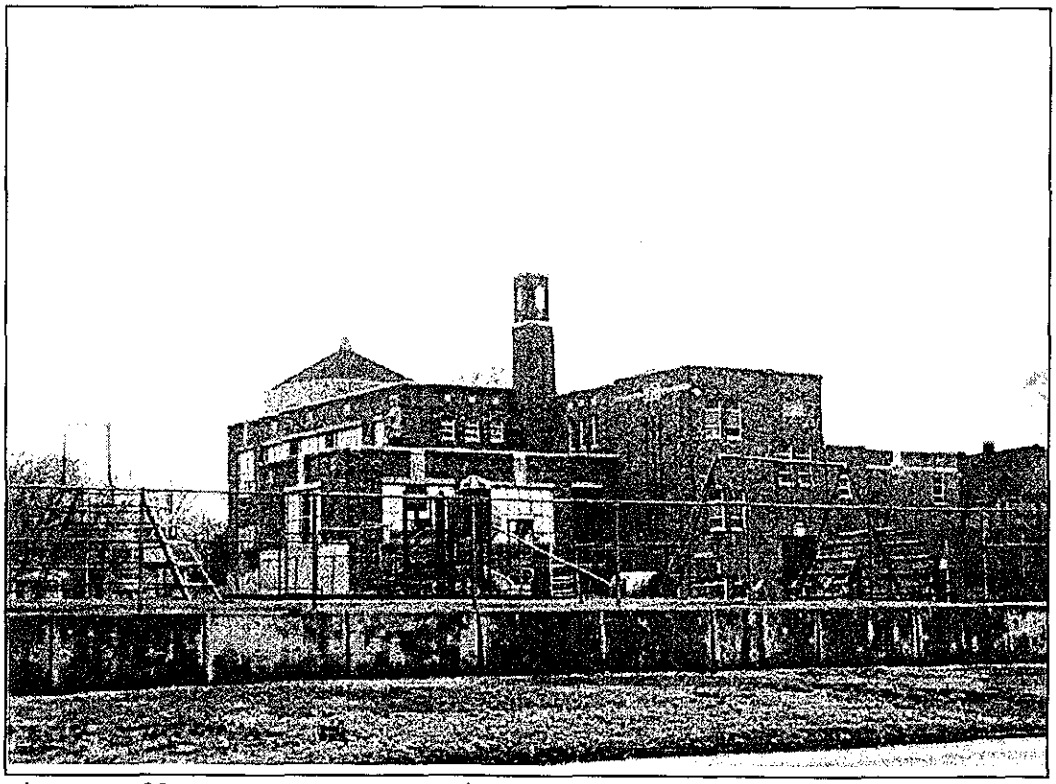


Figure A-22. A contemporary view of Sumner's playground.

Permission to use this historic photograph was withdrawn.

Figure A-23. Please note the bridge abutment located behind the girls in this historic photograph.

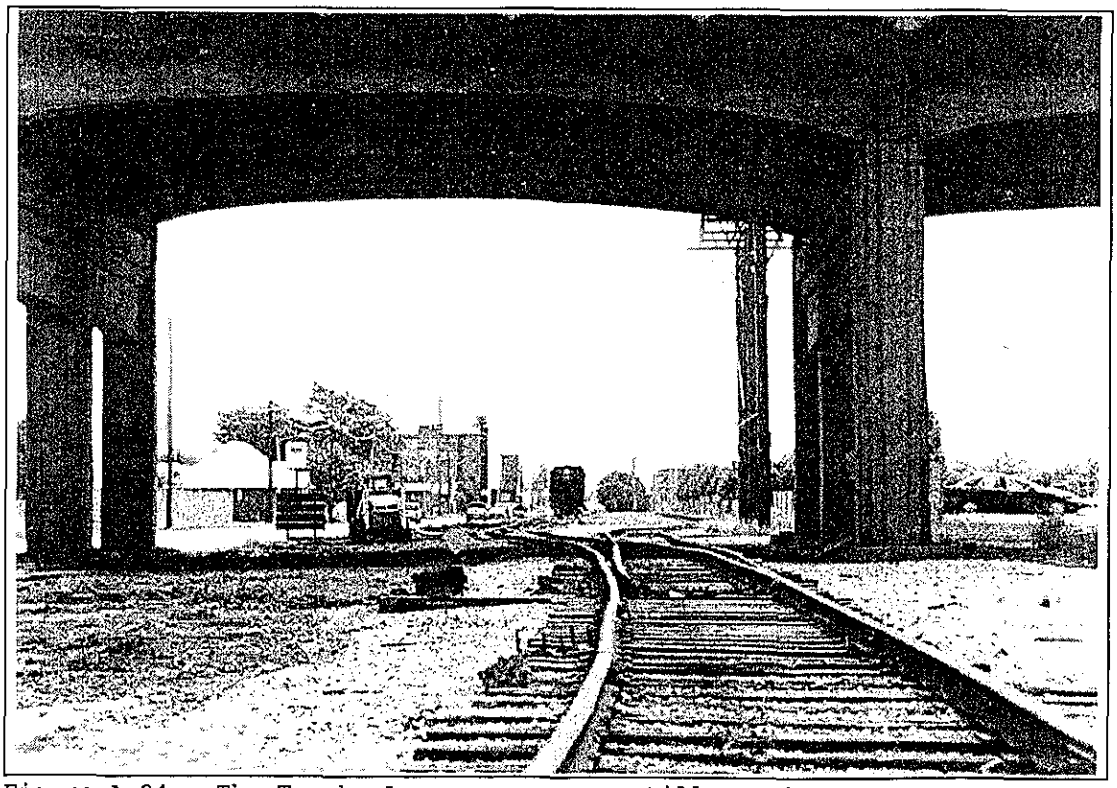


Figure A-24. The Topeka Avenue overpass still remains.

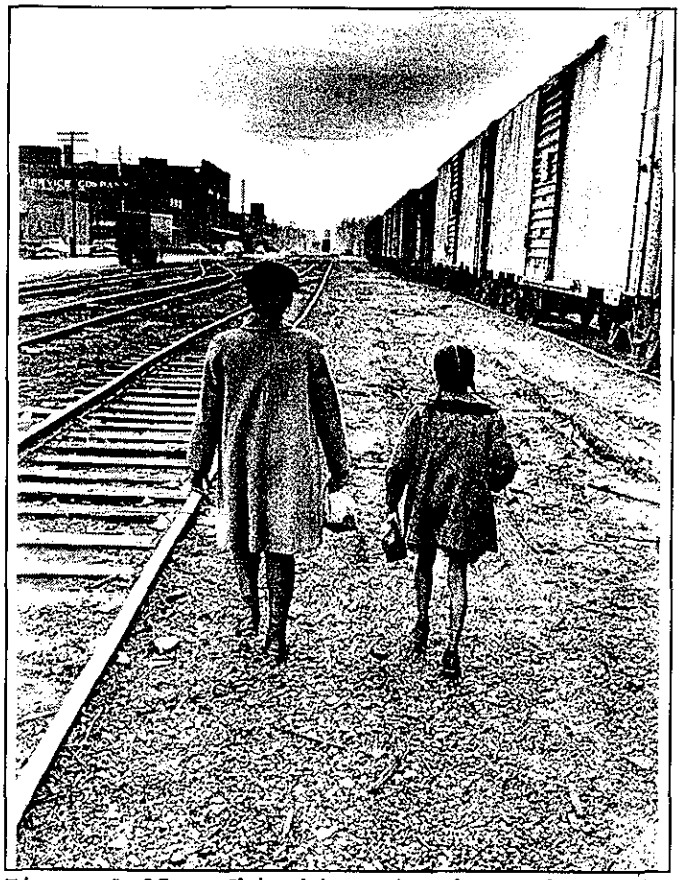


Figure A-25. This historic photo shows the switchyard in March 1953.

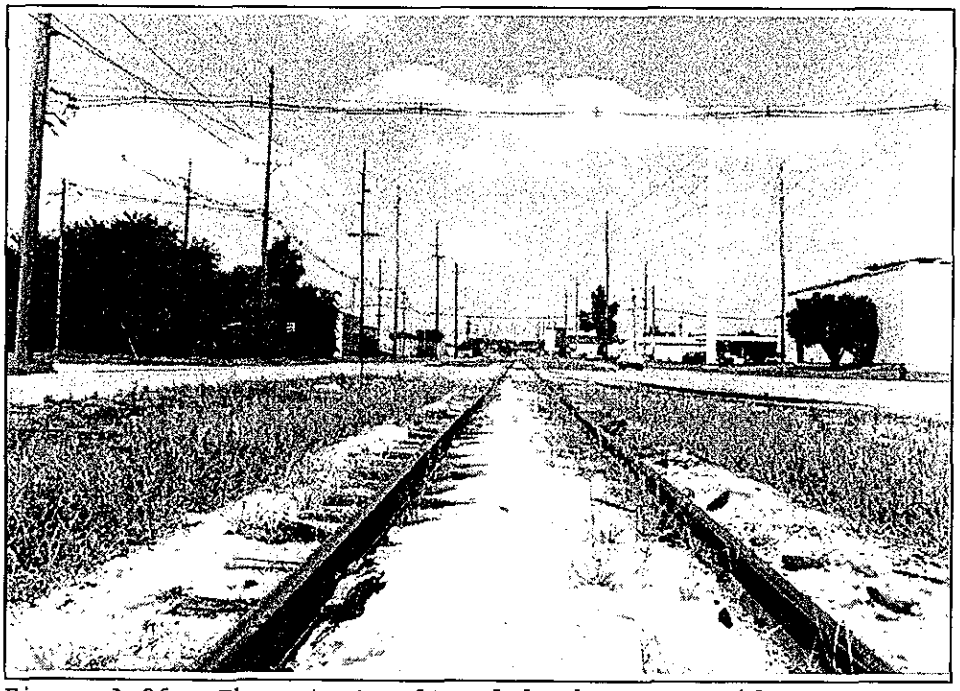


Figure A-26. The extant cultural landscape corridor.

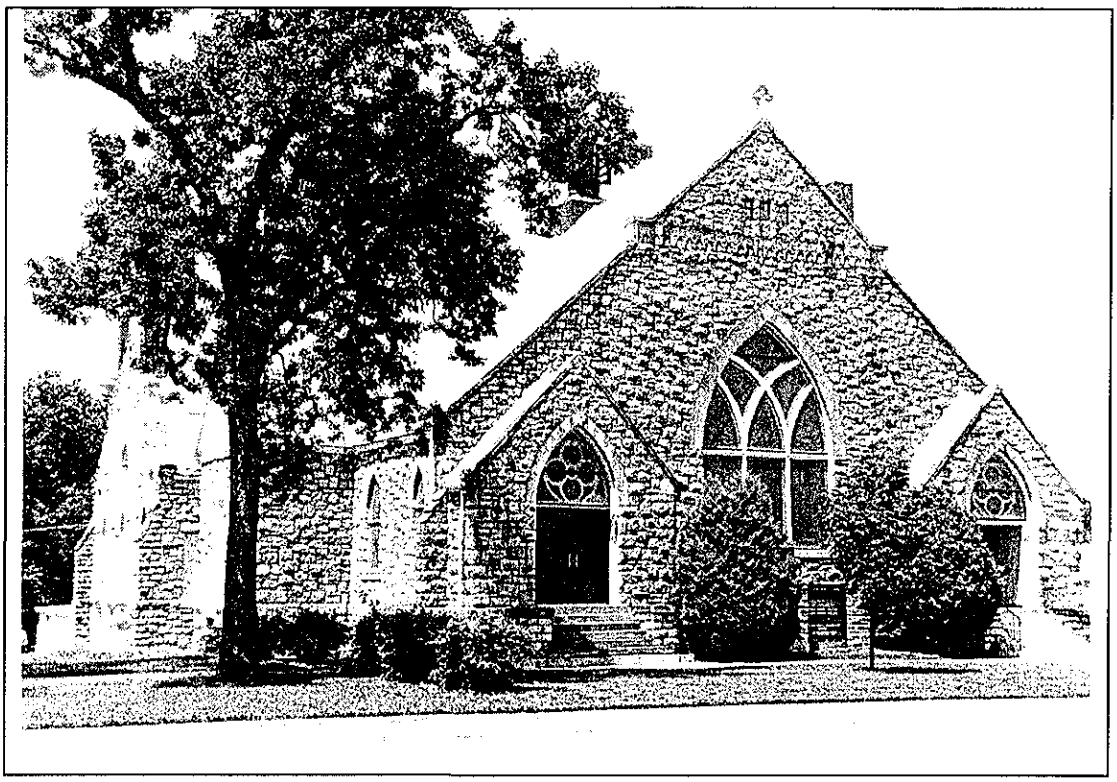


Figure A-27. St. John's AME Church, where some members of the local NAACP chapter met and worshipped.

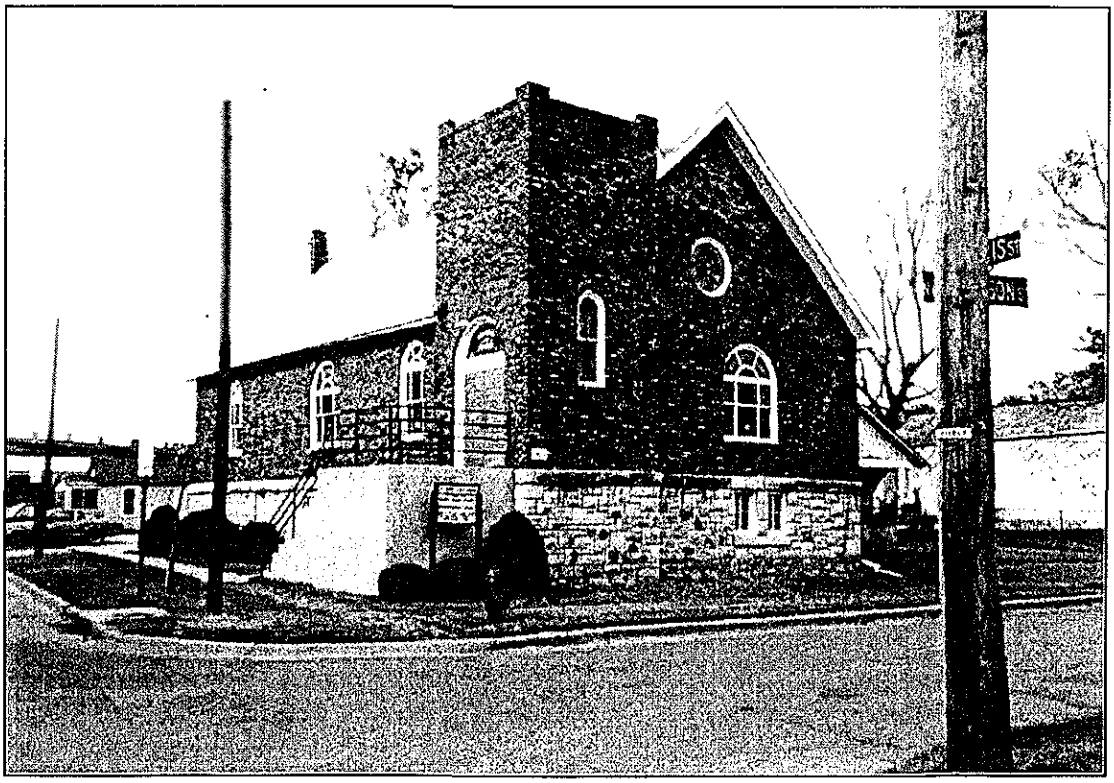


Figure A-28. Oliver Brown served as pastor of the St. Mark's AME Church at the time of the *Brown I* decision.

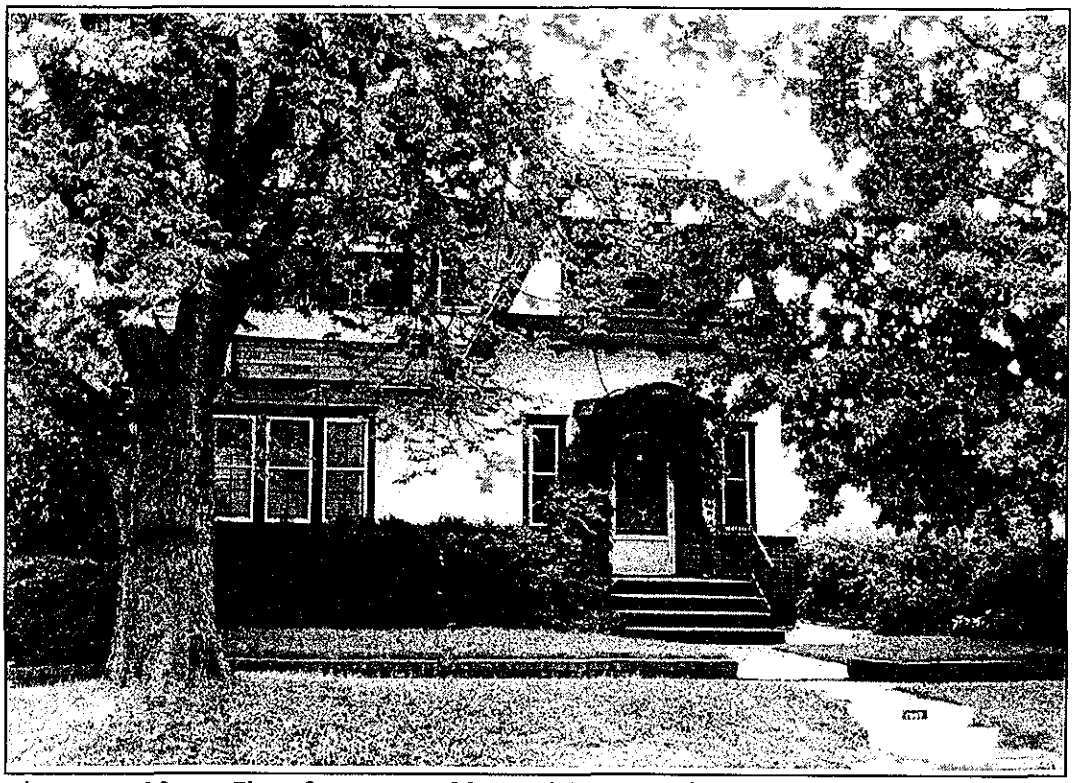


Figure A-29. The former Todd residence, where local desegregation strategy was discussed.

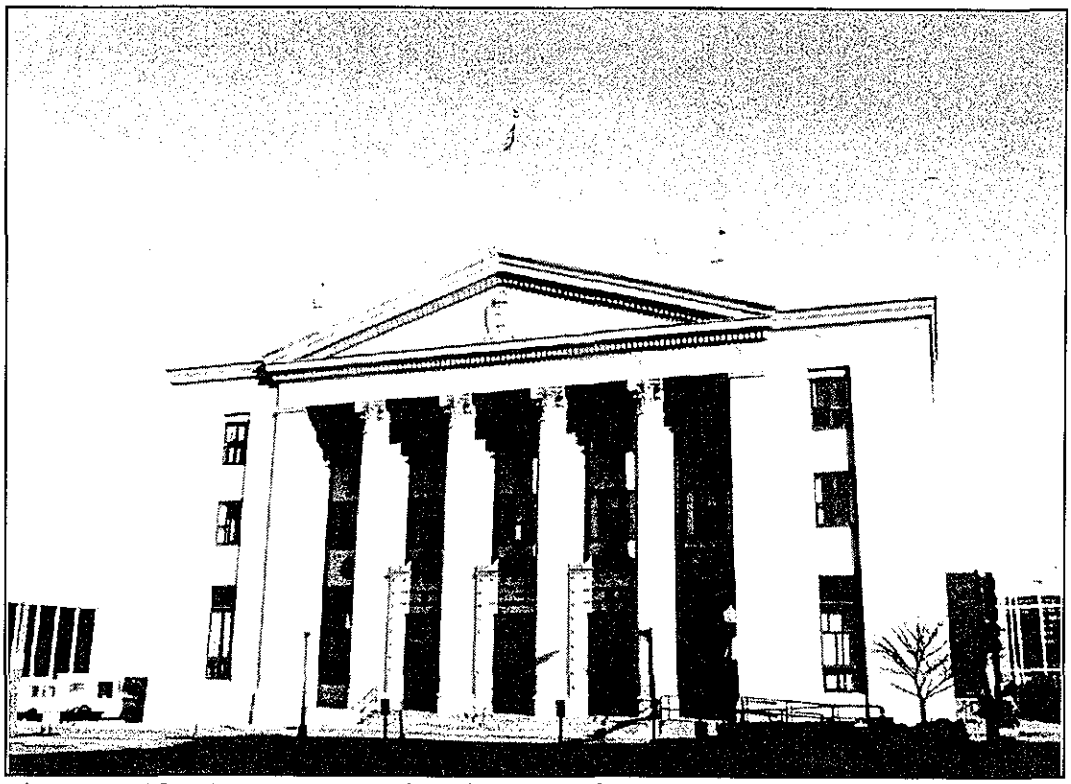


Figure A-30. Former U.S. District Courthouse, where the Kansas case was heard in June 1951.

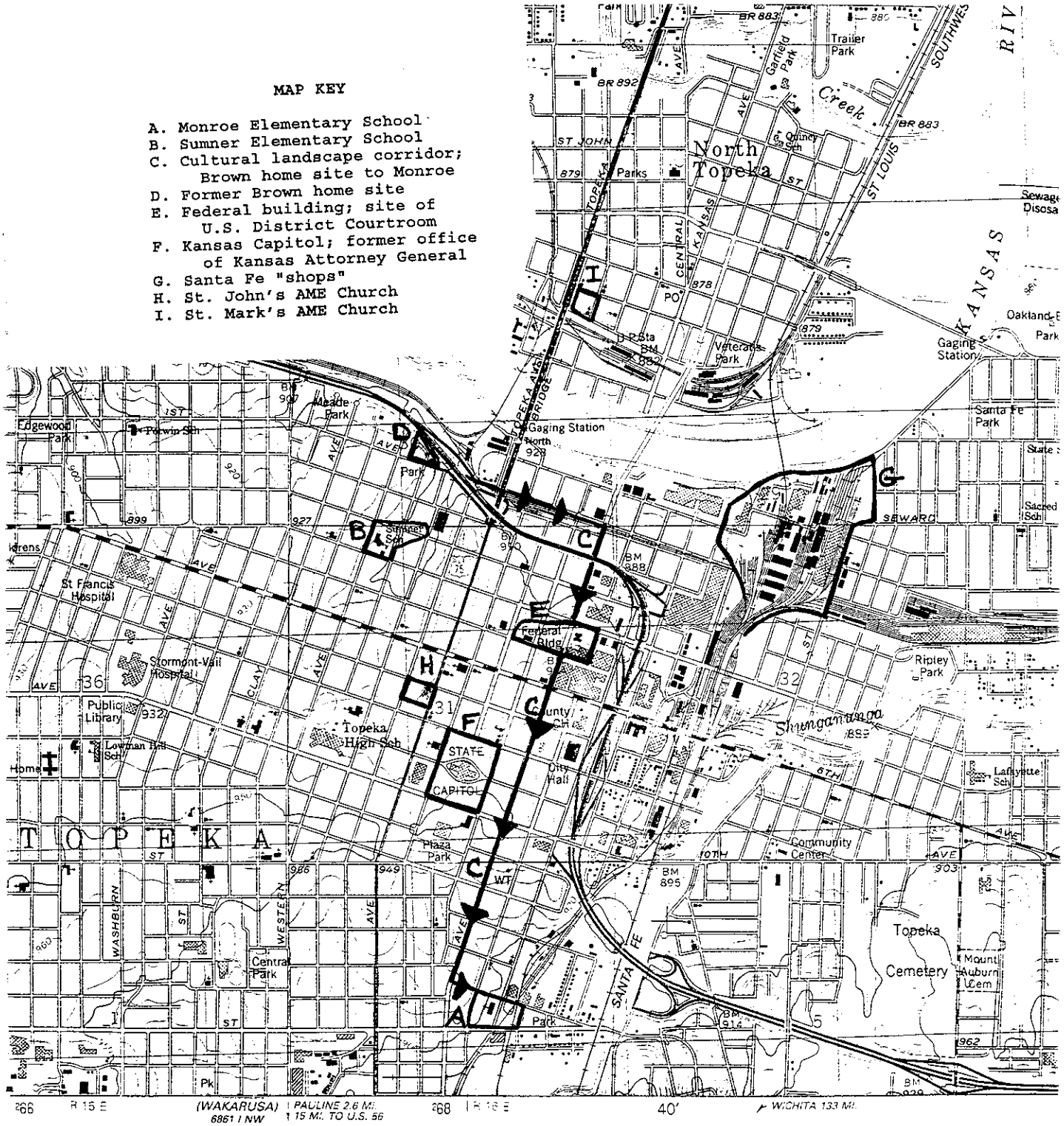
Figure A-31. The Capitol, which housed the law library and attorney general's office during the period of significance.

APPENDIX B

HRS Historical Base Map

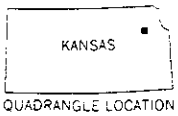
MAP KEY

A. Monroe Elementary School
B. Sumner Elementary School
C. Cultural landscape corridor; Brown home site to Monroe
D. Former Brown home site
E. Federal building; site of U.S. District Courtroom
F. Kansas Capitol; former office of Kansas Attorney General
G. Santa Fe "shops"
H. St. John's AME Church
I. St. Mark's AME Church



1 MILE
1000 0 1000 2000 3000 4000 5000 6000 7000 FEET
1 KILOMETER

CONTOUR INTERVAL 10 FEET
DOTTED LINES REPRESENT 5-FOOT CONTOURS
NATIONAL GEODETIC VERTICAL DATUM OF 1929



QUADRANGLE LOCATION

APPENDIX C

Park Enabling Act

Public Law 102-525
1-2d Congress

An Act

To provide for the establishment of the Brown v. Board of Education National Historic Site in the State of Kansas, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I, BROWN V. BOARD OF EDUCATION NATIONAL HISTORIC SITE

SEC. 101. DEFINITIONS

As used in this title--

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "historic site" means the Brown v. Board of Education National Historic Site as established in section 103.

SEC. 102. FINDINGS AND PURPOSES.

(a) FINDINGS.--The Congress finds as follows:

(1) The Supreme Court, in 1954, ruled that the earlier 1896 Supreme Court decision in Plessy v. Ferguson that permitted segregation of races in elementary schools violated the fourteenth amendment to the United States Constitution, which guarantees all citizens equal protection under the law.

(2) In the 1954 proceedings, Oliver Brown and twelve other plaintiffs successfully challenged an 1879 Kansas law that had been patterned after the law in question in Plessy v. Ferguson after the Topeka, Kansas, Board of Education refused to enroll Mr. Brown's daughter, Linda.

(3) Sumner Elementary, the all-white school that refused to enroll Linda Brown, and Monroe Elementary, the segregated school she was forced to attend, have subsequently been designated National Historic Landmarks in recognition of their national significance.

(4) Sumner Elementary, an active school, is administered by the Topeka Board of Education; Monroe Elementary, closed in 1975 due to declining enrollment, is privately owned and stands vacant.

(b) PURPOSES.--The purposes of this title are--

(1) to preserve, protect, and interpret for the benefit and enjoyment of present and future generations, the places that contributed materially to the landmark United States Supreme Court decision that brought an end to segregation in public education; and

(2) to interpret the integral role of the Brown v. Board of Education case in the civil rights movement.

(3) to assist in the preservation and interpretation of

related resources within the city of Topeka that further the understanding of the civil rights movement.

SEC 103. ESTABLISHMENT OF THE CIVIL RIGHTS IN EDUCATION: BROWN V. BOARD OF EDUCATION NATIONAL HISTORIC SITE.

(a) IN GENERAL.--There is hereby established as a unit of the National Park System the Brown v. Board of Education National Historic Site in the State of Kansas.

(b) DESCRIPTION--The historic site shall consist of the Monroe Elementary School site in the city of Topeka, Shawnee County, Kansas, as generally depicted on a map entitled "Brown v. Board of Education National Historic Site," numbered Appendix A and dated June 1992. Such map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

SEC. 104. PROPERTY ACQUISITION.

The Secretary is authorized to acquire by donation, exchange, or purchase with donated or appropriated funds the real property described in section 103(b). Any property owned by the States of Kansas or any political subdivision thereof may be acquired only by donation. The Secretary may also acquire by the same methods personal property associated with, and appropriate for, the interpretation of the historic site: Provided, however, that the Secretary may not acquire such personal property without the consent of the owner.

SEC. 105. ADMINISTRATION OF HISTORIC SITE.

(a) In General.--The Secretary shall administer the historic site in accordance with this title and the laws generally applicable to units of the National Park System, including the Act of August 25, 1916 (30 Stat. 535), and the Act of August 21, 1935 (40 Stat. 666).

(b) COOPERATIVE AGREEMENTS.--The Secretary is authorized to enter into cooperative agreements with private as well as public agencies, organizations, and institutions in furtherance of the purposes of this title.

(c) GENERAL MANAGEMENT PLAN.--Within two complete fiscal years after funds are made available, the Secretary shall prepare and submit to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a general management plan for the historic site.

SEC. 106. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $1,250,000 to carry out the purposes of this title including land acquisition and initial development.

APPENDIX D

National Historic Landmark Nomination of
Sumner & Monroe Elementary Schools

1. NAME OF PROPERTY

Historic Name: Sumner Elementary School & Monroe Elementary School

Other Name/Site Number:

2. LOCATION

Street & Number: Sumner: 330 Western Avenue
Topeka, Kansas 66606

Not for publication:____

Monroe: 1515 Monroe Street
Topeka, Kansas 66601

City/Town: Topeka Vicinity:____

State: Kansas County: Shawnee Code: 177 Zip Code: 66601

3. CLASSIFICATION

Ownership of Property
X :Private
X :Public-local
___:Public-State
___:Public-Federal

Category of Property
X :Building(s)
___:District
___:Site
___:Structure
___:Object

Number of Resources within Property

Contributing	Noncontributing
2 :Buildings	___:Buildings
___:Sites	___:Sites
___:Structures	___:Structures
___:Objects	___:Objects
2 :**Total**	0 :**Total**

Number of Contributing Resources Previously Listed in the National Register: 1

Name of related multiple property listing:___

4. STATE/FEDERAL AGENCY CERTIFICATION

As the designated authority under the National Historic Preservation Act of 1986, as amended, I hereby certify that this ___ nomination ___ request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60. In my opinion, the property ___ meets ___ does not meet the National Register Criteria.

Signature of Certifying Official — Date

State or Federal Agency and Bureau — Date

In my opinion, the property ___ meets ___ does not meet the National Register criteria.

Signature of Commenting or Other Official — Date

State or Federal Agency and Bureau — Date

5. NATIONAL PARK SERVICE CERTIFICATION

I, hereby certify that this property is:

___ Entered in the National Register
___ Determined eligible for the National Register
___ Determined not eligible for the National Register
___ Removed from the National Register
___ Other (explain):

Keeper — Date of Action

6. FUNCTION OR USE

Historic: Education Sub: School

Current: Education (Sumner) Sub: School (Sumner)
Vacant (Monroe)

7. DESCRIPTION

Architectural Classification
Art Deco (Sumner)
Italian Renaissance (Monroe)

Materials
Foundation: Limestone
Walls: Brick
Roof: Asphalt Shingle
Other: Steel (casement windows)
Limestone (quoins, cornice, sills, and panels)

DESCRIBE PRESENT AND HISTORIC PHYSICAL APPEARANCE.

THE SUMNER SCHOOL

The Sumner Elementary School was constructed in 1936 by the School Board of Topeka, Kansas. The school stands on 3.6 acres, has a total of 31,306 square feet with 17 rooms (10 classrooms), and has a capacity for 240 students and 30 staff members. The architect was Thomas W. Williamson of Topeka, perhaps best noted for his design of the Topeka High School and the First National Bank of Topeka.

The Sumner Elementary School was originally designed as a two-story, brick structure with 13 rooms, a tower, a basement, and auditorium. The exterior is enhanced by stone decorative bas reliefs in the art deco style. In the years since its construction, the school has undergone several renovations. For example, in the 1930s, manual training and cooking were taught in the elementary school; as the curriculum changed, these rooms were converted to a media center and teacher's lounge. In other remodelings, the auditorium became a multi-purpose room, the tower was renovated to contain a special reading classroom, and the basement was remodeled to contain a playroom and two additional classrooms. The specific dates of these renovations is unknown, although it is believed that the manual training and cooking rooms were changed during the early 1950s and the tower, auditorium, and basement were changed some years later.

Since the Sumner Elementary School is still in use, the school district has continued to update and repair the building as needed. These renovations represent modifications necessary to meet the continuing needs of the students at the Sumner Elementary School and *do not affect the integrity of the property as a functioning elementary school.* The Sumner Elementary School is essentially the same today as it was in 1954.

THE MONROE SCHOOL[1]

The Monroe School was constructed in 1926 by the School Board of Topeka, Kansas. The architect was Thomas W. Williamson of Topeka. Williamson designed all of the public schools in Topeka from 1912 through the 1950s.

At the time of its construction the Monroe School was one of four elementary schools in Topeka serving the black community. The other black elementary schools were the Washington School, the McKinley School and the Buchanan School. The Washington School no longer survives. The McKinley School and the Buchanan School survive, but are no longer owned by the Topeka Board of Education. The McKinley School is used as a storage building and the Buchanan School was remodeled for use as an office building. The Monroe

[1] The descriptive material for the Monroe School was supplied in a letter to Harry Butowsky by Ms. Martha Hagedorn-Krass, Architectural Historian for the Kansas State Historical Society, dated January 11, 1991.

School was closed in 1975 due to declining enrollment. The school is now owned by Mr. Mark Stueve, President of S/S Builders, Inc., of Topeka and is not occupied.

The Monroe School is a two-story, five-bay, red brick Italian Renaissance style building and stands on an ashlar cut limestone foundation. A low pitched, asphalt shingle clad, hipped roof with wide, overhanging eves surmounts the building. The building measures 61 feet north to south and 174 feet east to west overall and has an eastern facade orientation. A flat roofed gymnasium projects centrally from the building's western elevation, measuring 15 feet from east to west and 72 feet from north to south. The building fronts onto a large grassy park and is located in a residential and low-density commercial/industrial neighborhood.

An ashlar cut limestone entrance pavilion defines the building's center facade bay. A double doorway surmounted by a fanlight stands in the pavilion's center. The building's name, "Monroe", and the building's construction date, "1926", are incised above and around the main entry door. Double doorways surmounted by rectangular transoms provide entry into the building on the north and south elevations.

Steel casement windows surmounted by transoms compose the building's fenestration. Four bands of windows delineate each level on the eastern facade. The band treatment is also employed on the western elevation. Three fanlight windows are incorporated on the second level of the gymnasium on the western elevation. One window surmounts each door on the north and south elevations. Brick lintels surmount each window and limestone sills underscore each window.

Limestone quoins delineate each corner of the main building, excluding the gymnasium. Two carved limestone panels decorate the north and south elevations, flanking each door. Each panel is set off by a rectangular band of brick and limestone corner stones. A continuous limestone cornice surmounts the building.

The interior and exterior of the building maintain a high degree of structural and architectural integrity although some of the walls in the classrooms on the second floor have been removed. Most of the original wooden floors, doors, and paneling in the school survive. The Monroe Elementary School is still essentially the same today as it was in 1954 at the time Linda Brown attended the school.

8. STATEMENT OF SIGNIFICANCE

Certifying official has considered the significance of this property in relation to other properties:
Nationally: X Statewide:___ Locally:___

Applicable National Register Criteria: A X B___ C___ D___

Criteria Considerations (Exceptions): A___ B___ C___ D___ E___ F___ G X

NHL Criteria: 1

NHL Criteria Exception: 8

NHL Theme(s): XXVIII: The Law
A. The Development of Principles in the Legal Specialties

XXXI: Social and Humanitarian Movements
M. Civil Rights Movements

XXVII: Education
B. Elementary, Intermediate, and Secondary Education
5. Development of Equal Educational Opportunity

Area(s) of Significance	Period(s) of Significance	Significant Date(s)
Law	1951-1954	May 17, 1954
Politics/Government		
Social History		

Significant Person(s): _____

Cultural Affiliation: N/A

Architect/Builder: Thomas Williamson

STATE SIGNIFICANCE OF PROPERTY, AND JUSTIFY CRITERIA, CRITERIA CONSIDERATIONS, AND AREAS AND PERIODS OF SIGNIFICANCE NOTED ABOVE.

The Sumner and Monroe Elementary Schools are significant because of their association with the case of Brown v. Board of Education of Topeka (1954), in which the Supreme Court concluded that "separate educational facilities are inherently unequal" thus effectively denying the legal basis for segregation in 21 states with segregated schoolrooms and starting a revolution in the legal status of black Americans that continues to this day. The Sumner Elementary School is the neighborhood school that refused to enroll Linda Brown because she was black, thus precipitating the case that gave its name to the Supreme Court's 1954 decision. The Monroe Elementary School is the segregated school that Linda Brown attended before the Supreme Court's 1954 decision. The location of both schools in Topeka and the quality of education they provided to Linda Brown, and the other plaintiffs in the case, were material to the finding of the Supreme Court in the Brown decision.

BACKGROUND[1]

The achievement of Civil Rights for black Americans in the twentieth century did not require a change in the Constitution as much as the fulfillment of the original intention of the framers of the 13th, 14th, and 15th Amendments to the Constitution. The purpose of these amendments was to integrate the freed slaves into the political and social order on the basis of legal equality. Reconstruction fell short of this goal, and in the late nineteenth and early twentieth centuries, patterns of discrimination between and physical separation of the races that had begun to take shape in the South after the Civil War were transformed into legally sanctioned segregation and disenfranchisement.

At the center of the struggle for equal civil rights was the case of Plessy v. Ferguson, (1896), in which the Supreme Court established the doctrine of separate but equal in the use of public transportation facilities. While the Plessy decision itself did not involve the issue of schools, the principle carried over. The segregation of whites and blacks was valid, if the facilities were equal, since it is the "equal" protection of the laws that is guaranteed by the Fourteenth Amendment.

At first, the Supreme Court was extremely lenient in construing what this "equality" required when it held in Cummings v. County Board of Education (1899) that there was no denial of "equal" protection of the laws in the failure of a Southern county to provide a high school for sixty black children, although it maintained a high school for white children. The Court

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[1] Material for the statement of significance was taken from the following sources.

Robert F. Cushman, Leading Constitutional Decisions (16th ed.: Englewood Cliffs, New Jersey, Prentice Hall, Inc. 1981), pp. 327-35.

Alfred H. Kelley, Winfred A. Harbison and Herman Belz, The American Constitution: Its Origins and Development (New York: W.W. Norton & Company, Inc., 1983), pp. 602-12.

Richard Kluger, Simple Justice (New York: Vantage Books, 1975), pp. 407-411.

was satisfied with the county's defense that it could not afford to build a high school for black children. In other cases dealing with Negro segregation which reached the Supreme Court after Plessy, the doctrine of "separate but equal" was followed and never reexamined. The Court seemed content with the Plessy decision. For example, in Berea College v. Kentucky (1908), the Court held that the state could forbid a college, even though a private institution, to teach whites and blacks at the same time and place. This left no doubt of the validity of the laws requiring the education of white and black children in separate tax-supported schools.

During the forty-year period after 1914, the Court, applying ever more rigid standards of equality, began to find that Negro plaintiffs were being denied equality of treatment as specified in the Plessy decision. In McCabe v. Atchison, T.& S. Ry. Co. (1914), an Oklahoma law was held not to accord equal accommodations to blacks and whites when it allowed railroads to haul sleeping, dining, and chair cars for the exclusive use of whites without providing them on demand for blacks. In Missouri ex rel. Gaines v. Canada (1938), the court held that Gaines, a Black man, was entitled to be admitted to the law school of the University of Missouri, in the absence of other and proper provision for his legal education within the state. In other words, Missouri did not have a separate and equal law school for Black people and thus had to admit Gaines to the law school of the University of Missouri. In Sweatt v. Painter (1950), the court rejected the argument from the State of Texas that its new law school for Blacks afforded educational opportunity equal to those at the University of Texas Law School.

By the fall of 1952 the Supreme Court had on its docket cases from four states, Kansas, South Carolina, Virginia, Delaware, and from the District of Columbia, challenging the constitutionality of racial segregation in public schools. In several of these cases the facts showed that both the black and white schools were as equal with respect to buildings, salaries, teachers and other tangible factors as could be expected. The issue before the Court was the constitutionality of segregation per se--the question whether the doctrine of Plessy v. Ferguson should be affirmed or reversed.

The five cases were argued before the Court in December 1952. The death of Chief Justice Vinson caused the cases to be reargued in December 1953, after the appointment of Earl Warren as Chief Justice. On May 17, 1954, the Court issued its historic decision in which it concluded that "Separate educational facilities are inherently unequal." After sixty years, Plessy v. Ferguson was overturned.

SUMMARY

This decision, in Brown v. Board of Education of Topeka, written by Chief Justice Earl Warren, was momentous. The social and ideological impact of the case can not be over-estimated. The decision was unanimous with only a single opinion of the Court. The issue of the legal separation of the races was settled. Segregation was a violation of the Fourteenth Amendment of the Constitution and was unconstitutional. By denying Linda Brown the right to enroll in the neighborhood Sumner Elementary School, the Board of Education of Topeka, Kansas, started the chain of events that led to the Supreme Court and the case of Brown v. Board of Education of Topeka. The Sumner Elementary School and

the Monroe Elementary School symbolize both the harsh reality of discrimination permitted by the Plessy decision in 1896 and the promise of equality embodied in the Fourteenth Amendment to the Constitution that was realized after 1954.

FINAL NOTE

This nomination is a revision of the original National Historic Landmark nomination for the Sumner Elementary School, dated December 1986. The original nomination recommended the designation of only the Sumner Elementary School in Topeka, Kansas, for its association with the case of Brown v. Board of Education of Topeka. After further review of the material facts relating to the Brown decision, it was decided to amend the original nomination to include the Monroe Elementary School in Topeka, Kansas for the following reasons:

The Reverend Oliver Brown was the principal plaintiff in the case and the Monroe Elementary School was the black elementary school that Linda Brown attended when the suit was filed in the United States District Court for Kansas on February 28, 1951. The distance of the Monroe Elementary School from Linda Brown's home and the proximity of the Sumner Elementary School to her home was the central reason the Reverend Oliver Brown agreed to be a plantiff in the case. The location of the Monroe school and the quality of the education provided by the Monroe school were significant judgmental factors that were considered by the Supreme Court in its decision of the case.[2]

A discussion concerning the effect of the segregation of the races in the Topeka elementary schools was included in the findings of the United States District Court for Kansas and the Supreme Court adopted this language as the basis for its decision.

The specific language quoted by the Supreme Court in the Brown decision stated the following:

> "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of the child to learn. Segregation with the sanction of law, therefore, has the tendency to (retard) the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial(ly) integrated school system."

[2] Kluger, Simple Justice, pp. 407-11.

This language was originally drafted by the First District Court of Kansas, using the testimony of Louisa Pinkham Holt, an assistant professor in the psychology department at the University of Kansas, who served as one of the expert witnesses for the plaintiffs in the Brown case.[3]

[3] Kluger, Simple Justice, 419-424, 783.

9. MAJOR BIBLIOGRAPHICAL REFERENCES

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Cushman, Robert F. Leading Constitutional Decisions. 16th ed. Englewood Cliffs, New Jersey: Prentice Hall, 1981.

David, Andrew. Famous Supreme Court Cases. Minneapolis, Minnesota: Lerner Publications Company, 1980.

Fribourg, Majorie G. The Supreme Court in American History. Philadelphia, Pennsylvania: Macrae Smith Company, 1984.

Kelley, Alfred H.; Harbison, Winfred A.; Belz, Herman. The American Constitution: Its Origins and Development. New York: W.W. Norton & Company, Inc., 1983.

Kluger, Richard. Simple Justice. New York: Vantage Books, 1975.

Powledge, Fred. Free At Last: The Civil Rights Movement and the People Who Made It. Boston: Little Brown and Company, 1991.

PREVIOUS DOCUMENTATION ON FILE (NPS):

___ Preliminary Determination of Individual Listing (36 CFR 67) has been requested.
_X_ Previously Listed in the National Register.
___ Previously Determined Eligible by the National Register.
_X_ Designated a National Historic Landmark.
___ Recorded by Historic American Buildings Survey: #_____
___ Recorded by Historic American Engineering Record: #_____

PRIMARY LOCATION OF ADDITIONAL DATA:

X State Historic Preservation Office
___ Other State Agency
___ Federal Agency
___ Local Government
___ University
X Other: Specify Repository: Washburn University School of Law
Topeka, Kansas
Brown Foundation Archives

University of Kansas
Lawrence, Kansas
Charles and John Scott Papers

Kansas State Historical Society
Topeka, Kansas
Kansas State Supreme Court Records
Various dissertations and newspaper clippings

10. GEOGRAPHICAL DATA

Acreage of Property: Sumner: 3.6 Acres
Monroe: 2.017 Acres

UTM References: Zone Easting Northing

Sumner: A 15 267910 4326430
Monroe: A 15 268360 4324140

VERBAL BOUNDARY DESCRIPTION:

The boundary for the Sumner Elementary School conforms to the lots enclosed by the dark line on the attached boundary description map. This was the boundary of the Sumner Elementary School at the time of the 1954 Supreme Court decision.

The boundary for the Monroe Elementary School includes lots 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, 525, 527, 529, and 531 on Monroe Street and Lots 506, 508, 510, 512, 514, 516, 520, and 522 on the east side of Monroe Street, all in Ritchie's addition to the City of Topeka, Shawnee County, Kansas, enclosed by the dark line of the attached boundary description map. This was the boundary of the Monroe Elementary School at the time of the 1954 Supreme Court decision.

BOUNDARY JUSTIFICATION:

These are the historic boundaries associated with both the Sumner and Monroe schools at the time of the 1954 Supreme Court decision.

11. FORM PREPARED BY

Name/Title: Ms. Martha Hagedorn-Krass
Architectural Historian
Kansas State Historical Society
120 West Tenth Street
Topeka, Kansas 66612-1291

and

Dr. Harry A. Butowsky, Historian,

Organization: National Park Service, Division of History (418)

Street/#: P.O. Box 37127

City/Town: Washington

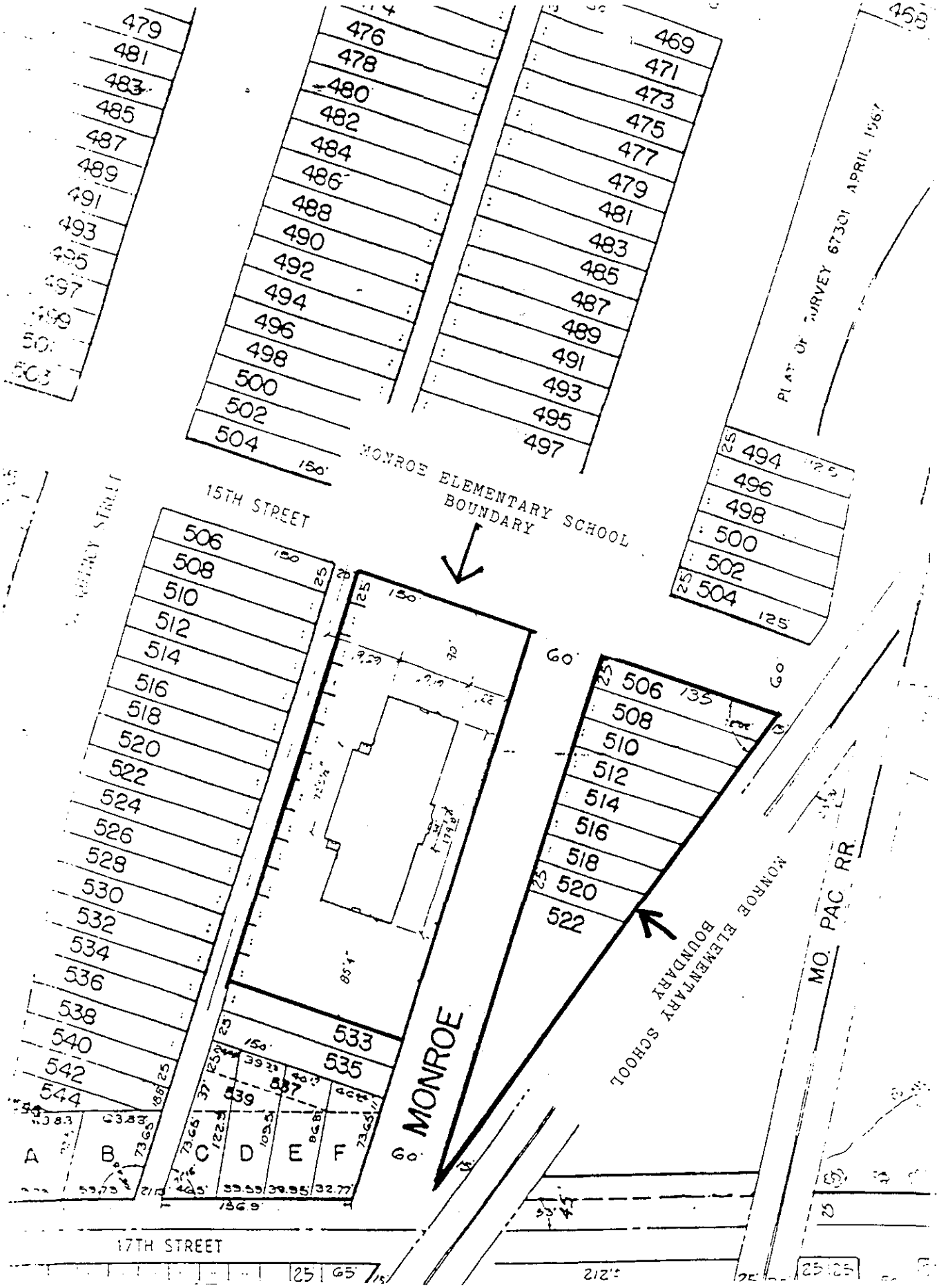
State: District of Columbia

ZIP: 20013-7127

Telephone: (202) 343-8155

Date: June 20, 1991

Topeka Quadrangle
MONROE ELEMENTARY SCHOOL
Topeka Quadrangle
UTM References
15/268360/4326430
North Topeka
Creek
Radio Sta (KTOP)
Trailer Park
Parks
Veterans Park
Gaging Station
Edgewood Park
Childrens Park
St Francis Hospital
Stormont-Vail Hospital
Public Library
Lowman Hill Sch
Methodist Home
Federal Bldg
County Ct H
Topeka High Sch
STATE CAPITOL
City Hall
Shunganunga
Plaza Park
Community Center
Central Park
Reservoir
WASHBURN UNIVERSITY
Topeka Cemetery
Hillcrest Park
SANTA FE
SEWARD
T O P E K A



MONROE ELEMENTARY SCHOOL BOUNDARY
15TH STREET
17TH STREET
MONROE
MO. PAC. RR.
PLAT OF SURVEY 67301 APRIL 1967
A
B
C
D
E
F

DESCRIPTION OF LAND
OWNED BY BOARD OF EDUCATION

Name SUMNER SCHOOL Street No. Fourth & Western Ave. File Checked Mar.28,1946 By R Dilgey

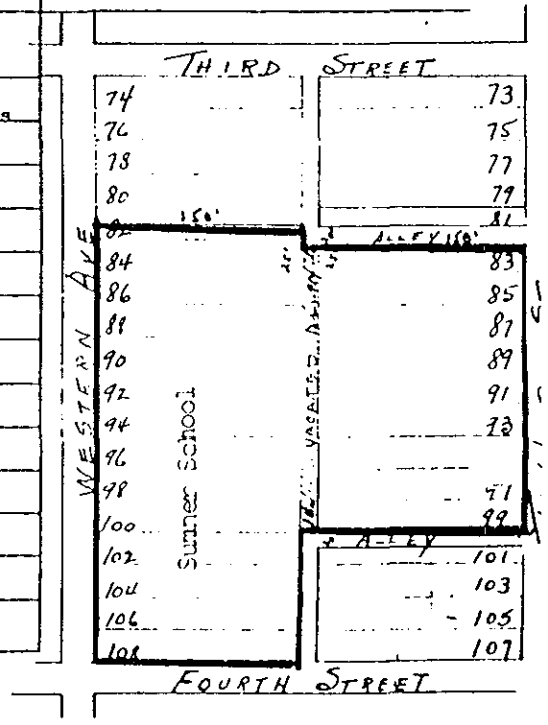
Number of Lots	Legal Description Lot Numbers	Location			Addition
13½	Even Numbers Only S½-82, 84 to 108	ON: Western Ave	BETWEEN: Third	& Fourth St.	City of Topeka, Sec.31
10	Odd Numbers only S½-81, 83 to 99, N½-101	ON: Taylor St.	BETWEEN: Third	& Fourth	City of Topeka, Sec.31
		ON:	BETWEEN:	&	
		ON:	BETWEEN:	&	
		ON:	BETWEEN:	&	

REMARKS

Deeds & Abstracts on file for all Described Property

However Lots 97,99& N½ of 101 were acquired through Condemnation Proceedings

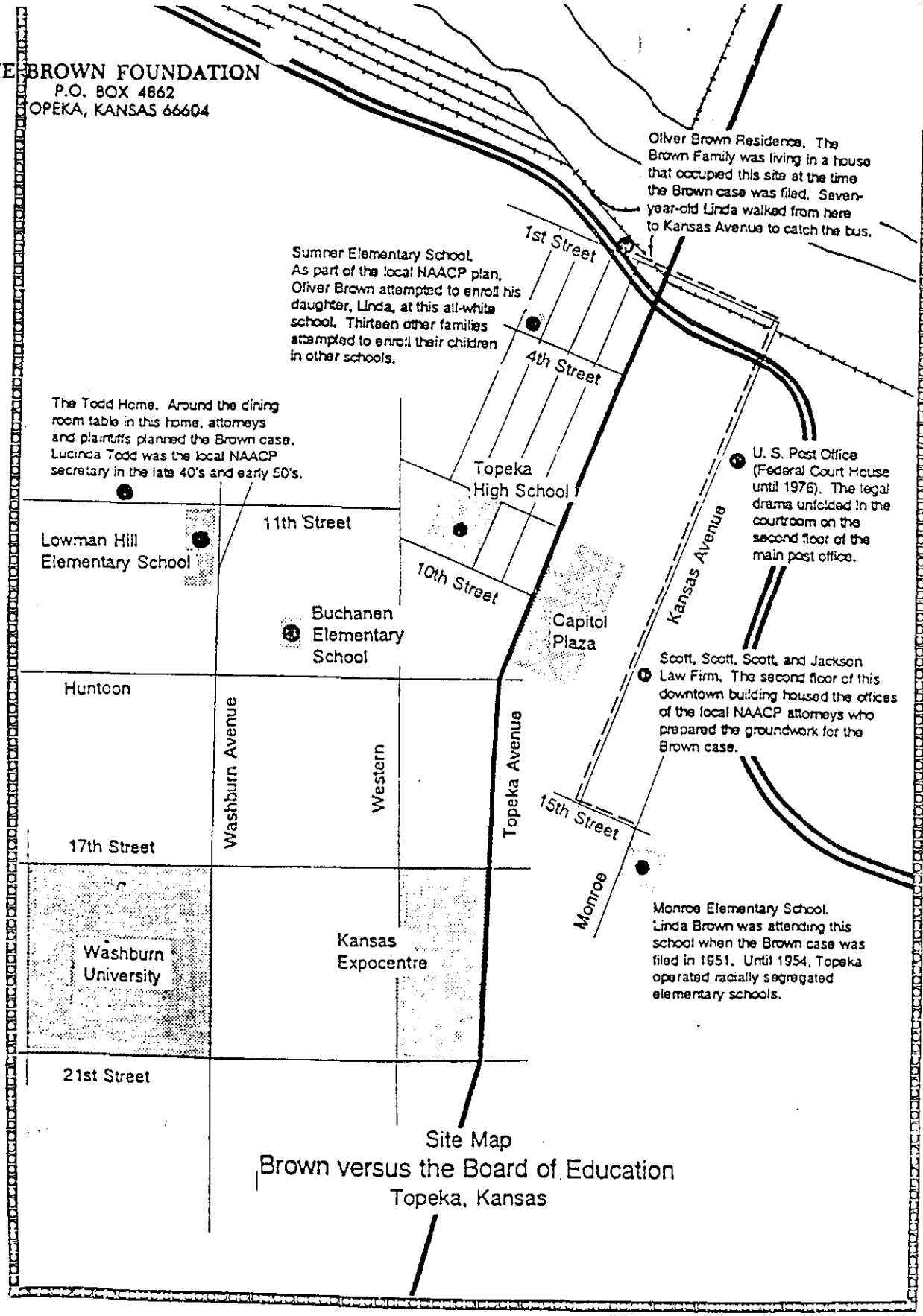
The South 12½ Ft of lot 81 and North 7½' of Lot 83, also the North 12½' of lot 101 and the south 7½' lot 99 were deeded to the city for alleys



Sumner Elementary School

Boundary Description Map

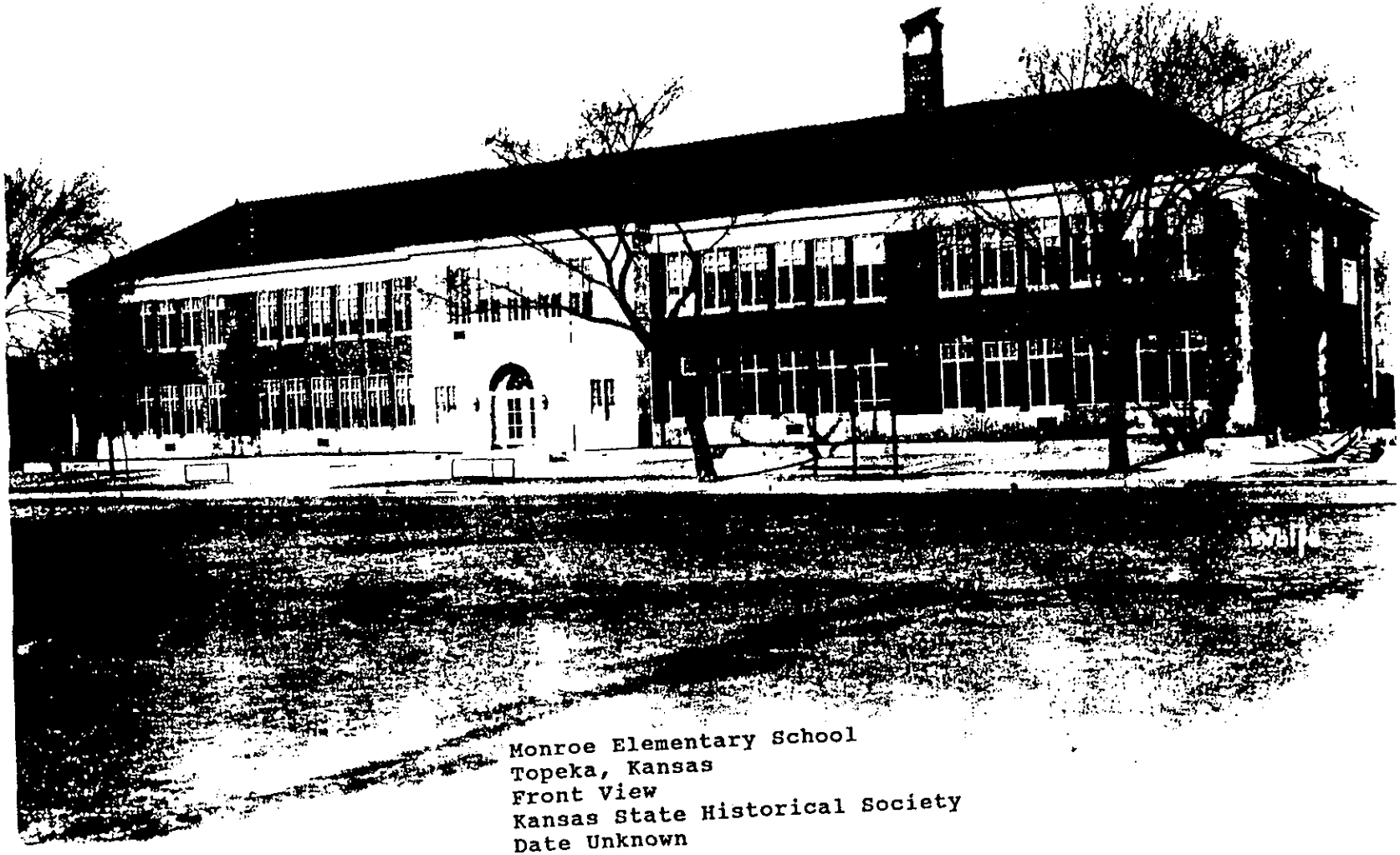
THE BROWN FOUNDATION
P.O. BOX 4862
TOPEKA, KANSAS 66604



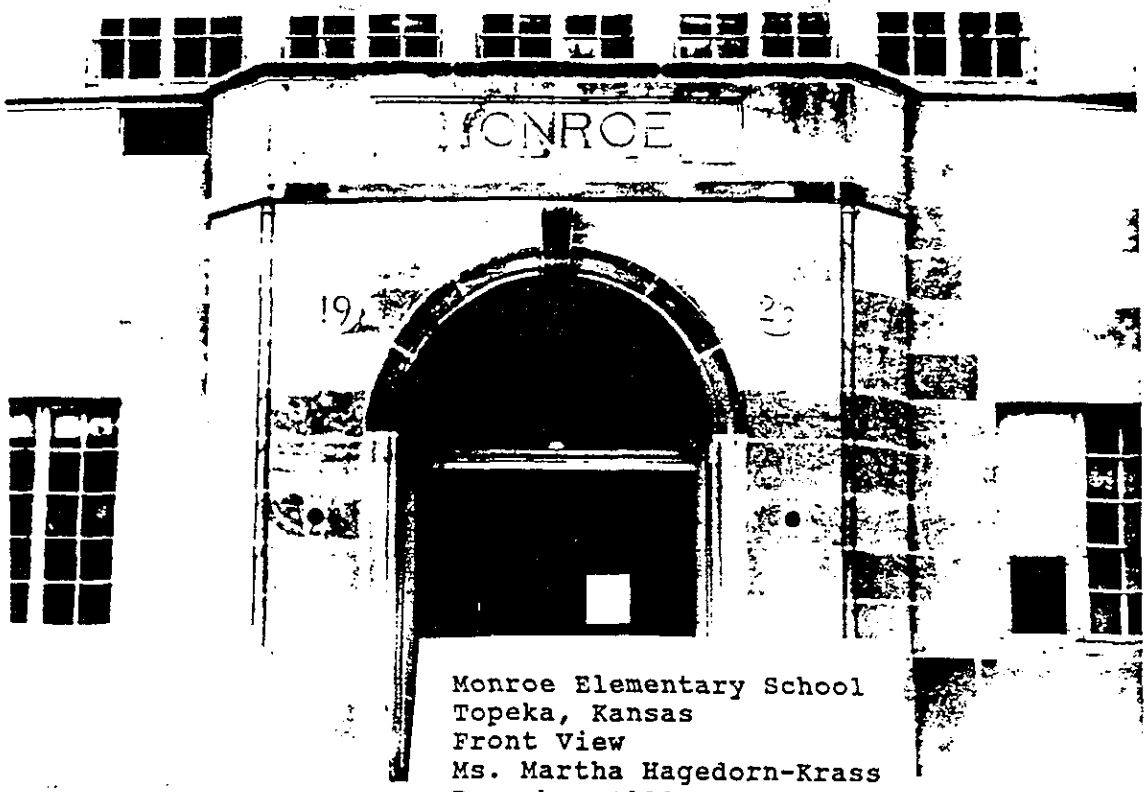
Site Map

Brown versus the Board of Education

Topeka, Kansas



Monroe Elementary School
Topeka, Kansas
Front View
Kansas State Historical Society
Date Unknown



Monroe Elementary School
Topeka, Kansas
Front View
Ms. Martha Hagedorn-Krass
December 1990

Monroe Elementary School
Topeka, Kansas
Front View
Ms. Martha Hagedorn-Krass
December 1990

APPENDIX E

National Register of Historic Places and National Historic Landmark Nominations of Related Cultural Resources

ARKANSAS

Little Rock [Central] High School, Little Rock, Pulaski County
NRHP / NHL - August 19, 1977

DELAWARE

Howard High School, Wilmington, New Castle County
NRHP - February 21, 1985

Redding House, Wilmington, New Castle County
Preliminary Assessment - June 1992

DISTRICT of COLUMBIA

M Street High School, District of Columbia
NRHP - October 23, 1986

Supreme Court Building, District of Columbia
NHL - 1987

SOUTH CAROLINA

Summerton High School, Summerton, Clarendon County
NRHP - August 26, 1994

VIRGINIA

Richard Russa Moton High School, Farmville vicinity, Prince Edward County
DOE - December 1994

Form No. 10-300 (Rev. 10-74) 60-502-0100-73

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

Listed: 8-19-77
NR

NATIONAL REGISTER OF HISTORIC PLACES INVENTORY -- NOMINATION FORM

RECEIVED

DATE ENTERED

SEE INSTRUCTIONS IN *HOW TO COMPLETE NATIONAL REGISTER FORMS*
TYPE ALL ENTRIES -- COMPLETE APPLICABLE SECTIONS

1 NAME

HISTORIC
Little Rock High School

AND/OR COMMON
Little Rock Central High School

2 LOCATION

STREET & NUMBER
14th and Park Streets — NOT FOR PUBLICATION

CITY, TOWN
Little Rock — VICINITY OF

CONGRESSIONAL DISTRICT
Second

STATE
Arkansas

CODE
05

COUNTY
Pulaski

CODE
119

3 CLASSIFICATION

CATEGORY	OWNERSHIP	STATUS	PRESENT USE	
__DISTRICT	X PUBLIC	X OCCUPIED	__AGRICULTURE	__MUSEUM
X BUILDING(S)	__PRIVATE	__UNOCCUPIED	__COMMERCIAL	__PARK
__STRUCTURE	__BOTH	__WORK IN PROGRESS	X EDUCATIONAL	__PRIVATE RESIDENCE
__SITE	PUBLIC ACQUISITION	ACCESSIBLE	__ENTERTAINMENT	__RELIGIOUS
__OBJECT	__IN PROCESS	X YES: RESTRICTED	__GOVERNMENT	__SCIENTIFIC
	__BEING CONSIDERED	__YES: UNRESTRICTED	__INDUSTRIAL	__TRANSPORTATION
		__NO	__MILITARY	__OTHER:

4 OWNER OF PROPERTY

NAME
Little Rock Public Schools, Board of Education

STREET & NUMBER
West Markham and Izard

CITY, TOWN
Little Rock — VICINITY OF

STATE
Arkansas

5 LOCATION OF LEGAL DESCRIPTION

COURTHOUSE, REGISTRY OF DEEDS, ETC.
Pulaski County Courthouse

STREET & NUMBER
Markham and Spring Streets

CITY, TOWN
Little Rock

STATE
Arkansas

6 REPRESENTATION IN EXISTING SURVEYS

TITLE

DATE

__FEDERAL __STATE __COUNTY __LOCAL

DEPOSITORY FOR SURVEY RECORDS

CITY, TOWN

STATE

DESCRIPTION

CONDITION		CHECK ONE	CHECK ONE
X EXCELLENT	__DETERIORATED	__UNALTERED	X ORIGINAL SITE
__GOOD	__RUINS	X ALTERED	__MOVED DATE_____
__FAIR	__UNEXPOSED		

DESCRIBE THE PRESENT AND ORIGINAL (IF KNOWN) PHYSICAL APPEARANCE

Little Rock Central High School, originally Little Rock High School, was designed in the Gothic Revival style by associated architects George R. Mann, Eugene John Stern, John Parks Almand, George H. Wittenberg and Lawson L. Delony. The four-story building with its irregular but generally Y-shaped plan was completed in 1927. The plan can be divided into five distinct sections; a dominate central portion containing a 2,000 seat auditorium, and four classroom wings, two per side, wrapping around a centered reflecting pool in the building's foreground. The school's plan and elevation are symmetrical about this central axis which bisects the pool and central section.

The structure, of brick, load-bearing walls and steel frame, is faced with a tan or buff brick. The high school's elevations consist of systems of brick pilasters and spandrels of varying vertical scale separated by horizontal bands of paired window openings. Window frames are double-hung with 12 lights per sash. All pilasters rise above the parapet level and are capped with cut stone. The pilasters comprising the main entry elevation continue a full one-and-one-half stories above the main parapet and create a towering stepped facade capped and decorated in cut stone. Parapets of the main section are lined with medieval shields and crests of cut stone. Gothic (pointed) arches of cut stone span between broad pilasters at the facade's pinacle and round arched columnades of cut stone decorate the next lower level.

From the main entry esplanade, at ground floor level, double steps rise at either side in two flights to a terrace at the second floor (main) entry. This terrace is supported by a round arched colonnade, with masonry arches springing from stone Corinthian columns.

The main entry consists of three pairs of doors set between four broad pilasters with tall round-arched glazed openings above. Each of the pilasters are decorated with female statuary depicting educational themes; large iron Gothic lanterns on the pilasters illuminate the entry.

The interior corridors are arched at bearing walls and are finished with a glazed ceramic floor and wainscot. Walls and ceilings of corridors, as well as walls and ceilings of other areas, are plaster. All other floors are wooden with the exception of finished concrete in shop areas.

Little Rock Central High School appears today much as it was originally designed, still serving its original purpose as a large urban high school. The building is a testament to its functional design and the strengths of its materials and construction.

SIGNIFICANCE

PERIOD

- __PREHISTORIC
- __1400-1499
- __1500-1599
- __1600-1699
- __1700-1799
- __1800-1899
- X 1900-

AREAS OF SIGNIFICANCE -- CHECK AND JUSTIFY BELOW

__ARCHEOLOGY-PREHISTORIC	__COMMUNITY PLANNING	__LANDSCAPE ARCHITECTURE	__RELIGION
__ARCHEOLOGY-HISTORIC	__CONSERVATION	X LAW	__SCIENCE
__AGRICULTURE	__ECONOMICS	__LITERATURE	__SCULPTURE
X ARCHITECTURE	X EDUCATION	__MILITARY	__SOCIAL/HUMANITARIAN
__ART	__ENGINEERING	__MUSIC	__THEATER
__COMMERCE	__EXPLORATION/SETTLEMENT	__PHILOSOPHY	__TRANSPORTATION
__COMMUNICATIONS	__INDUSTRY	__POLITICS/GOVERNMENT	__OTHER (SPECIFY)
	__INVENTION		

SPECIFIC DATES September, 1927
September 25, 1957

BUILDER/ARCHITECT Almand, Delony, Mann, Stern, & Wittenberg

STATEMENT OF SIGNIFICANCE

Little Rock Central High School, architecturally unique among Arkansas school structures, is the state's most important historic landmark associated with the civil rights movement. Marking the first important test of the Supreme Court's "Brown vs. Board of Education" ruling, Central High became internationally known in 1957 when nine black students enrolled and attended classes in this traditionally all-white school.

Prior to the news-making year of 1957, Central High was already an important educational landmark in Arkansas. (Until 1957, when two new city high schools opened, the building was known simply as Little Rock High School.) When constructed in 1927 the five-story building was the state's second largest structure, ranking just behind the State Capitol. Described in the dedicatory brochures as "the most beautiful high school building in America," Little Rock High School in 1927 was the pride of the city.

Built on an unusual half-decagon floor plan, Central High was designed by Little Rock architects John P. Almand, Lawson Delony, George R. Mann, Eugene Stern and George Wittenberg. General contractor for the $1,500,000.00 building was Gordon Walker of Salina, Kansas; the landscape architect for the two-block site in Civitan Park was John Highberger of Memphis, Tennessee. Three thousand pupils, with a recessed locker for each, could be accommodated in the 126 classrooms of Central High. Other features of this 1927 educational structure included a library, cafeteria, gymnasium with showers and locker rooms, equipment for vocational education and an auditorium with the largest stage in the state.

The buff-brick building features architectural elements of the Neo-Gothic Revival style. The north and south wings are relatively unadorned with the central section displaying a number of significant features. Of special interest are the four female figures set above the three entry bays; these figures symbolize Ambition, Personality, Opportunity and Preparation.

The 1927 opening of Central High School marked a new high point in the history of public education in Little Rock. In 1853, a decade after enabling legislation was passed, the first public school was opened in Little Rock and offered six years of free education. The curriculum and terms of public schools grew gradually; within 20 years the city offered 12 years of instruction. By 1873, Little Rock had graduated its first high school class from Sherman High.

orm No. 10-300a
Rev. 10-74)

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

NATIONAL REGISTER OF HISTORIC PLACES
INVENTORY -- NOMINATION FORM

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In 1885 the city high school was moved to the Scott Street School. It was moved again in 1890 to the Peabody High School at Capitol and Gaines Streets, where it remained until a new building was constructed in 1905 at Fourteenth and Scott Streets. By the 1920's the growing student population necessitated a larger building. The far-sighted plans of the school board resulted in construction of Central High, which has been used longer than any other high school building in the city's history.

Contemporary newspaper accounts report that over 5,000 persons attended the formal opening of Central High, held in the school auditorium. School board members recounted the history of Little Rock schools and the mayor accepted the building on behalf of the citizens of the capital city.

In addition to high school classes, Central High originally housed Little Rock Junior College, now the University of Arkansas at Little Rock. Before 1927 the University of Arkansas at Fayetteville had conducted some classes in Little Rock for freshmen and sophomore courses. When these classes were discontinued, the principal of Little Rock High School, Mr. John A. Larson, persuaded the local school board to set up college level classes, using extra space in the new high school building. With approval but no financial backing from the school board, qualified high school teachers taught part-time in the college and were paid by the students' tuition fees. Classes were held in the north wing of Central High.

Two years after its beginning, Little Rock Junior College was accredited; at the same time it was endowed by the Donaghey Foundation. The enrollment of one hundred quadrupled during the first four years, and more room was needed than was available at Central High. In 1931 the junior college moved its classes to another building, and the high school expanded to fill the entire building.

The next two decades were typical of most American high schools, exceptions being a 19-year winning streak by the track team and a national-award-winning student newspaper, the Tiger. However, the decade of the 1950's brought many changes to Central High and marked the only year in a century when public high school education was not available in Little Rock.

On May 17, 1954, the Supreme Court of the United States made an historic ruling in the "Brown vs. Board of Education" case. It was declared that public schools could no longer be operated on a racially segregated basis; the "separate but equal" theory was no longer held valid.

Three days later, on May 20, 1954, the Little Rock School Board held a special meeting in the Albert Pike Hotel to discuss the impact of the Court's decision on Little Rock schools. A unanimous resolution declared that the Board would comply with Federal requirements and work toward "...the creation of an integrated school system..."*

The Little Rock integration plan called for gradual integration beginning at the high school level and eventually encompassing all 12 grades. The fall of 1957 was selected as the date to begin integration; in that year two new city high schools were to open, Hall High in west Little Rock for whites and Horace Mann High in east Little Rock for blacks. Central High was situated geographically between the two and was the only school to be integrated.

There was relatively little open dissent among whites in the three years of planning for desegregation in Little Rock. However, in January, 1956, several black students attempted to enroll in white schools. Lower courts judged the 1957 integration date to be in line with the Supreme Court's 1954 ruling and denied admittance to the black students.

During the summer of 1957 white opposition to integration began to crystallize in the formation of segregationist citizens groups. Political pressure began to mount and was focused on Arkansas' chief executive, Governor Orval Faubus. Though re-elected over a staunch segregationist in 1956, Governor Faubus had not made a strong public stand on the Central High issue.

When the Arkansas National Guard surrounded Central High on September 2, 1957, some citizens still believed that Faubus intended to enforce the integration policy laid down by the school board. However, when black students tried to enroll two days later, the guardsmen blocked their entry. For almost two weeks the Governor kept the Guard on duty at Central High, but a court order finally forced their withdrawal.

On September 23 the black students again tried to enroll at Central High, but this time were turned away by an angry mob of white segregationists. At this point the Federal government stepped in to back up the ruling of the Federal courts. The Arkansas National Guard was federalized by President Dwight D. Eisenhower, and a detachment of the 101st Airborn Infantry Division was sent to Little Rock. On September 25, 1957, nine black students under military escort were enrolled at Central High.

Integrated classes at Central High continued throughout the 1957-58 school year. There were problems at Central High despite the continued presence of the Guard. Over one hundred white students were suspended and four were expelled; one of the black girls was expelled. Nevertheless, integration was achieved, and in 1958 Ernest Green became the first black ever to graduate from Central High.

The question of school integration continued to be a political problem in the city and state. Legislation passed by the Arkansas General Assembly in 1958 enabled Governor Faubus to close all Little Rock high schools during the 1958-59 school year. However, by the fall of 1959 all the city high schools were reopened. Since that time they have continued to follow court rulings on integration.

The 1957 integration crisis at Central High symbolized the end of racially segregated public schools in America. The entry of nine black students into a previously all white school represented the efforts of all black Americans to attain their full civil rights guaranteed under the Constitution.

Based on its architectural merits, role in public education and symbolic place in the civil rights movement, Little Rock Central High School is one of the city's most important historic landmarks.

* Little Rock School Board, Minutes of the Meetings, May 20, 1954. (Typewritten.)

MAJOR BIBLIOGRAPHICAL REFERENCES

Alford, Dale. The Case of the Sleeping People. Little Rock: Pioneer Publishing Company, 1959.

Arkansas Gazette. July-September, 1927; July-October, 1957.

Arkansas State Press. July-October, 1957.

Atkinson, J. H. Little Rock Junior College: The First Ten Years, 1927-1937. Archives, Arkansas History Commission (microfilm).

Bates, Daisey. The Long Shadow of Little Rock; A Memoir. New York: David McKay Co., 1962.

GEOGRAPHICAL DATA

ACREAGE OF NOMINATED PROPERTY 5 acres (approximately)

UTM REFERENCES

	ZONE	EASTING	NORTHING
A	15	564220	3846860
B			
C			
D			

VERBAL BOUNDARY DESCRIPTION

LIST ALL STATES AND COUNTIES FOR PROPERTIES OVERLAPPING STATE OR COUNTY BOUNDARIES

STATE	CODE	COUNTY	CODE
STATE	CODE	COUNTY	CODE

FORM PREPARED BY

NAME / TITLE

Dan Chapel, Architect and Dianna Kirk Historian

ORGANIZATION — DATE

Arkansas Historic Preservation Program — 3-8-77

STREET & NUMBER — TELEPHONE

Suite 500, Continental Building — 501-371-2763

CITY OR TOWN — STATE

Little Rock — Arkansas

STATE HISTORIC PRESERVATION OFFICER CERTIFICATION

THE EVALUATED SIGNIFICANCE OF THIS PROPERTY WITHIN THE STATE IS:

NATIONAL X STATE ____ LOCAL ____

As the designated State Historic Preservation Officer for the National Historic Preservation Act of 1966 (Public Law 89-665), I hereby nominate this property for inclusion in the National Register and certify that it has been evaluated according to the criteria and procedures set forth by the National Park Service.

STATE HISTORIC PRESERVATION OFFICER SIGNATURE Anne Bartley

TITLE State Historic Preservation Officer — DATE 3-8-77

FOR NPS USE ONLY

I HEREBY CERTIFY THAT THIS PROPERTY IS INCLUDED IN THE NATIONAL REGISTER

DATE

DIRECTOR, OFFICE OF ARCHEOLOGY AND HISTORIC PRESERVATION

ATTEST: DATE

KEEPER OF THE NATIONAL REGISTER

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

NATIONAL REGISTER OF HISTORIC PLACES INVENTORY -- NOMINATION FORM

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DATE ENTERED

Blossom, Virgil. It Has Happened Here. New York: Harper and Brothers, 1959.

Brown, Robert T. Bigger Than Little Rock. Greenwich, Connecticut: Seabury Press, 1958.

Hays, Brooks. A Southern Moderate Speaks. Chapel Hill: University of North Carolina Press, 1959.

Little Rock School Board. Minutes of Meeting of the Board, May, 1954 - December, 1957 (typewritten).

Little Rock School Board. Scrapbooks: 1923, 1925, 1927, 1957, 1958. Vault, Offices of the School Board.

The Tiger (Little Rock Central High School student newspaper), September 19, 1957 and May 6, 1976.

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

NATIONAL REGISTER OF HISTORIC PLACES
PROPERTY PHOTOGRAPH FORM

FOR NPS USE ONLY
RECEIVED
DATE ENTERED

SEE INSTRUCTIONS IN *HOW TO COMPLETE NATIONAL REGISTER FORMS*
TYPE ALL ENTRIES -- ENCLOSE WITH PHOTOGRAPH

1 NAME

HISTORIC Little Rock High School

AND/OR COMMON
Little Rock Central High School

2 LOCATION

CITY, TOWN Little Rock ___VICINITY OF COUNTY Pulaski STATE Arkansas

3 PHOTO REFERENCE

PHOTO CREDIT Bob Dunn DATE OF PHOTO 1977

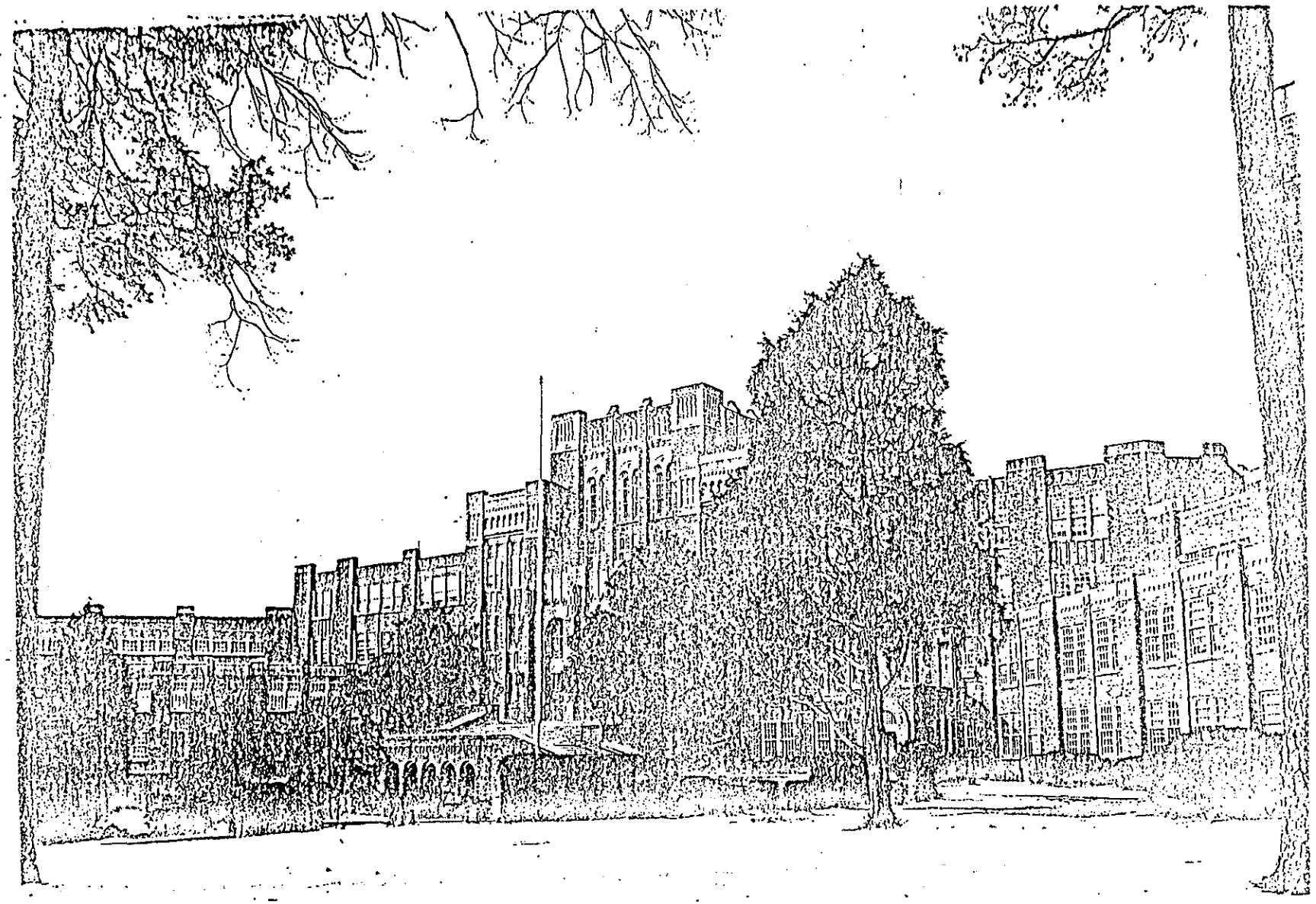
NEGATIVE FILED AT Arkansas Historic Preservation Program

4 IDENTIFICATION

DESCRIBE VIEW, DIRECTION, ETC. IF DISTRICT, GIVE BUILDING NAME & STREET
central section facade, viewed from east

PHOTO NO.
1

INT: 2983-75



UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

NATIONAL REGISTER OF HISTORIC PLACES PROPERTY PHOTOGRAPH FORM

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TYPE ALL ENTRIES --ENCLOSE WITH PHOTOGRAPH

1 NAME

HISTORIC Little Rock High School

AND/OR COMMON
Little Rock Central High School

2 LOCATION

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3 PHOTO REFERENCE

PHOTO CREDIT Bob Dunn DATE OF PHOTO 1977

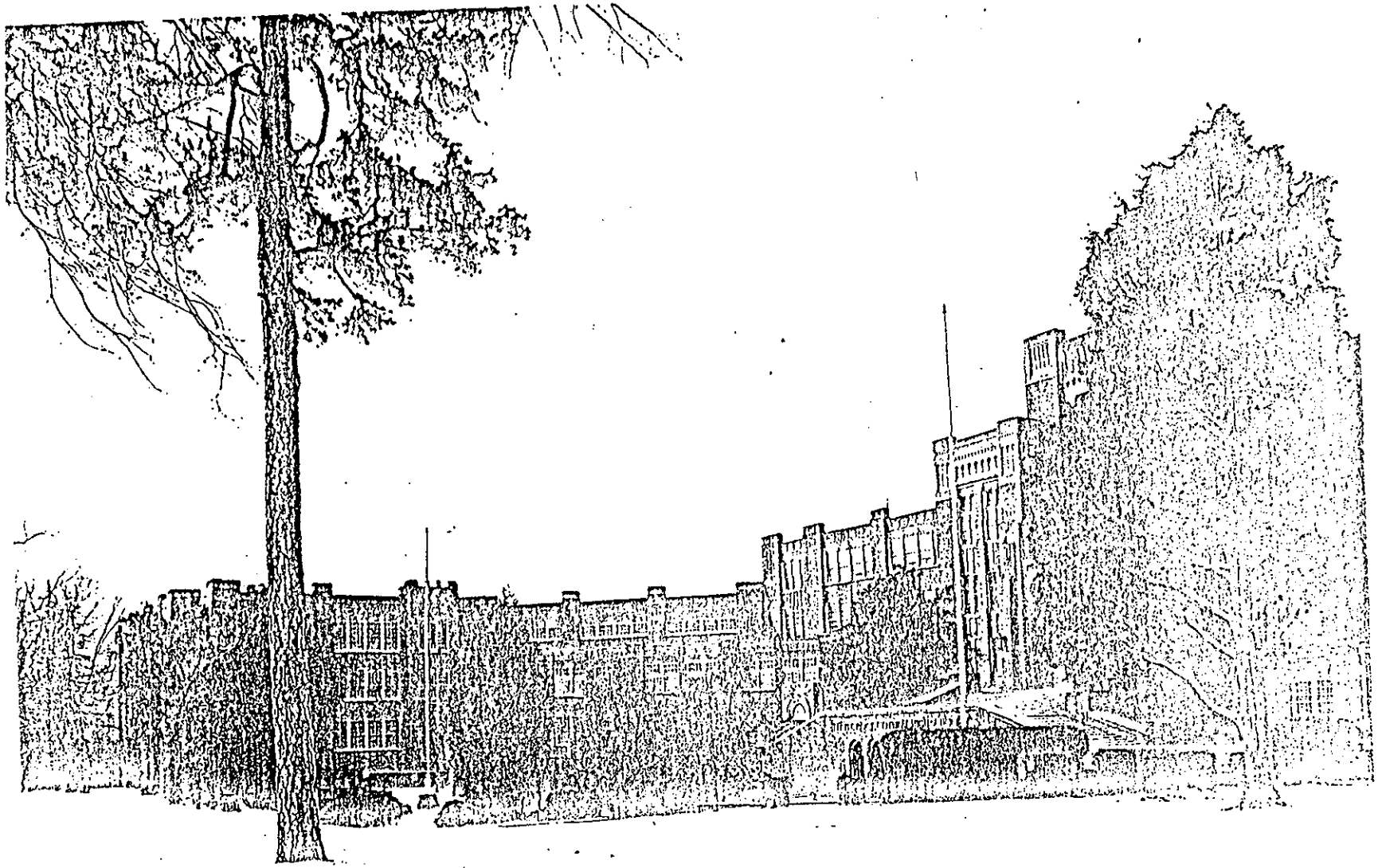
NEGATIVE FILED AT Arkansas Historic Preservation Program

4 IDENTIFICATION

DESCRIBE VIEW, DIRECTION, ETC. IF DISTRICT, GIVE BUILDING NAME & STREET
central sections viewed from the northeast

PHOTO NO.
2

INT: 2983-75



ARKANSAS HISTORIC
PRESERVATION PROGRAM
Suite 500, Continental Building, Main and Markham
Little Rock, Arkansas 72201 Telephone: (501) 371-2763

MAR 0 3 197

February 3, 1977

The Little Rock School Board
Markham and Izard
Little Rock, Arkansas 72201

Re: Central High School
Little Rock, Pulaski County

Dear Sirs:

The staff of the Arkansas Historic Preservation Program is preparing a National Register nomination for Central High School which will be presented to the Arkansas State Review Committee at their March meeting. If approved, the nomination will be submitted to the National Register office in Washington for final consideration.

The National Register of Historic Places is a listing of historic sites, buildings, objects and districts from all across the country that are worthy of preservation.

Entry in the National Register is an honor which places no obligation on a private owner. It does, however, provide protection through comment by the Advisory Council on Historic Preservation from federally financed, assisted or licensed projects that might affect a National Register property.

On October 4, 1976, the President signed a Tax Reform Act of which Section 2124 refers to tax incentives for historic properties. Enclosed you will find an information sheet on that tax act.

If you have any questions concerning the program or this property's nomination, please contact Dianna Kirk of our staff.

Enclosed are two copies of this letter. Please complete the form below, sign and return the original to our office. The copy is for your files. We would appreciate receiving any comments you might have concerning the nomination of this property. If we do not hear from you within 30 days, your approval will be assumed.

Sincerely,

Barbara Woodard

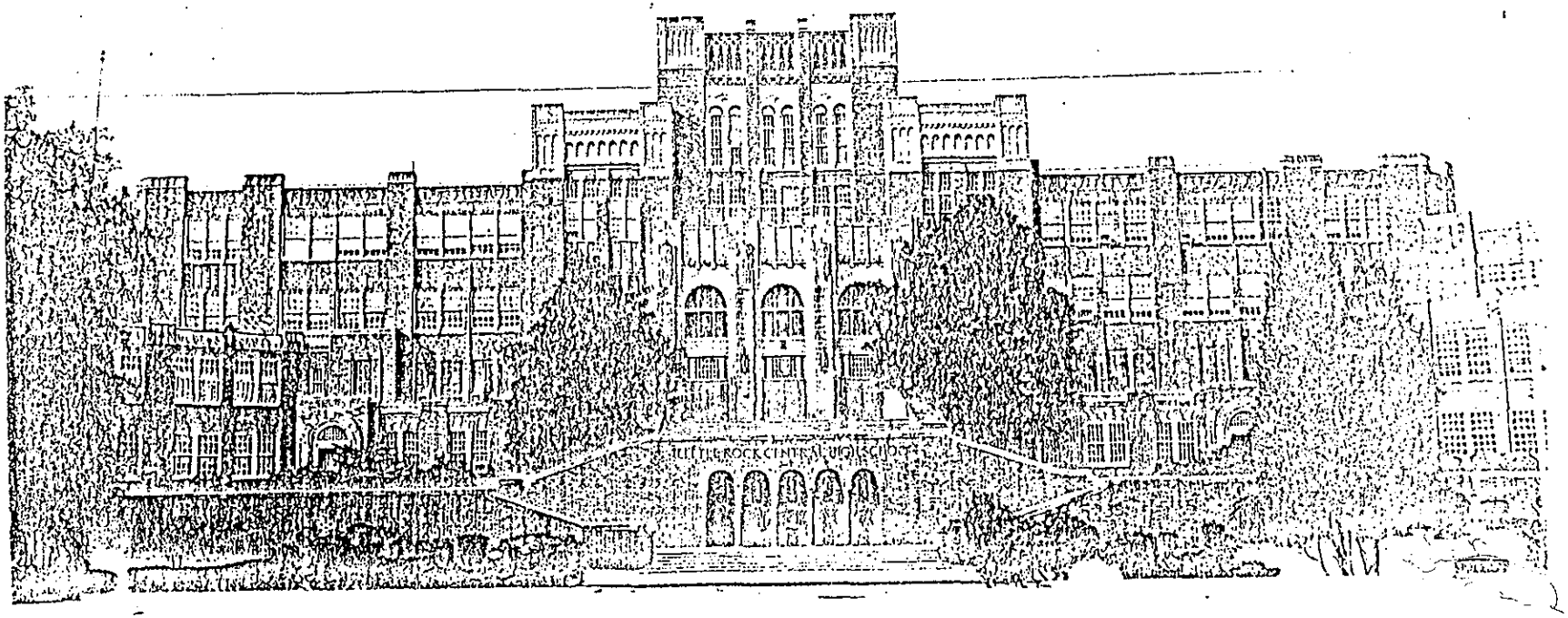
Barbara Woodard, Deputy Director
Arkansas Historic Preservation Program

I approve of the nomination of the above property to the National Register of Historic Places. ✓ Yes ____ No

Comments:

3-1-77
Date

Paul R. Fair
Signature Paul R. Fair, Superintendent of Schools



UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

NATIONAL REGISTER OF HISTORIC PLACES
PROPERTY PHOTOGRAPH FORM

FOR NPS USE ONLY
RECEIVED
DATE ENTERED

SEE INSTRUCTIONS IN *HOW TO COMPLETE NATIONAL REGISTER FORMS*
TYPE ALL ENTRIES --ENCLOSE WITH PHOTOGRAPH

1 NAME

HISTORIC Little Rock High School

AND/OR COMMON
Little Rock Central High School

2 LOCATION

CITY, TOWN Little Rock ___VICINITY OF COUNTY Pulaski STATE Arkansas

3 PHOTO REFERENCE

PHOTO CREDIT Bob Dunn DATE OF PHOTO 1977

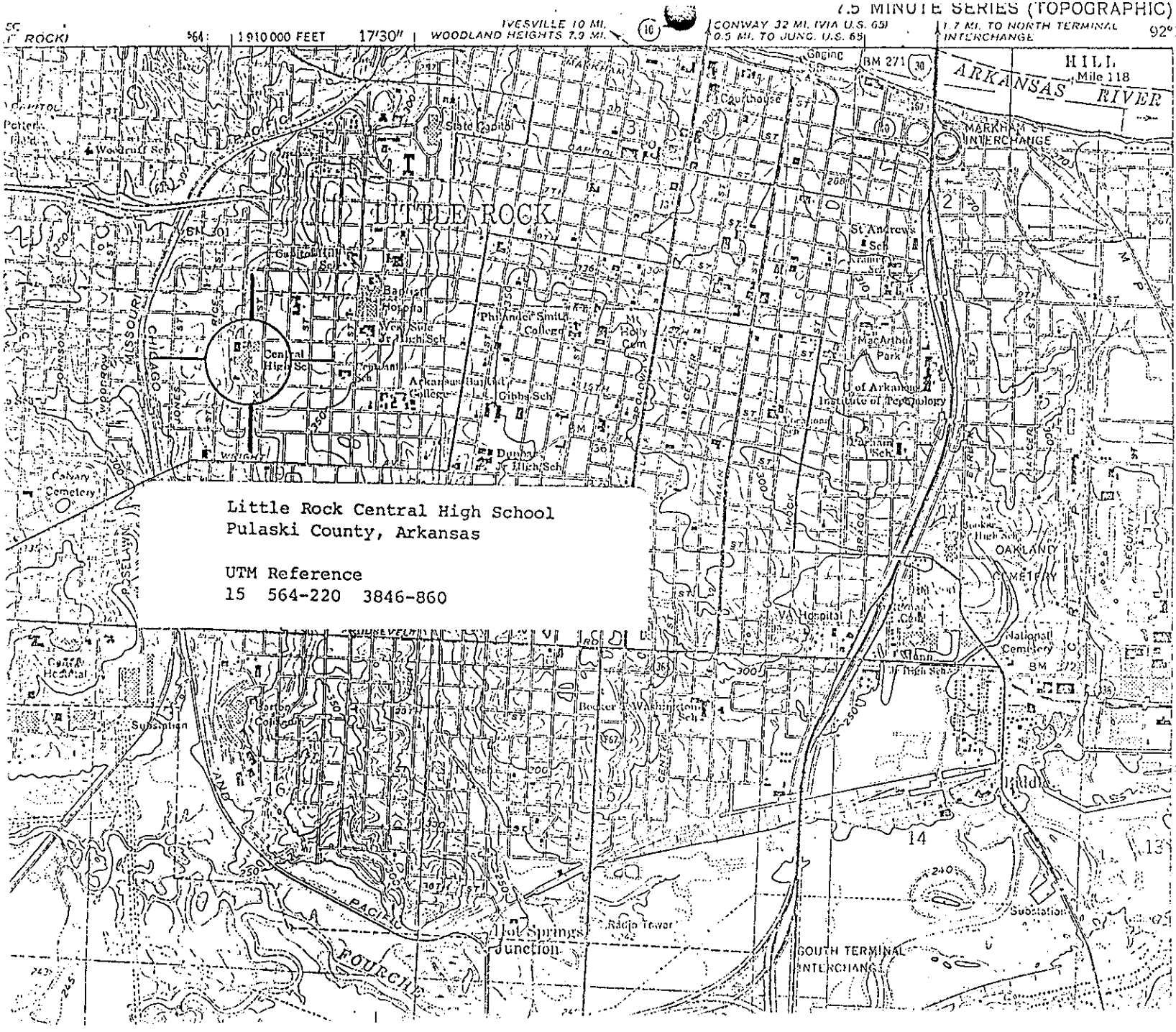
NEGATIVE FILED AT Arkansas Historic Preservation Program

4 IDENTIFICATION

DESCRIBE VIEW, DIRECTION, ETC. IF DISTRICT, GIVE BUILDING NAME & STREET PHOTO NO.

south wing and central section, viewed from the northeast 3

INT: 2383-75



Little Rock Central High School
Pulaski County, Arkansas

UTM Reference
15 564-220 3846-860

rm No. 10-301
v. 10-74)

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

NATIONAL REGISTER OF HISTORIC PLACES PROPERTY MAP FORM

FOR NPS USE ONLY
RECEIVED
DATE ENTERED

SEE INSTRUCTIONS IN *HOW TO COMPLETE NATIONAL REGISTER FORMS*
TYPE ALL ENTRIES -- ENCLOSE WITH MAP

1 NAME

HISTORIC Little Rock High School

AND/OR COMMON
Little Rock Central High School

2 LOCATION

CITY, TOWN Little Rock ___VICINITY OF

COUNTY Pulaski

STATE Arkansas

3 MAP REFERENCE

SOURCE U. S. G. S. Little Rock Quadrangle

SCALE 1:24,000 DATE 1961 - photo revised 1970 and 1975

4 REQUIREMENTS

TO BE INCLUDED ON ALL MAPS
1. PROPERTY BOUNDARIES
2. NORTH ARROW
3. UTM REFERENCES

INT: 3464-75

NPS Form 10-900
(3-82)

OMB No. 1024-0018
Exp. 10-31-84

United States Department of the Interior
National Park Service

National Register of Historic Places Inventory—Nomination Form

For NPS use only
received
date entered

See instructions in *How to Complete National Register Forms*
Type all entries—complete applicable sections

1. Name

historic Howard High School

and or common Howard High School

2. Location

street & number 13th and Poplar Streets ___ not for publication

city, town Wilmington ___ vicinity of

state Delaware code 10 county New Castle code 003

3. Classification

Category	Ownership	Status	Present Use	
___ district	_X_ public	_X_ occupied	___ agriculture	___ museum
_X_ building(s)	___ private	___ unoccupied	___ commercial	___ park
___ structure	___ both	___ work in progress	_X_ educational	___ private residence
___ site	**Public Acquisition**	**Accessible**	___ entertainment	___ religious
___ object	___ in process	___ yes: restricted	___ government	___ scientific
	NA being considered	_X_ yes: unrestricted	___ industrial	___ transportation
		___ no	___ military	___ other:

4. Owner of Property

name New Castle County Vocational Technical School District

street & number 1417 Newport Road

city, town Newport ___ vicinity of state Delaware

5. Location of Legal Description

courthouse, registry of deeds, etc. Recorder of Deeds

street & number City/County Building,4th Floor,800 French Street

city, town Wilmington state Delaware

6. Representation in Existing Surveys

title Cultural Resources Survey of Wilmington,Delaware N-4234 has this property been determined eligible? ___ yes _X_ no

date June 1984 federal _X_ state ___ county ___ local

depository for survey records Bureau Of Archaeology&Historic Preservation

city, town Doyer state Delaware

05/11/1995 DE STATE HIST PRESERVATION OFFICE

7. Description

Condition		Check one	Check one
___ excellent	___ deteriorated	___ unaltered	X original site
___ good	___ ruins	X altered	___ moved date
___ fair	___ unexposed		

Describe the present and original (if known) physical appearance

Howard High School, at the northeast corner of 13th and Poplar Streets, is a filled "L" shaped utilitarian function building with Neoclassical elements that was constructed in 1927.

The Howard High School building is red brick laid in Flemish bond. The front facade of the school faces westward, and is symmetrically designed. The main entryway features three three-panel institutional doors with recessed arch shaped wood, with tracery panels above them. The three doorways have Tuscan half column surrounds and horizontal three-light transoms. Eight over twelve light windows are at second floor level above the doors. Colossal Ionic columns of concrete highlight the entryway and support the dentil underline entablature which has rosettes above the columns and is otherwise unadorned except for the surmounted rectangle inscribed with "Howard High School" in Berling Bold style letters. A rosette-type scrowl is found at either end of the nameplate. Banks of windows are on either side of the main entryway--four recessed six over nine light configuations on the first floor with a large brick archway area above them; six nine over nine lights at the second floor. Either end of the front facade has a large projected section with flanking brick pilasters. In the center of each section at second floor level, is a large concrete tablet. At the northern end, the tablet commemorates Abraham Lincoln; at the southern end, General Oliver Otis Howard. An Adamesque swag adorns the top of each tablet. Concrete beltcourses punctuate the brickwork between the basement and first, and the first and second floors. A concrete plain cornice follows the level of the entablature. The only addition to the front of the building has been a handicapped access ramp done in concrete. It does not adversely affect the original design.

As mentioned above, the building is a filled "L" shape, that is, the front (west) and southern walls constitute the "L" with classrooms within this configuration on the first and second floors. The 700-plus seat and two-story rectangular auditorium snuggles into the elbow of the "L." The stage section of the auditorium is not only wide, but extremely deep since it was also used as a gymnasium (see sketch). Large wooden doors (since removed) were used to separate gymnasium section from the stage so activities could go on simultaneously. The stage has a hardwood floor and is surrounded by a simple floriated

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molding floor to ceiling and across the top of the stage. The auditorium itself has five large windows of nine over nine light with eliptical fan light and side light sections which allow ample natural lighting for assemblies. Ornate brass chandaliers dot the ceiling at regular intervals in the plaster ceiling panels. The walls of the auditorium feature a simple fluted plaster pilaster design at corners and intervals throughout this room. This pilaster design is found again in the front entryway of the building and at the first-floor entrance to the auditorim, but executed in wood on brick.

The south first-floor hall (on the Poplar Street level) is lined with lockers. (Poplar Street) Entry lobby hallway and second-floor hallway have walls of yellow machine pressed glazed brick in stretcher bond which rises to a single row of headers before meeting the crown molding. The entrance lobby features three sets of interior double doors with ten lights each and a brass placque commemorating Pierre S. du Pont's donation and cooperation with the City of Wilmington in the erection of the school in 1927.

From the main Poplar Street entry hall, one may turn left or right and find stairs leading to the second floor, which has basic classrooms with five banks of nine over nine windows each originally used for math and science, including the biology room at the east end of the building that features a copper base bay used as a growing room. The staircases, which are metal rail and riser with tile or concrete treads (also found in Lore School and other Wilmington schools of this vintage), also lead down to the basement level which contains the cafeteria and rooms used by shop and home economic classes. Due to the sloping grade of the school lot, this basement level is able to have natured light in most of the eastern classrooms. It is also from this level that access is possible through a brick arched walkway to the school's annex.

The annex is a small separate brick building that was built at the time of the main building to house a machine training shop. This was added on to in 1940 and 1955, with the *resulting composite structure echoing design element such as* flemish bond brick work and elipical windows found in the main building. Its auxilliary relationship to the main building is defined by a brick arched walkway that extends from the eastern end of the "L" of the main building to this annex.

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Also, near this ground level walkway to the annex, a break at the rear staircase at the second-floor level of the main building has been made to provide covered access to the adjacent new Howard Career Center building. Due to this elevation and its execution in a non-reflective black metal, the walkway connector is not obtrusive and does not detract from the original building's integrity.

Just west of the connector can be seen the more ornate arched with keystone window openings to the former library, now the Pauline A. Young Memorabilia Room. It is the second most ornate room in the school after the auditorium with its eliptical fan light entrance with two 15 light wooden frame windows. It contains a collection of Pauline A. Young's personal papers, amassed during her 30 years as librarian at Howard, that chronicle the efforts of black education in Delaware. As well as hardwood display cases containing year books, class photos, trophies, and other miscellaneous memorabilia items. Glass display cases hold the protrait of Edwina Kruse, as well as letters to and from famous faculty and alumni including a telegram from poet Paul Lawrence Dunbar to his wife who taught at the school. Overall, the building is in excellent condition with no major modifications other than the handicapped access and the walkway to the Career Center mentioned above.

It was designed by J. O. Batelle of the Newark, New Jersey firm of Guilbert and Batelle who also designed the Charles B. Lore School, which was placed on the National Register in 1983.

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8. Significance

Period	Areas of Significance—Check and justify below				
___ prehistoric	___ archeology-prehistoric	___ community planning	___ landscape architecture	___ religion	
___ 1400–1499	___ archeology-historic	___ conservation	___ law	___ science	
___ 1500–1599	___ agriculture	X economics	___ literature	___ sculpture	
___ 1600–1699	X architecture	___ education	___ military	X social	
___ 1700–1799	___ art	___ engineering	___ music	___ humanitarian	
___ 1800–1899	___ commerce	___ exploration settlement	___ philosophy	___ theater	
X 1900–	___ communications	___ industry	___ politics government	___ transportation	
		___ invention		___ other (specify)	

Specific dates 1927 **Builder Architect** J.O. Batelle

Statement of Significance (in one paragraph)

Howard High School, located at the corner of 13th and Poplar Streets, is being nominated under three criteria -

Criterion A - for its association with the development of an organized system of education for the black population of Delaware and the social changes resulting therefrom;

Criterion B - for its association with Delaware notables, including but not restricted to: Pierre S. du Pont, who helped fund construction; Edwina Kruse, who ably guided the school's development for half a century and contributed to the educational standards of the State of Delaware; and Alice Moore Dunbar Nelson (the widow of poet Paul Lawrence Dunbar) who headed the English Department at the school after her arrival in Wilmington in 1902 until 1920.

Criterion C - for its embodiment of classical design elements in an utilitarian function building built during the wave of construction inspired by the "Platoon School Concept" of the 1920s in Delaware's northernmost county.

Howard High School was the first black institution of higher learning in the State of Delaware. Organized by a group known as the Delaware Association for the Moral Improvement and Education of Colored People, the 1867 institution was named in honor of Brigadier General Oliver Otis Howard, who headed the Freedman's Bureau. Through his efforts, the Wilmington City Council appropriated $5,000 which he supplemented with another $5,000 from the Freedman's Bureau to boost black education in Delaware. The original school operated at 12th and Orange Streets until the 20th century when Pierre S. du Pont offered to erect and equip a new Howard High School (February 11, 1926). The construction of the building at the cost of $1,000,000 was directed by the Delaware School Auxiliary Association (DSAA). Completed in 1928, the new building was hailed as a model of its class and could accommodate 1,300 students. In its first year of operation, it housed 27 teachers and 476 pupils in grades 7-12. (Howard High School 1975 yearbook)

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The signicance of Howard High School requires an understanding of its context in the history of education, and particularly black education in the State of Delaware.

Most early education started either under the auspices of religious groups or as a privately-funded venture, not only in Delaware but in much of the nation. For blacks, the first organized drive for education was made by the Quaker community in 1801, when a school was opened in Wilmington for "the blacks and people of color." (News-Journal 2/20/71) In 1814, a school for black children was established in Wilmington with 14 pupils. Two years later, the African Society purchased a plot of land on Sixth Street between West and Tatnall Streets, where a school for black children was constructed for a cost of $1,800. Delaware's free blacks numbered 18,073, in 1850, of whom 187 were attending school (information from the News-Journal archives). Ten years later, the black population had increased by 1,500, but the number in school was only up to 250.

After the Civil War, there were few schools for blacks, only seven by 1867. The establishment of the Delaware Society for the Moral Improvement in Education of Colored People, a result of a meeting of several philantrophic gentlemen at the home of Samuel Hilles, a Quaker educator in Wilmington, along with the efforts of the Freedmen's Bureau (an organization created by the Federal Government after the Civil War) provided the impetus for black education in Delaware. By the end of 1867, money had been raised to construct 15 schools in the State. By 1875, the number had increased to 28.

In 1875, the Delaware General Assembly passed a law for the taxation of black citizens for the education of their children. The funds raised by this taxation process only covered one-third of the amount necessary. The remainder was raised through contributions from black and white citizens.

The tax proved to be a severe hardship since it cut deeply into the limited income of most black families, and still did not provide sufficient funds for adequate education. It was not until 1881 that the State of Delaware contributed to black education in the sum of $2,400. The appropriation was raised periodically until 1891, it had reached $9,000 a year.

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During this time, Howard High School (formerly dedicated September 20, 1869) and the State College for colored students in Dover (founded 1891) provided the higher education opportunities organized for blacks in the State of Delaware.

The 20th century saw the formation of coalition groups that championed black education across Delaware. Among them, the Delaware Colored Citizens Political Organization and the Delaware Negro Civic Association. Despite their influence in the presence of strong philantrophic leaders like Pierre S. du Pont and H. Fletcher Brown who pushed for and financed educational opportunties for blacks, a "separate but equal" philosophy of education was maintained by the State Board of Education until the 1950s. Salesianum School, a private Catholic high school in Wilmington, under its principal Reverend Doctor Thomas A. Lawlass, admitted five black students in 1950, thereby establishing the first break in the dam of segregation. In 1951, a Delaware court upheld the right of black students to attend the University of Delaware, ending the long practice of segregation there.

In March of 1951, State representative William J. Winchester, a Howard High School graduate and the first black legislator in Delaware, introduced two bills into the House, one calling for school desegregation and the other calling for integration of public places. On March 21, 1951, Louis S. Redding, Esquire, another Howard graduate and the first black attorney in the State of Delaware, brought suit for two black girls attempting to gain admittance to the public schools in Claymont and Hockessin. The suit was decided in 1952, ording admission to those schools. The ruling was upheld by the Delaware Supreme Court later that year.

The State Board of Education appealed that ruling to the United States Supreme Court, becoming one of the co-plaintiffs in the landmark Brown v. The Board of Education of Topeka, Kansas, along with the states of Kansas, Virginia, South Carolina, and the District of Columbia. Delaware's case was, however, unique among the five, since it did not question the necessity for dissegration, but rather whether it should occur immediately (News-Journal 2/20/71).

In 1956, a second major lawsuit affecting black education was filed in the Federal Court in Wilmington. The court in 1957 held in this case Evans v. Buchanan that the school districts

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had ignored Brown v. Board of Education and order the Delaware State Board of Education to develop an overall desegregation plan for the State. Not until 1961 was an acceptable desegregation plan produced, and not until February 1964, did the State Board of Education adopt a resolution to close a number of smaller schools and end de jure segregation (News-Journal article 5/13/84).

Twenty-six school districts were established by the 1968 Education Advancement Act with Wilmington left as a separate school district. Evans v. Buchanan was reopened in 1971, with the claim that City district had not been desegregated, since it was excluded from that 1968 Education Advancement Act. In 1975, the Education Advancement Act was struck down as unconstitutional by both the Delaware and the United States Supreme Courts. An alternative measure for successful desegregation eventually led to the "nine-three" concept of busing (nine or three being the number of years students from the newly-created four districts in New Castle, Delaware, had to ride a bus to school to achieve a racial balance in each school (which remains at the date of this writing).

During the entire process, Howard High School continued to produce black graduating classes that had been imbued with the philosophy that they could not just be "good," they had to be better than others in their skills to be able to advance themselves. Accordingly, its alumni association roster reads like a black "whos who" not only for Delaware but regionally, and in some cases, nationally. Graduates in the Delaware area include Municipal Court Judge Leonard L. Williams; Red Clay School District Superintendent Joseph Johnson; Pauline A. Young, the niece of poet Paul Lawrence Dunbar, and Alice Dunbar Nelson, who wrote the first comprehensive study of Black History in the State of Delaware; Louis Redding, the first black attorney in the State of Delaware; Robert Jordon, renown concert pianist; Delaware State Senator Herman Holloway, Sr.; and Maryland State Senator Verda Freeman Welcome.

The pride that inspired such a high caliber of education was also evident in the black community at large through its involvement in Howard High School activities. There was a common bond of pride, ambition, and support running through Howard High School, the church, the community, and the family. According to Pauline Young, an example of this connectedness is

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that not only family members of the graduating class, but people throughout the community attended commencement ceremonies.

The community also contributed to fund-raising events for Howard High School. Concerts performed by the school orchestra and guest speakers such as Booker T. Washington, W. E. B. Du Bois, and James Weldon Johnson were popular events attended by the black community at large.

The support the community gave to the high school was returned by students in such projects as the directory of Wilmington area businesses owned by blacks, that was compiled by the graduating class of 1920.

Howard High School became, in fact, a part of the heritage of local families. The desire to carry on the family tradition of being a Howard High School graduate was a strong one. Even in the early 1960s when intergretion was well underway, students continued to choose to attend Howard High School, even if a long walk across town was required. That choice was a demonstration of loyality to the school and it indicates the important part Howard High School played in creating pride and a sense of heritage not only in the family, but also in the Wilmington community.

In June of 1975, Howard High School per se graduated its last class. In September of that year, Howard, with a newly-built adjacent facility, became Howard Career Center. The center's initial program provided specialized vocational training for 500 full-time students. An additional 1,000 students attended time-share sessions. The time-share students attended their regular schools for half a day, then received vocational training at Howard Career Center for the other half. In 1978, Howard Career Center joined with Delcastle Technical High School and Paul M. Hodgson Vocational Technical School to form the New Castle County Vocational Technical District. Howard Career Center currently provides nearly 1,000 students with full-time academic and vocational programs which include data processing, communications technology, carpentry, and graphic arts.

The alumni association of "Old" Howard High School has made the library of the building at 13th and Poplar Streets into a Memorabilia Room dedicated to Pauline A. Young and her 30 years

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of service as librarian at Howard High School. The room contains the awards and yearbooks, and other tangible reminders of the Howard High School and its graduates. It also contains a collection of the personal papers of Pauline A. Young, including an extensive manuscript collection related to Paul Lawrence Dunbar into black history in Delaware.

Howard High School cannot be discussed without noting a woman of almost legendary proportions in Delaware education, Ms. Edwina Kruse.

Ms. Kruse was born in Puerta Rico, the daughter of a German father and a Puerta Rican mother (News-Journal article 9/16/83). Reared in Connecticut, she was educated at Hampton Institute and came to Middletown as one of Delaware's pioneer black teachers. In 1873, she suceeded Ms. Sallie Miller as the principal of the fledgling Howard High School. During almost half a century as principal, Ms. Kruse brought such prominent personalities as W. E. B. Du Bois, Booker T. Washington, and Frederick Douglass to speak at the school. It was undoubtedly her highly professional approach to achiving quality education that led P. S. du Pont to devote money to the continuation of her educational work through the new building for Howard High School that stands today at the northeast corner of 13th and Poplar Streets.

Ms. Kruse's association with the school was not entirely without controversary. In 1890, a black teacher was charged with insubordination, and at Ms. Kruse's request transferred to another black school with a reduction of salary. Denunciation of Ms. Kruse from black leaders in the community followed accompanied by 2,000 signature petition for her dismissal to the Wilmington Board of Education. The Board ignored their request and Ms. Kruse continued as principal until 1921. A record for high standards of excellence not only at Howard High School, but for the entire City of Wilmington. Dr. Carol Hoffecker writes about Ms. Kruse:

> "Edwina Kruse was in her own way a leader in her race's quest for equality. Under her firm hand, Howard High School became one of the best, possibly the best, in the entire City school system. If the black community as a whole could not gain a constituency for education, she personally commanded their respect of the school board to such an extent that the black schools were financed at a level nearly consistent with the white schools."

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The Howard High School building, besides being of paramount importance as the focal point for black education in New Castle County, was an intregal part of the City-wide school building program of modernization reflecting the policy "a successful education policy results in the creation of the best possible learning situation for every child in the schools." (Annual Report of the Superintentent of Public Schools 1932)

The physical facility of Howard High School, the building at 13th and Poplar Streets, is a good example of the modernization in school building (expressed as the Platoon School Concept in elementary schools) that was supported widely by P. S. du Pont during the 1920s and early 1930s. It featured architectural changes in schools such as wide hallways, larger windows allowing natural lighting and better ventilation, an embellishment of facilities with gymnasiums and auditoriums, and specialized facilites such as projecting bays that were used as growing rooms for science classes. The building was designed by J. O. Batelle of Guilbert and Batelle of Newark, New Jersey, the firm that designed the Charles B. Lore School (placed on the National Register in 1983). The building, which was part of the trend of modernization of Delaware schools during the early 20th century, along with the Charles B. Lore School, P. S. du Pont School, E. P. Warner, and David Harlan Schools with its classically adorned entryway flemishes bond construction, its soleum commenorantive symetrical panels, and the quiet elegant classical detailing on both interior and exterior leads the criteron for embodying distinctive characteristics of a period and method of construction.

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9. Major Bibliographical References

See attached continuation sheet

10. Geographical Data

Acreage of nominated property .7

Quadrangle name WilmingtonSouth Quadrangle scale 1:24,000

UTM References

	Zone	Easting	Northing		Zone	Easting	Northing
A	18	4 5 3 6 0 0	4 3 9 9 5 6 0	B			
C				D			
E				F			
G				H			

Verbal boundary description and justification

See attached continuation sheet

List all states and counties for properties overlapping state or county boundaries

state	code	county	code
state	code	county	code

11. Form Prepared By

name/title Patricia A. Maley, Planner II

organization Wilmington Planning Office date 8/22/84

street & number 800 French Street,7th Floor telephone (302)571-4130

city or town Wilmington state Delaware

12. State Historic Preservation Officer Certification

The evaluated significance of this property within the state is:

___ national ___ state _X_ local

As the designated State Historic Preservation Officer for the National Historic Preservation Act of 1966 (Public Law 89-665), I hereby nominate this property for inclusion in the National Register and certify that it has been evaluated according to the criteria and procedures set forth by the National Park Service.

State Historic Preservation Officer signature John R Kern

title Dir, Div. of Historical & Cult. Affairs date 2 Jan 85

For NPS use only

I hereby certify that this property is included in the National Register

date

Keeper of the National Register

Attest: date

Chief of Registration

GPO 894-788

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Interview with Mrs. Yvonne Jensen, English teacher at Howard High School for 25 years, June 1984.

Interview with Ms. Pauline A. Young, Librarian and English teacher at Howard High School for 30 years, October 1984.

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HOWARD HIGH SCHOOL

Bounded on the north by a line 169 feet south of and parallel to 14th Street, on the northeast by the Brandywine River, on the east by a line 570 feet east of and parallel to the easterly side of Poplar Street, on the south by a line 333 feet south of and parallel to southerly side of 14th Street, and on the west by Poplar Street.

The intention of the boundary described above is to provide for an area around Howard High School while excluding the adjacent Howard Career Center which was built in 1974.

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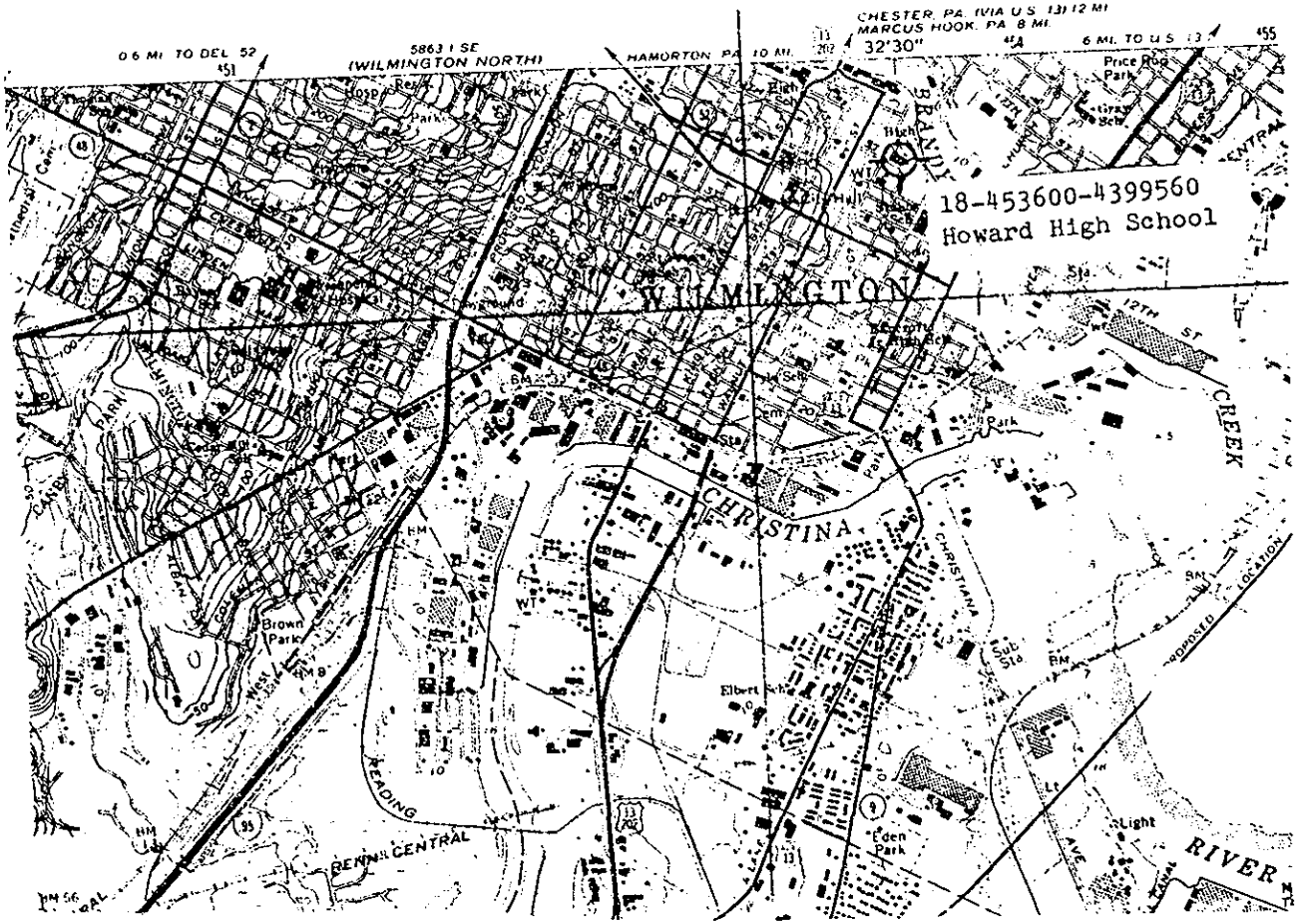

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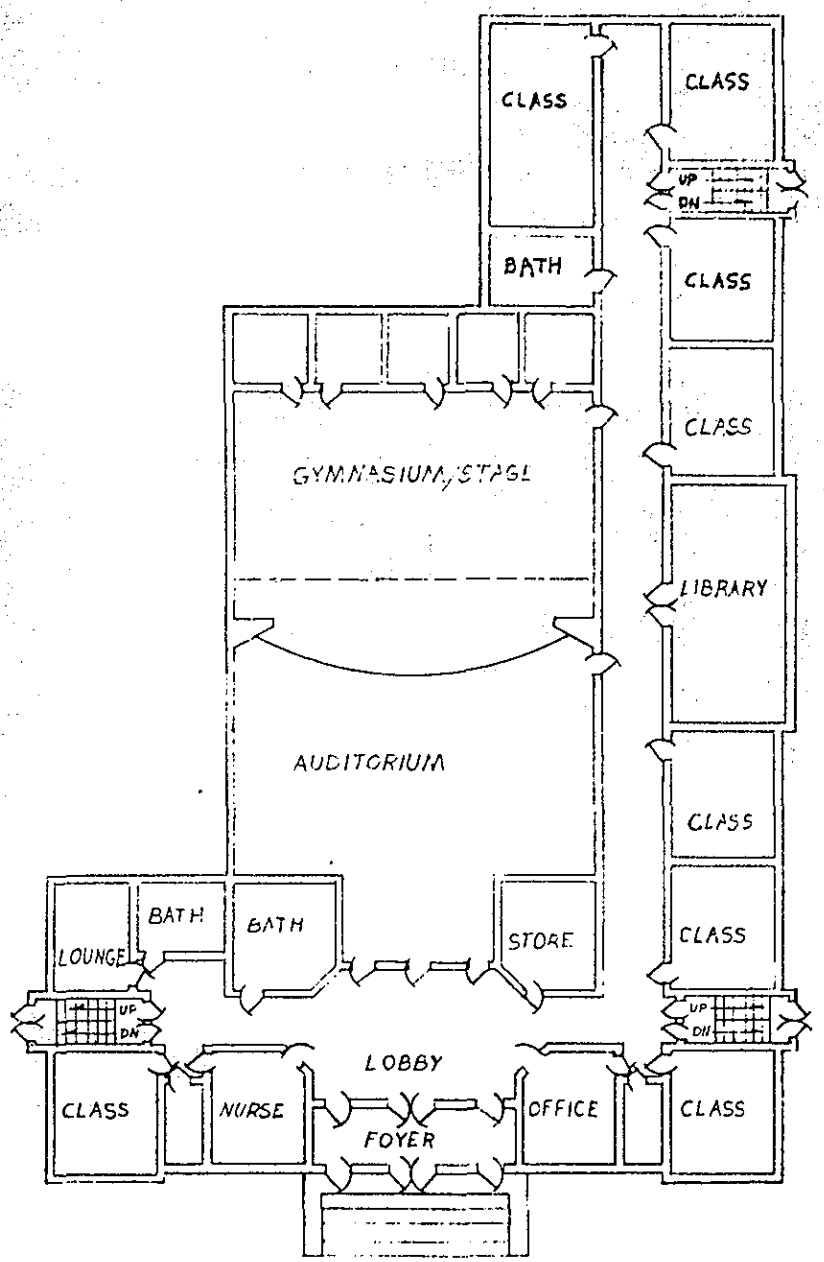

HOWARD HIGH SCHOOL BUILT 1927 NOT TO SCALE A. NAWN. 1981.

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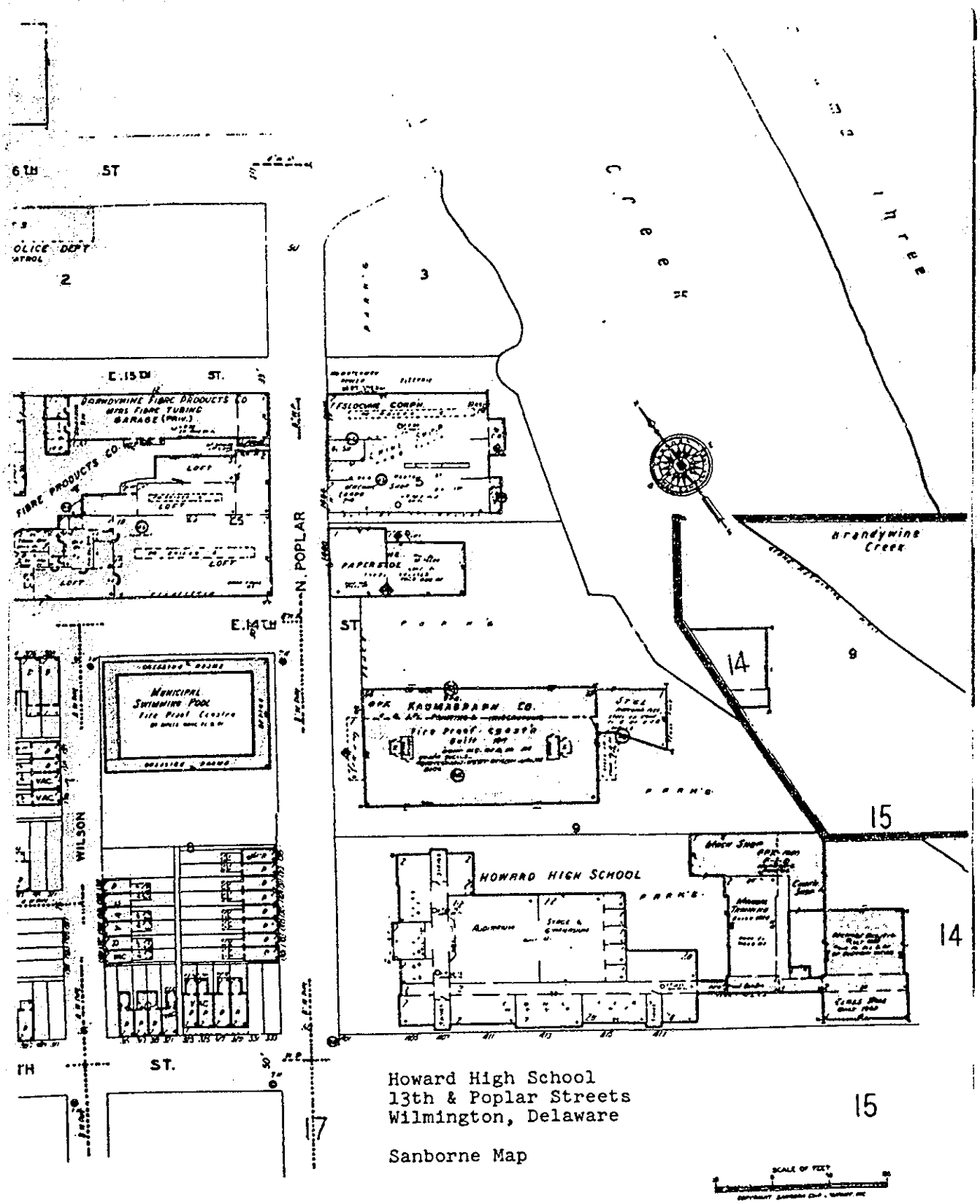

Howard High School
13th & Poplar Streets
Wilmington, Delaware

Sanborne Map

15

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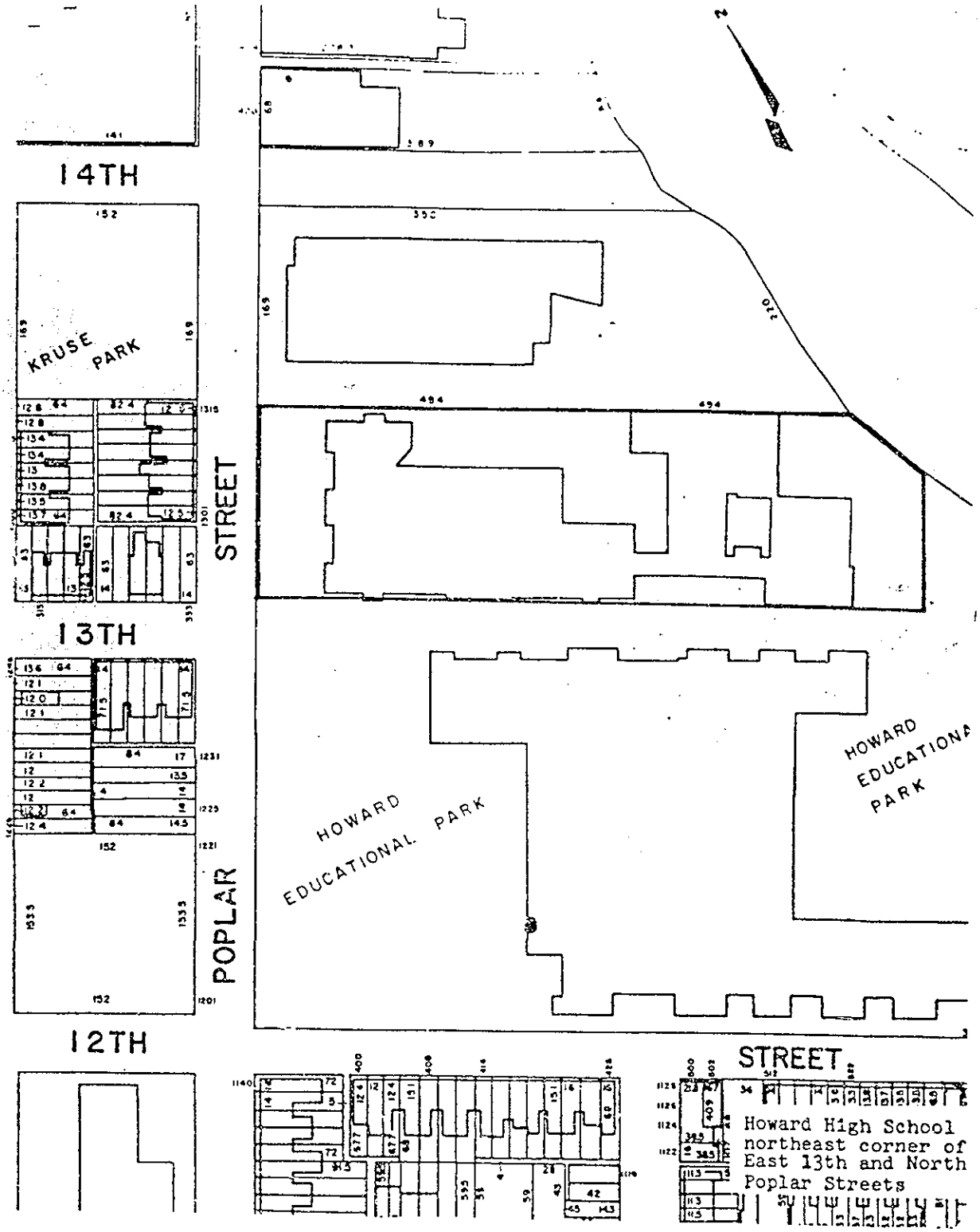

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NPS Form 10-900
(3-82)

OMB No. 1024-0018
Expires 10-31-87

United States Department of the Interior
National Park Service

National Register of Historic Places Inventory—Nomination Form

For NPS use only
received SEP 26 1986
date entered OCT 23 1986

See instructions in *How to Complete National Register Forms*
Type all entries—complete applicable sections

1. Name

historic M Street High School

and or common Perry School

2. Location

street & number 128 M Street, N.W. ___ not for publication

city, town Washington ___ vicinity of

state D.C. code 11 county D.C. code 001

3. Classification

Category	Ownership	Status	Present Use	
___ district	X public	___ occupied	___ agriculture	___ museum
X building(s)	___ private	X unoccupied	___ commercial	___ park
___ structure	___ both	___ work in progress	X educational	___ private residence
___ site	**Public Acquisition**	**Accessible**	___ entertainment	___ religious
___ object	___ in process	X yes: restricted	___ government	___ scientific
	___ being considered	___ yes: unrestricted	___ industrial	___ transportation
		___ no	___ military	___ other:

4. Owner of Property

name D.C. Department of Administrative Services

street & number 613 G Street, N.W.

city, town Washington ___ vicinity of state D.C.

5. Location of Legal Description

courthouse, registry of deeds, etc. Recorder of Deeds

street & number 515 D Street, N.W.

city, town Washington state D.C.

6. Representation in Existing Surveys

title Building is listed on the D.C. Inventory of Historic Sites has this property been determined eligible? ___ yes X no

date ___ federal X state ___ county ___ local

depository for survey records Historic Preservation Division
Department of Consumer & Regulatory Affairs

city, town Washington state D.C.

7. Description

Condition		Check one	Check one
___ excellent	_X_ deteriorated	___ unaltered	_X_ original site
___ good	___ ruins	_X_ altered	___ moved date _____
___ fair	___ unexposed		

Describe the present and original (if known) physical appearance

The Perry School is a red brick building generally in the Romanesque style with colonial accents. Its facade is built of "Philadelphia pressed brick" with sandstone and wood ornament. It is three stories high with basement. The building's floor plan is rectangular in shape, measuring approximately 147 feet long (along M Street, N.W.) and 80 feet wide. The facade is composed of three main sections: a central projecting pavilion with an entrance tower and two other projecting wings which extend back from the building line of the central pavilion. Each of the recessed areas between the central pavilion and the wings contains secondary entrances. Stone steps lead to a raised first floor level. At each of the main floors, the windows are 6 over 6 sash with segmental arched brick lintels except at the third floor of the central bay. Here circular arched windows mark the location of the "assembly room." The central section is covered by a variable sloped hip roof. The wings are covered with a cross roof with gables at the front and at the central pavilions of the side elevation.

Each of the entrances is decorated with a carved wooden surround of paired composite pilasters and a triangular pediment above each door. The entrance elements are reminiscent of colonial revival details. In the gables above the central entrance tower and the two wings is decorative terra cotta. At the apex of the gable above the central entrance are the letters "H" and "S," denoting High School. At the apex of the gables above the wings are terra cotta panels formed in a diaper pattern.

The vertical elements of the facade--projecting pavilions and wings, tall windows, and circular open and blind arches--are balanced by horizontal elements of a stone strip at the watertable, brick string courses tying together sandstone window sills, two rows of corbelled brick linking together the segmental arched lintels of the first two stories, stone strips tying together the spring lines of the circular arches of third floor windows, and rows of corbelled brick at the cornice line under the eaves.

The sides and rear of the building are plainer. The side elevations echo the balanced composition of the facade with a central projecting pavilion with a gabled roof. The rear of the building replicates the three part symmetrical arrangement of the main facade.

The interior of the building was arranged in the following scheme: In the basement were located a number of "playrooms" used as small gymnasia, workrooms, and dryclosets that had been "tested in the other buildings of the District and found satisfactory." The basement also included a "drill room" or armory for the marching corps. The first floor of the building contained the principal's office and reception room on either side of the vestibule leading from the main central entrance. Seven classrooms and adjoining cloakrooms were located on this floor as was a large study hall in the rear of the central section. Each of the secondary entrances led to vestibules and a hall connected to the main east-west corridor. The second floor also contained seven classrooms and a large study hall. Over the main vestibule and offices of the first floor was a library and reading room. A teachers' room was located over each of the secondary entrance vestibules. On the third floor, four classrooms were located, two in each of the wings. The classrooms in the east wing were intended for drawing lessons. Two laboratories were located at the rear of the central section. The large assembly hall is situated in the front portion of the central section and contains a stage on the south side of the room and rows of opera chairs.

Because it has been abandoned and has experienced several small fires, the building is in a deteriorated condition. Some of the windows are broken, leaving the building vulnerable to further damage. Many of the configurations of the rooms are intact. The assembly room contains the original stage and several rows of chairs.

In 1934, a utilitarian one story-with-basement gymnasium was added to the east side of the building. Designed generally in the colonial revival style, the gymnasium building is connected to the original structure by a narrow covered passageway.

8. Significance

Period	Areas of Significance—Check and justify below			
___ prehistoric	___ archeology-prehistoric	___ community planning	___ landscape architecture	___ religion
___ 1400–1499	___ archeology-historic	___ conservation	___ law	___ science
___ 1500–1599	___ agriculture	___ economics	___ literature	___ sculpture
___ 1600–1699	___ architecture	_X_ education	___ military	___ social/ humanitarian
___ 1700–1799	___ art	___ engineering	___ music	___ theater
_X_ 1800–1899	___ commerce	___ exploration/settlement	___ philosophy	___ transportation
___ 1900–	___ communications	___ industry	___ politics/government	___ other (specify)
		___ invention		

Specific dates 1890-91 **Builder/Architect** Office of the Building Inspector

Statement of Significance (in one paragraph)

Summary Statement

The original section of the Perry School was built in 1890-91 as the M Street High School. The M Street High School was one of the first high schools for black students constructed with public funds in the nation. The school represents an important benchmark in the development of education for Washington, D.C.'s black student population since 1870 when the principle of a dual system of education for the nation's capital was reaffirmed by the U.S. Congress. The Preparatory High School for Colored Youth was founded in November of 1870. Between 1870 and 1891, the institution was located in several makeshift locations. It grew and flourished and in 1890, an appropriation of $112,000 was passed by the U.S. Congress to build a structure specifically to house the high school classes. The M Street High School produced many of the city's and the nation's black leaders. It sent an unusually large number of its graduates to the nation's leading colleges and universities in the North at a time when the black population did not enjoy equal access to quality education, especially in the South. Its teachers were unusually well educated, far beyond those of most white schools, because of limited professional opportunities for black professionals elsewhere. The M Street High School population outgrew the building and, in 1916, was replaced with the Dunbar High School on First Street Street between N and O Streets, N.W. (now demolished). After then, the building served the city's black population as a junior high school and as an elementary school, renamed the Perry School, until the integration of the school system in 1954.

Origins

The Perry School represents the struggle for a quality education by the black population in the nation's capital. The original section of the Perry School was built as the M Street High School in 1890-91 to house the classes of the black high school students who aspired to an education beyond the grammer school level. The Preparatory High School for Colored Youth was organized in November 1870 by friends of the abolitionist movement for those who were only recently freed from slavery. The founders included William Syphax, president, and William W. A. Wormley, secretary of the Board of Trustees of Colored Schools of Washington and Georgetown. Its founding was a direct outcome of the defeat in the U.S. Congress of the bill sponsored by Senator Charles Sumner for an integrated school system in the nation's capital city. The two sides aceded to a compromise that promised equal standards and proportional representation on the governing body over the school system.

The high school was first located at the Fifteenth Street Presbyterian Church in northwest Washington, D.C. It later moved to the Stevens School in 1871, the Charles Sumner School between 1872 and 1877, and the Myrtilla Miner School at 17th and Church Streets, N.W. between 1877 and 1891. During this formative period, the high school classes and activities were located in facilities that had been built for the lower grades.

The M Street High School

The construction of a building designed to house the high school classes was made possible with a $112,000 appropriation from the U.S. Congress. The institution was named the M Street High School when it was located at the Sumner School at 17th and M Streets, N.W. The name was retained when it was located at the intersection of M Street and New York Avenue in the northwest quadrant of the city. The plans for the school were prepared in the Office of the Building Inspector headed by Thomas Entwistle and approved by Edward Clark, Architect of the Capitol. At that time, designs for most municipal edifices in the District, including school buildings, were prepared by the Office of the Building Inspector which served as a centralized municipal design agency. Bureaucratically, the office was under the supervision of the Engineer Commissioner, a member of the U.S. Corps of Engineers, who served as one of the three District Commissioners. During the period of the 1880s and the 1890s, the designs for school buildings prepared by the Office of the Building Inspector were "approved" by Edward Clark, Architect of the Capitol, whose services at that time extended beyond the confines of the Capitol complex.

In September 1890, the bid of Peter McCartney in the amount of $69,653 was accepted. (The site had cost $25,000.) By September 1891, the building was completed and turned over to the District Commissioners.

At the ceremony marking the transfer of the building from the contractors to the city, it was described as "the finest school building in the city, the most thoroughly equipped without exception." The building was also proclaimed "the first colored high school ever constructed from the public funds. Other houses have been put up from private subscription, but this building was built from an appropriation made for that purpose. . ." The building was designed to house 450 students.

The M Street High School offered primarily academic and college preparatory subjects, but due to the demand of its students, added business courses at the turn of the century. Vocational education was also considered as an addition to the curriculum. Manual training and vocational education for the black population was espoused by black educator Booker T. Washington. His views ran contrary to those of W. E. B. DuBois, who saw such training as an attempt to restrict the educational and thus professional opportunities for black students. The principal of the M Street High School during the period 1901-1906, Anna J. Cooper, resisted efforts to add vocational courses to the curriculum. With the construction of the Armstrong Manual Training School just a few blocks to the north of the M Street High School in 1902, the college preparatory goals were reaffirmed for the latter institution.

The M Street High School curriculum was organized around tracks. The academic and scientific tracks were college preparatory. The business track was not. The academic track required four years of English, history, and Latin; two years of mathematics; and one year of physics or chemistry. Elective courses were available in Greek, French, German, biology, political economy, and other math and science courses. The scientific track required a heavier concentration in math, science, and language courses. With its emphasis on classics, the curriculum was considered superior to that of the first two years of many American colleges and universities. Many black Washingtonians viewed the M Street High School and its successor Dunbar High School as their equivalent of the public Boston Latin School or of other of the nation's exclusive prep schools. In fact, graduate and historian Rayford W. Logan declared the M Street High School to be "one of the best high schools in the nation, colored or white, public or private."

Due to the efforts of the school's principals, teachers, and the students themselves, the graduates of the M Street High School were accepted by leading colleges and universities in the Northern states, such as Amherst, Antioch, Dartmouth, Hamilton, Oberlin, and Rutgers. The graduates were able to meet the competitive standards of these schools in spite of the limitations imposed by a Southern segregated public school system. Its graduates also attended Howard University and other traditionally black colleges and universities.

From the nation's leading institutions of high learning, many graduates of the M Street High School went on to professional schools and became the nation's leading black doctors, lawyers, educators, businessmen, scholars, architects, and military leaders. Several returned to the M Street High School as teachers because Washington, D.C.'s school policy provided for equal salaries for all teachers regardless of sex or race. The relatively high salary attracted the best black educators to the school and resulted in a level of achievement among the teaching corps that outranked that of white public schools which were populated largely by graduates of normal schools and teachers colleges.

Significant individuals associated with the M Street High School included the school's first principal, Francis L. Cardozo, Sr., a graduate of Glasgow University, Scotland and a secretary of state of South Carolina during Reconstruction. A Harvard University graduate, Robert H. Terrell served as principal from 1899 to 1901. In 1902, President Theodore Roosevelt appointed Terrell to a judgeship in the D.C. Municipal Court. He was the first black judge of the District of Columbia. Notable graduates included Carter G. Woodson who went on to earn a Ph.D. degree in history from Harvard University and to found the Association for the Study of Negro Life and History. Many members of the cadet corps served with distinction in the armed forces in World War I.

Post-1916 History

By the end of the first decade of the twentieth century, the school population had outgrown the 1891 building. In 1915, the building intended to house 450 students enrolled 850. The school was also deficient in athletic facilities, forcing students to hold sports activities in the streets or in vacant lots. The scientific laboratories had become obsolete and were in poor condition.

In 1916, the new Dunbar High School was completed a few blocks to the north. The old building was renamed the M Street Junior High School (later called Shaw) and served as a black junior high school from 1919 to 1928. It was later used by Cardozo High School between 1929 and 1932, served again as the M Street Junior High School (later Terrell) between 1932 and 1952, and under the name of the Perry Elementary School, served as a black elementary school starting in 1952. Two years later, in 1954, the city's school system was integrated and the Perry School was no longer a strictly black school. Today the building is abandoned.

Legacy

The Perry School is a symbol of the now defunct policy of racial segregation of Washington, D.C.'s school system. As M Street High School, it catered to the aspiring children of black parents whose employment with the federal government provided stable, albeit modest, family incomes. The generation of students who studied at the M Street High School were intent on professional careers. Because the students represented the upwardly mobile segments of the black population, the school took on an "elite" image. The elitist image became more pronounced in the successor Dunbar High School. While many alumni of the M Street High School and Dunbar High School recall the opportunities they enjoyed, comparable schools for the white student population, i.e., Western High School (now Duke Ellington School for the Performing Arts) built in 1898 and Central High School (now Cardozo High School), completed in the same year as Dunbar High School (1916), are testimony to the great disparities in facilities, grounds, architectural design, and size. With the integration of the D.C. school system in 1954, the need for an academic or "elite" school set aside for the black population evaporated. The Perry School recalls both the hardships occasioned by legislatively mandated racial segregation and the triumps black students achieved in spite of tremendous odds.

Major Bibliographical References

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Articles

Anderson, Jervis. "A Very Special Monument." The New Yorker, 20 March 1978.

"Colored High School, Contractor McCartney Completes His Work within the Specified Time." Washington Post. 11 September 1891.

Logan, Rayford W. "Growing Up in Washington: A Lucky Generation." Records of the Columbia Historical Society 50 (1980): 500-507.

"The New Colored High School." Washington Post. 3 September 1890.

Proctor, John Clagett. "Colored High Schools Hold Anniversary." Sunday Star, 11 November 1945.

Robinson, Henry S. "The M Street High School, 1891-1916." Records of the Columbia Historical Society 51 (1984): 119-143.

Terrell, Mary Church. "History of the High School for Negroes in Wahsington." Journal of Negro History. 2 (July 1917): 252-266.

9. Major Bibliographical References

See attached bibliography.

10. Geographical Data

Acreage of nominated property 0.90 acres (approximate)

Quadrangle name Washington West

Quadrangle scale 1:24 000

UTM References

	Zone	Easting	Northing
A	18	325410	4308000
B	18	325410	4307970
C	18	325370	4307970
D	18	325370	4308000
E			
F			
G			
H			

Verbal boundary description and justification

The property is located in the center of the block of M Street, N.W. between First and Second Streets, N.W. with M Street, N.W. on its northern boundary. The building and the utilitarian gymnasium addition to the east occupy Square 557, Lots 849 and 864.

List all states and counties for properties overlapping state or county boundaries

state code county code

state code county code

11. Form Prepared By

name/title Antoinette J. Lee, Historian

organization date August 29, 1986

street & number 1307 New Hampshire Avenue, N.W. telephone (202) 429-8985

city or town Washington state D.C.

12. State Historic Preservation Officer Certification

The evaluated significance of this property within the state is:

___ national X state ___ local

As the designated State Historic Preservation Officer for the National Historic Preservation Act of 1966 (Public Law 89-665), I hereby nominate this property for inclusion in the National Register and certify that it has been evaluated according to the criteria and procedures set forth by the National Park Service.

State Historic Preservation Officer signature Carol B. Thompson

title Carol B. Thompson
State Historic Preservation OFficer date 9/24/86 date of incoming cert

For NPS use only

I hereby certify that this property is included in the National Register

for Delores Byers date 10-23-86

Keeper of the National Register

Attest: date

Chief of Registration

Form 10-900

OMB No. 1024-0018
Expires 10-31-87

United States Department of the Interior
National Park Service

For NPS use only

received

date entered

National Register of Historic Places Inventory—Nomination Form

See instructions in *How to Complete National Register Forms*
Type all entries—complete applicable sections

1. Name

historic Supreme Court Building

and/or common

2. Location

street & number First and East Capitol Streets, NE ___ not for publication

city, town Washington ___ vicinity of

state DC code 11 county DC code 001

3. Classification

Category	Ownership	Status	Present Use	
___ district	X public	X occupied	___ agriculture	X museum
X building(s)	___ private	___ unoccupied	___ commercial	___ park
___ structure	___ both	___ work in progress	___ educational	___ private residence
___ site	**Public Acquisition**	**Accessible**	___ entertainment	___ religious
___ object	___ in process	X yes: restricted	X government	___ scientific
	___ being considered	___ yes: unrestricted	___ industrial	___ transportation
		___ no	___ military	___ other:

4. Owner of Property

name United States Supreme Court

street & number First and East Capitol Street, NE

city, town Washington ___ vicinity of state DC

5. Location of Legal Description

courthouse, registry of deeds, etc. Recorder of Deeds

street & number Sixth and D Streets, NW

city, town Washington state DC

6. Representation in Existing Surveys

title Historic American Buildings Survey has this property been determined eligible? ___ yes X no

date February 1975 X federal ___ state ___ county ___ local

depository for survey records Library of Congress

city, town Washington state DC

7. Description

Condition		Check one	Check one
X excellent	___ deteriorated	X unaltered	X original site
___ good	___ ruins	___ altered	___ moved date _____
___ fair	___ unexposed		

Describe the present and original (if known) physical appearance

The Supreme Court Building, 1st and East Capitol Streets, NE, in Washington, DC, is one of the last of the large neoclassical Federal buildings erected in the 1930s. It was designed by the noted architect Cass Gilbert who is best known as the architect for the Woolworth Building in New York City.[1]

The classical Corinthian architectural order of the building was selected because it best harmonized with nearby congressional buildings. The building was designed on a scale in keeping with the importance and dignity of the Court and the Judiciary as a coequal, independent branch of the United States Government, and as a symbol of "the national ideal of justice in the highest sphere of activity."

The general dimensions of the foundation are 385 feet east and west, from front to back, and 304 feet north and south. At its greatest height, the building rises four stories above the terrace or ground floor. Marble was chosen as the principal material to be used and three million dollars' worth was gathered from foreign and domestic quarries. Vermont marble was used for the exterior, while the four inner courtyards are of crystalline flaked, white Georgia marble. Above the basement level, the walls and floors of all corridors and entrance halls are either wholly or partially creamy Alabama marble. The wood in offices throughout the building such as doors, trim, paneled walls, and some floors is American quartered white oak.

The main entrance to the Supreme Court Building is on the west side, facing the United States Capitol. A few low steps lead up to the 100-foot-wide oval plaza in front of the building. Flanking these steps is a pair of marble candelabra with carved panels on their square bases depicting; Justice, holding sword and scales, and The Three Fates, weaving the thread of life. On either side of the plaza are fountains, flagpoles, and benches. Flower gardens are planted throughout the grounds and courtyards.

The bronze flagpole bases are crested with symbolic designs of the scales and sword, the book, the mask and torch, the pen and mace, and the four elements: air, earth, fire, and water.

On either side of the main steps are seated marble figures. These large statues are the work of sculptor James Earle Fraser. On the left is a female figure, the Contemplation of Justice. On the right is a male figure, the Guardian or Authority of Law.

Sixteen marble columns at the main west entrance support the portico. On the architrave above is incised "Equal Justice Under Law." Capping the entrance is the pediment, filled with a sculpture group by Robert Aitken, representing Liberty Enthroned guarded by Order and Authority. On either side are groups of three figures depicting Council and Research which Aitken modeled after several prominent personalities concerned with the law or the creation of the Supreme Court Building. At the left are Chief Justice Taft as a youth, Secretary of State Elihu Root, and the architect Cass Gilbert. Seated on the right are Chief Justice Hughes, the sculptor Aitken, and Chief Justice Marshall as a young man.

On the east front of the building is a sculpture group by Herman A. McNeil and the marble figures represent great lawgivers, Moses, Confucius, and Solon, flanked by symbolic groups representing Means of Enforcing the Law, Tempering Justice with Mercy, Carrying on of Civilization and Settlement of Disputes Between States. The Architrave bears the legend: "Justice the Guardian of Liberty."

The bronze doors of the west front weigh six and one-half tons each and slide into a wall recess when open. The door panels, sculpted by John Donnelly, Jr., depict historic scenes in the development of law: the trial scene from the shield of Achilles, as described in the Iliad; a Roman praetor publishing an edict; Julian and a pupil; Justinian publishing the Corpus Juris; King John sealing the Magna Carta; The Chancellor publishing the first Statute of Westminister; Lord Coke barring King James from sitting as a Judge; and Chief Justice Marshall and Justice Story.

The main corridor is known as the Great Hall. At each side, double rows of monolithic marble columns rise to coffered ceiling. Busts of all former Chief Justices are set alternately in niches and on marble pedestals along the side walls. The frieze is decorated with medallion profiles of lawgivers and heraldic devices.

At the east end of the Great Hall, oak doors open into the Court Chamber. This dignified room measures 82 by 91 feet and has a 44-foot ceiling. Its 24 columns are Old Convent Quarry Siena marble from Liguria, Italy; its walls and friezes are Ivory Vein marble from Alicante, Spain; and its floor borders are Italian and African marble.

The raised Bench behind which the Justices sit during sessions, and other furniture in the Courtroom are mahogany. The Bench was altered in 1972 from straight-line to a "winged" or half-hexagon shape to provide sight and sound advantages over the original design.

At the left of the Bench is the Clerk of the Court's desk. The Clerk is responsible for the administration of the Court's dockets and arguments calendars, the supervision of the admission of attorneys to the Supreme Court Bar and other related activities. To the right is the desk of the Marshal of the Court. The Marshal is the timekeeper of Court sessions, signaling the lawyer by amber and red lights as to time limits. The Marshal's responsibilities include the maintenance and security of the building and serving as the Court's building manager, reporting to the Chief Justice.

The attorneys arguing cases before the Court occupy the tables in front of the Bench. When it is their turn to argue, they address the Bench from the lectern in the center. A bronze railing divides the public section from that reserved for the Supreme Court Bar.

Representatives of the press are seated in the red benches along the left side of the Courtroom. The red benches on the right are reserved for guests of the Justices. The black chairs in front of those benches are for the officers of the Court, visiting dignitaries, and include a special chair for the President of the United States, although the President's attendance is rare and limited to important ceremonial

occasions. Overhead, along all four sides of the Chamber, are sculpted marble panels, the work of Adolph A. Weinman.

Directly above the Bench are two central figures, depicting Majesty of the Law and Power of Government. Between them is a tableau of the Ten Commandments. The group at the far left represents Safeguard of the Rights of the People, and Genii of Wisdom and Statecraft. At the far right is the Defense of Human Rights.

To the right of visitors is a procession of historical lawgivers of the pre-Christian era: Menes, Hammurabi, Moses, Solomon, Lycurgus, Solon, Draco, Confucius and Augustus. They are flanked by figures symbolizing Fame and History.

To the left are historical lawyers of the Christian era: Napoleon, John Marshall, William Blackstone, Hugo Grotius, Saint Louis, King John, Charlemagne, Mohammed and Justinian. Figures representing Liberty and Peace and Philosophy appear at either end.

Symbolized on the back wall frieze is Justice with the winged female figure of Divine Inspiration, flanked by Wisdom and Truth. At the far left the Powers of Good are shown, representing Security, Harmony, Peace, Charity, and Defense of Virtue. At the far right the Powers of Evil are represented by Corruption, Slander, Deceit, and Despotic Power.

The main floor is largely occupied by the Justices' Chambers; included are offices for law clerks and secretaries, the large, formal East and West Conference Rooms, the offices of the Marshal, an office for the Solicitor General, the lawyers' lounge, and the private conference room and robing room of the Justices. This office space surrounds four courtyards with central fountains.

Most of the second floor is devoted to office space including the offices of the Reporter of Decisions. The Justices' library reading room and the Justices' dining room are also located here.

The library occupying the third floor has a collection of over 250,000 volumes. The library's main reading room is paneled, pilastered in hand carved oak. The wood carving here, as throughout the building, is the work of Matthews Brothers.

The ground floor is devoted to offices and public services, including the offices of the Clerk of the Court, the offices of the Administrative Assistant to the Chief Justice, security headquarters, the Public Information office and Press Room, the Curator's office and the Personnel office. A museum was established in the past decade depicting some of the Court's history; and a film further acquaints visitors with the history and workings of the Court. Here visitors can view one of the two marble, spiral staircases. Each ascends five stories and is supported only be over-lapping steps and by their extensions into the wall. Additionally on the ground floor, there are a cafeteria and snack bar, public telephones, and restrooms.

8. Significance

Period	Areas of Significance—Check and justify below			
___ prehistoric	___ archeology-prehistoric	___ community planning	___ landscape architecture	___ religion
___ 1400–1499	___ archeology-historic	___ conservation	X law	___ science
___ 1500–1599	___ agriculture	___ economics	___ literature	___ sculpture
___ 1600–1699	___ architecture	___ education	___ military	___ social/ humanitarian
___ 1700–1799	___ art	___ engineering	___ music	___ theater
___ 1800–1899	___ commerce	___ exploration/settlement	___ philosophy	___ transportation
X 1900–	___ communications	___ industry	X politics/government	X other (specify) Constitutional
		___ invention		

Specific dates 1935 - Present **Builder/Architect** Cass Gilbert History

Statement of Significance (in one paragraph)

The Supreme Court Building is significant because of its association with the Supreme Court of the United States. At the laying of the cornerstone for the Supreme Court Building on October 13, 1932, Chief Justice Charles Evans Hughes stated it best when he said: "The Republic endures and this is the symbol of its faith." Hughes perceived the new building as a national symbol -- a symbol of the permanence of the Republic and of the ideal of justice in the highest sphere of activity, in maintaining the balance between the Nation and the States and in enforcing the primary demands of individual liberty as safeguarded by the overriding guarantees of a written Constitution.[2]

BACKGROUND

The Constitution, ratified in 1788, provided in Article III for the creation of a new national judiciary, vesting the entire judicial power of the Federal government in one Supreme Court and in such inferior courts as the Congress might from time to time ordain and establish. Although the matter of constituting the structure of the judicial department of the Federal government was one of the first matters addressed by the Congress, and the first session of the Supreme Court was convened on February 1, 1790, it would take 145 years for the Supreme Court to find a permanent residence.[3]

During these years the Supreme Court lived a nomadic existence; on the move from one building to another, even from one city to another.

Initially, the Court met in the Royal Exchange Building in New York City. When the national capital moved to Philadelphia in 1790, the Court moved with it, establishing Chambers first in Independence Hall and later in the City Hall.[4]

When the Federal Government moved, in 1800, to the permanent capital in Washington, the court again moved with it. Since no provision had been made for a Supreme Court building, Congress lent the Court space in the new Capitol building. The Court was to change its meeting place a half dozen times within the Capitol. Additionally, the Court convened for a short period in a private house after the British had used Supreme Court documents to set fire to the Capitol during the War of 1812. Following this episode, the Court returned to the Capitol and met from 1819 to 1860 in a chamber that has recently been restored as the Old Supreme Court Chamber. Then from 1860 until 1935, the Court sat in what is now known as the Old Senate Chamber.[5]

Finally in 1929, former president William Howard Taft, who was Chief Justice from 1921 to 1930, persuaded Congress to end this arrangement and authorize the construction of a permanent home for the Court. Architect Cass Gilbert was charged by Chief Justice Taft to design a building of dignity and importance suitable for its use as the permanent home of the Supreme Court of the United States.[6]

In May 1929 Gilbert presented his preliminary sketches and plans to the Supreme Court Building Commission. The Commission accepted Gilbert's design and recommended the sum of $9,740,000 for the project. In December 1929, Congress adopted the Commission's report and recommendation, and authorized the Commission to proceed with construction.[7]

The construction of a building exclusively for the use of the Supreme Court was a reaffirmation of the nation's faith in the doctrine of judicial independence and separation of powers. The ideal of separation of powers had been of the utmost concern to the delegates to the Constitutional Convention of 1787. James Madison writing in The Federalist Papers, No. 47, stated "...the preservation of liberty requires that the three great departments of power should be separate and distinct."[8] The long overdue construction of a magnificent building exclusively for the use of the Supreme Court was a dramatic illustration of a commitment to the early Republic's faith in the separation of powers.[9]

ARCHITECTURAL STATEMENT

Cass Gilbert, the architect of the Supreme Court Building, was trained in the best traditions of the beaux arts, and was previously associated with the well-known firm of McKim, Mead and White. For Gilbert, the commission to design a new courthouse for the Supreme Court of the United States was perceived as an opportunity to create a monument to the ideals of the Republic--to liberty, and equal justice for all under the law. With perfection as his goal, he designed a structure inspired by classical forms rich in history and symbolic significance. Constructed by skilled craftsmen working with the finest materials, the building was conceived from the beginning as more than a mere office or workplace--it would be a great national monument to the country's founding principles, and to the belief that the only sovereign of a free people is the law.[10]

While Gilbert succeeded in designing a magnificent home for the Supreme Court the building is not considered to be architecturally significant in the literature.[11] Opinion on the subject of Cass Gilbert, his buildings, and the importance of other beaux art buildings in the history of architecture appears to be fluid at this point in time. It is recommended that the Supreme Court Building be reconsidered for significance in Architecture when other beaux-art buildings in Washington are studied for designation as National Historic Landmarks under this theme.

FOOTNOTES

1 The description of the Supreme Court Building was taken directly from the following source: The Supreme Court of the United States (Washington, DC: Supreme Court Historical Society, no date), pp. 27-32.

2 Catherine Hetos Skefos, "The Supreme Court Gets a Home," Supreme Court Historical Society Yearbook, 1976, p. 26.

3 "Residences of the Court: Past and Present - Part I: The Early Years," The Supreme Court Historical Society Quarterly, Fall 1980, Vol. II, No. 4, p. 6.

4 The Supreme Court of the United States, pp. 26-7.

5 Ibid.

6 Ibid.

7 "Residences of the Court: Past and Present - Part III: The Past Fifty Years," The Supreme Court Historical Society Quarterly, Spring 1981, Vol. III, No. 2, pp. 7-10.

8 Paul Goodman, ed., The American Constitution (New York: John Wiley & Sons, Inc., 1970), pp. 160-61.

9 Skefos, p. 26.

10 "Residences of the Court: Past and Present -- Part III: The Past Fifty Years," pp. 8-9.

11 John Burchard and Albert Bush-Brown make the following statement: "There were lingering classicists, like Cass Gilbert, John Russell Pope and Otto Eggers, who kept grinding out classic monuments at Washington; the Supreme Court Building and the National Gallery of Art--buildings of a hollow and pompous cast, despite materials so rich that any modernist envied them the opportunity." John Burchard and Albert Bush-Brown, The Architecture of America (Boston: Little, Brown and Company, 1966), p. 379.

Winston Weisman in his essay on Cass Gilbert states the following: "The buildings that followed were classically correct but cold and unoriginal. Considering the revolutionary developments in America and Europe by men such as Frank Lloyd Wright, Walter Gropius, Ludwig Mies Van Der Rohe, and Le Corbrusier, Gilbert's late works made little contribution to the history of architecture." Winston Weisman, "Gilbert, Cass," Macmillian Encyclopedia of Architects, (New York: The Free Press, 1982), II, 202-04.

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Anonymous. "Residences of the Court: Past and Present - Part I: The Early Years." The Supreme Court Historical Society Quarterly, Vol. II, No. 4 (Fall, 1980), pp. 6-7.

Anonymous. "Residences of the Court: Past and Present - Part III: The Past Fifty Years." The Supreme Court Historical Society Quarterly, Vol. III, No. 2 (Spring 1981), pp. 7-10.

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Skefos, Catherine Hetos. "The Supreme Court Gets a Home." The Supreme Court Historical Society Yearbook, (1976), pp. 25-36.

The Supreme Court of the United States.: Washington, DC: Supreme Court Historical Society, no date.

Weisman, Winston. "Gilbert, Cass." Macmillian Enclyclopedia of Architecture. New York: The Free Press, 1982, II, 202-04.

9. Major Bibliographical References

SEE CONTINUATION SHEET

10. Geographical Data

Acreage of nominated property: Less than 10 acres

Quadrangle name: Washington West Quadrangle scale: 1:24,000

UTM References

	Zone	Easting	Northing
A	18	326120	4306340
B			
C			
D			
E			
F			
G			
H			

Verbal boundary description and justification

N/A

List all states and counties for properties overlapping state or county boundaries

state	code	county	code
state	code	county	code

11. Form Prepared By

name/title: Harry A. Butowsky

organization: National Park Service, Division of History date: December 1986

street & number: P.O. Box 37127 telephone: (202)343-8155

city or town: Washington state: DC

12. State Historic Preservation Officer Certification

The evaluated significance of this property within the state is:

___ national ___ state ___ local

As the designated State Historic Preservation Officer for the National Historic Preservation Act of 1966 (Public Law 89-665), I hereby nominate this property for inclusion in the National Register and certify that it has been evaluated according to the criteria and procedures set forth by the National Park Service.

State Historic Preservation Officer signature

title date

For NPS use only

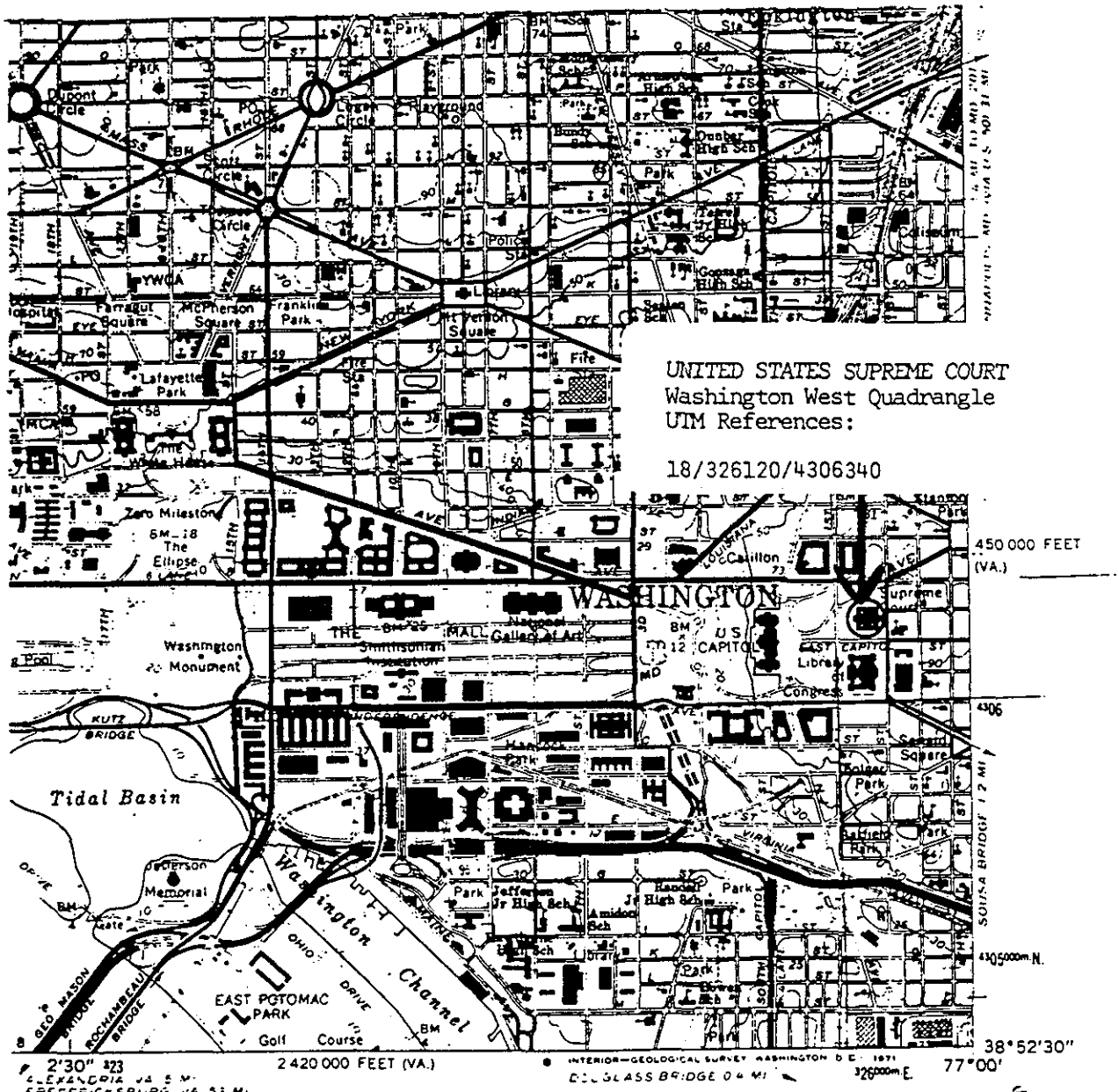
I hereby certify that this property is included in the National Register

date

Keeper of the National Register

Attest: date

Chief of Registration

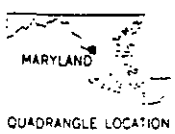


ROAD CLASSIFICATION

Heavy-duty ——— Light-duty ———

Medium-duty ——— Unimproved dirt - - - - - -

Interstate Route U S Route State Route

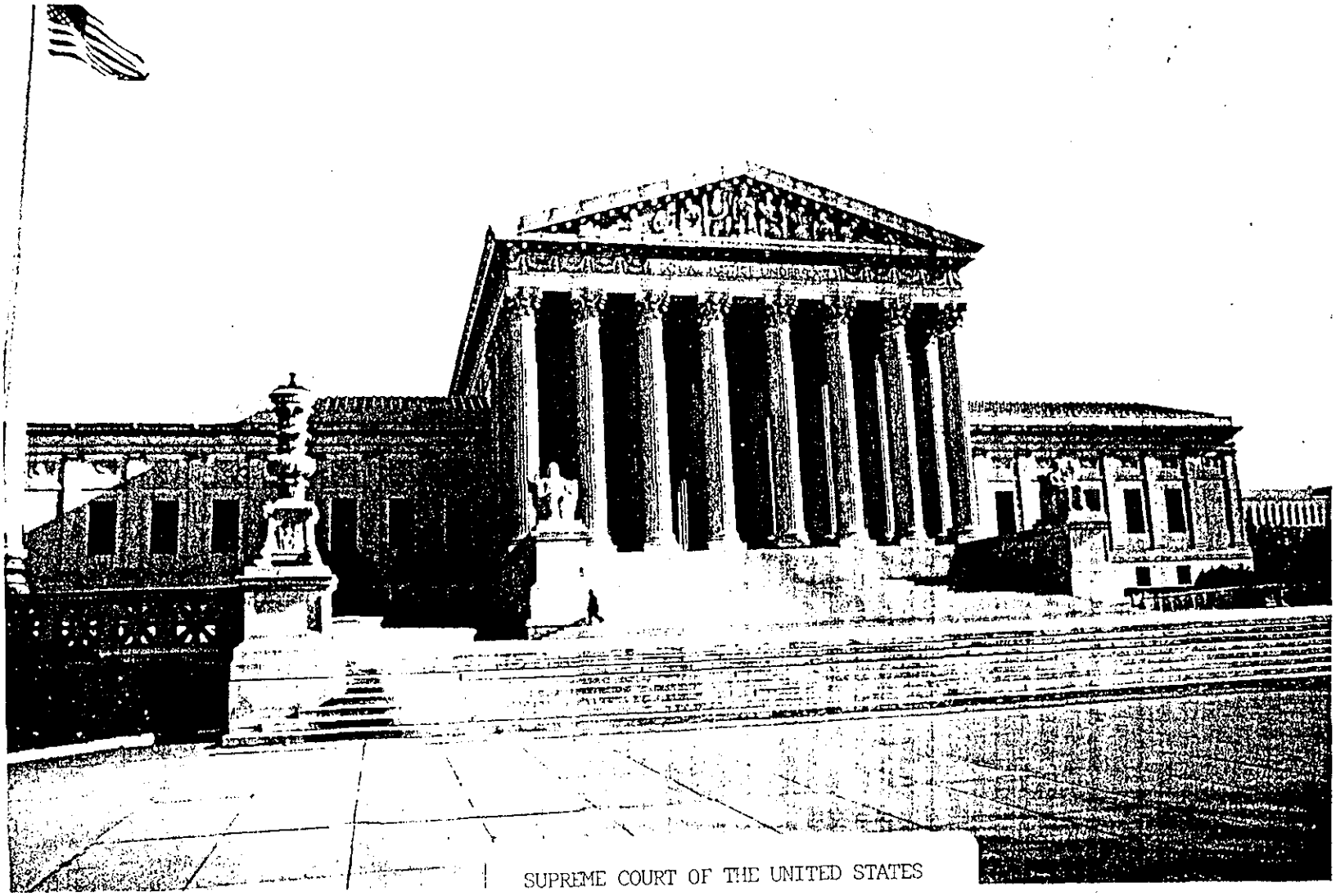


QUADRANGLE LOCATION

WASHINGTON WEST, D. C.—MD.—VA.

N3852.5—W7700/7.5

1965
PHOTOREVISED 1971
AMS 5561 I NE—SERIES V833



SUPREME COURT OF THE UNITED STATES

NPS Form 10-900
(Rev. 10-90)

OMB No. 1024-0018

United States Department of the Interior
National Park Service

NATIONAL REGISTER OF HISTORIC PLACES REGISTRATION FORM

This form is for use in nominating or requesting determinations for individual properties and districts. See instructions in How to Complete the National Register of Historic Places Registration Form (National Register Bulletin 16A). Complete each item by marking "x" in the appropriate box or by entering the information requested. If any item does not apply to the property being documented, enter "N/A" for "not applicable." For functions, architectural classification, materials, and areas of significance, enter only categories and subcategories from the instructions. Place additional entries and narrative items on continuation sheets (NPS Form 10-900a). Use a typewriter, word processor, or computer, to complete all items.

1. Name of Property

historic name Summerton High School

other names/site number Summerton Middle School

2. Location

street & number South Church Street — not for publication ___
city or town Summerton — vicinity ___
state South Carolina code SC county Clarendon code 027
zip code 29148

3. State/Federal Agency Certification

As the designated authority under the National Historic Preservation Act of 1986, as amended, I hereby certify that this X nomination ___ request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60. In my opinion, the property X meets ___ does not meet the National Register Criteria. I recommend that this property be considered significant X nationally ___ statewide ___ locally.
(___ See continuation sheet for additional comments.)

Mary Watson Edmonds 7/25/94
Signature of certifying official Date

Mary W. Edmonds, Deputy SHPO, S.C. Department of Archives & History, Columbia, S.C.
State or Federal agency and bureau

In my opinion, the property ___ meets ___ does not meet the National Register criteria.
(___ See continuation sheet for additional comments.)

Signature of commenting or other official Date

State or Federal agency and bureau

4. National Park Service Certification

I, hereby certify that this property is:

X entered in the National Register — 8/26/94
___ See continuation sheet.
___ determined eligible for the National Register
___ See continuation sheet.
___ determined not eligible for the National Register
___ removed from the National Register
___ other (explain): _____

Signature of Keeper Date of Action

5. Classification

Ownership of Property
(Check as many boxes as apply)
___ private
_X_ public-local
___ public-State
___ public-Federal

Category of Property
(Check only one box)
_X_ building(s)
___ district
___ site
___ structure
___ object

Number of Resources within Property

Contributing	Noncontributing	
2	____	buildings
____	____	sites
____	____	structures
____	____	objects
2	0	Total

Name of related multiple property listing
Enter "N/A" if property is not part of a multiple property listing.)
N/A

Number of contributing resources previously listed in the National Register 0

6. Function or Use

Historic Functions (Enter categories from instructions)
Cat: EDUCATION Sub: School

Current Functions (Enter categories from instructions)
Cat: VACANT/NOT IN USE Sub:

7. Description

Architectural Classification
(Enter categories from instructions)
Late 19th and 20th Century Revivals

Materials
(Enter categories from instructions)
foundation Not Visible
roof Asphalt
walls Brick
other Wood

Narrative Description
(Describe the historic and current condition of the property on one or more continuation sheets.)

8. Statement of Significance

Applicable National Register Criteria
(Mark "x" in one or more boxes for the criteria qualifying the property for National Register listing)

_X_ A Property is associated with events that have made a significant contribution to the broad patterns of our history.
____ B Property is associated with the lives of persons significant in our past.
____ C Property embodies the distinctive characteristics of a type period, or method of construction or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components lack individual distinction.
____ D Property has yielded, or is likely to yield information important prehistory or history.

Criteria Considerations
(Mark "X" in all the boxes that apply.)

____ A owned by a religious institution or used for religious purposes.
____ B removed from its original location.
____ C a birthplace or a grave.
____ D a cemetery.
____ E a reconstructed building, object,or structure.
____ F a commemorative property.
__X__ G less than 50 years of age or achieved significance within the past 50 years.

Areas of Significance
(Enter categories from instructions)
Education
Ethnic Heritage/Black

Significant Dates
1936
1949
1954

Significant Person
(Complete if Criterion B is marked above)

Cultural Affiliation
N/A

Architect/Builder
Wessinger, Jesse Walter
Stork, Robert Caughman

Period of Significance
1949-1954

Narrative Statement of Significance
(Explain the significance of the property on one or more continuation sheets.)

9. Major Bibliographical References

Bibliography
(Cite the books, articles, and other sources used in preparing this form on one or more continuation sheets.)

Previous documentation on file (NPS)
___ preliminary determination of individual listing (36 CFR 67) has been requested.
___ previously listed in the National Register
___ previously determined eligible by the National Register
___ designated a National Historic Landmark
___ recorded by Historic American Buildings Survey # _____
___ recorded by Historic American Engineering Record # _____

Primary Location of Additional Data
__X__ State Historic Preservation Office
___ Other State agency
___ Federal agency
___ Local government
___ University
___ Other
Name of repository: _____

10. Geographical Data

Acreage of Property Approximately 1.8 acres
UTM References
(Place additional UTM references on a continuation sheet)

	Zone	Easting	Northing		Zone	Easting	Northing
1	17	560940	3718540	3			
2				4			

___ See continuation sheet.

Verbal Boundary Description
(Describe the boundaries of the property on a continuation sheet.)

Boundary Justification
(Explain why the boundaries were selected on a continuation sheet.)

11. Form Prepared By

name/title J. Tracy Power, Ph.D., NR Specialist/Historian; Andrew W. Chandler, NR Specialist/ Architectural Historian

organization S.C. Department of Archives & History date 20 July 1994

street & number P.O. Box 11669 telephone (803) 734-8610

city or town Columbia state SC zip code 29211

Additional Documentation

Submit the following items with the completed form:

Continuation Sheets

Maps

A **USGS map** (7.5 or 15 minute series) indicating the property's location.
A **Sketch map** for historic districts and properties having large acreage or numerous resources.

Photographs

Representative **black and white photographs** of the property.

Additional items (Check with the SHPO or FPO for any additional items)

Property Owner

(Complete this item at the request of the SHPO or FPO.)

name Clarendon County School District I

street & number P.O. Box 38 telephone

city or town Summerton state SC zip code 29148

Paperwork Reduction Act Statement: This information is being collected for applications to the National Register of Historic Places to nominate properties for listing or determine eligibility for listing, to list properties, and to amend existing listings. Response to this request is required to obtain a benefit in accordance with the National Historic Preservation Act, as amended (16 U.S.C. 470 et seq.).

Estimated Burden Statement: Public reporting burden for this form is estimated to average 18.1 hours per response including the time fo: reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding this burden estimate or any aspect of this form to the Chief, Administrative Services Division, National Park Service, P.O. Box 37127, Washington, D 20013-7127; and the Office of Management and Budget, Paperwork Reductions Project (1024-0018), Washington, DC 20503.

The Summerton High School, located on South Church Street in Summerton, was constructed in 1936 according to designs by the prominent Columbia architectural firm of Wessinger and Stork.

This one-story hip roof brick building is rectangular in plan, and has a central pavilion featuring a pedimented gable, supported visually by four cast stone pilasters. Between the inner pilasters is a compass-headed portal which is itself accented with cast stone trim and keystone. Recessed within this opening is a double-leaf door with compass-headed, glazed fanlight transom. Flanking the entrance portal and framed by the inner and outermost pilasters are twelve-over-twelve double-hung sash windows with cast stone sills and jack arches with keystones. In the tympanum of the central pediment is a glazed oculus with molded cast stone surround. The seventeen-bay facade features two groups of six nine-over-nine double-hung sash windows with brick sills. At either extreme end of the principal (east) elevation is a six-over-six double-hung sash window, flanked by cast stone pilasters and featuring stuccoed underpanels with decorative iron grille overlays. The grille on the north end of the main elevation is missing. Two louvered semicircular roof vents articulate the slope of the roof on the east (front) elevation, while the north and south elevations each feature one of the same type, and the west (rear) elevation contains three peaked vents. A secondary entrance, with double-leaf door and compass-headed glazed fanlight transom similar to that at the front entrance, is located at the center of the north elevation. The building's interior features a T-shaped central corridor, flanking offices at the entrance, six classrooms, and restrooms at either end of the main block. All walls, original partitions, and ceilings are finished in plaster, and the original steam heat radiators remain throughout the building.

A one-story truncated hip roof brick gymnasium, accented with cast stone and brick corner and wall pilasters on each of its principal elevations, is attached to the south end of the main building by an enclosed brick connector. The connector features on its east (front) elevation a centrally located, double-leaf door with cast stone trimmed brick arch, and flanking six-over-six, double-hung sash windows. The gymnasium is rectangular in plan, and features a one-story flat-roofed frontal projection, containing a triple-arched loggia with two double-leaf door entrances. Flanking the loggia are a ticket office to the north and a storage room to the south, each of which contains a four-over-four, double-hung sash window with simple soldier course lintels on their east elevations and their respective north and south elevations as well. This building contains large tripartite windows with nine-over-nine double-hung sash flanked by three-over-three double-hung sash. An approximately forty-foot tall square stack, originally a part of the coal-fired boiler heating system and articulated with cast stone bands at and near its top, is located immediately to the north of the gymnasium and within the connector. On the gymnasium's interior can be seen the roof structure which consists of frame rafters and joists supported by a steel truss system.

The Summerton High School is nationally significant for its close association with the landmark Supreme Court decision in Brown v. the Board of Education of Topeka, Kansas, a decision which struck down the segregation of public education in the United States in 1954. This decision also overturned the Court's earlier decision in Plessy v. Ferguson (1896), which had held that separate public facilities for white and blacks were constitutional as long as those separate facilities were equal, a doctrine which had since formed the cornerstone of legal segregation in the South and elsewhere. The Brown case, commonly referred to as Brown v. Board of Education, was actually five cases from South Carolina, Kansas, Virginia, the District of Columbia, and Delaware, cases that had been consolidated for joint argument before the Supreme Court.[1] The Summerton High School is the only school still standing of the five schools in Clarendon County School District # 22 that were associated with Briggs v. Elliott, the South Carolina case which helped form the basis for Brown v. Board of Education.

Briggs v. Elliott, the first of the five cases included in the Brown case, concerned the disparate quality of education provided by five schools in Clarendon County School District # 22. There were two white schools--Summerton High School and Summerton Elementary School--and three black schools--Scotts Branch High School, Liberty Hill Elementary School, and Rambay Elementary School--in the district. The state of public education in Clarendon County as a whole, with sixty-one black schools serving 6500 students, and twelve white schools serving 2300 students during the 1949-1950 school year, demonstrated the fallacy of the "separate but equal" doctrine in public education, as the county spent $43 per black child and $179 per white child in 1950. Though Reverend J.A. DeLaine, a teacher at Scotts Branch High School, had requested as early as 1947 that the Clarendon County school board provide school buses for black students, Superintendent L.B. McCord had refused. When a test case, Pearson v. County Board of Education, was heard in a Federal district court in Florence in 1948 it was dismissed on a technicality. DeLaine and others then approached the South Carolina and national leaders of the National Association for the Advancement of Colored People (NAACP) and proposed a test case seeking equality of educational opportunity in Clarendon County instead of simply seeking additional transportation.

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[1]The definitive study of Brown v. the Board of Education is Richard Kluger, Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality (New York: Alfred A. Knopf, 1976); for a useful brief assessment, see Alfred H. Kelly, "The School Desegregation Case," in John A. Garraty, ed., Quarrels That Have Shaped the Constitution, rev. ed. (New York: Harper & Row, 1987). For a useful introduction to the background of Briggs v. Elliott, the Clarendon County case which was the first of the five cases consolidated to form Brown v. the Board of Education and which concerned Summerton High School, see Benjamin F. Hornsby, Jr., Stepping Stone to the Supreme Court: Clarendon County, South Carolina, Topics in African American History 1 (Columbia: South Carolina Department of Archives and History, 1992).

Over one hundred petitioners acting on behalf of the black students in the county then presented a petition to Clarendon County School District # 22 in November 1949. Their petition detailed the obvious differences in expenditures, buildings, and services available for white and black students, and observed that Summerton High School and Summerton Elementary School were "maintained for the sole use, comfort, and convenience of the white children of said district . . . modern, safe, sanitary, well equipped, lighted and healthy . . . uncrowded, and maintained in first class condition." Scotts Branch High School, Liberty Hill Elementary School, and Rambay Elementary School, on the other hand, were described as "the only three schools to which Negro pupils are permitted to attend," "inadequate . . . unhealthy . . . old and overcrowded and in a dilapidated condition." The petitioners further argued that "the Negro children of public school age in School District #22 and in Clarendon County are being discriminated against solely because of their race and color in violation of their rights to equal protection of the laws provided by the 14th amendment to the Constitution of the United States," and warned that court action would result if their petition were ignored.[2]

On May 17th, 1950, after the county school board did nothing, the Clarendon County branch of the NAACP filed Briggs v. Elliott in Federal district court in Charleston. The plaintiff whose name led the list was Harry Briggs, a service station attendant in Summerton with school-age children, and the defendant was R.W. Elliott, the chairman of the board for Clarendon County School District # 22. The trustees for the district replied to the suit in June, arguing that the public school facilities and services were "separate but equal" and asking the court to dismiss the complaint.

Thurgood Marshall and other lawyers retained by the NAACP changed their tactics at this point. Instead of demanding that Clarendon County take steps to ensure that the separate white and black schools were actually equal, they decided to use Briggs v. Elliott as a test case to strike down segregation in all public schools in South Carolina, on the basis that "separate" was fundamentally not "equal". The case was argued in May 1951 before the Federal district court in Charleston, with Judges John J. Parker, J. Waties Waring, and George Bell Timmerman presiding. Marshall and Robert Carter represented the plaintiffs, while Charleston attorney Robert M. Figg, Jr., represented the defendants. Figg, surprising Marshall and Carter, focused on the issue of equality rather than the issue of segregation, admitting that Clarendon County schools were not equal and promising that the county would take steps in the future to address past inequalities. The court ruled against the petitioners' pleas to

[2]Petition of Harry Briggs, et al., to the Board of Trustees for School District No. 22, 11 November 1949, Records of Clarendon County, Board of Education, Jeanes Teachers' Records, Negro Rural School Fund, Inc., 1949-1950, South Carolina Department of Archives and History, Columbia, S.C.

desegregate the schools, but directed the defendants to ensure that equal educational facilities and opportunities for black students were established, and requested a progress report in six months. Waring, for his part, wrote a lengthy dissent, arguing that the simple fact of segregation was the key issue instead of the equality of separate schools, and claiming that "segregation in education can never produce equality and . . . is an evil that must be eradicated. . . . the system of segregation in South Carolina must go and must go now. Segregation is per se inequality."[3]

The NAACP's lawyers appealed the district court's decision to the United States Supreme Court in July 1951, and before they heard from their appeal, Clarendon County school officials reported to the district court in December. The officials explained that they were planning to build three new black schools--one high school and two elementary schools--and that they had already taken steps to make teacher salaries and expenditures for books and equipment equal to those for white schools, as well as providing buses for black students. After the Supreme Court returned the case to the Federal district court for a second hearing, the district court ruled in January 1952 that equality and not segregation was the issue. The court's decision observed that the county was taking steps to ensure equality, claiming, "the educational facilities and opportunities afforded Negroes within the district will, by the beginning of next school year . . . be made equal to those afforded white persons."[4]

On May 10th, 1952, when Thurgood Marshall and Robert Carter appealed the Federal district court's latest ruling to the Supreme Court, they dropped the "equality" portion of the original argument in Briggs v. Elliott in favor of a vigorous argument that segregation in and of itself violated the Fourteenth Amendment's guarantee to "equal protection under the laws." This appeal included evidence from experts who had testified at the first trial before the district court to the effect that segregation on the basis of race and color was harmful to black children. Among those experts was black psychologist Kenneth Clark, whose tests with black children--some of them school children in Clarendon County--had demonstrated that those children often felt an inferiority which was caused, at least in part, by racial segregation in education.

There were four similar cases joined with Briggs v. Elliott on appeal to the United States Supreme Court; they were, in order of their addition to the Supreme Court's docket, Brown v. Board of Education of Topeka, which would lend its name to the five school desegregation cases; Davis v. County

[3]Quoted in Kluger, p. 366.

[4]Quoted in Kluger, p. 534.

School Board of Prince Edward County, from Virginia; Bolling v. Sharpe, from the District of Columbia; and Belton v. Gebhart, from Delaware.

The Supreme Court convened to hear arguments in these five cases on December 9th, 1952, with Thurgood Marshall representing the plaintiffs in Briggs v. Elliott. Marshall argued that school segregation, in spite of the Federal district court's ruling, was a matter of policy for each state to decide on its own and that segregation in public education violated the Fourteenth Amendment. "The only thing we ask," Marshall said, "is that the state-imposed racial segregation be taken off, and to leave the county school board, the county people, the district people, to work out their own solution of the problem to assign children on any reasonable basis they want to assign them on."[5] John W. Davis, representing the state of South Carolina, argued in its defense that the state had complied with the ruling of the district court to equalize the schools, that the Fourteenth Amendment did not apply to a state's decision about its public schools, and that the social science evidence of Clark and others on the effects of segregation on black children was not relevant to a question of constitutional rights. He also argued that the Court's decision in Plessy v. Ferguson had not been--and should not be--overturned, and that the doctrine of "separate but equal" should be allowed to stand. Marshall's eloquent rebuttal charged that Davis had missed the main point of the case, that is, that "There is nothing involved in this case other than race and color, and I do not need to go to the background of the statutes or anything else. I just read the statutes, and they say 'white' and 'colored.'"[6]

All the arguments by attorneys for the plaintiffs and the defendants were completed by December 11th, after only three days before the Court. The Supreme Court justices, troubled by all the implications of the cases--perhaps most of all by the prospect of overturning a decision as firmly established as Plessy v. Ferguson--were divided on the proper decision, and deliberated for nearly six months. In June 1953 the Court, instead of issuing a ruling, placed the five cases under the heading of Brown v. Board of Education on its docket for the coming fall, instructing the attorneys for both sides to address the question of whether the framers of the Fourteenth Amendment intended it to apply to segregation in public schools, and if so, then to address the way in which the Court might issue a decree ending school segregation.

Though the NAACP and the plaintiffs in the five cases had not yet won the Supreme Court over to their position, the very fact that the Court was willing to address the issue of what if segregation was ruled to violate

[5]Quoted in Kluger, pp. 571-72.

[6]Quoted in Kluger, p. 574.

the Fourteenth Amendment and what to do next was a significant step in the right direction. When the Court convened on December 7th to hear the rearguments, it had a new Chief Justice, for Chief Justice Fred Vinson had died suddenly in September, and President Dwight D. Eisenhower nominated Earl Warren, a Federal judge from California, to replace Vinson. The arguments lasted for three days, and Reverend J.A. DeLaine from Clarendon County was there to hear them. DeLaine said to a reporter, "There were times when I thought I would go out of my mind because of this cause," but added, "if I had to do it again, I would. I feel that it was worth it. I have a feeling that the Supreme Court is going to end segregation."[7] John W. Davis, speaking for the state of South Carolina in Briggs v. Elliott, argued that "Your honors do not sit, and cannot sit, as a glorified board of education for the state of South Carolina or any other state. . . . Here is equal education, not promised, not prophesied, but present. Shall it be thrown away on some fancied question of racial prestige?"[8] He was answered the next day by Thurgood Marshall, who said, referring to the question about "racial prestige," "Exactly correct. Ever since the Emancipation Proclamation, the Negro has been trying to get . . . the same status as anybody else regardless of race."[9] Marshall's argument seemed to strike home with Chief Justice Warren, who commented in a conference with the other Justices a few days later that the Court could no longer uphold those laws--or Plessy v. Ferguson--because the entire doctrine of "separate but equal" was based on the supposed inferiority of the Negro race.

The United States Supreme Court announced its long-awaited ruling on May 17th, 1954, in the most significant decision of the twentieth century and arguably the most significant decision in all of American constitutional history. Warren, in his first major decision as Chief Justice, read the Court's opinion in Brown v. Board of Education, outlining the way in which the five cases had reached the Court, then saying, "In approaching this problem, we cannot turn the clock back to 1868 when the [Fourteenth] Amendment was adopted, or even to 1896 when Plessy V. Ferguson was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. . . . In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." Warren then asked the question, "Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other tangible factors may be equal, deprive the children of the minority group of equal educational opportunities?" He replied, speaking for all nine

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[7]Afro-American (Baltimore), 12 December 1953, quoted in Kluger, p. 667.

[8]Quoted in Kluger, p. 672.

[9]Quoted in Kluger, p. 674.

Justices in a unanimous decision, "We believe that it does." The Court then dismissed Plessy v. Ferguson as based on outdated and simply wrong psychological assumptions about the supposed inferiority of blacks, then offered its opinion:

> We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.[10]

As Richard Kluger says so eloquently in his monumental study Simple Justice, the decision in Brown v. Board of Education meant that

> In the United States, schoolchildren could no longer be segregated by race. The law of the land no longer recognized a separate equality. No Americans were more equal than any other Americans. Jim Crow was on the way to the burial ground.[11]

Summerton High School is significant as the only extant school of the five schools named in the original 1949 petition which became the basis for Briggs v. Elliott, which was in turn the first of the five cases which were consolidated to become Brown v. the Board of Education. Its close association with Briggs v. Elliott, as one of the two white schools that were targeted by those who sought to end legal segregation in Clarendon County schools, gives the school significance not only in Clarendon County and the state of South Carolina but also on a national scale as well. Though the petitions, court arguments, appeals, and eventual Supreme Court decision in Briggs v. Elliott and Brown v. Board of Education took place less than fifty years ago, the dismantling of segregation in public education is an event of such exceptional significance that the Summerton High School is eligible for inclusion in the National Register of Historic Places.

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[10]Quoted in Kluger, Appendix, pp. 781-82.

[11]Kluger, p. 708.

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Kluger, Richard. Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality. New York: Alfred A. Knopf, 1976.

Verbal Boundary Description

The boundary of the nominated property is shown as the pencil line on the accompanying Clarendon County Tax Map 78-11, Parcel 01-004, drawn at a scale of 1" = 100'.

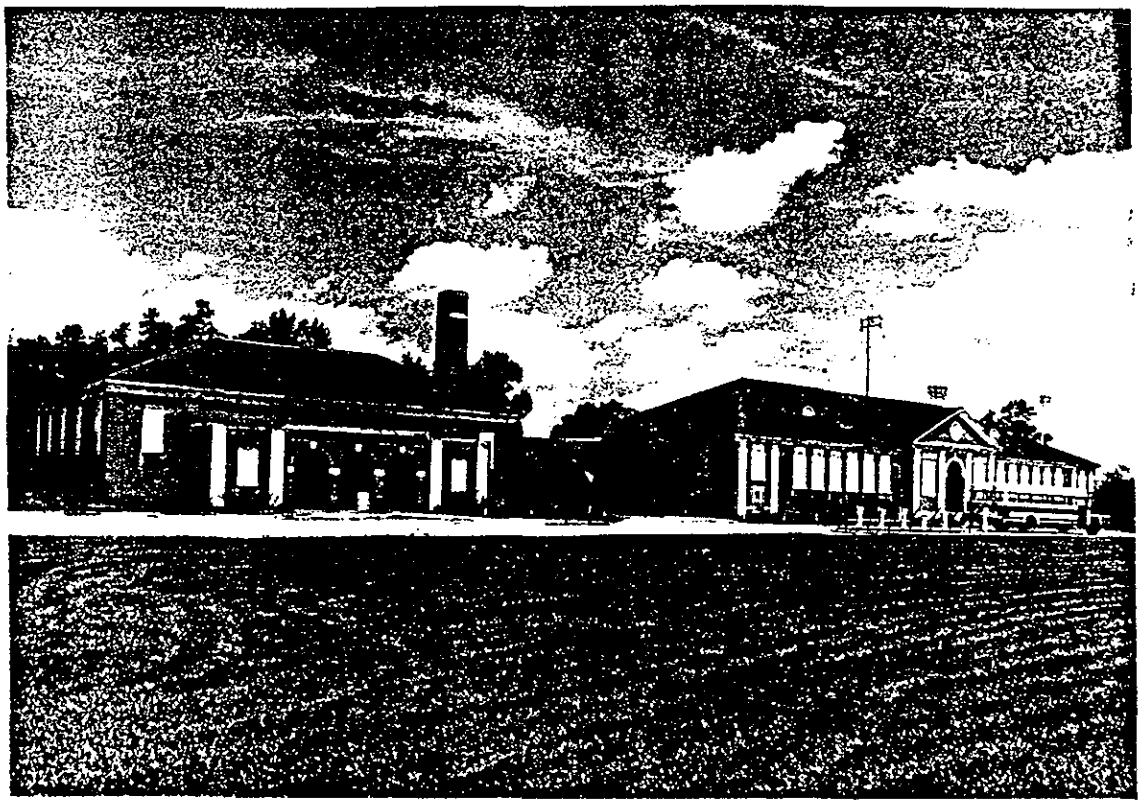
Verbal Boundary Justification

The nominated property is restricted to the historic school building and gymnasium and their immediate settings.

The following information is the same for each of the photographs:

Name of Property:	Summerton High School
Location:	Summerton, Clarendon County, South Carolina
Name of Photographer:	J. Tracy Power S.C. Department of Archives & History
Date of Photographs:	7 July 1994
Location of Negatives:	S.C. Department of Archives & History, Columbia, S.C.

1. Gymnasium (left) and Main Building (right); Facade left oblique
2. Main Building; Facade left oblique
3. Gymnasium; Facade
4. Main Building; Facade detail
5. Main Building; Facade entrance detail
6. Main Building; Facade right oblique
7. Main Building; Interior view of hallway, looking south
8. Main Building; Interior view of classroom, looking southwest



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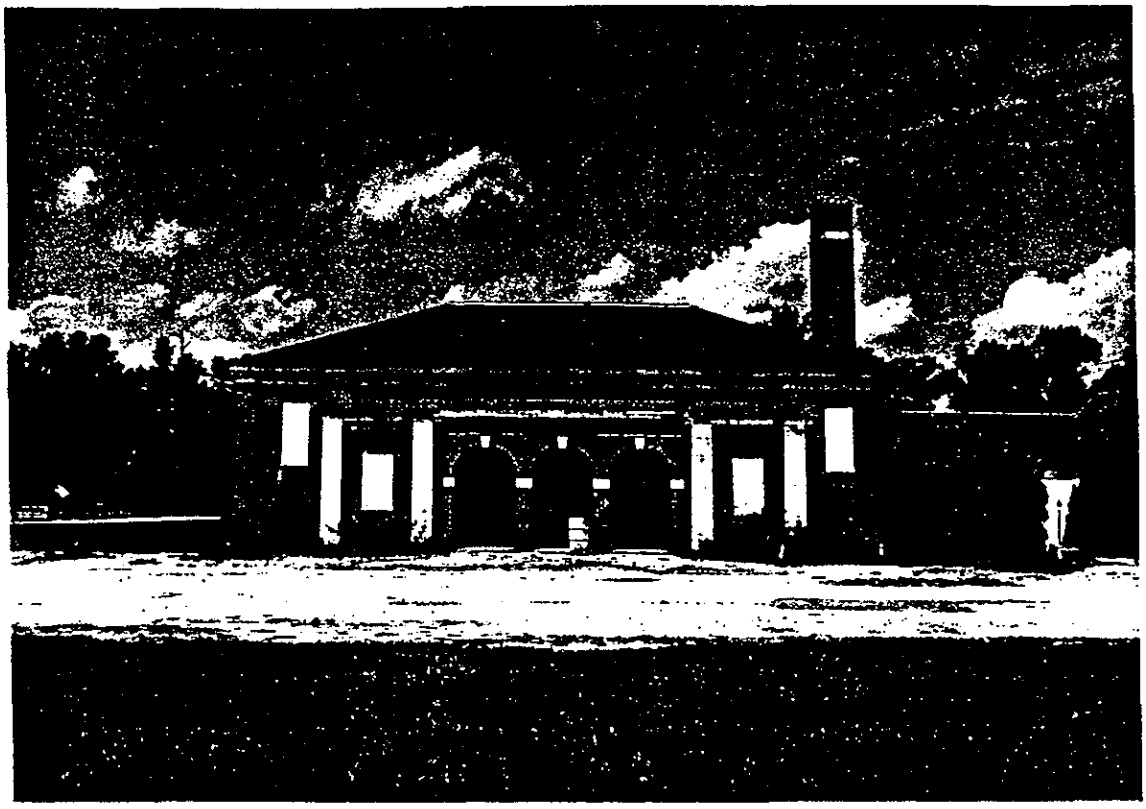

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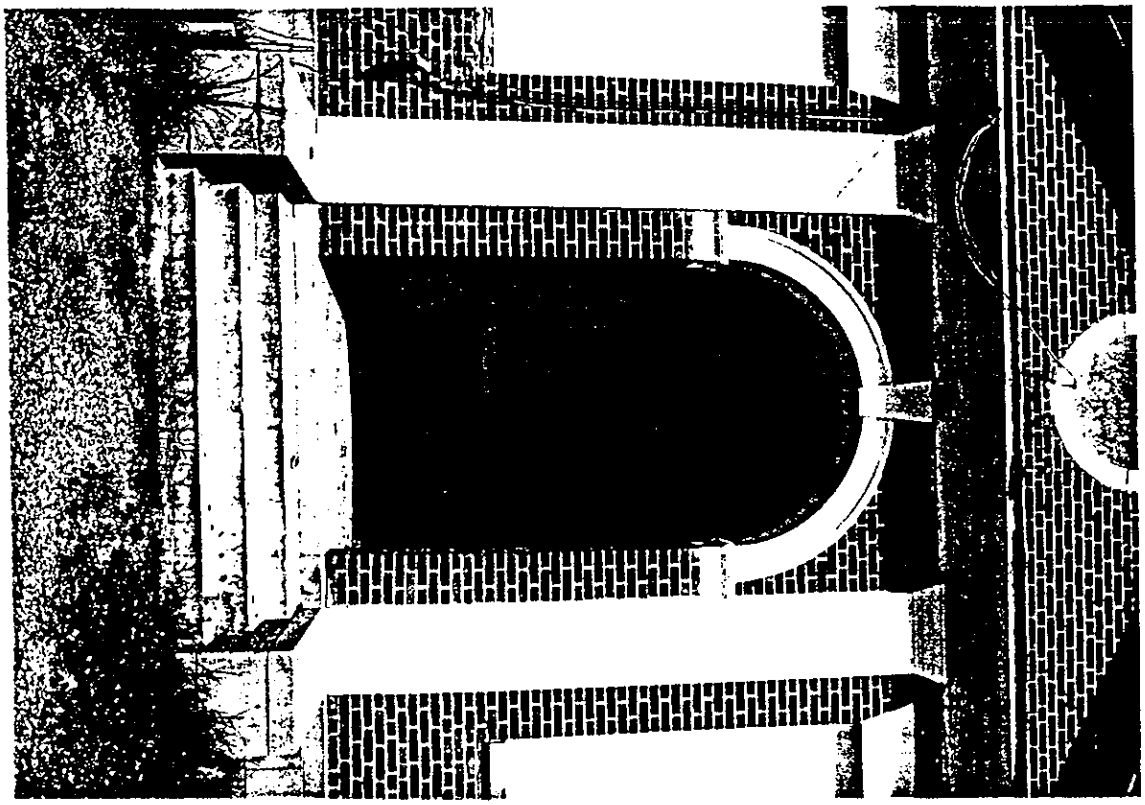


5

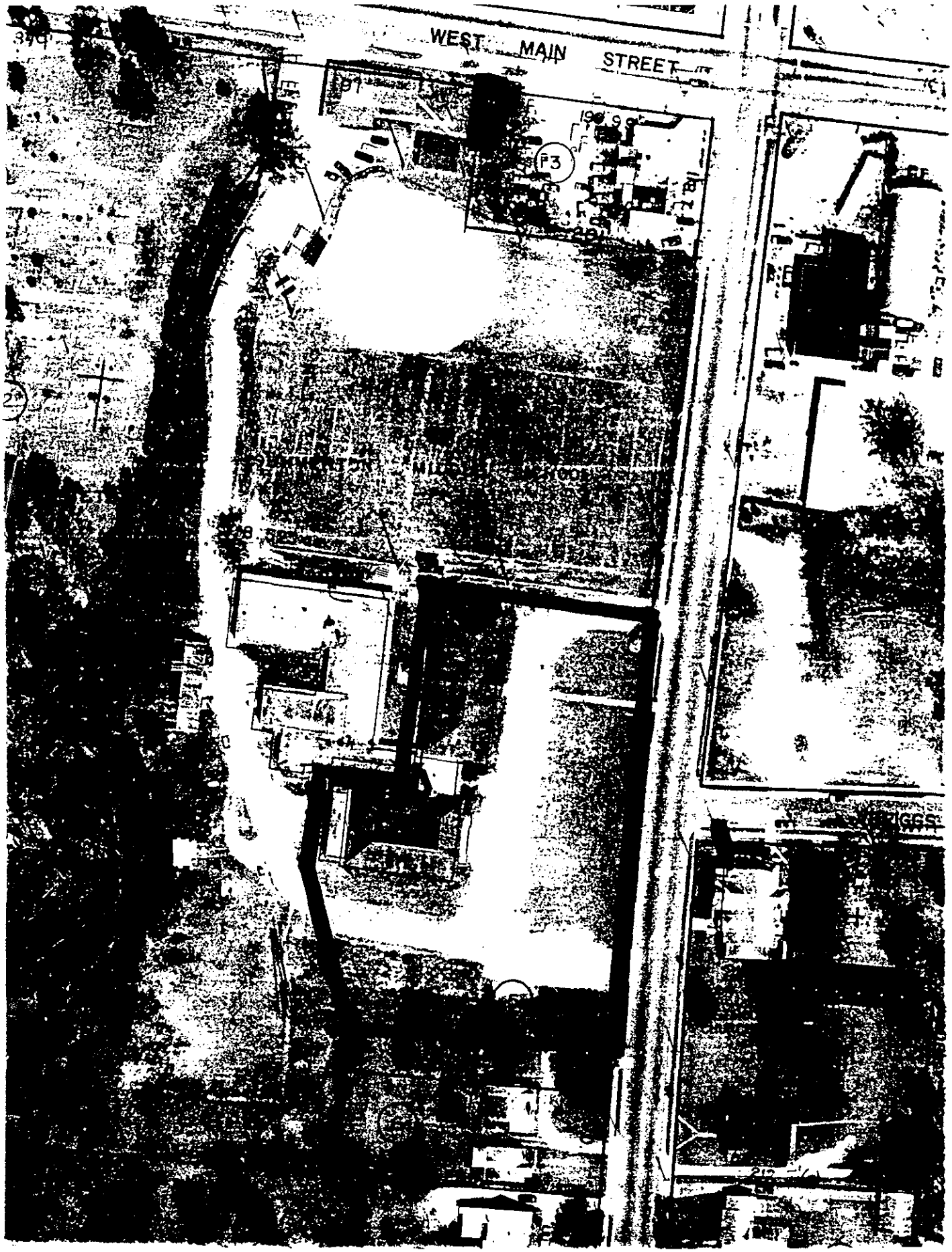
6

7

8

SUMMERTON HIGH SCHOOL
AS IT APPEARED AT THE TIME OF *Briggs v. Elliott*

State Budget & Control Board, Sinking Fund Commission,
Insurance File Photographs, 1948-1951,
South Carolina Department of Archives and History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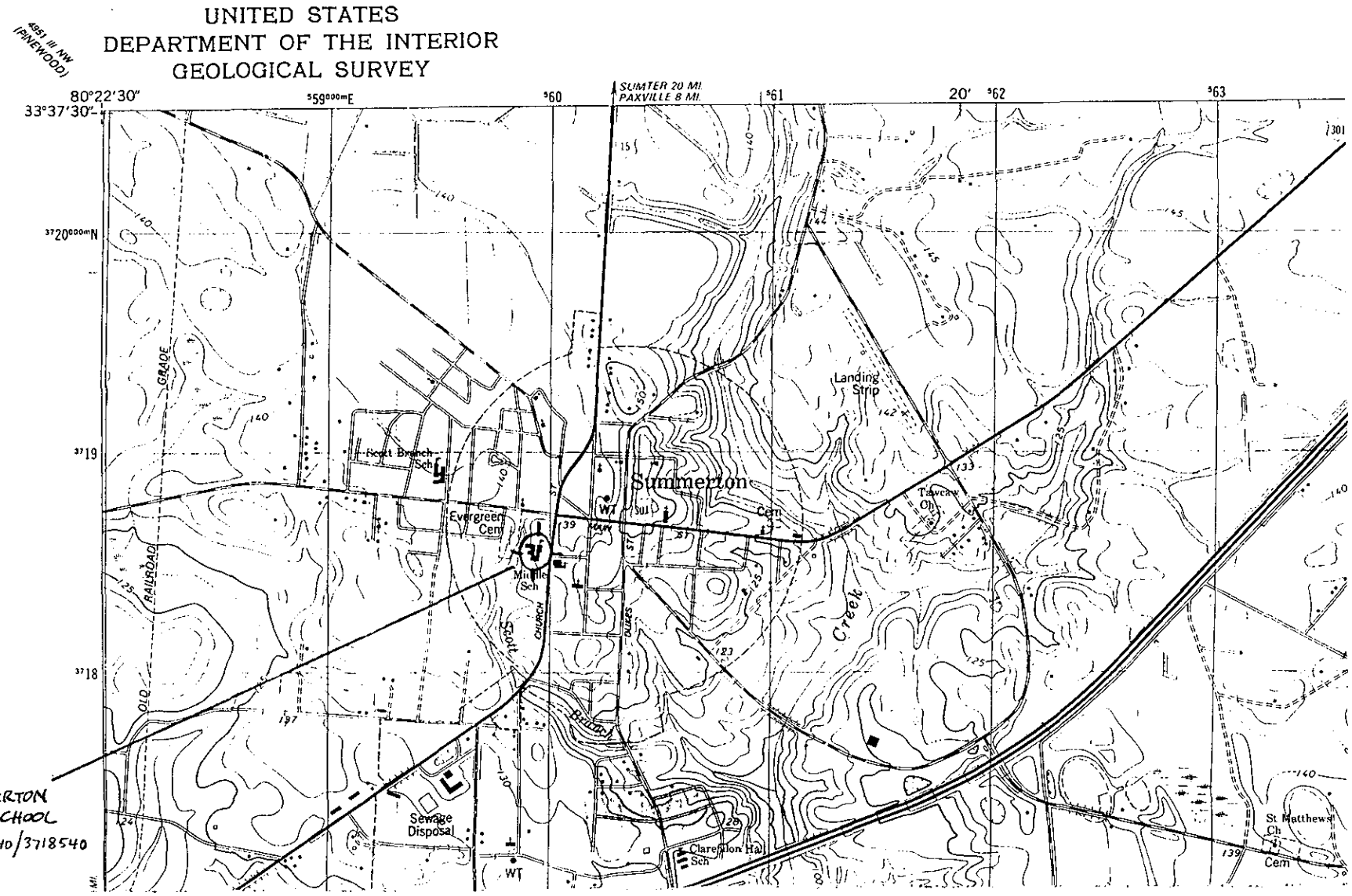
UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY



SUMMERTON
HIGH SCHOOL
17/560940/3718540

NPS Form 10-900
(Oct. 1990)

OMB No. 1024-0018

United States Department of the Interior
National Park Service

5

NATIONAL REGISTER OF HISTORIC PLACES REGISTRATION FORM

This form is for use in nominating or requesting determinations for individual properties and districts. See instructions in How to Complete the National Register of Historic Places Registration Form (National Register Bulletin 16A). Complete each item by marking "x" in the appropriate box or by entering the information requested. If any item does not apply to the property being documented, enter "N/A" for "not applicable." For functions, architectural classification, materials, and areas of significance, enter only categories and subcategories from the instructions. Place additional entries and narrative items on continuation sheets (NPS Form 10-900a). Use a typewriter, word processor, or computer, to complete all items.

1. Name of Property

historic name **Robert Russa Moton High School**

other names/site number **Farmville Elementary School; VDHR File No. 144-53**

2. Location

street & number **Intersection of South Main & Griffin Blvd.** not for publication **N/A**
city or town **Farmville** vicinity **N/A**
state **Virginia** code **VA** county **Prince Edward** code **147** zip code **23901**

3. State/Federal Agency Certification

As the designated authority under the National Historic Preservation Act of 1986, as amended, I hereby certify that this _x_ nomination ___ request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60. In my opinion, the property _x_ meets ___ does not meet the National Register Criteria. I recommend that this property be considered significant _x_ nationally ___ statewide ___ locally. (___ See continuation sheet for additional comments.)

Signature of certifying official/Title — Date

Virginia Department of Historic Resources
State or Federal agency and bureau

In my opinion, the property ___ meets ___ does not meet the National Register criteria. (___ See continuation sheet for additional comments.)

Signature of commenting or other official — Date

State or Federal agency and bureau

4. National Park Service Certification

I, hereby certify that this property is:

___ entered in the National Register ___ See continuation sheet.
___ determined eligible for the National Register ___ See continuation sheet.
___ determined not eligible for the National Register
___ removed from the National Register
___ other (explain): _____

Signature of Keeper — Date of Action

5. Classification

Ownership of Property (Check as many boxes as apply)

___ private
_x_ public-local
___ public-State
___ public-Federal

Category of Property (Check only one box)

_x_ building(s)
___ district
___ site
___ structure
___ object

Number of Resources within Property

Contributing	Noncontributing	
1	0	buildings
0	0	sites
0	0	structures
0	0	objects
1	0	Total

Number of contributing resources previously listed in the National Register 0

Name of related multiple property listing (Enter "N/A" if property is not part of a multiple property listing.) N/A

6. Function or Use

Historic Functions (Enter categories from instructions)
Cat: EDUCATION Sub: School

Current Functions (Enter categories from instructions)
Cat: EDUCATION Sub: School

7. Description

Architectural Classification (Enter categories from instructions)
LATE 19TH AND EARLY 20TH CENTURY REVIVALS: Classical Revival

Materials (Enter categories from instructions)

foundation BRICK
walls BRICK
roof METAL
other

Narrative Description (Describe the historic and current condition of the property on one or more continuation sheets.)

8. Statement of Significance

Applicable National Register Criteria (Mark "x" in one or more boxes for the criteria qualifying the property for National Register listing)

- _x_ A Property is associated with events that have made a significant contribution to the broad patterns of our history.
- __ B Property is associated with the lives of persons significant in our past.
- __ C Property embodies the distinctive characteristics of a type, period, or method of construction or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components lack individual distinction.
- __ D Property has yielded, or is likely to yield information important in prehistory or history.

Criteria Considerations (Mark "X" in all the boxes that apply.)

- __ A owned by a religious institution or used for religious purposes.
- __ B removed from its original location.
- __ C a birthplace or a grave.
- __ D a cemetery.
- __ E a reconstructed building, object, or structure.
- __ F a commemorative property.
- _x_ G less than 50 years of age or achieved significance within the past 50 years.

Areas of Significance (Enter categories from instructions)
POLITICS/GOVERNMENT
SOCIAL HISTORY

Period of Significance 1951

Significant Dates April 23, 1951

Significant Person (Complete if Criterion B is marked above)
N/A

Cultural Affiliation N/A

Architect/Builder unknown

Narrative Statement of Significance (Explain the significance of the property on one or more continuation sheets.)

9. Major Bibliographical References

(Cite the books, articles, and other sources used in preparing this form on one or more continuation sheets.)

Previous documentation on file (NPS)
- __ preliminary determination of individual listing (36 CFR 67) has been requested.
- __ previously listed in the National Register
- __ previously determined eligible by the National Register
- __ designated a National Historic Landmark
- __ recorded by Historic American Buildings Survey # _____
- __ recorded by Historic American Engineering Record # _____

Primary Location of Additional Data
- _x_ State Historic Preservation Office
- __ Other State agency
- __ Federal agency
- __ Local government
- __ University
- __ Other

Name of repository: _____

10. Geographical Data

Acreage of Property __5 acres__

UTM References
(Place additional UTM references on a continuation sheet)

	Zone	Easting	Northing		Zone	Easting	Northing
1	17	730630	4130190	2	17	730730	4130200
3	17	730660	4130060	4			

___ See continuation sheet.

Verbal Boundary Description
(Describe the boundaries of the property on a continuation sheet.)

Boundary Justification
(Explain why the boundaries were selected on a continuation sheet.)

11. Form Prepared By

name/title Jarl K. Jackson and Julie L. Vosmik
organization Virginia Dept. of Historic Resources date December 1994
street & number 221 Governor Street telephone 804-786-3143
city or town Richmond State VA zip code 23219

Additional Documentation

Submit the following items with the completed form:

Continuation Sheets

Maps
A USGS map (7.5 or 15 minute series) indicating the property's location.
A sketch map for historic districts and properties having large acreage or numerous resources.

Photographs
Representative black and white photographs of the property.

Additional items
(Check with the SHPO or FPO for any additional items)

Property Owner

(Complete this item at the request of the SHPO or FPO.)
name/title Prince Edward County School Board
street & number Route 5, Box 680 telephone 804-392-8893
city or town Farmville State VA zip code 23901

Paperwork Reduction Act Statement: This information is being collected for applications to the National Register of Historic Places to nominate properties for listing or determine eligibility for listing, to list properties, and to amend existing listings. Response to this request is required to obtain a benefit in accordance with the National Historic Preservation Act, as amended (16 U.S.C. 470 et seq.).
Estimated Burden Statement: Public reporting burden for this form is estimated to average 18.1 hours per response including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding this burden estimate or any aspect of this form to the Chief, Administrative Services Division, National Park Service, P.O. Box 37127, Washington, DC 20013-7127; and the Office of Management and Budget, Paperwork Reductions Project (1024-0018), Washington, DC 20503.

SUMMARY DESCRIPTION

The Robert Russa Moton High School is a one-story brick structure located on a triangular lot at the prominent intersection of South Main Street and Griffin Boulevard in Farmville. The building is designed with a symmetrical "U" plan and subtle classical detailing. It consists of eight classrooms, an office and an auditorium. Located at the center of the front facade, the main entrance is highlighted by a fanlight. Throughout the building, the design and details are functional and typical of schools constructed during the late 1930s and early 1940s.

ARCHITECTURAL DESCRIPTION

Simple in its design and detailing, the Robert Russa Moton High School remains little altered since its construction in 1939. It is visually prominent due to its location on a triangular site located at the busy intersection of two main thoroughfares south of downtown. The one-story school is constructed of brick and has a low-pitched metal-clad hipped roof. The building is designed in the shape of a "U" with a plan that includes a central auditorium space and eight classrooms. Directly to the north of the building is a paved parking area beyond which are athletic fields which are included within the nominated area.

The front elevation of the school faces southwest and is symmetrical, with a central entrance and two slightly projecting end pavilions. Located between the entrance and the end pavilions are four eight-over-eight double-hung windows. The end pavilions do not have any fenestration. Four steps lead to the arched entrance with double wooden doors with nine-light upper sash and a fanlight.

The west and east elevations each have three sets of four eight-over-eight double-hung windows that illuminate classrooms. Each side elevation also possesses a small window for a restroom. The east elevation has an exterior access to a small basement area.

The "U" shape of the plan is most clearly evident on the rear elevation where two wings project from either end thus creating a three-sided courtyard area. A temporary metal building is located within the space and is not attached to the main building. Entrances lead from the end of each wings to corridors of classrooms. The two interior elevations of the wings have double-hung windows consistent with those found on the front and exterior side elevations, however, the rear wall of the main block has metal double-hung windows that illuminate the auditorium.

Like the exterior, the interior retains a remarkable degree of integrity. The plan and materials are virtually unchanged. Wood floors, mouldings, baseboards, doors and other woodwork are all original. In most of the classrooms, blackboards and closets are original features, though the light fixtures have been replaced.

The most prominent feature of the interior is the auditorium, centrally located and into which the entrance vestibule and corridors lead. At the east end of the room is an elevated stage, the rear portion of which has been enclosed for two offices. The ceiling of this space is detailed with beams that form a grid pattern. An office is located off of this space opposite the stage. Four classrooms are located across the front of the building and each rear wing contains two classrooms and a restroom. It is likely that the classroom containing shelves in the west wing originally served as the library.

Overall, the school and its site are in a remarkable state of preservation. Unlike many other schools of this period, ceilings have not been lowered, windows replaced or additions constructed. Virtually all of the original materials and finishes remain in place.

STATEMENT OF SIGNIFICANCE

The Robert Russa Moton High School is eligible for listing in the National Register of Historic Places under Criterion A in the categories of Politics/Government and Social History for its association with the struggle for desegregation of our nation's schools. The school was the scene of a strike by students of the then all-black institution begun on 23 April 1951 to protest the inadequate and unequal educational facilities that existed for blacks at the time. This strike led to the court case Davis v. County School Board of Prince Edward County, which was combined with others before the United States Supreme Court as Brown v. Board of Education. That case was the basis for the landmark decision that struck down the "separate but equal" doctrine governing public policy with regard to race. The strike and resulting court decision also precipitated the long struggle between the federal courts and the governments of both Prince Edward County and the State of Virginia over desegregation of the public schools. That struggle gave birth to the massive resistance movement by which white Virginians sought to prevent the implementation of Brown and other court decisions calling for an end to segregation by race. Prince Edward County closed its public schools until 1964 rather than desegregate. The Moton High School stands as a fitting symbol of the lengthy conflict that ultimately led to the racial desegregation of the nation's public schools.

HISTORICAL BACKGROUND

Until 1870, no statewide, organized system of public education existed in Virginia, although a few localities operated their own systems. The Virginia Constitution of 1869 mandated the public school system and the following year William Henry Ruffner was appointed by the General Assembly as first superintendent of public instruction. Ruffner's first duty was to draft legislation establishing the system. The bill he submitted was based on precedents in New Jersey and Pennsylvania, and called for the creation of a state department of public instruction, with the state having a share in the funding.[1]

Opposition to the plan was widespread, and centered on the loss of traditional local authority represented by the new state agency and the state funding provision. There was also much concern expressed about the incorporation of education for blacks, which had been illegal before the Civil War, although this was clearly to be provided for apart from whites. There was also concern that parents would be deprived of complete influence in their children's upbringing.[2]

Funding was a problem from the start, with monies initially earmarked for public education on the state level being diverted to cover Virginia's large antebellum debt.[3] Enrollment and tax support, both viewed as referenda on the popularity of the public schools, continued for years to be a problem. By the time of Ruffner's retirement in 1882, however, the public schools were firmly established and growing. For example, Prince Edward County's first school superintendent, Benjamin Mosby Smith once complained that even with his other income as a religious educator, it was hard to make ends meet.[4]

Although Ruffner had expressed certainty that qualified blacks would be chosen to serve on the local school boards, none were. White males, usually property owners made up the membership. Black teachers were also paid less, it being asserted that they were less qualified, and school facilities for blacks tended to be less than adequate. One black teacher in Prince Edward County remarked on the large, drafty holes in the school floors. The lack of adequate heat was also a problem.[5]

Before 1939, all of the secondary school education available to blacks in Prince Edward County consisted of a few extra grades in one of the elementary schools. Prior to 1930, even this had not existed. Public education in general was slow in becoming a solid reality in the South, with what pre-college learning there was occurring in the home. Post-Civil War Reconstruction brought the first efforts at creating a public school system, but as this was viewed as being imposed by the hated victor, whites by and large rejected association with it. The Freedman's Bureau had established separate schools for blacks, and this separation was maintained. What was loosely referred to as "vocational training" was all that many whites thought the blacks needed. This and the "on-the-job training" favored in rural areas like Prince Edward County were considered sufficient, and even better-suited for preparing blacks than a high school education.[6]

Under pressure from local black professional men, during the 1920s the Prince Edward County School Board reluctantly added high school grades to the all-black Mary E. Branch Elementary School, though the professionals themselves initially paid for the teachers' salaries. The blame for such slow and inadequate effort was always placed on the lack of funds. Although it was true that financing problems existed, all-white schools still tended to fare better. The financial problems faced by Southern school systems were in fact exacerbated by the policy of separating black and white students, when integrated schools would have been more cost-effective.

During the 1930s, the National Association for the Advancement of Colored People (NAACP) began to attack through the courts racial discrimination in the public schools on the basis of the unequal facilities provided for black students. Still based on the theoretical implications of the "separate but equal" doctrine then upheld in the United States with respect to public facilities for whites and blacks, these efforts forced the Southern States to make a show of upgrading facilities. In Virginia, curricula quality, bus transportation, buildings, and equipment were being challenged as inadequate.

As a result of these challenges, a new high school for black students was built in Prince Edward County. Completed in 1939 and named for Robert Russa Moton, a native son who had succeeded Booker T. Washington as the president of Tuskegee Institute. At that time, only eleven other high schools for blacks existed in Virginia, and like them, the new institution proved to have inadequate facilities. Built with a capacity for 180 students, it had 167 when opened. The following year, 219 students were enrolled. By 1950, the enrollment had increased to 477.

In addition to overcrowded conditions, Moton High School had no gymnasium, cafeteria, lockers, or auditorium with fixed seating, unlike its whites-only counterpart, Farmville High School. As many as three classes were held in the auditorium simultaneously, and at least one on a school bus. When the county received an offer of a matching grant from the state in 1947 to build an addition, the board of supervisors refused to appropriate the additional local money needed. The board was influenced by W. I. Dixon, building supervisor for the state department of public instruction, who said any additional construction would be makeshift, with the implication that it therefore should not be undertaken.[7]

In response to demands for action to relieve the overcrowding at Moton High School, three temporary buildings were erected, promptly being dubbed the "tar paper shacks" due the material that covered their long, low framework. The Reverend Leslie Francis Griffin, a local black leader and member of the NAACP observed that local blacks became quite upset at the inadequate gesture, while the whites did not see anything wrong with the shacks--if the whites noticed them at all. Griffin would soon figure prominently in the organized response to the continued inequity the shacks represented.[8]

When Willie Redd, a black contractor who was looked upon by the white community as the spokesman for his race, resigned from the Moton Parent-Teacher Association in 1949, Griffin was elected chairman. Griffin saw this as a sign of change from the old accomodationist approach that Redd represented, whereby blacks attempted to make progress within the system.

Griffin also organized a local chapter of the NAACP, becoming the county coordinator, thus establishing links with other black activists on the state and national level. His immediate focus, however, was on the local level, where the Moton PTA offered to assist the county school board in its ongoing search for a site for a new black high school. Although there was plenty of available land in Prince Edward County, none had been deemed suitable. The PTA's offer was accepted. Willie Redd discovered a site, of which the school board was promptly informed. However, a delay occurred (supposedly caused by protracted negotiations) even though the amount for a good offer was already known.[9]

Then on 23 April 1951, a strike by the students was initiated to protest the overcrowded conditions, the shacks and the seemingly futile efforts to build a new high school. Using the ruse of a false report of truant students at the local bus station to get Principal M. Boyd Jones out of the building, several students forged written announcements of a school assembly, calling all classes to the auditorium. Teachers were then escorted from the auditorium. Instead of the principal, however, student Barbara Johns, a niece of the renowned minister Vernon Johns, appeared on the stage and announced the strike. She asked the students to join with the organizing committee in a strike to demand for better facilities. The student body as a whole agreed to join them in the effort. When principal Jones returned from his wild goose chase at about the same time, he pleaded with the students not to go through with it, but they refused and politely asked him to leave.[10]

Despite the deception used on him, Jones was accused by the school superintendent of participation in the conspiracy. Also implicated was Barbara's uncle, the Reverend Vernon Johns, along with Griffin as well. Griffin in fact was the first person the students contacted the same day after they had gained control of the school, asking him to settle a dispute over whether to send a delegation to the county school superintendent to present demands immediately or not. He suggested that a vote be taken, which was done, and the superintendent was called.

The students also called the Richmond office of the NAACP, which put them in touch with attorney Oliver Hill, whose firm was already handling a case involving black schools in another county in Virginia. Hill advised the students to return to class, promising to come to Prince Edward shortly to talk with them. Although discouraged, the students sent a delegation to the superintendent, who refused to meet with it at first. When he did agree to see it, he accused them directly of being misled by an adult agitator, and threatened expulsion if they did not end the strike.

The next day, two hundred people, including many students, Hill, and fellow attorney Spottswood Robinson, gathered at Griffin's church, where an attempt was made to get the students to end their strike. They refused. The adults present were asked for their opinions and found to be divided on whether to support the students. When presented with the idea of going beyond pushing for better schools and calling for desegregated ones, the students responded in a strongly positive way, however most adults seemed uncomfortable with the idea, though none made any comment. The students were asked to think about the question, and talk to those not present.

A mass meeting was called for the following day--26 April--at which NAACP state secretary W. Lester Banks was present. A decision was then reached. The strike continued until May 7, when the school year ended. On 23 May, Hill and Robinson filed suit in the Federal District Court in Richmond for the immediate integration of the Prince Edward County schools.

Known as Davis v. the County School Board of Prince Edward County, the case was decided on by a lower court in favor of the county. On being appealed, however, it was combined with two other, similar cases from other localities in the country: Briggs v. Elliott (South Carolina) had been initiated on 24 May with Spottswood Robinson acting as an assistant attorney for the plaintiff and an assistant attorney general from Virginia present as an observer. The third case, Brown v. the Board of Education of Topeka, Kansas, begun in 1951, gave its name to the resulting historic Supreme Court decision based on all three cases. The United States Supreme Court ruled on Brown in 1954, striking down the legal doctrine of "separate but equal" facilities as unconstitutional under the equal protection clause of the Fourteenth Amendment.[11]

That same year, a new Moton High School building finally was opened in an apparent effort to bolster the argument that Prince Edward County's schools while separate (segregated), were equal. Indeed, an attorney for the state in Brown, T. Justin Moore, had attempted to use the

new school to show that the state was acting in good faith to insure the equality side of "separate but equal."[12]

Reaction to this decision, especially in the South, was swift: Virginia, then ruled by the political machine led by U. S. Senator Harry F. Byrd, initiated the program of "massive resistance" by which desegregation was to be fought and racial integration prevented. Supported by the state, the Prince Edward County Board of Supervisors voted unanimously to not appropriate funds for the county school system (and consequently also lower the overall tax rate). The resulting closure of the public schools affected mainly the black children of the county, however, as a private school known as Prince Edward Academy was established and state assistance provided to allow white students to attend. Although a private foundation to provide a similar school for black children was created (by whites), this opportunity was refused on the grounds that it continued essentially the same situation that the Brown decision was supposed to end.

Massive resistance swiftly became part of Virginia's political agenda. In the words of the 1957 state Democratic Party gubernatorial campaign platform, the state would "oppose it [integration] with every facility at our command, and with every ounce of our energy." It was made clear that, following the lead of Prince Edward County, the state would sooner close its schools then integrate them. Other tactics were soon employed instead, however.[13]

A state pupil placement act, passed in 1956, took the power of assigning students to schools from the localities and invested it in a board of state appointees. Amended in both 1958 and 1959, the act established three criteria for student assignments: orderly administration of the schools; competent instruction of students; and a concern for their health, safety and welfare. However, only in the case of a court order specific to four Norfolk students were blacks sent to previously all-white schools.

Essentially, the system of segregation remained intact. However, when the three original members resigned from the board in 1959 in protest of the new "freedom of choice" policy then established, and new ones appointed, things changed. The board began to base decisions on residence, though this was not an original, required criterion. Thus, if black students lived nearer to an all-white school than to an all-black school, they were assigned to the all-white school. The white students, however, were sent to all-white schools whether they lived closer to an all-black school or not.

The freedom of choice rule established as law in 1959 allowed localities to not participate in the state placement system if they so chose. Special state guidelines by which such school systems would operate, however, were not adopted until 1961. Opting out required the recommendation of the school board and approval of the city council or county board of supervisors. Additionally, certain criteria for local placement decisions had to be met: academic achievement and aptitude; availability and location of facilities and instructional personnel; prevention of disruptions to educational system caused by unnecessary assignments; and the validity of the reasons for placement requests by parents. Again emphasis was placed on geography or

residence, this by localities, rather than the stated criteria per se, at least in some school systems. In addition, some other systems were already operating under Federal court scrutiny or approved plans.[14]

That same year, the state also began disbursing grants to students attending private, nonsectarian schools, or schools outside their home district. What differentiated this program from a similar, previous plan was that no reason for the alternative choice needed to be given. Many who took advantage of it attended private schools though they came from still-segregated districts. Others went from segregated to desegregated districts. Both the state and all localities were to contribute, with any locality that did not have its portion paid by the state having the same amount deducted from some other state grant or subsidy earmarked for that locality.[15]

The General Assembly also enacted laws permitting local school boards to provide transportation to private schools for those attending the same and allow for a tax credit for those sending their children to such schools. In addition, teachers were permitted to discharge state education board scholarship obligations by teaching in private schools and to participate in the state retirement system while teaching in private schools.[16]

Legislation permitting local compulsory attendance laws, while repealing the state attendance law, was also passed that year. However, local school systems still were required to excuse children whose parents objected to their being sent to a particular school.[17]

While the practice of massive resistance was statewide, except for Prince Edward County, nowhere in the nation was an entire school system closed to prevent integration. The closure of the schools had been made possible when the state's compulsory attendance law was repealed in 1959. However, the creation of federally-initiated, state-sponsored and privately-funded free school system helped to bridge the gap. Created in 1963 and intended to run for only one year (when, it was hoped, the regular public schools would reopen), the Prince Edward Free School system utilized existing facilities (with the permission of the school board). Former Governor Colgate Darden was among the trustees. Accreditation was readily gained from the state department of education.[18]

Because district courts were instructed to ensure compliance, the Davis case continued even after the Brown decision was handed down. As the original plaintiff became ineligible to remain a party in the suit, it became Allen v. County School Board. Later, one of Leslie F. Griffin's own children, also named Leslie Francis, became the named plaintiff in the case Griffin v. County School Board (Prince Edward) which came about in response to Prince Edward County's continued refusal to comply.[19]

This case resulted in Prince Edward County being ordered by the Supreme Court to open its schools. However, the school board requested only as much money as was believed needed to educate the county's black school-age populations, and the board of supervisors actually

appropriated an even smaller amount. In addition, the supervisors secretly met and appropriated funds for grants to private school education in the county.[20]

Such grants would be forbidden by the courts after the 1960-61 school year, based on the argument that the state thus participated in an unconstitutional attempt to evade the Brown decision. Eventually, all state and local efforts to resist integration would collapse, with the exception of the still-functioning Prince Edward Academy, which today receives no public assistance. The Prince Edward County school system was reopened in 1964 and the newer Moton High School was renamed Prince Edward County High School. The older building then became Farmville Elementary School.[21]

The Robert Russa Moton High School stands as a monument to the struggle for the desegregation of our nation's schools. It is also a memorial to the courage of the students who began and led the strike. Their strike led to the court case Davis v. County School Board of Prince Edward County, which, combined with others, formed Brown v. Board of Education and contributed to the subsequent landmark decision of the United States Supreme Court. That decision struck down the "separate but equal" racial doctrine governing public school policy and constituted an important step down the road toward the integration of American society. It also led to the closing of Prince Edward County's public schools and Virginia's efforts at "massive resistance" (including such measures as the pupil placement boards), which ultimately proved futile efforts. Thus, Moton High School's importance lies in the event that occurred there in April 1951, and the dramatic and fundamental change in American society that resulted.

Jarl K. Jackson

ENDNOTES

[1] William Link, *A Hard Country and a Lonely Place: Schooling, Society and Reform in Rural Virginia, 1870-1920* (Chapel Hill: University of North Carolina Press, 1986), 17.

[2] *Ibid.*, 19.

[3] *Ibid.*, 18.

[4] *Ibid.*, 21-22, 25.

[5] *Ibid.*, 39, 42 and 50.

[6] Bob Smith, *They Closed Their Schools* (Chapel Hill: University of North Carolina Press, 1965), 14; Janet Stevenson, *The School Segregation Cases (**Brown v. Board of Education of Topeka** and others): The Supreme Court Rules on Racially Separate Public Education* (New York: Franklin Watts, Inc., 1973), 2.

[7] Smith, 15.

[8] *Ibid.*, 16.

[9] *Ibid.*, 20-21.

[10] Stevenson, 1-15.

[11] Neil V. Sullivan, Thomas LaSalle Maynard, and Carol Lynn Yellin, *Bound for Freedom: An Educator's Adventures in Prince Edward County, Virginia* (Boston: Little, Brown and Company, 1965), 193.

[12] Sullivan, 14; Raymond Wolters, *The Burden of Brown: Thirty Years of School Desegregation* (Knoxville: The University of Tennessee Press, 1984), 75.

[13] Wolters, 91.

[14] United States Commission on Civil Rights, *Civil Rights U. S. A.: Public Schools/Southern States 1962* (Washington, D.C.: Government Printing Office, 1962), 165.

[15] *Ibid.*, 166.

[16] *Ibid.*, 166-67.

[17] Sullivan, 5, 19, 61 and 113.

[18] Sullivan, 200.

[19] Sullivan, 193; Wolters, 111.

[20] Sullivan, 202.

[21] Wolters, 101; Stevenson, 27-33.

MAJOR BIBLIOGRAPHICAL REFERENCES

Link, William. *A Hard Country and a Lonely Place: Schooling, Society and Reform in Rural Virginia, 1870-1920.* Chapel Hill: University of North Carolina Press, 1986.

Smith, Bob. *They Closed Their Schools.* Chapel Hill: University of North Carolina Press, 1965.

Stevenson, Janet. *The School Segregation Cases (Brown v. Board of Education of Topeka and others): The Supreme Court Rules on Racially Separate Public Education.* New York: Franklin Watts, Inc., 1973.

Sullivan, Neil V., Thomas LaSalle Maynard, and Carol Lynn Yellin. *Bound for Freedom: An Educator's Adventures in Prince Edward County, Virginia.* Boston: Little, Brown and Company, 1965.

United States Commission on Civil Rights. *Civil Rights U. S. A.: Public Schools/Southern States 1962.* Washington, D.C.: Government Printing Office, 1962.

Wolters, Raymond. *The Burden of Brown: Thirty Years of School Desegregation.* Knoxville: The University of Tennessee Press, 1984.

GEOGRAPHICAL DATA

Verbal Boundary Description

The boundary of the nominated property is delineated by the polygon whose vertices are marked by the following UTM Reference points:

1	17	730630	4130190
2	17	730730	4130200
3	17	730660	4130060

Boundary Justification

The boundaries of the nominated area encompass the building and playing fields historically associated with the Robert Russa Moton High School.

PHOTOGRAPHS

Robert Russa Moton High School
Prince Edward County
Photographed by Julie Vosmik, January 1995
Negatives on file at the VA State Library and Archives, Richmond

1. Front elevation taken looking northeast

2. Side and rear elevation taken looking southwest

3. Auditorium looking towards stage

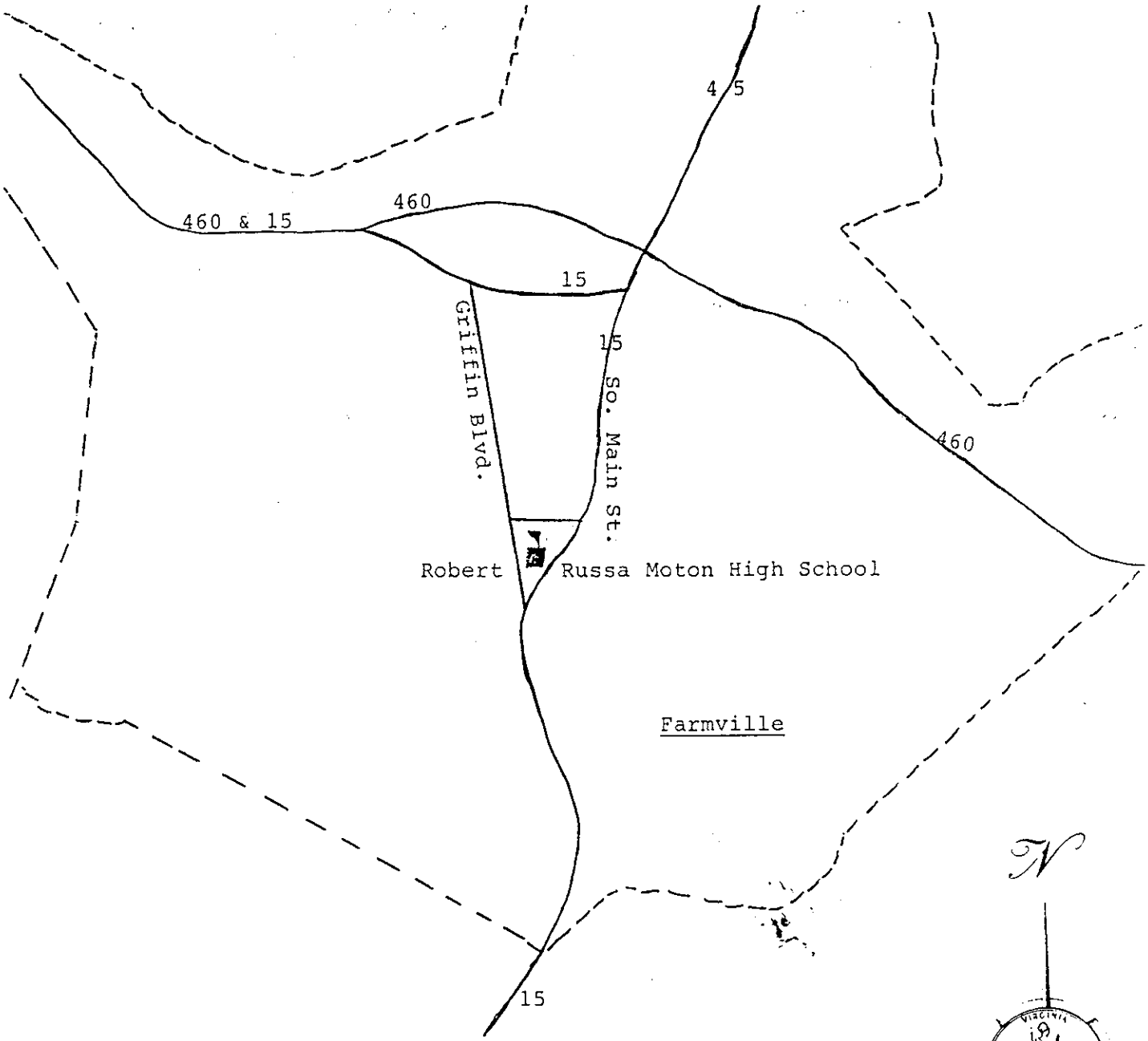
4. Classroom

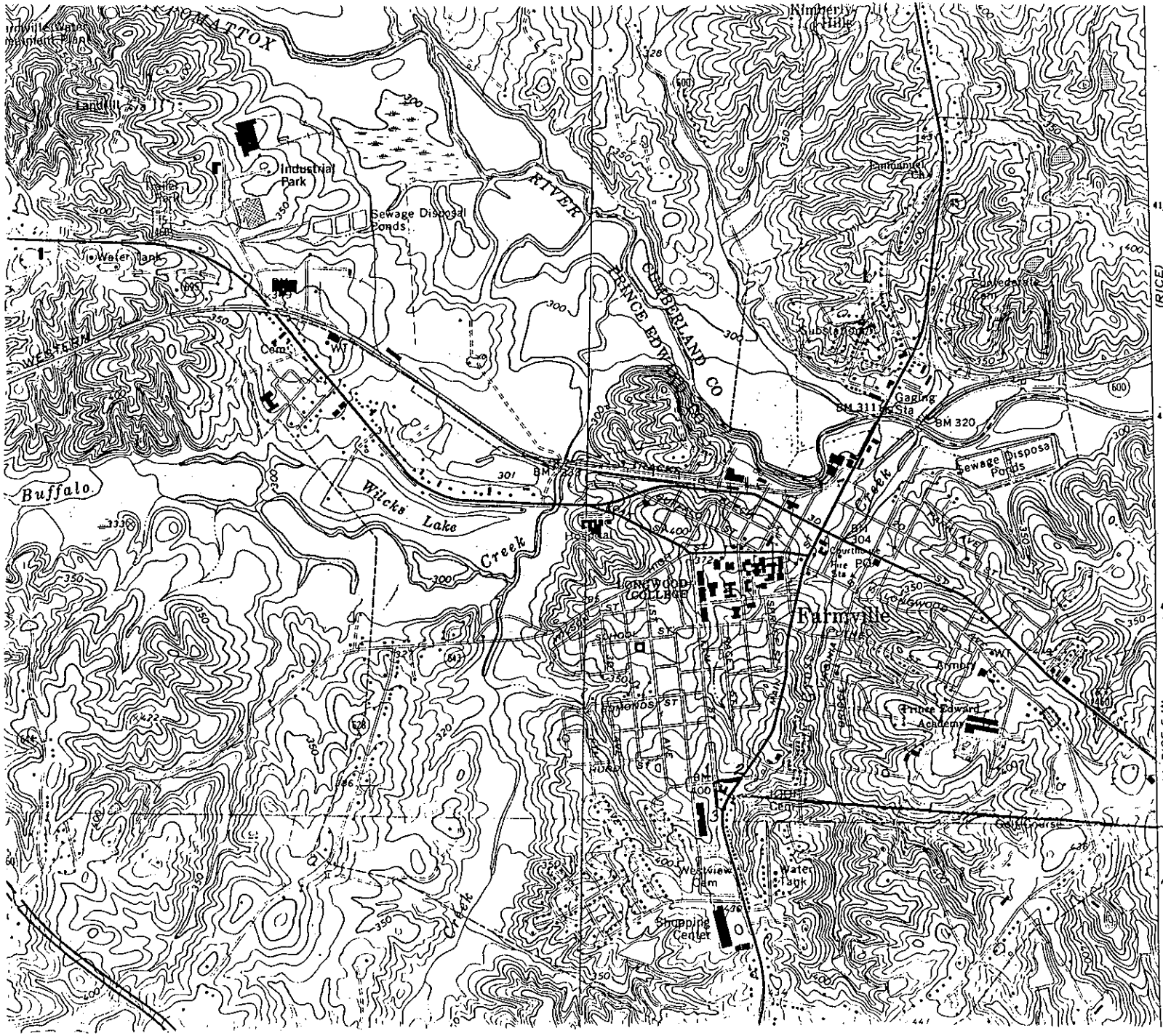
5. Classroom

6. View of corridor, rear hall

7. View of front entrance from auditorium

8. Classroom

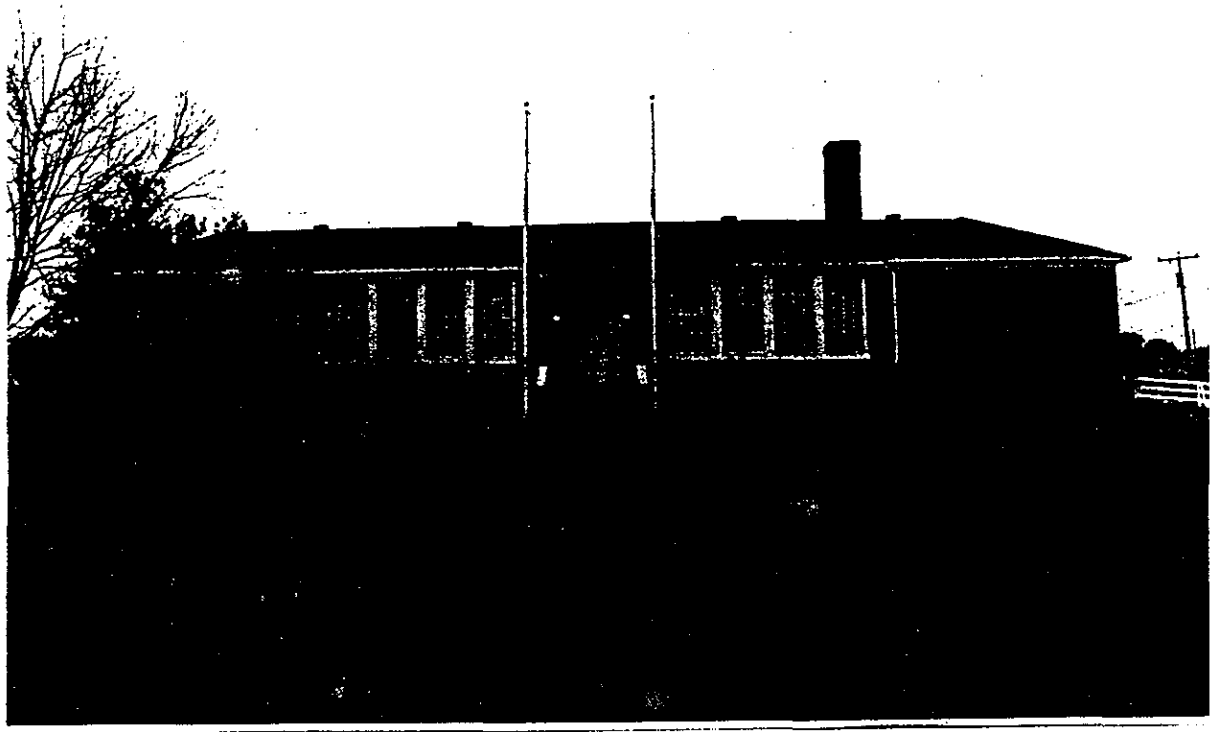

460 & 15
460
15
15
So. Main St.
Griffin Blvd.
460
Robert Russa Moton High School
Farmville
15
N



ROBT. RUSSA H
HIGH SCHOOL
FARMVILLE,
PRINCE EDWARD
CDHR 144-52

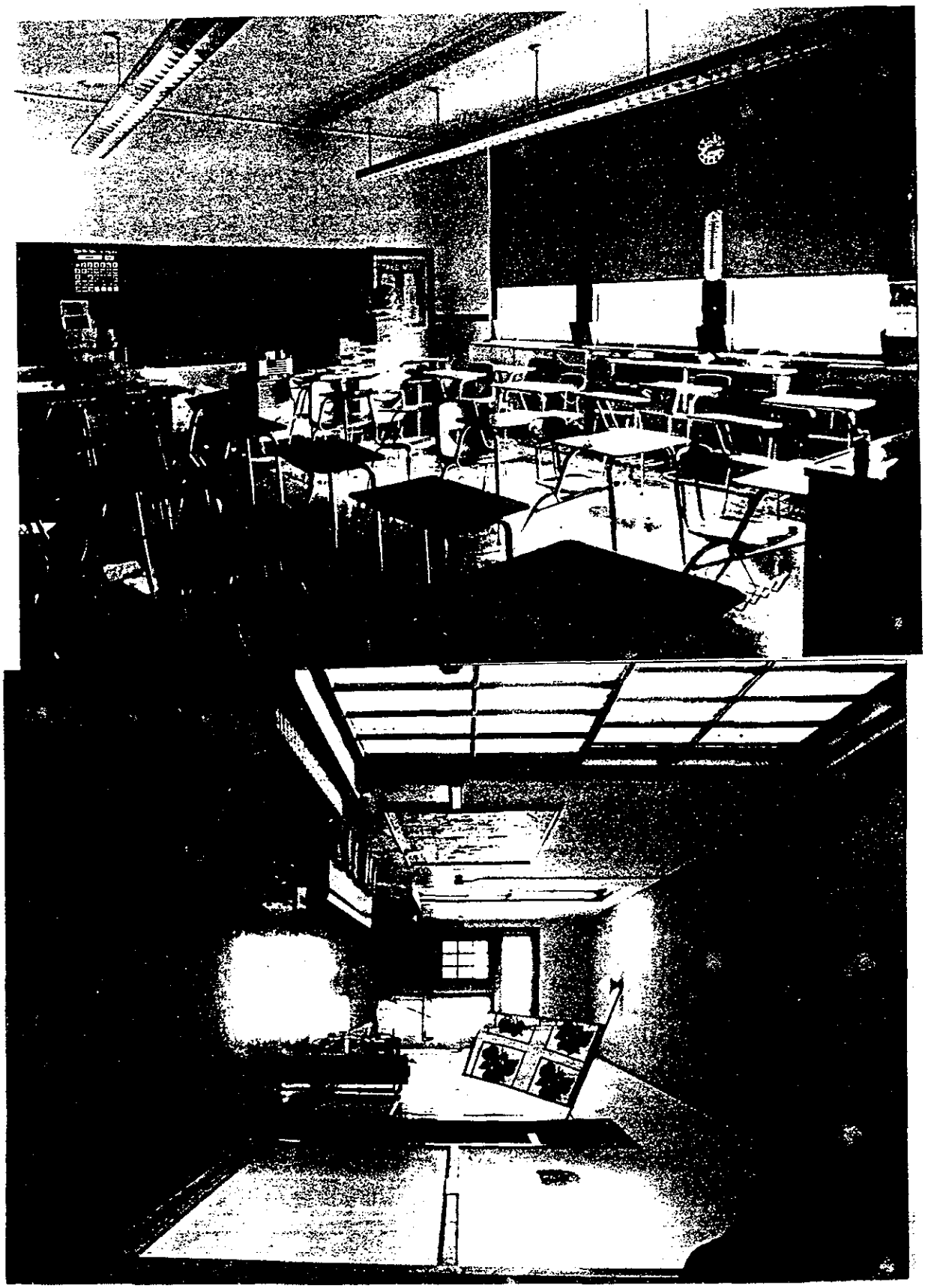
1	17	730680	4130190
2	17	730730	4130200
3	17	730660	4130060

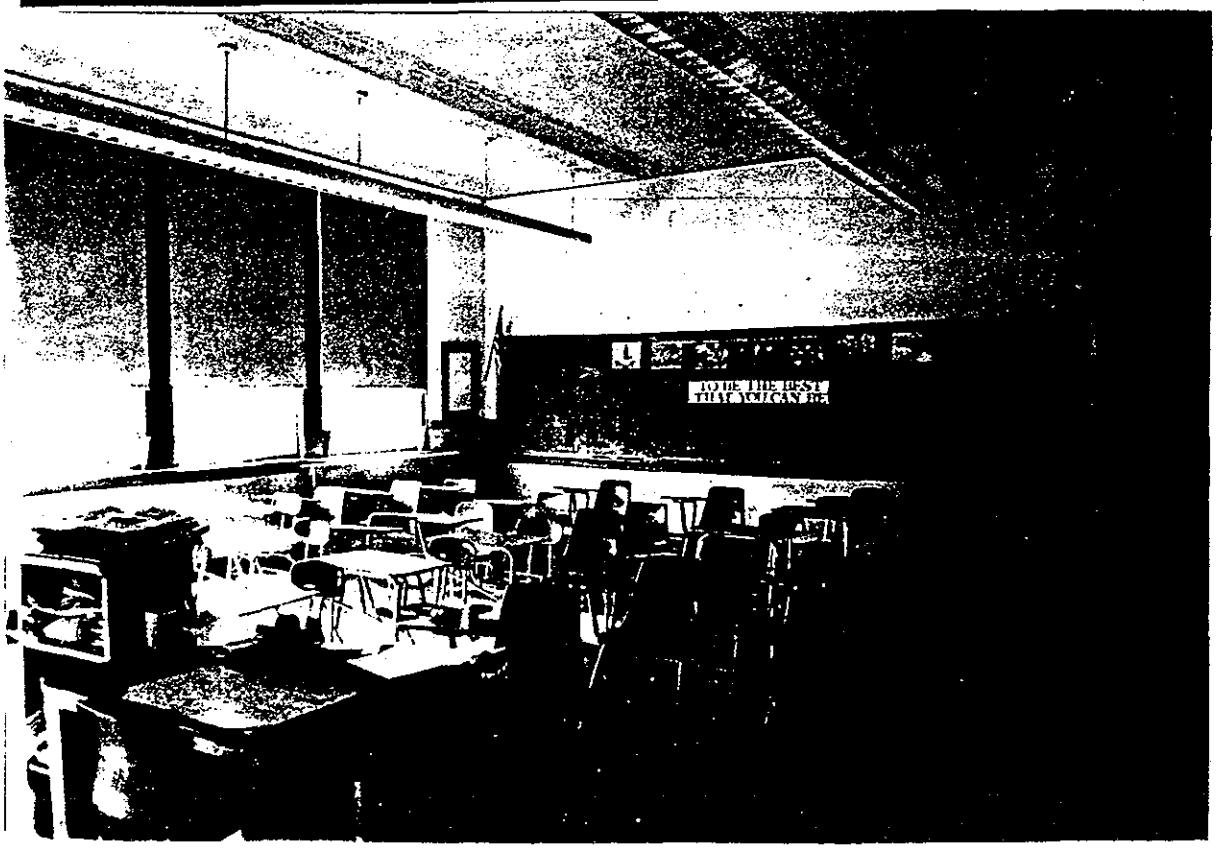
Robert Russa Moton High School, Prince Edward County (DHR № 144-53)



Robert Russa Moton High School, Prince Edward County (DHR № 144-53)

Robert Russa Moton High School, Prince Edward County (DHR № 144-53)




TO BE THE BEST
THAT YOU CAN BE

APPENDIX F

Relevant Litigation

SIGNIFICENT NATIONAL LITIGATION

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

Slaughterhouse Cases, 16 Wallace 36 (1873) or 1879 ???

Civil Rights Cases, 109 U.S. 3 (1883)

Yick Wo v. *Hopkins*, 118 U.S. 356 (1886)

Plessy v. *Ferguson*, 163 U.S. 537 (1896)

Cumming v. *Richmond County Board of Education*, 175 U.S. 528 (1899)

Gong Lum v. *Rice*, 275 U.S. 78 (1927)

Hocutt v. *Wilson and the University of North Carolina, No. Car. Superior Ct., County of Durham*, Civil Issue Docket #1-188, 28 March 1933 (1933)

Murray v. *Maryland*, 182 A. 590 (1936), 169 Md. 478 (1937)

Missouri ex. rel. Gaines v. *Canada*, 305 U.S. 337 (1938)

Korematsu v. *United States*, 323 U.S. 214 (1944)

Sipuel v. *Board of Regents*, 332 U.S. 631 (1948)

Sweatt v. *Painter*, 210 S.W. 2d 442 (1947), 339 U.S. 629 (1950)

McLaurin v. *Oklahoma State Regents*, 339 U.S. 637 (1950)

Briggs v. *Elliott*, 98 F. Supp. 529 (1951), 103 F. Supp. 920 (1952), 347 U.S. 497 (1954), 132 F. Supp. 776 (1955)

Brown v. *Board of Education of Topeka*, 98 F. Supp. 797 (1951), 347 U.S. 483 (1954), 349 U.S. 294 (1955)

Davis v. *County School Board of Prince Edward County*, 103 F. Supp. 337 (1952), 347 U.S. 483 (1954)

Belton v. *Gebhart* (and *Bulah* v. *Gebhart*), 87 A. 2d 862 (Del. Ch. 1952), 91 A. 2d 137 (1953), 347 U.S. 483 (1954)

Bolling v. *Sharpe*, 347 U.S. 497 (1954)

Aaron v. *Cooper*, 143 F. Supp. 855 (E.D. Ark. 1956), 156 F. Supp. 220, 225, 243 F.2d 361 (8th Cir. 1957), 163 F. Supp. 13 (E.D. Ark. 1958), 257 F.2d 33 (8th Cir. 1958), 261 F.2d 97 (8th Cir. 1958), 357 U.S. 566, 567

Faubus v. *United States*, 254 F. 2d 797 (8th Cir. 1958)

Cooper v. *Aaron*, 358 U.S. 1 (1958), 78 S.Ct. 1401 (August Special Term, 1958)

Shuttlesworth v. *Birmingham Board of Education*, 358 U.S. 101 (1958)

Faubus v. *Aaron*, 361 U.S. 197 (1959)

Goss v. *Board of Education of Knoxville*, 373 U.S. 430 (1963)

Griffin v. *County School Board of Prince Edward County*, 377 U.S. 218 (1964)

Green v. *County Board of New Kent County*, 391 U.S. 430 (1968)

Swann v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971)

Miliken v. *Bradley*, 94 S. Ct. 3112 (1974)

Regents of the University of California v. *Bakke*, 438 U.S. 265 (1978)

RELEVANT KANSAS LITIGATION

Board of Education of Ottawa v. *Elijah Tinnon*, 26 K. 19 (1881)

Knox v. *Board of Education, Independence*, 45 K. 152 (1891)

Reynolds v. *Board of Education, Topeka*, 66 K. 672, 72 P. 274 (1903)

Cartwright v. *Board of Education, Coffeyville*, 73 K. 32, 84 P. 382 1906)

Rowles v. *Board of Education, Wichita*, 76 K. 361, 91 P. 88 (1907)

Williams v. *Board of Education, Parsons*, 79K. 202 (1908), 81 K. 593, 106 P. 36 (1910)

Woolridge v. *Board of Education, Galena*, 98 K. 397, 157 P. 1184 (1916)

Thurman-Watts v. *Board of Education, Coffeyville*, 115 K. 328 (1924)

Wright v. *Board of Education, Topeka*, 129 K. 852, 284 Pac. 363 (1930)

Graham v. *Board of Education, Topeka*, 153 K. 840, 114 P. 2 313 (1941)

Webb v. *School District No. 90, South Park*, 167 K. 395, 206 P. 2d 1054 (1949)

Brown v. *Board of Education of Topeka* (1951), 98 F. Supp. 797

APPENDIX G

Chronology of Significant Events, 1785-1995

CHRONOLOGY OF SIGNIFICANT EVENTS, 1789-1995

TOPEKA / KANSAS HISTORY	DATE	UNITED STATES / WORLD HISTORY
	1785	Northwest Ordinance
	1787	Northwest Ordinance designation a town lot for the location of a public school.
	1789	U.S. Constitution ratified, sanctioning the institution of slavery.
	1808	U.S. participation in the international slave trade ends, as stipulated in the U.S. Constitution.
	1849	*Roberts* v. *City of Boston* sanctions segregation in Massachusetts public schools.
Passage of Kansas-Nebraska Act begins "Bleeding Kansas" episode regarding the westward expansion of slavery. Topeka founded on the banks of the Kansas River.	1854	Republican Party founded on anti-slavery expansion platform.
Kansas enters the Union as a free state.	1861	Civil War begins.
	1862	Homestead Act provides 160-acre tracts to interested takers.
Lots 50, 52, 54 on Monroe Street purchased and Monroe School constructed for black children.	1868	Civil War Amendments passed; 13th, 14th, and 15th. Ulysses S. Grant elected president.
Atchison, Topeka, & Santa Fe Railroad begins operation.	1869	First transcontinental railroad completed.
	1873	*Slaughterhouse Cases* restrict 14th Amendment protections, endorsing concepts of dual state and nation citizenship.
New, larger Monroe School constructed.	1874	
Sumner School established to educate African American youth; some sources date its founding instead to 1880.	1875	Civil Rights Act passes, providing full benefits of citizenship to all persons regardless of race.
Height of "exoduster" migration into Kansas.	1879-80	

TOPEKA / KANSAS HISTORY	DATE	UNITED STATES / WORLD HISTORY
Madison School built for African Americans.	1882	
	1883	*Civil Rights Cases* nullify the 1873 Civil Rights Act.
Buchanan Elementary School constructed. Status of Sumner School changes and hereafter is reserved for white students; African Americans sent to a 2-room building at 3rd & Polk Streets.	1885	
Original Sumner School destroyed by fire.	1888	
Sanborn map shows "Monroe School" occupying lots 505, 507, and 509 at 15th & Monroe Streets.	1889	
Dr. Charles Sheldon opens the first public kindergarten for African American children in Topeka's "Tennessee Town."	1893	
	1896	*Plessy* v. *Ferguson* establishes the "separate but equal" doctrine.
School Board approves land exchange with City of Topeka, acquiring playground to the east of Monroe School.	1899	*Cumming* v. *Richmond County Board of Education* reaffirms constitutionality of segregated public schools.
New Sumner School constructed near 4th Street.	1901	
McKinley School built in North Topeka.	1907	
	1909	NAACP founded.
Washington Elementary School built for African American students. Madison School razed; students sent to Washington and Monroe schools.	1910	
School Board purchases lots 513 and 515 on Monroe Street. Topeka NAACP chapter organized.	1913	Woodrow Wilson inaugurated as the 28th president.
	1918	World War I ends.
Additional playground space requested for Monroe Elementary. School Board purchases lots 517, 519, 521, 523. Issues bonds to finance purchase and new construction.	1925	

TOPEKA / KANSAS HISTORY	DATE	UNITED STATES / WORLD HISTORY
New Monroe Elementary School is built and the abandoned building is demolished.	1926	
	1927	*Gong Lum* v. *Rice* considers segregation question "settled," as consistent with 14th Amendment protections.
	1929	Stock market crashes, ushering in the Great Depression.
	1933	Defeat in *Hocutt* v. *University of North Carolina* exposes severe flaws in NAACP strategy. FDR assumes the presidency during the Depression's worst year.
New Sumner School constructed by the Public Works Administration; the old school is razed.	1935	
Governor Alf Landon runs unsuccessfully for the presidency, losing by a wide margin to Franklin D. Roosevelt.	1936	*Murray* v. *Maryland* ends segregation at University of Maryland Law School.
	1938	*Missouri ex. rel. Gaines* v. *University of Missouri* forces state law school to admit Gaines, but he never matriculates.
Topeka NAACP chapter re-established. *Graham* v. *Board of Education* leads to desegregation of Topeka junior high schools.	1941	Pearl Harbor bombed; U.S. enters World War II.
	1945	Harry S Truman becomes president upon the death of Roosevelt. World War II ends.
	1947	Jackie Robinson becomes first African American to play major league baseball.
	1948	Truman issues Executive Order 8981, ending segregation in the armed services. *Sipuel* v. *Board of Regents* finds that denial of admission to professional school violates 14th Amendment.
Webb v. *School District No. 90* ruling ends *de jure* segregation in Merriam, Kansas.	1949	Mao Tse-Tung's communist government gains control in China. USSR detonates its first atomic bomb.

TOPEKA / KANSAS HISTORY	DATE	UNITED STATES / WORLD HISTORY
Topeka NAACP chapter requests LDF assistance in proposed litigation to desegregate city's elementary schools and gathers potential plaintiffs.	1950	*McLaurin* v. *Oklahoma State Regents* compels the university to admit African Americans, with no racial restriction on treatment. *Sweatt* v. *Painter* recognizes inferiority of separate law school, which violates equal protection clause. Charles Hamilton Houston dies.
Brown v. *Board of Education* heard before U.S. District Court in Kansas. Flooding of Kansas River devastates North Topeka, ruining the home and business of plaintiff Zelma Henderson, and forcing McKinley School to close for one year.	1951	*Briggs* v. *Elliott* argued in U.S. District Court in South Carolina. *Gebhart* v. *Belton* argued before the Delaware Court of Chancery. *Bolling* v. *Sharpe* argued in U.S. District Court for the District of Columbia.
U.S. Supreme Court grants hearing to *Brown* v. *Board of Education* and combines it with other school cases.	1952	*Davis* v. *County School Board of Prince Edward County* heard in U.S. District Court in Virginia. Dwight D. Eisenhower wins presidential election. Five school cases argued before the U.S. Supreme Court; but Chief Justice Vinson's death delays resolution.
Topeka USD-501 begins desegregation process.	1953	Earl Warren appointed Chief Justice of the U.S. Supreme Court. The U.S. Supreme Court hears re-argument of the school cases, particularly regarding the original intent of the Fourteenth Amendment. Korean "Conflict" ends.
Merrill Ross becomes Topeka's first African American principal of a predominantly white elementary school.	1954	*Brown I* overturns *Plessy* v. *Ferguson*. Supreme Court orders re-argument of implementation questions. Geneva Conference partitions Indochina after French defeat.
Buchanan Elementary School closed; used thereafter as a warehouse and community social services center.	1955	*Brown II* orders segregation "with all deliberate speed." Emmett Till murdered. Success of the Montgomery bus boycott propels Martin Luther King, Jr. onto the national scene. Jonas Salk produces the polio vaccine.

TOPEKA / KANSAS HISTORY	DATE	UNITED STATES / WORLD HISTORY
	1956	*Aaron* v. *Cooper* filed to gain integration of Little Rock's Central High School. Virginia school systems begin "massive resistance."
	1957	Southern Christian Leadership Conference (SCLC) founded. Stand-off at Central High leads to intervention by U.S. forces. Civil Rights Act of 1957 passed. USSR launches *Sputnik* satellite.
	1958	*Cooper* v. *Aaron* finds that Arkansas governmental leaders rejected the civil authority of the U.S. Supreme Court and Constitution.
	1960	Greensboro, North Carolina "sit-in" begins effort to desegregate lunch counters/restaurants. Civil Rights Act of 1960 passed. Student Nonviolent Coordinating Committee (SNCC) founded. Wave of nationalism sweeps Africa, many new nations emerge. John F. Kennedy elected president.
	1961	Freedom Rides begin effort to desegregate interstate travel.
	1963	March on Washington held. John F. Kennedy and Medgar Evers assassinated. Lyndon Johnson assumes the presidency.
	1964	Civil Rights Act of 1964 brings sweeping changes to Mississippi Freedom Summer regarding voter registration.
	1965	*Selma-Montgomery march completed.* Malcolm X killed. Voting Rights Act passed.
	1967	Thurgood Marshall appointed to Supreme Court.

TOPEKA / KANSAS HISTORY	DATE	UNITED STATES / WORLD HISTORY
	1968	*Green* v. *County Board of New Kent County* restricts "freedom of choice" integration plans. Martin Luther King, Jr. and Robert F. Kennedy assassinated. Richard Nixon elected president.
	1971	*Swann* v. *Charlotte Mecklenburg Board of Education* orders aggressive action to remedy *de facto* segregation.
	1974	*Bradley* v. *Miliken* rejects option of busing suburban students to inner-city schools. Richard Nixon resigns from the presidency.
School Board closes Monroe School and uses the building as a warehouse.	1975	South Vietnam "falls" to communist forces.
	1978	*California* v. *Bakke* finds that racial quotas violate equal protection of the 14th Amendment.
Brown III filed in U.S. District Court, contending that Topeka USD-501 had never complied with 1954 and 1955 *Brown* decrees to end segregation.	1979	
Ownership of Monroe School transferred to Fairlawn Church of the Nazarene.	1981	
Ownership of Monroe School transferred to S/S Builders, Inc., Mark Steuve, President.	1988	George Bush wins the presidency.
Sumner and Monroe School designated as NHLs.	1991	USSR federation collapses; Russia becomes a democratic republic.
Trust for Public Lands helps Steuve stabilize Monroe pending federal legislation. BRvB NHS established on October 26, via Public Law 102-525.	1992	Persian Gulf War ends. Bill Clinton elected president.
Ownership of Monroe Elementary transferred to the National Park Service.	1993	
City re-development and construction of magnet schools underway.	1995	*Adarand Constructors* v. *Pena* signals limits on federal affirmative action programs.

APPENDIX H

Profiles of Topeka Plaintiffs, ca. 1950

SCHOOL ASSIGNMENTS AMONG PLAINTIFFS*

BUCHANAN	WASHINGTON	McKINLEY	MONROE
Victoria Jean Lawton	James Meldon Emanuel	Donald Andrew Henderson	Linda Carol Brown
Carol Kay Lawton	Silas Hardrick Fleming	Vickie Ann Henderson	Ruth Ann Scales **
Nancy Jane Todd	Duane Dean Fleming		
Katherine Louise Carper			
Charles Hodison			
Theron Lewis			
Martha Jean Lewis			
Arthur Lewis			
Frances Lewis			
Saundria Dorstella Brown			
Claude Arthur Emmerson			
George Robert Emmerson			

* Roland Douglas Richardson attended Holy Name Catholic School rather than Buchanan, as assigned.

** Attorney notes assigned Ruth Ann Scales to Washington Elementary, rather than Monroe. USD-501 records report, however, that she attended the fifth grade at Monroe during the 1950-1951 school year.

Data for these charts was transcribed from notes compiled by counsel working on the Kansas case; Charles Scott Collection, Kenneth Spencer Library, University of Kansas, Lawrence, Kansas, and the Papers of the NAACP, Group II, Manuscript Division, Library of Congress, Washington, D.C.

PROFILES OF TOPEKA PLAINTIFFS, 1950

PLAINTIFFS & CHILDREN	ADDRESS	DISTANCE FROM SEGREGATED VERSUS DISTRICT SCHOOLS	ESTIMATED LENGTH OF SCHOOL DAY
Oliver Brown Linda Carol, age 7	511 West First Street	21 blocks to Monroe (50 minutes); 5 blocks to Sumner (10 minutes)	7:40 AM - 4:45 PM (9 hrs., 5 min.)
Mrs. Richard Lawton Victoria Jean Carol Kay	1422 Munson Avenue	3.5 blocks to Buchanan (10 minutes); 4 blocks to Lowman Hill (10 minutes)	unavailable
Sadie Emmanuel James Meldon, age 8	1606 East Third Street	17 blocks to Washington (45 minutes); 3 blocks to Lafayette (10 minutes)	8:15 AM - 4:30 PM (8 hrs., 15 min.)
Lucinda Todd Nancy Jane, age 9	1007 Jewell Avenue	11 blocks to Buchanan (15 minutes); 4 blocks to Lowman Hill (10 minutes)	8:45 AM - 4:15 PM (7 hrs., 30 min.)
Iona Richardson Roland Douglas, age 7	1035 Jewell Avenue	11 blocks to Buchanan (15 minutes); 3 blocks to Lowman Hill (10 minutes) (Attends Holy Name Catholic)	8:30 AM - 4:10 PM (7 hrs., 40 min.)
Lena Mae Carper Katherine Louise, age 10	11217 Hillsdale Street	30 blocks to Buchanan (40 minutes); 16-19 blocks to either Gage or Randolph (20-30 minutes)	8:20 AM - 4:40 PM (8 hrs., 10 min.)

PLAINTIFFS & CHILDREN	ADDRESS	DISTANCE FROM SEGREGATED *VERSUS* DISTRICT SCHOOLS	ESTIMATED *LENGTH OF* SCHOOL DAY
Shirley Hodison Charles, age 9	734 Garfield Avenue	10 blocks to Buchanan (20 minutes); 5 blocks to Clay (10 minutes)	8:00 AM - 4:40 PM (8 hrs., 40 min.)
Alma Lewis Theron, age 11 Martha Jean, age 9 Arthur, age 7 Frances, age 6	944 College Avenue	11 blocks to Buchanan (30 minutes); 4.5 blocks to Lowman Hill (10 minutes)	8:15 AM - 4:15 PM (8 hours)
Darlene Brown Saundria Dorstella	1414 Munson Avenue	3 blocks to Buchanan (10 minutes); 4.5 blocks to Lowman Hill (10 minutes)	unavailable
Shirla Fleming Silas Hardrick, age 10 Duane Dean, age 6	522 Liberty Street	21.5 blocks to Washington (45 minutes via city bus); 3 blocks to Lafayette (5 minutes)	8:00 AM - 4:30 PM (8 hrs., 30 min.)
Zelma Henderson Donald Andrew, age 6 Vickie Ann, age 5	1307 N. Jefferson	15.5 blocks to McKinley (40 minutes); 5 blocks to Quincy (10 minutes)	8:20 AM - 4:15 PM (7 hrs., 55 min.)
Vivian Scales Ruth Ann, age 10	1028 Lime	7 blocks to Washington** (15 minutes); 2 blocks to Parkdale (5 minutes) ** *USD-501 records show Ruth Ann attending Monroe in 1951.*	8:30 AM - 4:10 PM (7 hrs., 40 min.)
Marguerite Emmerson Claude Arthur George Robert	1029 Grand	12 blocks to Buchanan (20 minutes); 5 blocks to Lowman Hill (10 minutes)	8:30 AM - 4:45 PM (8 hrs., 15 min.)

APPENDIX I

The School Cases: Schedule of Argument before the U.S. Supreme Court

Oral Arguments, October Term 1952

Tuesday, December 9, 1952

Case No. 8
Oliver Brown, Mrs. Richard Lawton, Mrs. Sadie Emmanuel, et. al., Appellants v. *Board of Education of Topeka, Shawnee County, Kansas, et. al,* Appellees,

Appearances: Robert L. Carter, Esq., on behalf of the Appellants
Paul E. Wilson, Esq., on behalf of the Appellants

Case No. 101
Harry Briggs, Jr., et. al., Appellants, v. *R.W. Elliott, Chairman, J.D. Carson, et. al., Members of Board of Trustees of School District No. 2, Clarendon County, S.C., et. al.,* Appellees

Appearances: Thurgood Marshall, Esq., on behalf of the Appellants
John W. Davis, Esq., on behalf of the Appellants

Wednesday, December 10, 1952

Case No. 191
Dorothy E. Davis, Bertha M. Davis and Inez D. Davis, etc., et. al., Appellants v. *County School Board of Prince Edward County, Virginia, et. al.,* Appellees

Appearances: Spottswood Robinson, Esq., on behalf of the Appellants
T. Justin Moore, Esq., on behalf of the Appellants

Case No. 413
Spottswood Thomas Bolling, et. al., Petitioners v. *C. Melvin Sharpe, et. al.,* Respondents

Appearances: George E.C. Hayes, Esq. and James M. Nabrit, Jr., Esq.,
on behalf of the Petitioners
Milton D. Korman, Esq., on behalf of the Respondents

Thursday, December 11, 1952

Case No. 448
Francis B. Gebhart, et. al., Petitioners v. *Ethel Louise Belton, et. al.* Respondents
Francis B. Gebhart, et. al. Petitoners v. *Shirley Barbara Bulah, et. al.,* Respondents

Appearances: H. Albert Young, Esq. on behalf of the Petitioners
Louis L. Redding, Esq. and Jack Greenberg, Esq., on behalf of the Respondents

Oral Arguments, October Term 1953

Monday, December 7, 1953

Case No. 4
Harry Briggs, Jr., et. al., Appellants, v. *R.W. Elliott, Chairman, J.D. Carson, et. al., Members of Board of Trustees of School District No. 2, Clarendon County, S.C., et. al.*, Appellees

Appearances: Thurgood Marshall, Esq., on behalf of the Appellants
John W. Davis, Esq., on behalf of the Appellants

Dorothy E. Davis, Bertha M. Davis and Inez D. Davis, etc., et. al., Appellants v. *County School Board of Prince Edward County, Virginia, et. al.*, Appellees

Appearances: Spottswood Robinson, Esq., on behalf of the Appellants
T. Justin Moore, Esq. and J. Lindsay Almond, Esq., on behalf of the Appellants
Lee J. Ranking, Esq. on behalf of the United States

Tuesday, December 8, 1953

Case No. 1
Oliver Brown, Mrs. Richard Lawton, Mrs. Sadie Emmanuel, et. al., Appellants v. *Board of Education of Topeka, Shawnee County, Kansas, et. al*, Appellees,

Appearances: Robert L. Carter, Esq., on behalf of the Appellants
Paul E. Wilson, Esq., on behalf of the Appellants

Case No. 8
Spottswood Thomas Bolling, et. al., Petitioners v. *C. Melvin Sharpe, et. al.*, Respondents

Appearances: George E.C. Hayes, Esq. and James M. Nabrit, Jr., Esq.,
on behalf of the Petitioners
Milton D. Korman, Esq., on behalf of the Respondents

Wednesday December 9, 1953

Francis B. Gebhart, et. al., Petitioners v. *Ethel Louise Belton, et. al.* Respondents
Francis B. Gebhart, et. al. Petitoners v. *Shirley Barbara Bulah, et. al.*, Respondents

Appearances: H. Albert Young, Esq. on behalf of the Petitioners
Jack Greenberg, Esq., and Thurgood Marshall, Esq. on behalf of the Respondents

Oral Arguments, October Term 1954

April 11, 1955

Case No. 1
Oliver Brown, Mrs. Richard Lawton, Mrs. Sadie Emmanuel, et. al. v. *Board of Education of Topeka, Shawnee County, Kansas, et. al.*

Appearances: Harold Fatzer, Attorney General of Kansas
Robert L. Carter on behalf of *Brown, et. al.*

Case No. 5
Francis B. Gebhart, et. al. v. *Ethel Louise Belton, et. al.*

Appearances: Joseph Donald Craven, Attorney General of Delaware
Louis L. Redding, on behalf of *Belton, et. al.*

Case No. 4
Spottswood Thomas Bolling, et. al. v. *C. Melvin Sharpe, et. al.*

Appearances: George E.C. Hayes and James M. Nabrit, Jr. on behalf of *Bolling*
Milton D. Korman on behalf of *Sharpe, et. al.*

Case No. 2
Harry Briggs, Jr., et. al. v. *R.W. Elliott, Chairman, J.D. Carson, et. al., Members of Board of Trustees of School District No. 2, Clarendon County, S.C., et. al.*

Appearances: Thurgood Marshall and Spottswood Robinson on behalf of *Briggs, et. al.*
Robert McC. Figg, Jr. and S.E. Rogers on behalf of *Elliott, et. al.*

Case No. 3
Dorothy E. Davis, Bertha M. Davis and Inez D. Davis, etc., et. al. v. *County School Board of Prince Edward County, Virginia, et. al.*

Appearances: Thurgood Marshall and Spottswood Robinson, Esq., on behalf of *Davis, et. al.*
Archibald G. Robertson and J. Lindsay Almond, Attorney General of Virginia

Amicus Curiae: Richard W. Ervin (Florida), Ralph E. Odum (Florida), I. Beverly Lake (North Carolina), Tom Gentry (Arkansas), Mac Q. Williamson (Oklahoma), C. Ferdinand Sybert (Maryland), John Ben Shepperd (Texas), and Brunell Naldrep (Texas)

APPENDIX J

Text of the *Brown* Decisions

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware. They are premised on different facts and different local conditions, but a common legal question justifies their consideration together in this consolidated opinion.[1]

[1] In the Kansas case, *Brown* v. *Board of Education*, the plaintiffs are Negro children of elementary school age residing in Topeka. They brought this action in the United States District Court for the District of Kansas to enjoin enforcement of a Kansas statute which permits, but does not require, cities of more than 15,000 population to maintain separate school facilities for Negro and white students. Kan. Gen. Stat. § 72-1724 (1949). Pursuant to that authority, the Topeka Board of Education elected to establish segregated elementary schools. Other public schools in the community, however, are operated on a nonsegregated basis. The three-judge District Court, convened under 28 U. S. C. §§ 2281 and 2284, found that segregation in public education has a detrimental effect upon Negro children, but denied relief on the ground that the Negro and white schools were substantially equal with respect to buildings, transportation, curricula, and educational qualifications of teachers. 98 F. Supp. 797. The case is here on direct appeal under 28 U. S. C. § 1253.

In the South Carolina case, *Briggs* v. *Elliott*, the plaintiffs are Negro children of both elementary and high school age residing in Clarendon County. They brought this action in the United States District Court for the Eastern District of South Carolina to enjoin enforcement of provisions in the state constitution and statutory code which require the segregation of Negroes and whites in public schools. S. C. Const., Art. XI, § 7; S. C. Code § 5377 (1942). The three-judge District Court, convened under 28 U. S. C. §§ 2281 and 2284, denied the requested relief. The court found that the Negro schools were inferior to the white schools and ordered the defendants to begin immediately to equalize the facilities. But the court sustained the validity of the contested provisions and denied the plaintiffs admission to the white schools during the equalization program. 98 F. Supp. 529. This Court vacated the District Court's judgment and remanded the case for the purpose of obtaining the court's views on a report filed by the defendants concerning the progress made in the equalization program. 342 U. S. 350. On remand, the District Court found that substantial equality had been achieved except for buildings and that the defendants were proceeding to rectify this inequality as well. 103 F. Supp. 920. The case is again here on direct appeal under 28 U. S. C. § 1253.

In the Virginia case, *Davis* v. *County School Board*, the plaintiffs are Negro children of high school age residing in Prince Edward County. They brought this action in the United States District Court for the Eastern District of Virginia to enjoin enforcement of provisions in the state constitution and statutory code which require the segregation of Negroes and whites in public schools. Va. Const., § 140; Va. Code § 22-221 (1950). The three-judge District Court, convened under 28 U. S. C. §§ 2281 and 2284, denied the requested relief. The court found the Negro school inferior in physical plant, curricula, and transportation, and ordered the defendants forthwith to provide substantially equal curricula and transportation and to "proceed with all reasonable diligence and dispatch to remove" the inequality in physical plant. But, as in the South Carolina case, the court sustained the validity of the contested provisions and denied the plaintiffs admission to the white schools during the equalization program. 103 F. Supp. 337. The case is here on direct appeal under 28 U. S. C. § 1253.

In the Delaware case, *Gebhart* v. *Belton*, the plaintiffs are Negro children of both elementary and high school age residing in New Castle County. They brought this action in the Delaware Court of Chancery to enjoin enforcement of provisions in the state constitution and statutory code which require the segregation of Negroes and whites in public schools. Del. Const., Art. X, § 2; Del. Rev. Code § 2631 (1935). The Chancellor gave judgment for the plaintiffs and ordered their immediate admission to schools previously attended only by white children, on the ground that the Negro schools were inferior with respect to teacher training, pupil-teacher ratio, extracurricular activities, physical plant, and time and distance in-

In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis. In each instance,

ported by general taxation, had not yet taken hold. Education of white children was largely in the hands of private groups. Education of Negroes was almost nonexistent, and practically all of the race were illiterate. In fact, any education of Negroes was forbidden by law in some states. Today, in contrast, many Negroes have achieved outstanding success in the arts and sciences as well as in the business and professional world. It is true that public school education at the time of the Amendment had advanced further in the North, but the effect of the Amendment on Northern States was generally ignored in the congressional debates. Even in the North, the conditions of public education did not approximate those existing today. The curriculum was usually rudimentary; ungraded schools were common in rural areas; the school term was but three months a year in many states; and compulsory school attendance was virtually unknown. As a consequence, it is not surprising that there should be so little in the history of the Fourteenth Amendment relating to its intended effect on public education.

In the first cases in this Court construing the Fourteenth Amendment, decided shortly after its adoption, the Court interpreted it as proscribing all state-imposed discriminations against the Negro race.[5] The doctrine of

virtually stopped all progress in public education. *Id.*, at 427–428. The low status of Negro education in all sections of the country, both before and immediately after the War, is described in Beale, A History of Freedom of Teaching in American Schools (1941), 112–132, 175–195. Compulsory school attendance laws were not generally adopted until after the ratification of the Fourteenth Amendment, and it was not until 1918 that such laws were in force in all the states. Cubberley, *supra*, at 563–565.

[5] *Slaughter-House Cases*, 16 Wall. 36, 67–72 (1873); *Strauder* v. *West Virginia*, 100 U. S. 303, 307–308 (1880):

"It ordains that no State shall deprive any person of life, liberty, or property, without due process of law, or deny to any person within its jurisdiction the equal protection of the laws. What is this but

"separate but equal" did not make its appearance in this Court until 1896 in the case of *Plessy* v. *Ferguson, supra*, involving not education but transportation.[6] American courts have since labored with the doctrine for over half a century. In this Court, there have been six cases involving the "separate but equal" doctrine in the field of public education.[7] In *Cumming* v. *County Board of Education*, 175 U. S. 528, and *Gong Lum* v. *Rice*, 275 U. S. 78, the validity of the doctrine itself was not challenged.[8] In more recent cases, all on the graduate school

declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color? The words of the amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity, or right, most valuable to the colored race,—the right to exemption from unfriendly legislation against them distinctively as colored,—exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race."

See also *Virginia* v. *Rives*, 100 U. S. 313, 318 (1880); *Ex parte Virginia*, 100 U. S. 339, 344–345 (1880).

[6] The doctrine apparently originated in *Roberts* v. *City of Boston*, 59 Mass. 198, 206 (1850), upholding school segregation against attack as being violative of a state constitutional guarantee of equality. Segregation in Boston public schools was eliminated in 1855. Mass. Acts 1855, c. 256. But elsewhere in the North segregation in public education has persisted in some communities until recent years. It is apparent that such segregation has long been a nationwide problem, not merely one of sectional concern.

[7] See also *Berea College* v. *Kentucky*, 211 U. S. 45 (1908).

[8] In the *Cumming* case, Negro taxpayers sought an injunction requiring the defendant school board to discontinue the operation of a high school for white children until the board resumed operation of a high school for Negro children. Similarly, in the *Gong Lum* case, the plaintiff, a child of Chinese descent, contended only that state authorities had misapplied the doctrine by classifying him with Negro children and requiring him to attend a Negro school.

they had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. In each of the cases other than the Delaware case, a three-judge federal district court denied relief to the plaintiffs on the so-called "separate but equal" doctrine announced by this Court in *Plessy* v. *Ferguson*, 163 U. S. 537. Under that doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate. In the Delaware case, the Supreme Court of Delaware adhered to that doctrine, but ordered that the plaintiffs be admitted to the white schools because of their superiority to the Negro schools.

The plaintiffs contend that segregated public schools are not "equal" and cannot be made "equal," and that hence they are deprived of the equal protection of the laws. Because of the obvious importance of the question presented, the Court took jurisdiction.[2] Argument was heard in the 1952 Term, and reargument was heard this Term on certain questions propounded by the Court.[3]

volved in travel. 87 A. 2d 862. The Chancellor also found that segregation itself results in an inferior education for Negro children (see note 10, *infra*), but did not rest his decision on that ground. *Id.*, at 865. The Chancellor's decree was affirmed by the Supreme Court of Delaware, which intimated, however, that the defendants might be able to obtain a modification of the decree after equalization of the Negro and white schools had been accomplished. 91 A. 2d 137, 152. The defendants, contending only that the Delaware courts had erred in ordering the immediate admission of the Negro plaintiffs to the white schools, applied to this Court for certiorari. The writ was granted, 344 U. S. 891. The plaintiffs, who were successful below, did not submit a cross-petition.

[2] 344 U. S. 1, 141, 891.

[3] 345 U. S. 972. The Attorney General of the United States participated both Terms as *amicus curiae*.

Reargument was largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then existing practices in racial segregation, and the views of proponents and opponents of the Amendment. This discussion and our own investigation convince us that, although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best, they are inconclusive. The most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among "all persons born or naturalized in the United States." Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty.

An additional reason for the inconclusive nature of the Amendment's history, with respect to segregated schools, is the status of public education at that time.[4] In the South, the movement toward free common schools, sup-

[4] For a general study of the development of public education prior to the Amendment, see Butts and Cremin, A History of Education in American Culture (1953), Pts. I, II; Cubberley, Public Education in the United States (1934 ed.), cc. II–XII. School practices current at the time of the adoption of the Fourteenth Amendment are described in Butts and Cremin, *supra*, at 269–275; Cubberley, *supra*, at 288–339, 408–431; Knight, Public Education in the South (1922), cc. VIII, IX. See also H. Ex. Doc. No. 315, 41st Cong., 2d Sess. (1871). Although the demand for free public schools followed substantially the same pattern in both the North and the South, the development in the South did not begin to gain momentum until about 1850, some twenty years after that in the North. The reasons for the somewhat slower development in the South (*e. g.*, the rural character of the South and the different regional attitudes toward state assistance) are well explained in Cubberley, *supra*, at 408–423.

level, inequality was found in that specific benefits enjoyed by white students were denied to Negro students of the same educational qualifications. *Missouri ex rel. Gaines* v. *Canada*, 305 U. S. 337; *Sipuel* v. *Oklahoma*, 332 U. S. 631; *Sweatt* v. *Painter*, 339 U. S. 629; *McLaurin* v. *Oklahoma State Regents*, 339 U. S. 637. In none of these cases was it necessary to re-examine the doctrine to grant relief to the Negro plaintiff. And in *Sweatt* v. *Painter, supra*, the Court expressly reserved decision on the question whether *Plessy* v. *Ferguson* should be held inapplicable to public education.

In the instant cases, that question is directly presented. Here, unlike *Sweatt* v. *Painter*, there are findings below that the Negro and white schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other "tangible" factors.[9] Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when *Plessy* v. *Ferguson* was written. "We must consider public education in the light of its full development and its present place in American life throughout

[9] In the Kansas case, the court below found substantial equality as to all such factors. 98 F. Supp. 797, 798. In the South Carolina case, the court below found that the defendants were proceeding "promptly and in good faith to comply with the court's decree." 103 F. Supp. 920, 921. In the Virginia case, the court below noted that the equalization program was already "afoot and progressing" (103 F. Supp. 337, 341); since then, we have been advised, in the Virginia Attorney General's brief on reargument, that the program has now been completed. In the Delaware case, the court below similarly noted that the state's equalization program was well under way. 91 A. 2d 137, 149.

the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

In *Sweatt* v. *Painter, supra*, in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on "those qualities which are incapable of objective measurement but which make for greatness in a law school." In *McLaurin* v. *Oklahoma State Regents, supra*, the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: ". . . his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession."

Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

> "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system." [10]

Whatever may have been the extent of psychological knowledge at the time of *Plessy* v. *Ferguson*, this finding is amply supported by modern authority.[11] Any language in *Plessy* v. *Ferguson* contrary to this finding is rejected.

[10] A similar finding was made in the Delaware case: "I conclude from the testimony that in our Delaware society, State-imposed segregation in education itself results in the Negro children, as a class, receiving educational opportunities which are substantially inferior to those available to white children otherwise similarly situated." 87 A. 2d 862, 865.

[11] K. B. Clark, Effect of Prejudice and Discrimination on Personality Development (Midcentury White House Conference on Children and Youth, 1950); Witmer and Kotinsky, Personality in the Making (1952), c. VI; Deutscher and Chein, The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion, 26 J. Psychol. 259 (1948); Chein, What are the Psychological Effects of Segregation Under Conditions of Equal Facilities?, 3 Int. J. Opinion and Attitude Res. 229 (1949); Brameld, Educational Costs, in Discrimination and National Welfare (MacIver, ed., 1949), 44–48; Frazier, The Negro in the United States (1949), 674–681. And see generally Myrdal, An American Dilemma (1944).

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal." Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment.[12]

Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity. On reargument, the consideration of appropriate relief was necessarily subordinated to the primary question—the constitutionality of segregation in public education. We have now announced that such segregation is a denial of the equal protection of the laws. In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument on Questions 4 and 5 previously propounded by the Court for the reargument this Term.[13] The Attorney General

[12] See *Bolling* v. *Sharpe*, *post*, p. 497, concerning the Due Process Clause of the Fifth Amendment.

[13] "4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment

"(*a*) would a decree necessarily follow providing that, within the

of the United States is again invited to participate. The Attorneys General of the states requiring or permitting segregation in public education will also be permitted to appear as *amici curiae* upon request to do so by September 15, 1954, and submission of briefs by October 1, 1954.[14]

It is so ordered.

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limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or

"(*b*) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

"5. On the assumption on which questions 4 (*a*) and (*b*) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4 (*b*),

"(*a*) should this Court formulate detailed decrees in these cases;

"(*b*) if so, what specific issues should the decrees reach;

"(*c*) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

"(*d*) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

[14] See Rule 42, Revised Rules of this Court (effective July 1, 1954).

SUPREME COURT OF THE UNITED STATES

No. 8.—October Term, 1953.

Spottswood Thomas Bolling, et al., Petitioners, *v.* C. Melvin Sharpe, et al.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[May 17, 1954.]

Mr. Chief Justice Warren delivered the opinion of the Court.

This case challenges the validity of segregation in the public schools of the District of Columbia. The petitioners, minors of the Negro race, allege that such segregation deprives them of due process of law under the Fifth Amendment. They were refused admission to a public school attended by white children solely because of their race. They sought the aid of the District Court for the District of Columbia in obtaining admission. That court dismissed their complaint. We granted a writ of certiorari before judgment in the Court of Appeals because of the importance of the constitutional question presented. 344 U. S. 873.

We have this day held that the Equal Protection Clause of the Fourteenth Amendment prohibits the states from maintaining racially segregated public schools.[1] The legal problem in the District of Columbia is somewhat different, however. The Fifth Amendment, which is applicable in the District of Columbia, does not contain an equal protection clause as does the Fourteenth Amendment which applies only to the states. But the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive. The "equal protection of the laws" is a more explicit safeguard of prohibited unfairness than "due process of law," and, therefore, we do not imply that the two are always interchangeable phrases. But, as this Court has recognized, discrimination may be so unjustifiable as to be violative of due process.[2]

Classifications based solely upon race must be scrutinized with particular care, since they are contrary to our traditions and hence constitutionally suspect.[3] As long ago as 1896, this Court declared the principle "that the Constitution of the United States, in its present form, forbids, so far as civil and political rights are concerned, discrimination by the General Government, or by the States, against any citizen because of his race."[4] And in *Buchanan* v. *Warley*, 245 U. S. 60, the Court held that a statute which limited the right of a property owner to convey his property to a person of another race was, as an unreasonable discrimination, a denial of due process of law.

Although the Court has not assumed to define "liberty" with any great precision, that term is not confined to mere freedom from bodily restraint. Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective. Segregation in public education is not reasonably related to any proper governmental objective, and thus it imposes on Negro children of the District of Columbia a burden that constitutes an arbitrary deprivation of their liberty in violation of the Due Process Clause.

[1] *Brown* v. *Board of Education*, — U. S. —.

[2] *Detroit Bank* v. *United States*, 317 U. S. 329; *Currin* v. *Wallace*, 306 U. S. 1, 13–14; *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 585.

[3] *Korematsu* v. *United States*, 323 U. S. 214, 216; *Hirabayashi* v. *United States*, 320 U. S. 81, 100.

[4] *Gibson* v. *Mississippi*, 162 U. S. 565, 591. Cf. *Steele* v. *Louisville & Nashville R. Co.*, 323 U. S. 192, 198–199.

In view of our decision that 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.[5] We hold that racial segregation in the public schools of the District of Columbia is a denial of the due process of law guaranteed by the Fifth Amendment to the Constitution.

For the reasons set out in *Brown* v. *Board of Education*, this case will be restored to the docket for reargument on Questions 4 and 5 previously propounded by the Court. 345 U. S. 972.

It is so ordered.

[5] Cf. *Hurd* v. *Hodge*, 334 U. S. 24.

SUPREME COURT OF THE UNITED STATES

Nos. 1, 2, 3, 4 AND 5.—OCTOBER TERM, 1954.

1	Oliver Brown, et al., Appellants, *v.* Board of Education of Topeka, Shawnee County, Kansas, et al.	On Appeal From the United States District Court for the District of Kansas.
2	Harry Briggs, Jr., et al., Appellants, *v.* R. W. Elliott, et al.	On Appeal From the United States District Court for the Eastern District of South Carolina.
3	Dorothy E. Davis, et al., Appellants, *v.* County School Board of Prince Edward County, Virginia, et al.	On Appeal From the United States District Court for the Eastern District of Virginia.
4	Spottswood Thomas Bolling, et al., Petitioners, *v.* C. Melvin Sharpe, et al.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.
5	Francis B. Gebhart, et al., Petitioners, *v.* Ethel Louise Belton, et al.	On Writ of Certiorari to the Supreme Court of Delaware.

[May 31, 1955.]

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

These cases were decided on May 17, 1954. The opinions of that date,[1] declaring the fundamental principle

[1] 347 U. S. 483; 347 U. S. 497.

that racial discrimination in public education is unconstitutional, are incorporated herein by reference. All provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle. There remains for consideration the manner in which relief is to be accorded.

Because these cases arose under different local conditions and their disposition will involve a variety of local problems, we requested further argument on the question of relief.[2] In view of the nationwide importance of the decision, we invited the Attorney General of the United States and the Attorneys General of all states requiring or permitting racial discrimination in public education to present their views on that question. The parties, the United States, and the States of Florida, North Carolina, Arkansas, Oklahoma, Maryland, and Texas filed briefs and participated in the oral argument.

[2] Further argument was requested on the following questions, 347 U. S. 483, 495–496, n. 13, previously propounded by the Court:

"4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment

"(*a*) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or

"(*b*) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

"5. On the assumption on which questions 4 (*a*) and (*b*) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4 (*b*),

"(*a*) should this Court formulate detailed decrees in these cases;

"(*b*) if so, what specific issues should the decrees reach;

"(*c*) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

"(*d*) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

These presentations were informative and helpful to the Court in its consideration of the complexities arising from the transition to a system of public education freed of racial discrimination. The presentations also demonstrated that substantial steps to eliminate racial discrimination in public schools have already been taken, not only in some of the communities in which these cases arose, but in some of the states appearing as *amici curiae,* and in other states as well. Substantial progress has been made in the District of Columbia and in the communities in Kansas and Delaware involved in this litigation. The defendants in the cases coming to us from South Carolina and Virginia are awaiting the decision of this Court concerning relief.

Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts.[3]

In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies[4] and by a facility for adjusting and reconciling public and private needs.[5] These cases call

[3] The cases coming to us from Kansas, South Carolina, and Virginia were originally heard by three-judge District Courts convened under 28 U. S. C. §§ 2281 and 2284. These cases will accordingly be remanded to those three-judge courts. See *Briggs* v. *Elliott,* 342 U. S. 350.

[4] See *Alexander* v. *Hillman,* 296 U. S. 222, 239.

[5] See *Hecht Co.* v. *Bowles,* 321 U. S. 321, 329–330.

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for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.

While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system. During this period of transition, the courts will retain jurisdiction of these cases.

The judgments below, except that in the Delaware case, are accordingly reversed and remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases. The judgment in the Delaware case—ordering the immediate admission of the plaintiffs to schools previously attended only by white children—is affirmed on the basis of the principles stated in our May 17, 1954, opinion, but the case is remanded to the Supreme Court of Delaware for such further proceedings as that court may deem necessary in light of this opinion.

It is so ordered.

APPENDIX K

Additional Historical Research Needs

This historic resource study provides a broad overview of events and persons associated with the landmark school desegregation case, *Brown* v. *Board of Education of Topeka, Shawnee County, Kansas*. A primary value of cultural resources lies in the information they convey and their potential to enliven and enrich through education. Through interpretation, historic resources function as instructional tools which facilitate better understanding of specific historic events and persons involved or affected by them, placed within the broader context of national history. Hopefully, the educational experience will enhance the visitor's understanding of self and placement within the historical record. This document provides the basic narrative of events associated with the lengthy campaign to end racial segregation in public education, Topeka's role in those events, and the short-term effects of desegregation.

Complementary studies will contribute additional information about the historic resource and its context. Level I and II Cultural Landscape Inventories (CLI) have been completed for Monroe Elementary School, which specifically document the physical features, equipment, use, and historical significance of playgrounds and sports fields on the property. Current park planning calls for the completion of a cultural landscape report, which will flesh out the preliminary findings of these cultural landscape inventories. A historic structure report (HSR) will provide useful data about the construction and condition of Monroe Elementary School. It will also place the school within the context of Thomas W. Williamson's body of work and the broader field of public school construction in the early twentieth century.

A scope of collections statement will reflect the purpose and significance of the BRvB NHS. This brief report, recommended by NPS policy, defines the purpose and variety of objects which may be collected for future research and interpretive needs. Archival and photographic collections will reflect the mission of the park unit, as described in its legislative mandate to interpret the history of the school desegregation campaign, the impact of *Brown* v. *Board of Education* on the modern civil rights movement, and related cultural resources in Topeka. The current BRvB general management plan calls for little restoration of Monroe's interior. In the event that park staff decide to restore a portion of the interior, such as a classroom or office, a historic furnishings report will aid these efforts. It will outline the history of the buildings's use, recommend furnishings appropriate to the 1950-1955 period of significance, and propose alternatives for the care and management of historic furnishings/objects acquired by the park unit.

These NPS reports supply rudimentary material about Monroe Elementary School, as well as significant people and events associated with the *Brown* v. *Board* school desegregation case. Interpretive programming would also benefit from more specialized data which would elaborate on specific historical themes, events, biographies, and cultural resources. These fall under the category of "special history studies" and may be completed as needed. Possible research topics include:

1. Park planning and interpretive programs would benefit from additional knowledge about the neighborhood near Monroe School, both of its physical environment and residential patterns for the period of significance, 1950-1955. The setting of the schools represented by the plaintiffs in the Kansas District Court were crucial factors in *Brown* v. *Board of Education*. While Seasonal Landscape Architect Technician David Barnes made a very good start during Summer 1994 in determining the physical landscape around the building, more research is needed to determine the physical arrangement of buildings and spaces, inhabitants, and ethnic/racial composition of the neighborhood near Monroe Elementary. This would provide a crucial research tool if park professionals plan to interpret this area and/or retain any remaining residential integrity. It would also provide important documentation in light of construction of the magnet school at Fourteenth and Quincy and would aid in the protection of Cushinberry Park (even though it does not lie within park boundaries). Historic maps and photographs of the general area near the four segregated schools would contribute greatly to this project.

2. Although judges in Kansas District Court found conditions between schools in Topeka to be "substantially equal," a researcher could look at this angle more closely. This case and the other four dealt with comparisons, to varying degrees, of conditions between "black" and "white" schools, an intern could provide an analysis of conditions at the four African American elementary schools and representative examples of "white" schools. This would involve gathering information about buildings, their settings/landscapes, teachers, educational materials, supplies, nutrition programs, health facilities (i.e. school nurse or medical screening programs available), recreational programs, playgrounds, sports teams, music programs, etc. Quinn/Evans, Architects, of Ann Arbor, Michigan, have begun such an analysis with the Historic Structure Report on Monroe Elementary.

   Similar analyses of schools represented in the companion cases would also enhance a comprehensive approach to interpretation of the *Brown* v. *Board of Education* case. Legal action in other states hinged on conditions at the following schools: a) Rambay Elementary School, Liberty Hill Elementary, and Scotts Branch Union (which housed primary and secondary grades) reserved for black students should be juxtaposed with the white Summerton Elementary and Summerton High School in Clarendon County, South Carolina; b) Farmville and Robert Russa Moton High Schools, central to the Virginia case; c) the Delaware suits pertained to conditions at the black Hockessin School No. 29 and the white No. 107, and aligned conditions at Howard High School with those at Claymont High; d) Shaw and Browne Junior High Schools compared unfavorably with John Philip Sousa Junior High in the District of Columbia case.

3. Even though current park planning resists full restoration of the interior of Monroe, or any classrooms, it will need specific information about how the interior space was furnished and used in the early 1950s. Official school photographs, taken annually, show the

classroom settings in the best light, but should be supplemented with additional research. The Historical Research Center of the Kansas State Historical Society possesses a ca. 1945-1950 film of student activities at Washington Elementary School. It shows the building interiors and playgrounds, which would offer a more general look at the use and furnishing of classrooms in Topeka's African American schools.

4. A special history study is needed on the African American community in Topeka. Research could begin with late nineteenth century migration and the settlement of various African American communities, including Tennessee Town. A study could focus on these communities in the mid-twentieth century. Regardless of the temporal context, such a study should discuss the development of social institutions; such as neighborhoods, churches, social clubs (ie: women's clubs, men's fraternal organizations), professional organizations, etc. Photographs would add an important dimension to this important social history.

5. The role of the individual is important on many levels in each of the school cases. The Brown v. Board of Education National Historic Site represents people, most of all, and should highlight the contributions made by those who are often forgotten in the historical record. Biographical sketches are needed on specific individuals who are not usually mentioned; such as Esther Brown, Joe Douglas, Charles Bledsoe, Daniel Sawyer, McKinley Burnett, Merrill Ross, and Grant Cushinberry. The study should examine their lives, and relate specific effects of their activities and personal initiative on African American advancement in Topeka. Similar biographies of key people in the other four school cases would also contribute to a better understanding of individual effort, on the local level, in the broader campaign for school desegregation. These may include; J.A. Delaine, Barbara Johns, Dorothy Davis, Louis Redding, Gardner Bishop, Spottswood Bolling, etc.

   Oral histories are vital for the personal insights and experiences of those involved in the school desegregation campaign. The Brown Foundation, in conjunction with the Kansas State Historical Society and other sponsors, has established a comprehensive collection of oral history interviews. Ralph Crowder and Jean Vandelinder conducted most of the interviews in this collection, primarily with those involved in the Kansas case. The project continues, however, and now includes interviews with participants in the South Carolina, Virginia, Delaware, and Washington, D.C. actions, as well. Researchers may find the Brown Foundation Oral History Project at the Center for Historical Research, Kansas State Historical Society, Topeka, Kansas. Additional oral history interviews may be found at the Eisenhower and Truman Libraries.

6. African American churches played critical roles in these actions, as well as later civil rights gains. A specific study should elaborate on the function of ministers and congregations in supporting African American activism and the relationships between those involved in activism; i.e.: the specific correlation between association in church activities and participation in local desegregation efforts. It could also delve into the importance of

the church congregation as a social network which provided support for resistance to white dominance.

7. A special history study should be completed on race relations in Topeka for the period, 1945-1965. Experiences during World War II and the economic boom of the 1950s led to decreasing patience with the status quo and increasing economic power to change it. Researchers should analyze these tensions in Topeka, discuss the level of social activity among its African American population, and describe specific aspects of segregation in the city. All of these elements contributed to *Brown*.

8. Another study should address the effects of *Brown* in Topeka--did *de facto* segregation end? What effects did civil rights activity in the 1960s have on this Kansas city and its people? Did black Topekans join CORE, SNCC, and participate in boycotts, sit-ins, etc.? What issues underlay and motivated the level of protest in Topeka? Historic photographs and oral histories could provide important data for this study.

9. Several research projects could benefit from resources in the Dwight D. Eisenhower Library, located in Abilene, Kansas. Researchers should look at Ike's public statements and internal correspondence about civil rights issues. Political negotiations, NAACP lobbying, and public appeal played important roles in the drafting and passage of the 1957 Civil Rights Act. This law served as an influential precedent for the 1964 Civil Rights Act and deserves more attention than it often receives.

10. Many good secondary sources deal with President Eisenhower's reaction to the decision, the sending of troops to Arkansas in 1957, etc. The Eisenhower Library contains many letters from avid segregationists and integrationist. Researchers could provide an analysis of these letters, as a survey of public response, both pro- and con- to the events of the 1950s.

11. A biography of E. Frederic Morrow, the first African American to serve as an administrative assistant in the White House, would also prove useful. The Eisenhower administration (1955-1969) employed Morrow as Administrative Officer for Special Projects, from 1955 to 1961. He, along with others, dealt primarily with race relations and civil rights issues. His experience presents an interesting topic for additional research. The park now owns a copy of his memoirs and has copies of oral history interviews with him. The Eisenhower Library possesses some of his official correspondence and inter-office memos which provide insight into this engaging man. The Papers of the NAACP, reposited in the Manuscripts Division of the Library of Congress, and historic photographs in the Prints and Photographs Division, provide limited information about Morrow's involvement with that organization.

12. The Harry S Truman Library in Independence, Missouri, contains material pertaining to the Truman administration's civil rights activities. The Civil Rights Commission produced a very important report in 1947 which outlined goals which were

implemented in the 1950s and 1960s. This study should discuss that report, efforts to desegregate the military, and activities by the Department of Justice relating to the litigation of the school desegregation cases before the U.S. Supreme Court.

13. Even though interpretation at BRvB will not focus on architecture, this and other school buildings played critical roles in the Kansas case. Monroe's architect, Thomas W. Williamson, designed or modified these schools and crafted many other public buildings in Topeka during his long career. During specific eras, his body of work exemplifies the concept of an "authored townscape," deriving from the existence of many commissioned structures within an area. Some of Williamson's commissions have been demolished in recent years, but many remain. The University of Kansas Libraries, in Lawrence, Kansas, contain the Williamson Collection, comprised of the architect's measured drawings, contracts, and business records. This archival collection is currently closed to public use, but will be available in the late 1990s. Access certainly would enhance any study of Williamson's work. The Historic Structure Report on Monroe Elementary School would provide a good starting point for further analysis.

14. Two of Thomas W. Williamson's schools, Sumner and Monroe, have been designated as an NHL, due to their association with *Brown* v. *Board of Education*. The relative abundance and architectural integrity of Williamson school buildings in Topeka, Shawnee County, and Kansas, in general, call for a more comprehensive look at these structures. A thematic nomination to the National Register of Historic Places would provide fitting recognition for this architect's contribution to many Kansas towns. Again, please refer to the Historic Structure Report for more information about the man and his buildings.

GLOSSARY

action = lawsuit

amicus curiae = "friend of the court;" a brief filed on behalf of a plaintiff. a person, not a party to the litigation, who volunteers or is invited by the court to give advice upon some matter pending before it. The action requires court permission.

appellant = party who bring an action in a higher court; usually, those who served as plaintiffs in the lower court case.

appellee = party against whom an action is brought in a higher court; usually, those who served as defendants in the lower court case.

Attorney General = chief law officer and legal counsel of a state or of the federal government. The Attorney General of the United States is a Cabinet level post within the Executive Branch, as functional head of the Justice Department.

black = *black*, *colored*, and *Negro* have all been used to describe or name the dark-skinned African peoples or their descendants. *Colored*, now old-fashioned, is often considered to be offensive. In the late 1950's *black* began to replace *Negro* and today is the most widely used term. Common as an adjective (ie: black woman, man, American, people), black is also used as a noun, especially in the plural. Like other terms referring to skin color (white, yellow), *black* is usually not capitalized, except in proper names or titles (ie: Black Muslim, Black English). In the appropriate meanings *Afro-American* or *African American* is sometimes used instead of *black*. [quoted directly from *The Random House Dictionary of the English Language*, 2d ed.]

caveat = a warning; let him or her beware.

cultural landscape = settings which humans have created in the natural world. They link people with the land and its resources. Cultural landscpaes include such things as structures, plant materials, circulation routes, as well as defined and/or natural spaces. Whether designed or vernacular, cultural landscapes comprise expressions of human manipulation of and adaptation to the enviroment.

cultural resource = physical evidence of human occupation; being buildings, structures, sites, cultural landscapes, objects, or portions thereof. They possess and/or represent at least three key concepts; being, historical significance, historical integrity and historical context.

de facto = in fact; in reality.

de jure = by force/action of law.

due process = a general substantive limitation upon the police power of the state. Any state statute, ordinance, or administrative act which imposes any kind of limitation upon the right of private property or free contract immediately raises the question of due process of law. The guarantee of "due process of law" and its counterpart, "the law of the land" were granted by King John to his barons in 1215 in the Magna Carta. The phrase "due process of law" first occurred in 1354 English law. The phrase "law of the land," purportedly the same thing, was incorporated in several colonial charters and so became a part of the commonly accepted body of liberties among English subjects in America. It was later included in state constitutions and in the Fifth Amendment. [taken from Kelly & Harbison, *The American Constitution*, 526. those interested may find a great discussion of due process on 504-506.]

Before 1850, it was assumed to be a procedural rather than a substantive restriction upon governmental authority. That is, it guaranteed certain protective rights to an accused person before he could be deprived of his life, liberty, or property. These included: protection against arrest without warrant, right to counsel, requirement of indictment by grand jury before trial, right to hear evidence against you, right to impartial jury of peers, requirement of verdict before sentencing. [see Kelly & Harbison, *The American Constitution*, 505 for specific language.]

Due process replaced the contract clause as the protector of vested rights, after 1890 in particular. This gave due process a substantive content and made it a guarantee against unreasonable legislative interference with private property. Before 1870, the concept of due process as tentative and it appeared in only a few cases.

Due process clauses of the Fifth and Fourteenth Amendments were almost identical. The difference is that the Fifth pertains to federal powers and does not specifically address the freedom of speech. It would have been redundant for it to have included freedom of speech after that was granted in the First Amendment. The Fourteenth limited state powers and was construed to include freedom of speech. [paraphrased, with substantial borrowing, from Kelly & Harbison, *The American Constitution*, 803]

enjoin = command to maintain the status quo either by doing or refraining from doing a specific act; the writ is called an injunction.

ex rel. = on the information supplied by.

Exoduster = African Americans who left the lower Mississippi Valley in 1879-1880 in a millenarian movement, seeking new homes in the freedom of Kansas, were ordinary, uneducated former slaves, whom one of them called "a class of hard laboring people." [taken from Painter, *Exodusters*, vii.]

historical significance = the importance of a property to the history, architecture, archaeology, engineering, or culture of a community, state, or the nation. It can be achieved through association with events, individuals/groups, distinctive physical characteristics of design or construction, or perceived potential of yielding important information through further investigation (as in an archaeological site).

holding = a ruling by the court; court's decision on a question properly raised in a case.

infra = below; following.

mandamus = writ ordering the execution of a non-discretionary duty by one charged with responsibility therefor.

opinion = reasoning offered by a court to explain why it has decided a case as it has. The **"opinion of the court"** is that reasoning accepted by a majority of the participating judges. A **"concurring opinion"** contains the views of a judge who agrees with the court's judgement but desires to express some views not contained to his satisfaction in the opinion of the court. A **"dissenting opinion"** expresses the reasons a judge would decide the case differently from the majority of the judges. When several questions arise in one case, there may be partial concurrences or dissents. [taken directly from glossary in Reutter, *The Supreme Court's Impact on Public Education*, 193.]

per curiam = by the whole Court, a unanimous ruling without a dissenting opinion by an individual justice.

per se = in and of itself, solely.

petitioner = party bringing a case before a court; the appellant in a case appealed.

plaintiff = party instituting a legal action.

prima facie = on its face; evidence supporting a conclusion unless it is rebutted.

ratio decidendi = reasoning applied by a court to crucial facts of a case in process of determining the judgement; basic reason for a holding.

reductio ad absurdum = interpretation which would lead to results clearly illogical or not intended.

remand = to send back (a case) to a lower court from which it was appealed, with instructions as to what further proceedings should be had. to send a case back to the court from which it was appealed for further action by the lower court.

res judicata = a matter finally decided by the highest court of competent jurisdiction.

respondent = party against whom a legal action is brought; the appellee in a case appealed.

Solicitor General = takes responsibility for deciding in which cases the government will ask for an appeal and which cases to enter as an *amicus curiae* (in politically explosive cases the Attorney General almost always takes part in the decision). [taken directly from Mayer, "With Much Deliberation and Some Speed: Eisenhower and the *Brown* Decision," 47.]

stare decisis = doctrine of precedents whereby prior decisions of courts are followed under similar facts.

sub judice = being considered by a court.

summary = immediate; without a full proceeding.

supra = above; preceding.

ultra vires = outside the legal power of an individual or body.

vacate = to annul, abandon, or cancel a court order or ruling.

vested rights = fixed; accrued; not subject to any contingency, a product of eighteenth century natural rights theory. Certain rights were so fundamental as to be derived from the very nature of justice, even from the very nature of God. It was the purpose and function of organized society to protect these rights; indeed constitutional government existed to assure their protection. Private property was an extremely important right. State legislatures did not have an unlimited right of interference with private property. The Bill of Rights set up certain, specific immunities, but natural rights could extend beyond these. The whole body of natural rights inhered [existed permanently and inseparably in, as a quality, attribute, or element; rested] with the people and the legislature was powerless to interfere with them. [taken from Kelly & Harbison, 502-504]

It was implied in the obligation of contracts clause in Article I, Section 10 of the U.S. Constitution sometimes it was associated with the general nature of all constitutional government. In the early nineteenth century, the contract clause played an important role in the embodiment of vested rights, as the due process clause was to play after 1890.

void = having no legal force or effect.

white = light or comparatively light in color; marked by slight pigmentation of the skin, as of many Caucasoids. Used as an adjective to describe situations, things, organizations, etc. set aside for, limited to, or predominantly made up of persons whose racial heritage

is Caucasian (ie: a white school, white neighborhood). [quoted from *The Random House Dictionary of the English Language*, 2d ed.]

writ of certiorari = "to be informed/certified" [made certain]; a writ issuing from a superior court calling up the record of a proceeding from an inferior court for review. Court agrees to review the decision of a lower court. A proceeding in which a higher court reviews a decision of an inferior court. If the government (or appellant) asks for *certiorari*, it asks for an appeal.

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5. Taken from Tindall and Shi, *America*, brief 2d. ed., 390.
6. Taken from Fitzgerald, *John Ritchie*, 42.
7. Taken from Tindall and Shi, *America*, 777.
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BIBLIOGRAPHIC ESSAY

Richard Kluger's *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* provides a logical starting point for research of this very broad topic because he has completed the most comprehensive work to date. Kluger provided a wonderful context for the development of the five school cases, but more specific references contributed additional information about events in Topeka and the development of a unified strategy to overturn *Plessy*. These include Daniel Fitzgerald's works, *John Ritchie: Portrait of An Uncommon Man* and *Gone But Not Forgotten: The Lost Schools of Topeka*, Roy Bird and Douglass W. Wallace's *Witness of the Times: A History of Shawnee County*, *Cyrus K. Holliday: A Documentary Biography* by William E. Treadway, and Thomas C. Cox's *Blacks in Topeka, Kansas, 1865-1915: A Social History*. Several good studies on the settlement of Kansas are available, which discuss its place in the escalation of tensions prior to the Civil War. *In Search of Canaan: Black Migration to Kansas, 1879-1880*, by Robert Athearn, and Nell Irvin Painter's *Exodusters: Black Migration to Kansas After Reconstruction* deal with the impact of African American movement out of the South after the conflagration.

Mark Tushnet offers an in-depth view of the desegregation campaign, in *The NAACP's Legal Strategy Against Segregated Education, 1925-1950*, which Genna Rae McNeil supports with her focus on the main player, in *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights*. Other monographs, such as Hugh Speer's *The Case of the Century*, Jack Greenberg's *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution*, and Paul E. Wilson's recently published *A Time to Lose: Representing Kansas in Brown v. Board of Education*, offer valuable detail about specific aspects of the Topeka case by the participants themselves. Biographies and secondary sources enlighten readers about Dwight D. Eisenhower and pertinent events during his presidency. Stephen E. Ambrose, James C. Duram, Robert F. Burk, and Michael S. Mayer were the most useful for this study. While these present Ike in varying lights, E. Frederic Morrow's autobiography, *Black Man in the White House* provided an alternate view of Ike's behavior towards African Americans. A large body of scholarship discusses the growth of civil rights activism in the 1960s, resistance to it, and constitutional reform, specifically relating to broadening legal rights and racial integration in public schools. Works which contributed to this discussion included Robbins Gates, *The Making of Massive Resistance: Virginia's Politics of Public School Desegregation, 1954-1956*, *They Closed Their Schools: Prince Edward County, Virginia, 1951-1964*, by Bob Smith, Melba Pattillo Beals' personal account, *Warriors Don't Cry: A Searing Memoir of the Battle to Integrate Little Rock's Central High*, Stephen Halpern's *On the Limits of the Law: The Ironic Legacy of Title VI of the 1964 Civil Rights Act*, and J. Harvie Wilkinson, *From Brown to Bakke: The Supreme Court and Integration, 1954-1978*.

Primary materials, however, make up the brunt of the research. The information gathering process involved visits to eight archives in Washington, D.C., Topeka, Lawrence, and Abilene, Kansas. Several collections in both the Manuscripts Division, as well as Prints and Photographs Division of the Library of Congress provided data, namely the Papers of the

NAACP, the Thurgood Marshall Papers, and the Kenneth B. Clark Papers. Agency files in the Civil Rights Division of the U.S. Department of Justice allowed an insider's view to the preparation of *amicus curiae* briefs for the school desegregation cases and public perceptions of the Eisenhower Administration's involvement in the litigation. Most information gathered in Topeka came from collections of the Kansas State Historical Society, Topeka USD-501 school board records, the Washburn University Law Library, and local histories at the Topeka-Shawnee County Public Library. The Kansas Collection at the University of Kansas holds several useful individual and church holdings, as well as valuable photograph collections. The Charles S. Scott Papers, Brown Foundation Collection, the Joe Douglas Photograph, and Merrill Ross Photograph Collections were particularly helpful. The Ann Whitman File at the Dwight D. Eisenhower Library in Abilene, Kansas, is an absolute must for any primary investigation of his presidency. That wonderful repository also provided useful transcripts of oral history interviews, White House central files, press conference transcripts, minutes from Cabinet meetings, diaries kept by Eisenhower and Whitman, and records of telephone conversations.

Surviving plaintiffs, co-counsel in the school cases, and members of Topeka's African American community comprise irreplaceable primary sources. They patiently recalled activities of the local NAACP chapter, the involvement of local church congregations, actions of the USD-501 Board of Education, and segregated conditions in Topeka, itself. Oral history collections at the Kansas State Historical Society, Dwight D. Eisenhower Library, and Harry S Truman Library, facilitated the gathering of informative, personal recollections. David Barnes, seasonal landscape architect technician with the Brown v. Board of Education National Historic Site, recorded interviews conducted with alumni of Topeka's black schools during the summer of 1994. His work concentrated on the cultural landscape adjacent to Monroe, but the interviews also delve into land use, condition and maintenance of the school's physical plant, ownership and use of the building after it closed in 1974, and conditions of the surrounding neighborhood. These components added substantially to the historical record of Monroe Elementary School.

The following annotated bibliography organizes subject and reference materials by type of resource, specifically graphic or textual, and then by subject field. In this way, researchers and interested readers can turn directly to the relevant sections for further information.

ANNOTATED BIBLIOGRAPHY

GRAPHIC RESOURCES

Associated Press (AP) World Wide Photos. New York, New York.

The Associated Press collections contain photographs used in print news media during the last fifty years. Researchers may submit fax requests at (212) 621-1955, or contact a staff member at (212) 621-1930, ex.1956.

Brown Foundation for Educational Equity, Excellence and Research. "*Brown vs. Board of Education*, In Pursuit of Freedom & Equality: Kansas and the African American Public School Experience, 1855-1955." Exhibit. Funded in part by the Kansas Humanities Council. Topeka, Kansas. 1993.

Two copies of this exhibit currently exist, one is mounted in the Washburn University Law Library in Topeka and the other circulates among sites across Kansas. Eleven panels present photographs and text that briefly mention African American migration into Kansas, the value of education, hopes and disappointments with deferred equal opportunities, the successes of black schools and early attempts to desegregate, events and persons involved in the *Brown* cases, and subsequent integration in Topeka. The Brown Foundation plans to add a twelfth panel on Charles Hamilton Houston and his cadre of Howard University proteges and will publish a complete exhibit guide.

Douglas, Joe. Photograph Collection. The Kansas Collection, Kenneth Spencer Research Library, University of Kansas Libraries. Lawrence, Kansas.

Douglas, Topeka's first black fire chief, was active in the city's African American community. He photographed several scenes of fires and floods, new firetrucks, street scenes in Topeka, views from Menninger Hill, and various individuals. The collection contains 130 photographs. For this research, one photograph of a c.1950s NAACP meeting, and views of Washington Elementary School proved very useful.

Elbow, Mary, reporter, with Woody Crable, photojournalist. "Brown vs. Board of Education." Three-part anniversary series, May 1994. KSNT-Channel 27 Television, Topeka, Kansas. Videotape.

Mary Elbow completed this three-part series to commemorate the 40th anniversary of the *Brown I* ruling. She interviews seven members of Topeka's African American community who either attended segregated schools or participated in the legal case. Footage also includes c.1950s film of children at Washington Elementary School. The report touches on *Brown III*, re-filed in 1979 to protest the existence of thirteen racially identifiable schools. In 1994, Judge Richard Rogers ordered USD-501 to implement a plan for the full integration of Topeka's public schools.

Elwood, William, et. al. "The Road to Brown: The Untold Story of the 'Man Who Killed Jim Crow.'" 57 min. A presentation by the University of Virginia. California Newsreel, 1990. Videocassette.

A total of 216 students from the University of Virginia worked on this film about Charles Hamilton Houston. Born in 1895, Houston grew up in a well-to-do family in Washington, D.C. He was aware, however, of the more common experiences that African Americans endured in segregated societies. This film tells about his work with the NAACP and as Dean of Howard University Law School. The young professionals trained at Howard formed a nucleus of civil rights attorneys who successfully attacked segregation in education, transportation, housing, and public accommodations.

Erbe, Bonnie, host. "To The Contrary." Broadcast 334, 18 November 1994. Maryland Public Television, Owings Mills, Maryland. Videotape.

"To the Contrary" appears weekly on Public Broadcasting System (PBS) stations across the country, with a panel of guests who comment on recent newsworthy events. This segment dealt with the Pacific Rim Trade Agreement, the National Conference of Catholic Bishops, and the *Brown* Legacy. Ms. Erbe and her guests briefly discuss the continuing problem of segregation in Topeka's public schools and the broader legacy of *Brown*. The broadcast provides a brief summary of the case, with interviews of Lucinda Todd, Mrs. Carper, and Vivian Scales.

Fanning, David. Marlene Booth, producer and director. "They Had a Dream: Brown v. Board of Education 25 Years Later." Boston: WTBS Public Broadcasting System, 1980. Videocassette.

Produced in 1980, this video documentary juxtaposes two case studies which represent some key issues and frustrations associated with school desegregation. It reviews the events of the *Davis* v. *County School Board, Prince Edward County, Virginia* case, 25 years after the *Brown* decision, and focuses on the integration of South Boston, Massachusetts schools in the late-1970s. Although viewers may see these cases as representing the stereotypic "North" and "South," participants in both events show similar fears and responses. The South Boston example also illustrates the slow progress toward desegregation.

Hampton, Henry, creator and executive producer. "Eyes on the Prize: America's Civil Rights Years, 1954-1965." Blackside, Inc., Boston, Massachusetts, 1986. Videocassettes.

Soon after its release, educators and historians realized the lasting importance of this documentary series. The initial "Eyes on the Prize" films tell the story of the modern Civil Rights Movement through interviews and dramatic film footage. The series begins with the *Brown* decision and murder of Emmett Till. Five subsequent videos trace the Montgomery bus boycott, Martin Luther King, Jr.'s quick rise as leader of the movement, integration of Central High School, the nonviolent protests of the NAACP, CORE, and SNCC, the Freedom Rides, the March on Washington, Freedom Summer, and the voter registration drive in Selma. Although the series comes with a viewer's guide, Juan Williams wrote a companion volume, published in 1987 by Viking Press, which provides a much more detailed look at these events.

_____. "Eyes on the Prize II: America at the Racial Crossroads, 1965-1985." Blackside, Inc., Boston, Massachusetts, 1989. Videocassettes.

"Eyes on the Prize II" begins with the life of Malcolm X and increased frustration by many within the movement with nonviolent means. This series, comprised of eight videocassettes, covers the fragmentation of SNCC, the emergent Black Power movement, demonstrations/riots in northern cities, Martin Luther King, Jr.'s death, and the formation of the Black Panther Party. The final

segment focuses on 1980 racial tensions in Miami's suburbs, as contrasted with Harold Washington's election as the mayor of Chicago in the early 1980s.

LIFE Picture Sales. The *TIME* Inc. Magazine Company, Rockefeller Center. New York, New York.

The *LIFE* Picture Collection provided some very useful photographs and written notations regarding coverage of the Topeka and Farmville, Virginia, events. Carl Iwasaki took most of the photographs in Topeka and Hank Walker recorded events in Virginia, both in 1953. Selected images also were used in subsequent issues of *TIME* and *People*. Those interested may contact LIFE Picture Collection at (212) 522-4800. Please be advised that user fees apply for research, reproduction, and/or publication.

New York World-Telegram and *The Sun* Newspaper Photograph Collection. Prints and Photographs Division, The Library of Congress. Washington, D.C.

This collection contains several photographs owned by various news services of U.S. Supreme Court Justices and the Court building. It also includes one image of African American spectators waiting to attend the *Brown* hearing before the U.S. Supreme Court, two photographs comparing a black and a white public school in Prince Edward County, Virginia, and a photo showing some officials in the Eisenhower administration.

Ross, Merrill. Photograph Collection. The Kansas Collection, Kenneth Spencer Research Library, University of Kansas Libraries. Lawrence, Kansas.

This collection contains 23 photographs. Ross taught in Topeka elementary schools, coached the African American Topeka High basketball team, and served as the first black principal of a predominantly white elementary school. He photographed the basketball team members, some games, and awards presentations that took place in the Monroe Elementary School gymnasium. The collection provided one ca. 1949 photograph of grade school teachers in Topeka, scenes of a school dance, and the team bus parked in front of Monroe Elementary School.

Sanborn Fire Insurance Maps of Topeka. New York: Sanborn-Perris Map Company, 1896, 1913, and 1964.

These maps, drawn at various intervals for use by insurance companies, provide wonderful detail about the spatial layouts of neighborhoods, as well as patterns of and materials used in construction. Maps dating to 1896, 1913, and 1964 show the first and second Monroe Elementary Schools and conditions of the neighborhood. Copies may be obtained at the Kansas State Historical Society.

Still Picture Branch, National Archives and Records Administration. College Park, Maryland.

The National Archives houses its extensive historic photograph collection in its beautiful new building in College Park. This branch contains thousands of images, but apparently none of either Monroe or Sumner Elementary School, or related cultural resources in Topeka. Researchers may find photographs of members of the Eisenhower administration, the U.S. Supreme Court, the Supreme Court building, and other general images associated with the case.

"Topeka." Aerial photographs. Salt Lake City: Aerial Photography Field Office, 1942, 1954, 1962, 1965, 1976, and 1986.

Aerial photographs show the growth, development, and decline of some of Topeka's neighborhoods. Researchers may find copies of the following images in either the Engineering Division of the City of Topeka or in the Kansas Department of Transportation, located in Topeka: 26 May 1942 (Ref. ZG-2N-82); 29 June 1954 (Ref. ZG-2N-82); 1962 (Ref. SN-23-79); 1965 (Ref. SW 6-24); 1976 (Ref. SN-122-234).

ORAL AND TEXTUAL RESOURCES

** For the aid of researchers, the following are organized by subject, then by type of resource.

-- THE HISTORY OF KANSAS AND TOPEKA --

Primary sources:

Reid, Mildred P. Manuscript Collection. Kansas Collection, Kenneth Spencer Research Library, University of Kansas Libraries. Lawrence, Kansas.

Mildred Peoples Reid Mounger, born on her parents' ranch near Montezuma, Kansas, but spent most of her life in California and Kansas. She organized the Topeka Household Technicians organization. This collection contains Reid's personal papers, a scrapbook, records from the organization, as well as some photographs catalogued separately. It carries little direct use for this study, but provides some information on the level of activism in segments of Topeka's African American community.

St. John A.M.E. Church of Topeka, Kansas. Church Records. Kansas Collection, Kenneth Spencer Research Library, University of Kansas Libraries. Lawrence, Kansas.

These records actually include two collections, documents for the periods 1877-1987 and 1901-1980. They include minutes of church conferences, financial records, minutes of the trustee meetings, etc. At least three plaintiffs belonged to this church, including Oliver Brown, Mrs. Lucinda Todd, and Sadie Emmanuel. Mr. Alvin Todd served regularly as a financial trustee and Brown served as assistant pastor; both participated in church conferences.

Whitson, Mose J. Clipping Scrapbook. Manuscript Collections, Center for Historical Research, Kansas State Historical Society. Topeka, Kansas.

This collection contains clippings of news articles published in the Topeka *Daily Capital* and the Topeka *Journal* from the 1940s through the 1970s.

Williams, Mamie Luella. Papers. Manuscript Collections, Center for Historical Research. Kansas State Historical Society. Topeka, Kansas.

Mamie Williams taught in Topeka's public school system for 45 years. This collection contains academic honors, travel logs, personal correspondence, and an autobiographical journal chronicling Ms. Williams' life from 1894 to 1976. The journal provided the most important information for this project because Williams describes her maturation in Topeka's African American community, her teaching experiences, and educational philosophies. Unfortunately, she does not delve into the issues of racial segregation or the *Brown* victory over it.

Williamson, Thomas W. Architectural construction drawing file. Historical Research Center, Kansas State Historical Society. Topeka, Kansas.

The historical society possesses reproductions of fourteen construction drawings and details for the Monroe Elementary School. Quite unlike those deposited in the Kansas Collection at the University of Kansas, these are open to viewing and possibly to reproduction. Williamson (1887-1974) reputedly designed more than fifty commercial buildings in Topeka and more than thirty schools throughout Kansas during his long career.

_____. Architectural drawings collection. The Kansas Collection, Kenneth Spencer Research Library, University of Kansas Libraries. Lawrence, Kansas.

Williamson's grandson and namesake donated many architectural drawings and loose materials to the Kansas Collection, with severe restriction until 1998. Researchers must obtain written permission from him to view any of the materials. This being the case, archivists have not catalogued the materials, but do have a partial listing of some items. Those interested in pursuing access may contact the collection's archivist, Sheryl Williams at (913) 864-4274, or Thomas W. Williamson at 2501 East 51st Street, Suite 105, Tulsa, Oklahoma 74105.

Wilson, Florence R. Letters. Manuscript Collections, Center for Historical Research, Kansas State Historical Society. Topeka, Kansas.

The historical society possesses two letters by Wilson. Only one provides relevant information about peaceful race relations at Topeka High School in the mid-twentieth century, mentioning that Wilson's high school class was integrated.

Secondary sources:

Athearn, Robert G. *In Search of Canaan: Black Migration to Kansas, 1879-1880.* Lawrence: Regents Press of Kansas, 1978.

Athearn provides an intensive cross-section of one year in the mass exodus undertaken by African Americans after the Civil War. He does not confine his study to the movement of "Exodusters," specifically, but instead brings in evidence of broadly-based migration from all areas of the Old South. Dubbing his subjects "the 79ers," Athearn delves into the process of moving such a large population and the logistical problems which Kansas towns had to resolve (i.e.: sanitation, housing, foodstuffs, financial relief). The study blends local and national events, providing a reliable social context of the Exoduster phenomenon.

Bird, Roy. *Topeka: An Illustrated History of the Kansas Capital.* Topeka: Baranski Publishing Company, 1985.

This reference work is divided into specific chronological periods, with brief explanations of significant events accompanied by photographs of corresponding cultural resources. Although a bit scant on historical data, the photographs provide an interesting look at aspects of the community. It contains brief mention of local civil rights activism in the 1960s.

_____ and Douglass W. Wallace. *Witness of the Times: A History of Shawnee County.* Topeka: Shawnee County Historical Society, 1976.

Bird and Wallace integrate thematic chapters within a broader contextual presentation in this review of Shawnee County history. They begin with the territorial period (1854-1861) and follow with thematic chapters that deal with some of the following topics; transportation, industry, country schools, city schools and colleges, women's suffrage, etc. They briefly address diverse populations, namely Swedes, German Russians, and African Americans, in a four-page chapter. The work's greatest contribution lies in its coverage of the Shawnee County educational system and brief mention of black opposition to urban renewal in the 1960s.

Brady, Marilyn Dell. "Kansas Federation of Colored Women's Clubs, 1900-1930." *Kansas History* 9 (1) (Spring 1986): 19-30.

Membership in clubs and organizations offered several opportunities to African American women; including education and social networks, as well as outlets for service, creativity, and leadership. The national organization developed in 1896 because of the increased numbers of local and state clubs. Elizabeth Washington founded the Kansas Federation in 1900. The Topeka Coterie, a group formed for the study of literature, maintained independence from the state federation, but joined the national organization. African American women received strong support from black newspapers in Kansas, particularly from Nick Chiles, publisher of the *Plaindealer.* Brady discusses the accomplishments of the Kansas Federation and analyzes limitations placed on African American women's clubs by white society. Negative aspects aside, membership brought status to these women and provided this relatively powerless group opportunities to take action.

Carper, James C. "The Popular Ideology of Segregated Schooling: Attitudes Toward the Education of Blacks in Kansas, 1854-1900." *Kansas History* 1, no. 4 (Winter 1978): 254-265.

In the mid-nineteenth century, most white Kansans preferred to leave the education of African-Americans to private individuals and charities. Some felt that blacks did not need any education at all. After the 1860s, the need for education was realized, but the majority population rejected most proposals of "racial mixing." Despite the omission of separate schools in 1872 Kansas school laws, segregation was reinstated in the codes by 1879 for "first class cities" with populations exceeding 15,000. Thereafter, public debate declined and segregation became standard practice in most communities.

Cecil-Fronsman, Bill. "'Death to All Yankees and Traitors in Kansas': The *Squatter Sovereign* and the Defense of Slavery in Kansas." *Kansas History* 16, no. 1 (Spring 1993): 22-33.

The *Squatter Sovereign*, a pro-slavery newspaper, was published in Atchison, Kansas Territory,

during the "bleeding Kansas" episode prior to the Civil War. Cecil-Fronsman looks beyond the inflammatory rhetoric in order to understand why these early settlers viewed Yankees with such contempt and themselves with such pride. The paper expressed the view that northern capitalists engaged in "wage slavery," no better than physical bondage. Furthermore, writers expressed the opinion that this labor system amounted to unfair competition, not a system of free labor as touted by its supporters.

Cox, Thomas C. *Blacks in Topeka, Kansas, 1865-1915: A Social History.* Baton Rouge: Louisiana State University Press, 1982.

Cox provides a wonderful, focused study, replete with statistical breakdowns of numerous categories and maps. The study includes a narrative which relates the African American experience during this period, supplemented by statistical charts pertaining to black migration, persistence, occupation, education, etc. Maps trace Topeka's growth, indicate political ward boundaries, and pinpoint the centers of the African American community (i.e. churches, schools, neighborhoods). Researchers can benefit greatly from the detailed information provided by Cox. Unfortunately, no comparable study exists for post-1915 Topeka.

Davis, Kenneth S. *Kansas: A Bicentennial History.* The States and the Nation Series. New York: W.W. Norton & Co., Inc., 1976.

The pool of outstanding contributors and skillful editing by James Morton Smith have made "The States and the Nation Series" a very reliable source for state histories. Davis strives for the high standard but does not quite reach it because of his sentimental approach and some glaring omissions. Most of the book deals with events in the nineteenth century, most notably "bleeding Kansas," military involvement in the Civil War, homesteading, and Populism. Only two of the eight chapters touch on twentieth century events, concentrating on the careers of favorite sons, Alf Landon and Dwight D. Eisenhower. Either by omission or commission, Davis neglects to mention *Brown* or much of anything in recent Kansas history. He concludes with a philosophical essay about the stability of Kansans, counting himself among them, shaped by the forces of harsh weather and conservative religion, forming a solid hub or "balance-point" for an expansive, disparate nation.

Dick, Everett. *The Sod-House Frontier, 1854-1890: A Social History of the Northern Plains from the Creation of Kansas and Nebraska to the Admission of the Dakotas.* Lincoln: University of Nebraska Press, 1937.

Although quite dated, this classic work offers a rather comprehensive look at settlement of the middle west, from Kansas to North Dakota. Dick covers several broad topics in a chronological fashion, such as migration, homesteading, the range "wars," ethnic settlement, railroad expansion, and political wrangling. While characterized as a "social history," readers should place the study's terminology and methodology in its appropriate 1937 context.

Durham, Philip, and Everett L. Jones. *The Negro Cowboys.* New York: Dodd, Mead & Company, 1965.

Durham seeks to bring attention to the oft-forgotten African Americans who participated in the long drives from Texas to the upper Midwest in the late-nineteenth century. He begins with "slaves on horseback" who were taken to Texas at mid-century. The narrative then moves to those who worked the Chisholm Trail to Abilene, the Western to Ogallala and Deadwood, and Goodnight-Loving Trail through New Mexico,

Colorado, Wyoming and on to Bozeman. Durham then turns his focus to the stereotypic west; its "badmen," the west as fiction and entertainment.

Federal Writers' Project of the Work Projects Administration for the State of Kansas. *Kansas: A Guide to the Sunflower State.* American Guide Series. New York: The Viking Press, 1939.

Historians and writers working for the WPA during the Depression compiled brief histories of communities in Kansas. They provide a brief sketch of Topeka and lead the reader along a driving tour along U.S. Route 75 from the Nebraska border to Topeka. It provides interesting reading that provides a glimpse of the area in the 1930s.

Fitzgerald, Daniel, ed. *Gone But Not Forgotten: The Lost Schools of Topeka.* Shawnee County Historical Society Bulletin No. 67. Topeka: Shawnee County Historical Society, November 1990.

Fitzgerald surveys both extant and non-extant public schools that once served the Topeka USD–501 system. He brief discusses broad historical periods, patterns in school attendance, and local educational organizations in order to provide context for the schools, themselves. The work provides very useful facts about individual buildings, particularly those reserved for black and white students during the 1950s. Fitzgerald also includes a short chapter on "The Black Schools, Pupils, and Teachers" of Topeka in this valuable, but compact study.

_____, ed. *John Ritchie: Portrait of An Uncommon Man.* Shawnee County Historical Society Bulletin No. 68. Topeka: Shawnee County Historical Society, November 1991.

This bulletin is comprised of three essays. The first, by Bill Cecil-Fronsman, places John Ritchie in the 1850s context of westward expansion and the questions over the continuation of slavery. Mary Ritchie Jarboe provides a fine overview of her ancestor's contributions to the settlement of Topeka, illustrated with some interesting historic images. Don Chubb follows with a brief, but futile, call for the preservation of the Ritchie home at 1116 Madison. Unfortunately, the building was razed soon after the essay's publication for the construction of a new water tower.

Friedman, Lawrence J. *Menninger: The Family & The Clinic.* Lawrence: University Press of Kansas Press, 1990.

By 1951, the Menninger Clinic and its School of Psychiatry, located in Topeka, Kansas, were recognized as the primary authority for psychiatric care in the United States. Friedman's account provides some useful contextual information about various topics; including Topeka in the early twentieth century, the Menninger family's limited involvement in local affairs, anti-Semitism expressed towards institutional fellows and staff, and Karl Menninger's efforts to avoid involvement in the Topeka desegregation case.

Gordon, Jacob U. *Narratives of African Americans in Kansas, 1870-1992.* Lewiston, N.Y.: The Edwin Mellen Press, 1993.

Gordon calls for greater recognition of African American role models and their accomplishments. In Part I, he presents 35 narratives by individuals who discuss their participation in bits of Kansas history and Part II provides 88 biographical references as a "who's who" of black Kansan role

models. This work continues the story of the "exodusters" by following the lives of some of their descendants, both of those who remain in the state and those who subsequently have migrated to better opportunities elsewhere. It offers some interesting details about African American communities in the mid-twentieth century, despite the lack of documentation by Gordon.

"Historic Preservation in Kansas, Black Historic Sites: A Beginning Point." Historic Sites Survey. Kansas State Historical Society. Topeka: Kansas State Division of Printing, 1977.

One might categorize this as a preservation document, but it provides more information about the general historical context of Kansas resources. The narrative briefly covers the slavery debate, migration, the exoduster movement and specific colonization attempts, and renowned African Americans in Kansas history, circa 1850-1940. Key resources are mentioned throughout and selectively illustrated. This work is, indeed, only a beginning point, but proves very useful for local and community history.

Hubbard, Henry V. "Parks and Playgrounds: Their Requirements and Distributions Elements in the City Plan." *Landscape Architecture* 12 (July 1922): 240-264.

This important article certainly pertains to a broader scope that extends far beyond Topeka, Kansas. It provides key information about the late Progressive Era/early-1920s philosophy regarding the location of open, green spaces in cities and their civic benefits. Hubbard approaches his topic from a community planning perspective. He discusses desired uses of boulevards and parks, and the preferred location of playgrounds near schools. Landscape and city planners from this era often touted the importance of green spaces for the psychological and physical well-being of area residents.

_____. "The Size and Distribution of Playgrounds and Similar Recreation Facilities in American Cities. *Landscape Architecture* 4, no. 4 (July 1914): 133-144.

Hubbard presents recommendations for the placement and design of a small variety of recreational areas within urban settings. He uses a Socratic question-and-answer method to describe the physical characteristics, siting, use patterns, and social benefits of play areas. Interestingly, he says "the playground is the best place to overcome racial and social prejudices" because it can serve a homogeneous constituency (140), but Hubbard admits that the constraints of racial segregation in various regions of the country circumvents this potential social good. In Progressive fashion, the author gears his arguments to social reform. Hubbard emphasizes the value of open space in densely populated areas and the use of a comprehensive planning approach to the design and implementation of a recreation system.

Isely, Bliss, and W.M. Richards. *Four Centuries in Kansas.* Unit Studies Series. Wichita: The McCormick-Mathers Company, 1936.

Granted, this study is quite dated, but it provides wonderful narrative for contextual history of Kansas. The authors do a particularly good job of explaining the tedious wrangling over Kansas' four constitutional conventions, accompanying elections, the border war with Missouri, and resolution in 1861. They also provide brief information about selected cultural ways of Native Americans, the settlement of Topeka, and the development of educational systems across the state. Ethnographers and other professionals will find bias, quaint stereotypes, and blind generalizations in this work, however, they should not overlook items of value that also lie between its covers.

Katz, William Loren. *The Black West: A Documentary and Pictorial History.* Rev. ed. Garden City: Anchor Press, 1973.

This work gives a very cursory look at specific events that touched the lives of black Americans from sixteenth century exploration through early twentieth century imperialism. Katz includes some wonderful photographs and letters to personalize the history highlights. Much attention is given to the exoduster migration into the Midwest, the lives of cowhands and settlers, and African Americans in various military exploits.

Markley, Walt. *Builders of Topeka.* Topeka: The Capper Printing Company, 1934.

This handy reference provides brief biographical sketches of local businessmen, real estate developers, architects, etc., as well as synopses of Washburn University and noteworthy buildings which shaped the Topeka skyline. The volume features Thomas W. Williamson, architect of Monroe Elementary, and some of his buildings; including Topeka High School, the National Bank of Topeka, the Mulvane Art Museum at Washburn, and the Hotel JayHawk. A revised edition was published in 1956.

McKenna, Joseph M. *The Topeka Metropolitan Area, Its Political Units and Characteristics.* Citizen's Pamphlet Series, No. 32. Lawrence: Governmental Research Center, The University of Kansas, 1962.

Researchers will find some useful demographic and taxation data, circa 1960, in this handy pamphlet. McKenna also gives a brief summary of Shawnee County history, plus a review of its governmental offices, position qualifications, and duties. He also describes the organization of school districts and county services offered in the early 1960s, as well as the very pertinent background history of Topeka.

Miller, Timothy. "Charles M. Sheldon and the Uplift of Tennesseetown." *Kansas History* 9, no. 3 (Autumn 1986): 125-137.

Reverend Sheldon was a prominent religious leader in the early twentieth century, whose influence spread far beyond Topeka, Kansas. The capital city was his home, however, and from the pulpit of the Central Congregational Church, he sought to improve the lives of its people. Sheldon strove to stamp out poverty and immorality in the African American community of Tenneseetown, beginning with its youngest constituents. Miller discusses Sheldon's contributions, particularly the establishment of a kindergarten designed according to the Freidrich Froebel model. June R. Chapman and others implemented the educational program, demonstrating the value of early education for all Topekans. Sheldon also directed social programs for the poor, which greatly contributed to the quality of life in Tennesseetown.

Painter, Nell Irvin. *Exodusters: Black Migration to Kansas After Reconstruction.* New York: Alfred A. Knopf, Inc., 1976.

This has become the classic text on the post-Civil War Exoduster movement. Painter weaves a clear narrative explaining the mass migration of African Americans from the Deep South through St. Louis and on into Kansas. Benjamin "Pap" Singleton has been credited as the leader of the 1879 movement, but Painter narrows his involvement to middle Tennessee. She pulls together threads from several states, unifying the common motivations of the classic "American dream,"

independence, property, employment, and safety. These African Americans took control of their lives in the midst of political retrenchment that characterized the end of Reconstruction.

Prentis, Noble L. "Bypaths of Kansas History: The Story of Ann Shatteo, and Mention of Other Early Negro Activity in Kansas." *The Kansas Historical Quarterly* 35, no. 1 (Spring 1969): 89-94.

The *Quarterly* reprinted two of Noble's articles, "'Aunt Ann's' Story" and "Colored Folks in Kansas," originally published in 1875 and 1880, respectively. Noble recounts a bit of Ann Davis Shattio's life in slavery and her relocation as a free person to Uniontown and Topeka, Kansas in the 1840s and 1850s. "Colored Folks in Kansas" mentions Shattio, but primarily deals with the migration of African Americans to Nicodemus and other "colonies" in the late 1870s. Noble's brief articles provide interesting supplements to more recent secondary works.

Retired Teachers of the School System, comp. "A Centennial History of the Topeka Schools, 1854-1954." Typewritten manuscript, 1955.

This history constitutes a compilation of several short essays about aspects of the Topeka Unified 501 school system. Retained in the Kansas Collection, Center for Historical Research at the Kansas State Historical Society in Topeka, it provides some information about the city's elementary schools and contains an essay entitled, "The Colored Schools, Pupils and Teachers."

Sachs, David H., and George Ehrlich. *A Guide to Kansas Architecture.* Lawrence: University Press of Kansas, 1996.

This recent publication fills a gap in Kansas literature. The authors survey architectural types and significant buildings across the state, and place them in general historical context. Sachs and Ehrlich also provide information about the architects who designed and constructed these buildings. This book functions as a handy reference to high-style and designed architecture in Kansas. It contains very nice, but brief, mention of Topeka architect, Thomas Williamson, and some of his commissions.

"Schools--Public." Clipping file. Topeka Room, Topeka-Shawnee County Public Library. Topeka, Kansas. n.d.

The Topeka Room, the reference section of the city's public library, contains several clipping files pertaining to specific public schools in the Topeka USD-501 system. Most articles come from the Topeka *Capital Journal*, but there are a few from other sources. Separate files exist on Sumner, Buchanan, and Monroe Elementary Schools. Materials in any of these files may also pertain to the *Brown* case, personalities involved, and desegregation efforts in Topeka.

Schwendemann, Glen. "Nicodemus: Negro Haven on the Solomon." *The Kansas Historical Quarterly* 34, no. 1 (Spring 1968): 10-31.

Schwendemann outlines the establishment and early growth of this African American settlement in Graham County, Kansas. Although many include it as an Exoduster colony, Nicodemus actually pre-dated the Exodus of 1879-1881 by two years. The article reviews the collaboration of W.R. Hill and W.H. Smith in the establishment of the Nicodemus Town Company and recruitment of settlers

from Kentucky. Schwendemann discusses hard times during the colony's early years and key personalities who contributed to its eventual success.

_____. "Wyandotte and the First 'Exodusters' of 1879." *The Kansas Historical Quarterly* 26, no. 3 (Autumn 1960): 233-249.

In 1879, Wyandotte was inundated by African American exodusters who sought new opportunities in Kansas. Its location on the Missouri River had contributed to the town's growth and then to its decline because of the drain by the economic and social needs of the migrants. Some proposed to turn freedmen away, by force if necessary. Governor St. John organized a relief committee to aid exodusters and thus remove the burden from Wyandotte's citizens. After serious debate, a compromise was reached whereby migrants would arrive from St. Louis via the Missouri, enter the state at Kansas City, and travel by rail to Topeka. Wyandotte thus would be bypassed altogether and relief efforts concentrated instead in the capital city. St. John, a very progressive governor, foresaw the settlement of black communities across the state, where residents would enjoy the full benefits of Kansas citizenship.

"Shawnee County Schools--Clippings--General." Kansas Collection, Center for Historical Research, Kansas State Historical Society. Topeka, Kansas, n.d.

This collections consists of several volumes which contain clippings from the *Topeka Daily Capital* about various aspects of the city's schools. They provide information about African American schools and teachers, the city's involvement in the *Brown* case, and the forty-year effort to desegregate its public schools.

Shortridge, James R. *Peopling the Plains: Who Settled Where in Frontier Kansas.* Lawrence: University Press of Kansas, 1995.

Shortridge classifies his work as an atlas; a cultural geography of Kansas which targets specific census data for 1865, 1885, 1905, and 1925, with particular attention to migratory patterns of significant ethnic and racial groups. He believes that railroad policies and land costs directly affected settlement patterns. Most of the work deals with statistical analyses of county data, but the later chapters interpret the data in an attempt to explain Kansas characteristics and trends. The book provides a wealth of data, but its organization and presentation could be greatly improved. Shortridge divides the work by region and census year, thereby focusing on only one portion of Kansas. Unfortunately, he fails to label maps of selected counties, making them fairly difficult to use. While the work contains a wealth of information, its dissemination leaves a bit to be desired.

_____. "People of the New Frontier: Kansas Population Origins, 1865." *Kansas History* 14, no. 3 (Autumn 1991): 162-185.

This article reiterates some of the data presented in Shortridge's larger work, described above. He corrects the misconception that New Englanders dominated the settlement of Kansas. Only 8.8% of the population in 1865 came from that region, whereas 28% came from the mid-Atlantic region, and the majority, 32%, migrated from the Upper South. Approximately one-third of the territory had been settled by 1865. Missourians made a large impact on the settlement of the Kansas Territory, perhaps as a preemptive strike to counter the influence of anti-slavery forces. Shortridge, a cultural geographer, goes on to discuss the regionalization of the new state, due to the settlement patterns of specific cultural groups.

Sheridan, Richard B. "From Slavery in Missouri to Freedom in Kansas: The Influx of Black Fugitives and Contrabands into Kansas, 1854-1965." *Kansas History* 12, no. 1 (Spring 1989): 28-47.

Sheridan discusses the role of African Americans in events associated with the status of Kansas and Missouri between 1854 and 1865. The article is divided into five parts, in which Sheridan covers the growth of slavery in Missouri, the flight and numbers of fugitives to the Kansas Territory, and the recruitment and deployment of black soldiers in the Civil War. The study contains two very useful tables on page 38 which provide demographic data.

Taylor, Dot. *How Elementary School Buildings are Located in Cities.* Topeka: Topeka Board of Education, n.d.

Researchers can find the pamphlet in the Kansas Collection of the Kansas State Historical Society in Topeka. It contains six articles originally published in the *Topeka Capital Journal.* The articles discuss historical trends in the locations of school buildings, patterns of growth in Topeka, flaws in the siting of schools, and problems with overlapping school districts.

Topeka Board of Education. *The End of the Public Schools.* Topeka: Unified Public School District 501, n.d.

The title of this small pamphlet should be "The Goal of the Public Schools." It is a type of propaganda tract promoting public education as a means of ensuring a strong democracy. Published at the height of the Cold War era, the message emphasizes the importance of freedom, constitutional rights, and civic responsibility. Researchers can find the pamphlet in the Kansas Collections of the Kansas State Historical Society in Topeka.

Treadway, William E. *Cyrus K. Holliday: A Documentary Biography.* Topeka: Kansas State Historical Society, 1979.

Treadway interweaves primary documents throughout his narrative about the life and experiences of Cyrus K. Holliday. This gentleman caught "Kansas fever" like many in the 1850s and made his way to the banks of the Kansas River. He believed from the first that Topeka would serve as state capital for Kansas–and he set out to make it so. Holliday joined with others to lay out Topeka and he situated the home office of the Santa Fe railroad here, thus guaranteeing its success. The book offers a wonderful look inside the contentious war over Kansas' slave status and its entrance into the Union. Holliday's letters provide an additional treat, particularly the poignant missives to his wife, who remained in Pennsylvania.

Urban, Steve. "Grant Cushinberry--Never too Busy to Help." *Topeka Magazine* 4, no. 4 (May 1977): 37-39.

This brief article highlights Cushinberry's contributions to Topeka's African American youth. This benefactor provides group admissions for circuses and movies, he sponsors dances for teenagers, organizes athletic events, and collects toys and sporting equipment for underprivileged children. Grant Cushinberry, revered as a local hero for these acts, was later heralded by the city when council members renamed the public park near Monroe Elementary School in his honor.

Whittemore, Margaret. *Historic Kansas: A Centenary Sketchbook.* Lawrence: University of Kansas Press, 1954.

Whittemore weaves a survey of cultural resources into her narrative history. Some chapters focus on a particular historical period, while others discuss physical resources. It covers rock formations, trails, Native American resources, bridges, buildings, and trees.

Woods, Randall Bennett. *A Black Odyssey: John Lewis Waller and the Promise of American Life, 1878-1900.* Lawrence: The Regents Press of Kansas, 1981.

Woods describes John Lewis Waller as both product and victim of his times. He goes on to explain that Waller, born into slavery, made the most of his opportunities and became an educated, relatively wealthy black man. Waller was one of few freedmen admitted to the bar in the late-nineteenth century. He moved to Leavenworth, Kansas, in 1878 and established his law practice there. Waller believed that Kansas held great potential for African Americans and became active in politics and aided blacks who emigrated to the "free state." By 1890, Waller had become disillusioned with the state Republican Party and sought to establish an African American enclave in Madagascar. French colonial authorities had other ideas and Waller's plan failed. He returned to the U.S. in 1896 and resumed efforts to gain political and economic autonomy for African Americans. John Waller's dream of an autonomous black state, free of institutionalized racism, was not to be.

-- *PLESSY* v. *FERGUSON* AND THE CODIFICATION OF SEGREGATION --

Secondary sources:

Anderson, James D. *The Education of Blacks in the South, 1865-1935.* Chapel Hill: The University of North Carolina Press, 1988.

Anderson discusses the hunger for education among African Americans after the Civil War and corresponding efforts to satisfy it. He treks through familiar territory by reviewing the "Hampton model," implemented by Booker T. Washington, and W.E.B. DuBois' emphasis on liberal arts education. The work provides wonderful information about common, manual training, and high schools for African Americans. Anderson provides a great "nuts and bolts" resource, but also presents the perceived ramifications of an educated black populace in society during the early twentieth century.

Katz, Stanley. "The Strange Birth and Unlikely History of Constitutional Equality." *Journal of American History* 75 (December 1988): 747-762.

Katz discusses the political evolution of the doctrine of constitutional equality. He begins at the American Revolution with an analysis of its democratic versus egalitarian purpose. Given certain constitutional clauses protecting slavery, those in 1787 had little regard for extending equality to their contemporaries. Although antebellum America addressed "equality of opportunity" in the nineteenth century, the population never fully embraced the concept. Katz argues that court rulings

broadened interpretations of "civil rights" in the intervening years, but the 1954 *Brown* decision unleashed a more comprehensive interpretation of "equality."

Kelly, Alfred H., and Winfred A. Harbison. *The American Constitution: Its Origins and Developments.* New York: W.W. Norton & Company, Inc., 1970 edition.

Although somewhat out-of-date, this classic text explains the evolution of the United States' "living" Constitution by surveying Congressional amendments and U.S. Supreme Court determinations. Kelly and Harbison devote one chapter to "The Constitution, the Warren Court, and the "Black Revolution." The narrative surveys pertinent historical events, giving information about desegregation litigation heard by the Court, civil rights acts passed in the 1950s and 1960s, and responses/actions by presidential administrations. The text also provides wonderful information about the codification of segregation in public education and litigation that chipped away at it.

Kousser, J. Morgan. "Separate but *not* Equal: The Supreme Court's First Decision on Racial Discrimination in Schools." *The Journal of Southern History* 46, no. 1 (February 1980): 17-44.

In a fairly lengthy narrative, Kousser examines the context, players, evidence, and outcome of *Joseph W. Cumming, James S. Harper, and John C. Ladeveze* v. *School Board of Richmond County, Georgia* (1899). He describes it as the first post-*Plessy* ruling on racial discrimination in education. The case dealt with the closure of Augusta, Georgia's Ware High School, the town's only public black high school. After disappointment with lower court decisions, four of Augusta's leading African Americans hired a nationally prominent lawyer to take the case to the U.S. Supreme Court. Kousser closely analyzes Justice Harlan's agreement with the school board's action, given his dissent in *Plessy.*

Medley, Keith Weldon. "The Sad Story of How 'Separate but Equal' was Born." *Smithsonian* 24, no. 11 (February 1994): 105-117.

Homer Plessy, a light-skinned African American, challenged Louisiana's Separate Car Act as a volunteer on behalf of the *Comite des Citoyens.* Blacks had enjoyed a broad range of freedoms in New Orleans during Reconstruction, but as Democrats regained control of the Louisiana statehouse, restrictions on African Americans increased. The Separate Car Act, requiring separate and equal cars for each race, was passed and challenged during this backlash. The state court denied Plessy's right to ride in the "white" car, upholding the state's right to restrict transportation venues operating within its borders. Albion Tourgee argued *Homer Plessy* v. *J.H. Ferguson* before the U.S. Supreme Court in the October 1895 term. The Court determined that reasonability constituted the only test for segregation regulations. In an inspired opinion, Justice John Marshall Harlan dissented from the majority. After the case was remanded to the lower court, Plessy pled guilty and paid a $25 fine for violating Louisiana's segregation law. Medley describes events surrounding this landmark decision in a clear and interesting fashion, placing the initiation of the "separate but equal" doctrine in a proper and personal context.

Tyack, David B., Thomas James, and Aaron Benavot. *Law and the Shaping of Public Education, 1785-1954.* Madison: University of Wisconsin Press, 1987.

These three authors have provided a very useful study which outlines the construction of public education by pinpointing key developments in various state systems. The work is divided in two parts; the first focuses on the establishment of common schools and the second deals with minority

rights in a system often regulated by majority rule. Law and its implementation by society forms the framework for the evolutionary process. Although Americans tend to distrust strong central governments, they have, through the past two centuries, advocated uniform education, moral instruction, compulsory attendance, and a centralized bureaucratic structure at the state level. As public education evolved in this country, majority rule typically either ignored religious, ethnic, and racial minorities altogether, or consciously forced them to conform to a white, Protestant, Eurocentric "reality." Law provided both the instrument for maintaining this "reality" and for breaking it down.

Woodward, C. Vann. "The Case of the Louisiana Traveler." In John A. Garraty, ed., *Quarrels That Have Shaped the Constitution*. Rev. ed. New York: Harper & Row, Publishers, 1987.

After Reconstruction, blacks and whites co-existed in many Southern societies unhindered by Jim Crow laws. These were incorporated into the legal system in the late-nineteenth century. Railroad companies balked at segregationist laws because of the expense of additional railcars reserved solely for African Americans. They, nevertheless, complied and the practice was challenged in 1892 by Homer Plessy. Judge Ferguson ruled against Plessy's claim that the law was unconstitutional and the U.S. Supreme Court ultimately backed the lower court's decision.

_____. *The Strange Career of Jim Crow*. 2d rev. ed. London: Oxford University Press, 1966.

In this classic study, Woodward examines ways in which white Southerners have defined the social positions of their African American counterparts. From slavery through the first and second phases of Reconstruction, whites instituted legal codes, economic restrictions, social mores, and violence to force blacks into subordinate social roles. After 1877, the Redeemers wrestled control away from the increasingly disinterested "carpetbaggers." Woodward traces events from 1877 to 1955 which mark the implementation of Jim Crow laws, the use of race issues by politicians, and the institutionalization of segregation. First published in 1955 as a collection of lectures, this work reflects Woodward's scholarly contributions to the legal arguments posed by the NAACP counsel in the *Brown* hearings.

-- THE EFFORTS OF HOUSTON AND THE NAACP LEGAL DEFENSE FUND -

Primary sources:

Marshall, Thurgood. Papers. Manuscript Division, The Library of Congress. Washington, D.C.

Despite opposition by Chief Justice William Rehnquist, Marshall's papers are open to the general public. Most documents pertaining to his participation in the Brown case have been removed and placed in the restricted NAACP Legal Defense and Educational Fund, Inc. collection. Some important correspondence remains, however, which provides information on Marshall's efforts to bring a segregation case to national attention. Letters and telegrams document Marshall's extensive

travels to South Carolina, Louisiana, and beyond. The NAACP Papers (Group II, Series B) contain some of Marshall's papers as well.

National Association for the Advancement of Colored People (NAACP) Collection. Papers. Manuscript Division, The Library of Congress. Washington, D.C.

Researchers may find legal documents and correspondence pertaining to the School Desegregation Cases in Group II, Series B under the broad file heading, "Schools-Kansas-Topeka-*Brown* v. *Board of Education*." Folders contain some of Thurgood Marshall's correspondence, items from the NAACP Legal Defense and Educational Fund, Inc., and letters regarding the *Webb* v. *School District No. 90* case, which was prosecuted in Merriam, Kansas. Series A contains General Correspondence files and those pertaining to the activities of NAACP Branch Chapters.

NAACP Legal Defense and Educational Fund, Inc. Papers. Manuscript Division, The Library of Congress. Washington, D.C.

Key administrators with the LDF never granted access to this collection. Access has been granted to only three researchers during the past two-year period. Despite encouragement to open the collection from archivists with the Library of Congress, the LDF retains a firm grip on these records of civil rights cases. While claiming that their concerns pertain to the responsibility of the "attorney-client privilege," this seems irrelevant because this restriction only pertains to criminal cases and because the relevant information lies in case files dating to 1930-1960. Those interested in making their own requests for access may contact Ted Shaw, Director, or Donna S. Gloeckner, Administrator, at (212) 219-1900.

Ovington, Mary White. *The Walls Came Tumbling Down*. 1947 Repr. The American Negro: His History and Literature Series. New York: Arno Press and *The New York Times*, 1969.

Originally published in 1947 by Harcourt, Brace and Company, Ovington's autobiography describes her involvement in the NAACP during its early years, from 1909 to 1945, and its administration by John R. Shillady, James Weldon Johnson, and Walter White. She briefly describes her family background, her involvement in the civil rights cause, life in the North and Ovington's travels in the South. Contemporary readers will find Ovington's language stilted and melodramatic, but the book contains an important early, inside look at the NAACP as it fought to equalize opportunities in the United States.

White, Walter. *A Man Called White: The Autobiography of Walter White*. 1948 Repr. The American Negro: His History and Literature Series. New York: Arno Press and *The New York Times*, 1969.

African American by birth but caucasian in appearance, Walter White tells the compelling story of his experiences as a black man in a white man's world. He led the NAACP in its efforts to end racial prejudice in the mid-twentieth century. White recounts several campaigns for equal treatment, including access to voting, education, and legal rights, as well as political obstacles which impeded them. Researchers should note Chapter XVIII, in particular, for its discussion of the NAACP's legal strategy and litigation of critical cases regarding equal access to graduate programs various states. White's autobiography places all of these events within the historical contexts of both the NAACP and the nation.

Wilkins, Roy, with Tom Mathews. *Standing Fast: The Autobiography of Roy Wilkins.* New York: The Viking Press, 1982.

Wilkins served as executive secretary of the NAACP from 1955 to 1977, leading the Association through the post-*Brown* years of the civil rights movement and desegregation stand-offs. His personal and family history parallels some of the epochal events in U.S. history. Wilkins' grandparents toiled in slavery, his parents fled the racist South in 1900, and he became a leader in one of the most significant African American organizations of the twentieth century. Although born in St. Louis in 1901, Roy Wilkins grew up in St. Paul, Minnesota, in a community of mixed ethnic heritages. He tells a compelling story which weaves personal experiences, professional accomplishments, and reflections of significant individuals Wilkins knew along the way. This is as entertaining as it is enlightening.

Secondary sources:

Finch, Minnie. *The NAACP: Its Fight for Justice.* Metuchen, N.J.: The Scarecrow Press, Inc., 1981.

Ms. Finch compiled a vast amount of information in a very concise manner. She interweaves the story of the school desegregation cases with the history of the NAACP. The first part of the book focuses on the Association's organization and early work. Part II takes up the development of the NAACP's legal strategy to desegregate public schools. Finch then summarizes major litigation and covers each school desegregation case in Part III. The book lacks adequate documentation, although Finch states she gleaned most of the material from annual reports, *The Crisis, The Journal of Negro History*, archives at Howard University, and personal interviews. Despite this shortcoming, Finch offers a wonderful guidebook to these important events, one which should be used in conjunction with more lengthy scholarly works.

Greenberg, Jack. *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution.* New York: BasicBooks, A Division of HarperCollins Publishers, Inc., 1994.

Greenberg has provided a critical research tool with this personal memoir of his work as co-counsel, and later director, of the NAACP Legal Defense Fund, Inc (LDF). He worked on the Delaware and Topeka district cases, and argued *Brown* before the U.S. Supreme Court with the LDF team. Greenberg describes his involvement as a learning experience, crediting Marshall and others for instruction by example. Greenberg intertwines his personal story with an account of legal victories and social frustrations. The result is a readable, but somewhat lacking in organization, detail, and documentation. Portions on events associated with the school cases are brief and scattered in several chapters of the work.

Grothaus, Larry. "'The Inevitable Mr. Gaines': The Long Struggle to Desegregate the University of Missouri, 1936-1950." *Arizona and the West* 26, no. 1 (Spring 1984): 21-42.

Grothaus reviews the events of the Gaines lawsuit, prosecuted by the NAACP to integrate the University of Missouri Law School (1938). He then goes beyond this turning point to address the lesser-known attempts of Lucille Bluford to desegregate the university's School of Journalism.

Neither of these individuals ever attended the University of Missouri, which maintained its segregated student body by diverting black students to "separate but equal" facilities at Lincoln University rather than desegregate the Columbia campus. Resistance ended in 1950, when a few African American students successfully enrolled in the university.

Hubbard, Maceo W., and Raymond Pace Alexander. "Types of Potentially Favorable Court Cases Relative to the Separate School." *The Journal of Negro Education* 4 (1935): 375-405.

The NAACP formulated strategy to counter racial segregation almost from the organization's inception. It continually modified that strategy until the successful Brown findings of 1954-1955. Hubbard and Alexander provided this analysis in 1935 of litigation aimed to end segregation in public education. They review litigation which sought redress through the Fourteenth Amendment, and recommend that their readers pursue admission to white facilities when those provided for black students prove to be unequal. The authors devote a great deal of time to a discussion of the division of funds for separate schools and the resultant deficiencies in those reserved for African Americans. Hubbard and Alexander suggest the use of mandamus to admit black students to white schools, as redress for the inadequate facilities provided under a system of segregation. Their discussion provides an interesting look at strategic arguments posed at this stage of the long campaign to desegregate public schools in the United States.

Jacobs, Paul. "The NAACP's New Direction." *New Republic* 135 (July 16, 1956): 9-11.

Writing after the 1956 NAACP national convention, Jacobs discusses the "internal strain" pulling at the organization from within. At that time, the NAACP's legal strategy had accomplished court victories, but members felt frustrated because tangible change within southern communities had not been accomplished. Three figures, Martin Luther King, Jr., Roy Wilkins, and Thurgood Marshall, dominated the convention, with King advocating a proactive use of the boycott to effect social change in the South. Convention-goers also marked changes within the NAACP. With its recent successes, membership rolls swelled and African Americans increasingly replaced their white predecessors on the organization's board of directors.

McNeil, Genna Rae. *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights*. Philadelphia: The University of Pennsylvania Press, 1983.

McNeil takes her title from a comment made by Thurgood Marshall about Houston's fundamental contributions toward the NAACP legal successes in the 1950s. Houston lived in Washington, D.C. for most of his life; with absences for education at Amherst and Harvard, military service in World War I, and travels throughout the South. He revamped the Howard Law School and used it to develop a group of lawyers who then conducted the NAACP litigation campaign from 1935 to 1955. Although serving technically only a few years as special counsel to the Association, Houston stayed active in efforts to equalize civil rights until his death in 1950. McNeil tells the story fairly well, presenting a balanced approach that only occasionally idolizes her human subject.

Nabrit, James M., Jr. "Resort to the Courts as a Means of Eliminating 'Legalized' Segregation." *The Journal of Negro Education* 20 (1951): 460-474.

James Nabrit, Professor of Law at Howard University, helped craft the NAACP's legal strategy and represented the plaintiffs in the *Bolling* v. *Sharpe* case. In this essay, he discusses the Dred Scott and civil rights cases from the late-nineteenth century, which set guidelines for subsequent restrictions

on the rights of African Americans. *Plessy* v. *Ferguson* sealed the Court's interpretation of the Fourteenth Amendment for half of a century. Nabrit then traces court action from 1925 to 1950, demonstrating the gradual dissolution of *Plessy*'s power. Written from the perspective of 1951, this articles provides valuable insight for researchers into NAACP legal strategy and Nabrit's personal approach of pursuing a complaint of denial of due process in the *Bolling* case.

Rowan, Carl T. *Dream Makers, Dream Breakers: The World of Justice Thurgood Marshall.* Boston: Little, Brown and Company, 1993.

Rowan interweaves analysis and narrative into this biography of Thurgood Marshall. He offers a review of "dream makers" (e.g.: Marshall, Earl Warren) and "dream breakers" (e.g.: Orval Faubus, George Wallace). Rowan writes from the perspective of Marshall's generation, providing information on Charles H. Houston, the NAACP litigation strategy, and conclusions about the effects of Marshall's career. He concludes with an analysis of the broader impacts of the *Brown* decisions.

The Crisis.

This publication of the National Association for the Advancement of Colored People (NAACP) provides commentary about the association's legal attempts to overturn *Plessy*, the successful legal campaign, and the broad impact of desegregation. Issues contain articles and essays by the major participants in this fight to overturn segregationist laws.

Tushnet, Mark V. *The NAACP's Legal Strategy against Segregated Education, 1925-1950.* Chapel Hill: The University of North Carolina Press, 1987.

This work describes the NAACP's strategy to overturn the "separate but equal" doctrine deemed constitutional via *Plessy* v. *Ferguson* in 1896. Tushnet reviews the internal politics of the NAACP, the resignation of DuBois, Houston's direction to design a legal strategy that would eliminate Jim Crow laws, and the Legal Defense and Educational Fund's (the "Inc. Fund") separation from the main organization. He analyzes litigation as a social process, where key players mobilize resources and participants for the accomplishment of social justice. Throughout the narrative, the author provides information on court cases and personalities involved in the well-planned efforts that culminated in the 1954 *Brown* decision. Tushnet ends his study, however, with the *Sweatt* v. *Painter* decision which "strongly suggested that segregation in elementary and secondary schools was unconstitutional" (134). The groundwork was laid, therefore, for a breakthrough case like *Brown* to come before the Court and the inevitable rejection of the "separate but equal doctrine."

Ware, Gilbert. "*Hocutt*: Genesis of *Brown*. *The Journal of Negro Education* 52, no. 3 (1983): 227-223.

Ware analyzes the NAACP's prosecution of the case 1933 *Thomas R. Hocutt* v. *Thomas J. Wilson, Jr., Dean of Admissions and Registrar, The University of North Carolina.* The article is poorly written, however, and so events and personalities are a bit hard to follow. Two Durham attorneys, Pearson and McCoy, initiated the suit, but contacted Charles Houston for help from the NAACP. Despite Houston's fears that the case was premature, he seized the opportunity of a willing plaintiff and persuaded William H. Hastie to assist the local attorneys with Hocutt's case. Ware takes his readers through a very brief and tangled discussion of the issues. Hocutt sought admission to the university's School of Pharmacy. He met opposition in Durham's white and African American communities. Ultimately, Judge M.V. Barnhill decided in favor of the university because Hocutt

had failed to provide transcripts with his application. Despite the failure, this marked an important, early attempt by the NAACP to attack the "separate but equal" doctrine.

-- THE SCHOOL DESEGREGATION CASES --

Primary sources:

Board of Education, City of Topeka. Record of Minutes, 1928 Through 1956. Administration Building, Unified School District 501. Topeka, Kansas.

Minutes from school board meetings are held in the basement vault of the USD-501 administration building. These records contain some information about the maintenance and staffing of the city's black schools, including Monroe Elementary School, and provide interesting discussions of the board's response and reaction to desegregation suits initiated by members of Topeka's African American community.

Brady, Paul L. *A Certain Blindness: A Black Family's Quest for the Promise of America.* Atlanta: ALP Publishing, 1990.

The title of this work comes from commentary by William James on the certain blindness of humans towards the feelings and values of others. Brady uses the backdrop of his life and times "to show that the white majority has willfully blinded itself to the humanity and worth of Americans of African descent in order to preserve the best portion for itself" (ix). His family provides a prototype for the African American experience. But, his family is not typical. His aunt, Lucinda Todd, worked for the Topeka NAACP chapter and served as plaintiff in *Brown* v. *Board of Education*. Brady's at his best when discussing the *Brown* case from a contemporaneous perspective as a student at Washburn University and from a contemplative perspective after becoming a federal judge. In the work as a whole, however, Brady moves from general American history, to personal experience, to an analysis of the *Brown* case, and back to American history. While the personal insight makes interesting reading, Brady's personal axe-grinding limits the effectiveness of his narrative.

Brown Family Collection. Kansas Collection. University of Kansas Libraries. Lawrence, Kansas.

Presently unaccessioned and uncatalogued, this collection possesses very little primary documentation. It includes some wonderful photographs, of Linda with her friends, at various ages, and with her parents in their Springfield, Missouri home. Researchers will also find a scrapbook with news clippings rehashing the issues and events to mark anniversaries of the decision. Only one primary document, an incomplete copy of Oliver Brown's 1951 testimony before U.S. District Court, is included in the collection.

Case files #144-16-84 and #144-16-147. Freedom of Information/Privacy Act Office, Civil Rights Division, United States Department of Justice. Washington, D.C.

The Department of Justice filed an *amicus curiae* brief in support of the appellants in the *Brown* hearing before the U.S. Supreme Court. These case files contain correspondence within the department, between various state and federal agencies, and from citizens either supportive of or concerned about the Court's landmark ruling. Case #144-16-84 pertains most specifically to the Topeka case, whereas file #144-16-17 deals with *Bolling* v. *Sharpe*.

Caldwell, Peter F. Oral history interview with James C. Duram and Robert Bunting. Dwight D. Eisenhower Library. Abilene, Kansas. 5 June 1970.

Caldwell represented the Topeka Board of Education in later stages of litigation regarding the integration of its elementary schools, in *Brown* v. *Board of Education*. He earned his law degree at Washburn University and was well-established as a professional in the capital city. In this interview, Dr. Duram prompts Caldwell to address his limited involvement, usually eliciting such statements as, "I don't remember," or "I wasn't working on the case at that time." As a result, this oral history contributes little to research efforts. It is available through inter-library loan, however, from the Eisenhower Library.

Clark, Kenneth Bancroft. Papers. Manuscript Division, The Library of Congress. Washington, D.C.

Dr. Clark, a nationally respected social psychologist, testified as an expert witness at the South Carolina, Virginia, and Delaware cases and helped Carter and Marshall prepare arguments presented before the U.S. Supreme Court in *Brown* v. *Board of Education*. His papers contain valuable correspondence with NAACP Legal Defense Fund counsel, notes from conferences aimed at desegregation strategy, notes about Clark's studies on racism, and correspondence about the organization of a sociological advisory group. This collection provides critical primary documentation for serious researchers of *Brown*.

Crowder, Ralph, and Jean Vandelinder. *Brown* v. *Board of Education of Topeka* Oral History Collection. Center for Historical Research, Kansas State Historical Society. Topeka, Kansas. Cooperative effort sponsored by the Washburn University School of Law, Brown Foundation for Educational Equity, Excellence, and Research, and the Kansas State Historical Society with funding from Hallmark Cards and the Shawnee County Historical Society. Interviews completed as of August 17, 1994.

Fifty-one interviews with former Topeka plaintiffs, counsel who argued the *Brown* case, and those on the periphery of the main events have been completed to date. Many contain very useful information about participant involvement in and sentiment about the outcome of *Brown* and the tenor of Topeka's African American community in the 1950s. Other interviews are less useful because they lack historical content, context, and substance. Additional interviews with participants in the Virginia, South Carolina, and Washington, D.C. school desegregation cases are currently underway.

"Kansas NAACP: Topeka Chapter, 1940-1955." Microfilm Division, Kansas State Historical Society. Topeka, Kansas. Microfilm.

This reel (AR-1939) contains several documents pertaining to the reorganization of the Topeka NAACP branch in 1940-1941. Its activity level had declined to such an extent that, by 1939, the national office had revoked Topeka's charter. It was re-established, however, primarily through the

work of John Reynolds. These records contain many letters which outline membership drives, and three which pertain to the *Brown* case. McKinley Burnett requested assistance with the chapter's efforts to integrate Topeka's public schools on May 24, 1948 and received a reply dated June 3, 1948. Lucinda Todd drafted a letter on August 14, 1953 which relates the opposition of African American teachers to the school case. This information is readily available through inter-library loan, as the originals are housed in the Library of Congress.

"*Oliver Brown v. Board of Education of Topeka, Shawnee County, Kansas.*" Legal case file. Microfilm Division, Kansas State Historical Society. Topeka, Kansas. Washington, D.C.: National Archives and Records Administration, n.d. Microfilm.

This microfilm reel contains a photographic positive image of the entire *Brown* case file, which is retained in the National Archives. Fortunately, the Kansas State Historical Society provides it to researchers via interlibrary loan.

Records of the Attorney General's Office. "Segregation" and "Brown vs. Board of Education" Files. State Agency Records. Center for Historical Research, Kansas State Historical Society. Topeka, Kansas.

These files contain important correspondence for the period 1951-1963 pertaining to the *Brown* case, including prosecution of the Topeka case at the U.S. District and Supreme Court levels. Records also include letters between the Attorney General's office and attorneys representing the Topeka Unified School District, and some correspondence with the Justice Department, other state Attorneys General, counsel with the NAACP Legal Defense and Education Fund, Inc., and counsel for plaintiffs in the complementary cases. The collection also contains copies of two surveys regarding school desegregation (1953 and 1954) that the Attorney General's office sent to some school systems in Kansas and the responses.

Records of the Governor's Office. Governor Edward F. Arn (1951-1955): "General Correspondence" and "Subject" Files. State Agency Records. Center for Historical Research, Kansas State Historical Society. Topeka, Kansas.

This collection provides very little information on the Topeka case. Documents had been removed from at least two files pertaining to race relations in the state. Other files contained some correspondence with the Attorney General's office, the antidiscrimination commission, speeches made by Governor Arn, and letters expressing citizens' concerns about desegregation.

Scott, Charles S. Oral History Interview by James C. Duram and Robert Bunting. Dwight D. Eisenhower Library. Abilene, Kansas. 25 June 1970.

Professor Duram and then graduate student, Robert Bunting, conducted this interview with Scott on June 25, 1970. He recounts his involvement with the *Brown* case from Topeka to the U.S. Supreme Court, explaining the involvement of Oliver Brown and counsel's use of social theory to attack segregation. The transcript of this oral history interview provides some good details about the initiation of the case in Topeka, coordination with counsel from the national NAACP office, and compilation with the other four school cases.

Scott, Charles Sheldon. Papers. Kansas Collection. University of Kansas Libraries. Lawrence, Kansas.

With his legal associates in Topeka, Scott represented the thirteen plaintiffs in the *Brown* case before the U.S. District and Supreme Courts. His papers contain personal correspondence with his father, Elisha Scott, during his military service in World War II. It also provides information about Scott's participation in various anniversaries celebrating the landmark decision. Working case files and correspondence with members of the NAACP Legal Defense and Education Fund, Inc. were of particular interest for this researcher.

Sobeloff, Simon E. Papers. Manuscript Division, The Library of Congress. Washington, D.C.

Sobeloff served as Solicitor General in the Eisenhower administration. His papers provide little primary documentation, but contain printed copies of briefs and arguments presented to the U.S. Supreme Court in *Brown* and companion cases.

Speer, Hugh. *The Case of the Century: A Historical and Social Perspective on Brown v. Board of Education of Topeka, With Present and Future Implications.* Kansas City: University of Missouri-Kansas City, 1968.

Speer, former professor of Education at the University of Missouri-Kansas City (UMKC), testified about the comparative conditions of public schools in the Topeka case. He subsequently wrote about his involvement, including discussions of his experiences in the course of the trial as an "expert" witness with long, verbatim excerpts of testimony. It is an extremely useful resource and provides an interesting perspective from one of the participants. Unfortunately, the typewritten manuscript is not widely available, but may be found at UMKC and in the Topeka [Research] Room of the Topeka-Shawnee County Public Library.

Wilson, Paul E. *A Time to Lose: Representing Kansas in Brown v. Board of Education.* Lawrence: University Press of Kansas, 1995.

Wilson, a native Kansan, draws on his experiences co-counsel for the state in the Topeka school desegregation case. Much of the core material also appears in Wilson's speeches, oral interviews, and articles, but here he pulls it all together in a story of the small town boy from Kansas who succeeded on a national scale. There is a touch of guilt to Wilson's works, as indicated in his title. *A Time to Lose* bears a contrite tone, and Wilson plays the part of a repentant sinner caught on the wrong side of a moral crusade. Once past the guilt and remorse, readers find a wonderful, insider's view of legal maneuvers in the Topeka case and Wilson's interaction with co-counsel on both sides of the five School Cases.

_____. Oral history interview by James Duram. Dwight D. Eisenhower Library. Abilene, Kansas. 19 June 1970.

Wilson granted this interview with Dr. James Duram on June 19, 1970. He discusses his role as assistant attorney general during the appeal of the *Brown* case to the U.S. Supreme Court. Researchers may find Wilson's discussion of Kansas Attorney General Fatzer's correspondence with his fellow Attorneys General and Wilson's analysis of the Supreme Court's ruling.

_____. Papers. Manuscript Collections, Center for Historical Research, Kansas State Historical Society. Topeka, Kansas.

Paul Wilson served as the Assistant Attorney General of Kansas in the 1950s and argued on the state's behalf before the U.S. Supreme Court. His papers include very little about the *Brown* proceedings. The collection provides information on Wilson's failed attempt to join the Kansas Supreme Court, prison reform efforts, and his teaching career at the University of Kansas.

Secondary sources:

Adler, Frank J. "'The White Mrs. Brown': A Story of Negroes and Jews." In *Roots in a Moving Stream: The Centennial History of Congregation B'Nai Jehudah of Kansas City, 1870-1970.* Kansas City: The Temple, Congregation B'Nai Jehudah, 1972.

Although this congregational history has little to contribute to the story of *Brown* v. *Board of Education*, this chapter (pp. 252-258) describes the important work of one member, Esther Brown. She initiated a school desegregation case in Merriam, Kansas, known as *Webb* v. *Johnson County School Board No. 90*, which was argued by Topeka attorney, Elisha Scott. Mrs. Brown's efforts brought attention from the national NAACP office and led to greater enthusiasm for legal action regarding desegregation in Topeka.

Ashmore, Harry S. *The Negro and the Schools.* Chapel Hill: University of North Carolina Press, 1954.

The U.S. Supreme Court drew upon information in this study when forming the landmark opinion known as Brown I. The work, first published on May 16, 1954 (the day before the decision's announcement), quickly became a classic study of trends in integration at the university level, the costs of segregated education, and its effects on African American students. Ashmore also looks at interpretations of the Fourteenth Amendment, segregation in the District of Columbia, and provides charts and graphs of various statistics that illustrate demographic changes of the 1940s. This book functioned as a valuable resource for the school desegregation litigation and as a chronicle of its outcome.

"Brown." Clipping file. Law Library, Washburn University. Topeka, Kansas.

This vertical file contains clippings from the *Topeka Capital Journal* pertaining to the prolonged *Brown III* case and desegregation efforts and delays in Topeka. It contains some articles which profile some of the personalities involved in the original 1954 case. Some of this information also pertains to the thematic category of "Desegregation & Resistance."

Clark, Kenneth B. *Pathos of Power.* New York: Harper & Row, Publishers, 1974.

Clark gathered some of his finest speeches and papers for this small, but potent work. In some chapters he waxes philosophical, in others he reviews sociological theory about human relations. Chapter 5 deals with the longer-term effects of the use of social theory in the *Brown* cases. Clark examines the role of the social scientist as intellectual mercenary, social critic, apologist, or ombudsmen in Chapters 6 and 7. He criticizes those who use their talents and training to bolster

those in positions of power, thus contributing to the status quo, rather than using them to equalize power by extending equality to the powerless.

Hanson, Haldore. "No Surrender in Farmville, Virginia." *New Republic* 133 (October 10, 1955): 11-15.

Hanson, a Virginia farmer, offers a quasi-insider's view of events in Farmville through interviews with both black and white participants and townspeople regarding the 1955 school desegregation crisis. This article provides good background information about the situation and adds a personal touch to the story. White interviewees stated their beliefs that the NAACP instigated local African Americans to call for the desegregation of Prince Edward County Schools, and express concerns about the process and feared results of integration. Rev. Francis Griffin quietly reaffirms the African American community's desire for decent and equitable schooling.

Harris, Bettinita. "Some Personal Thoughts--Out of the Past." *Topeka Magazine* 4, no. 12 (January 1978): 30-33.

Harris interviews Linda Brown Smith, then 34, about the famous walk to Sumner Elementary School with her father and Oliver Brown's sentiments towards the fight for desegregation. Smith portrays her father as a staunch activist who would have "been arm and arm with Martin Luther King, had he lived" (32). Harris also reports that Rev. Brown had begun writing a manuscript entitled "The Long Walk to Sumner," which relayed his participation in the school desegregation case. Linda Brown Thompson, however, told this author on August 3, 1995 that Ms. Harris was mistaken about the existence of such a manuscript.

Hornsby, Benjamin F., Jr. "Stepping Stone to the Supreme Court: Clarendon County, South Carolina." Booklet. Topics in African American History Series. Columbia: South Carolina Department of Archives & History, 1992.

This handy little booklet provides a brief look at the record of desegregation attempts in this South Carolina county during the 1940s. Rev. Joseph Delaine rallied the African American community to make a final assault on segregation. The representative case, *Briggs* v. *Elliott*, was argued before the Supreme Court as one of the classic School Cases of the 1950s.

Katz, Milton S., and Susan B. Tucker. "A Pioneer in Civil Rights: Esther Brown and the South Park Desegregation Case of 1948." *Kansas History* 18, no. 4 (Winter 1995-1996): 234-247.

These authors provide a wonderful account of Esther Brown's involvement in *Webb* v. *School District No. 90* (1948) and *Brown* v. *Board of Education of Topeka* (1951). They trace her family's liberal roots and Brown's crusade to end segregation in Kansas schools. Esther Brown helped form the NAACP chapter in South Park to effect this end and spoke tirelessly to community groups and social clubs about civil rights issues across the state. These authors praise Brown as one of the nameless many who dedicated their lives to the improvement of society.

Kelly, Alfred H. "The School Desegregation Case." In John A. Garraty, ed., *Quarrels That Have Shaped the Constitution*. Rev. ed. New York: Harper & Row, Publishers, 1987.

This article places the Brown case in historical perspective. Kelly comments on the importance of the migration of blacks to the North, where they found political power via the vote. World War II brought increased earnings, urgent demand for labor, and an awareness of the hypocrisy of democracy abroad but discrimination at home. The NAACP tailored a defense strategy using sociological arguments via expert testimony to attack segregation in education. Kelley goes through legal precedents that led to the Brown decision, and covers the five associated cases that fit into this well-defined context.

Kluger, Richard. *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality.* New York: Vintage Books, 1975.

Any research of *Brown* v. *Board of Education* must begin with Kluger's comprehensive study. It contains three sections. The first covers early cases, events in Clarendon County, and the NAACP legal strategy, the second focuses on events in Topeka and Farmville, and the final section relates Supreme Court arguments and deliberations. Over a seven year period, Kluger conducted extensive research in archival collections, secondary materials, and interviewed key participants. His efforts constitute the most extensive single study completed to date.

Masters, Isabell. "The Life and Legacy of Oliver Brown, The First Listed Plaintiff of *Brown* vs. *Board of Education, Topeka, Kansas.*" Ph.D. diss., The University of Oklahoma, 1980.

Masters tempts her audience with an enticing topic, but fails to deliver on her promise to reveal the inner nature of Oliver Brown and examine his motivations for initiating such extensive social change. Masters' methodology relied on oral interviews with those associated with Reverend Brown and the landmark case, but admits that Brown family members refused to contribute to her study. Unfortunately, she failed to supplant unavailable family recollection with factual data. Masters relies heavily on Kluger's Simple Justice, but overlooks his critical points of analysis and depth of research. As a result, her product is poorly researched and poorly written. Oliver Brown's biography intertwines with very general treatments of the conditions of slavery, postbellum black migration, and the author's own childhood experiences in Topeka. Masters never questions the validity of her thesis that Brown acted as a pro-active agent of change. Instead of delving too far into the factual record, she merely reiterates the fable which extols this cultural icon.

Scheer, Julian. "The White Folks Fight Back." *New Republic* 133 (October 31, 1955): 9-12.

Julian Scheer travels to Clarendon County, South Carolina to survey conditions (circa 1955) resulting from the school desegregation case, *Briggs* v. *Elliott.* He finds a resistant white populace that threatens to close the public schools rather than integrate them. These residents formed the Citizens' Council as an advocacy group for the segregationist position. Scheer reports that economic pressure had been used to intimidate African Americans from any further social action. Basically, in 1955, nothing had changed despite the high court's decree.

Scott, Charles S., Sr., and Charles S. Scott, Jr. "The Myth of *Brown.*" *Washburn Law Journal* 14 (1975): 47-56.

Marking the twentieth anniversary of the *Brown* decision, the Scotts rail against the absence of full integration in America's public schools. They particularly blame the courts for inconsistent rulings

that often condone segregationist practices. This article reviews specific court decisions (1955-1974), targets attendance zones and "neighborhood policy" as perpetuating segregation, and defends busing as a successful method of integration. The Scotts particularly blast the *Milliken* v. *Bradley* (1974) decision which condoned the separation of Detroit-area school districts along political boundaries which separated the city from its suburbs. Although the essay validly reproaches the failures of desegregation proposals, it does so through dated and incomplete analyses.

Smith, Bob. *They Closed Their Schools: Prince Edward County, Virginia, 1951-1964.* Chapel Hill: The University of North Carolina Press, 1965.

Smith observed the events in Prince Edward County from his vantage point as a reporter for Norfolk's *Virginian-Pilot.* The book, a classic on the Virginia desegregation case and the county's extreme reaction, is divided into three sections. The first discusses the growing resentment of African Americans and their unification behind Rev. L. Francis Griffin, culminating in the NAACP's legal actions in *Davis* v. *Prince Edward County.* Smith then covers arguments by the white population which led to the closing of the Prince Edward County public schools in 1961. The final section examines pressures that forced the county to re-open its schools in September 1964 and the impact of the entire situation on the county's "crippled generation." Although this case brought nation attention and reaction, the focus of Smith's work remains local throughout.

Tushnet, Mark V. *Brown v. Board of Education: The Battle for Integration.* Historic Supreme Court Cases Series. New York: Franklin Watts, A Division of Grolier Publishing, 1995.

This is a handy little book, perhaps written on the secondary school level. Tushnet writes the basic story of *Brown* v. *Board*; including the inception of a desegregation strategy by the NAACP, progress in graduate and professional schools, the evolution of the "school cases," their prosecution, and attempts to implement Warren's desegregation order. He relates a factual discussion of these events in a very clear, concise narrative.

Whitman, Mark, ed. *Removing a Badge of Slavery: The Record of Brown v. Board of Education.* New York: Markus Wiener Publishing, Inc., 1993.

Whitman provides excerpts from key legal briefs, court documents, and trial testimonies. He includes data from prior cases, such as *Plessy* v. *Ferguson*, *Sweatt* v. *Painter*, and *McLaurin* v. *Oklahoma State Regents.* The work also provides the reader with important articles which debated issues of the *Brown* cases and considered their potential social and constitutional impact. This researcher feels that Whitman's selective editing and abbreviated presentation of critical documents places substantial limitations on his work and prevents its classification as a primary source. Researchers instead should use this only as a reference to locate the full documents.

Wilson, Paul E. "*Brown v. Board of Education* Revisited." *Kansas Law Review* 12, no. 4 (May 1964): 507-524.

This article provides a fairly early summary of Wilson's actions in the Kansas school desegregation case on behalf of the Kansas Attorney General's Office. Wilson covers some important ground in this piece, including a brief historical background of educational opportunities in Kansas and Topeka, the legal record of segregation in Kansas, and the appellate process of *Brown* v. *Board of Education.*

_____. "Speech on *Brown v. Board of Education*, May 1, 1981." *Kansas Law Review* 30, no. 1 (Fall 1981): 15-25.

Wilson argued for the state before the U.S. Supreme Court in the *Brown* cases and later taught at the University of Kansas Law School. For several years, Mr. Wilson spoke annually about litigation of the school desegregation case and described his participation in it. Researchers may find a published version of one of his last speeches before retirement. Editors dedicated this entire issue of the *Kansas Law Review* to Wilson, which includes a glowing statement by the Dean Michael J. Davis (pp. 1-3) and some personal reminiscences by Wilson of his days at the University of Kansas (pp. 5-14).

Wolters, Raymond. *The Burden of Brown: Thirty Years of School Desegregation*. Knoxville: The University of Tennessee Press, 1984.

Wolters looks at conditions in five locations following the 1954-1955 U.S. Supreme Court decisions mandating desegregation in the collection of cases that comprised *Brown v. Board of Education*. He returns to Washington, D.C., Clarendon County (South Carolina), Prince Edward County (Virginia), New Castle County (Delaware), and Topeka (Kansas) to assess the affects of the desegregation orders. Wolters believed that these "*Brown* districts" suffered from naive court orders and other influences since the Court acted. He notes that the meaning of desegregation has changed since 1954, from ending legal protection of segregationist practices to creating a racial balance. Wolters looks at the means employed in these five locales to initiate racial balance and their impacts on the respective communities.

-- THE UNITED STATES SUPREME COURT --

Primary sources:

Friedman, Leon, ed. *Argument: The Oral Argument Before the Supreme Court in Brown v. Board of Education of Topeka, 1952-1955*. New York: Chelsea House, 1969.

This very valuable resource provides verbatim copies of oral arguments before the U.S. Supreme Court for the 1952, 1953, and 1955 hearings of the five school desegregation cases. Friedman includes brief biographies of justices and counsel, as well as the text of the decisions of *Brown I* and *II*. Kenneth Clark contributed an essay regarding the role of the social scientist, which was updated and reprinted in *Pathos of Power*. An introductory essay by Yale Kamisar reviews the causes and effects of the school cases.

Irons, Peter, and Stephanie Guitton, eds. "'May it Please the Court...': Live Recordings of the Supreme Court in Session." Published in conjunction with the Earl Warren Bill of Rights Project and the Northwest Public Affairs Network. New York: The New Press, 1993.

This collection provides excerpts of arguments from selected cases heard by the U.S. Supreme Court, presented on six audiocassettes. A companion text provides transcripts of the selected excerpts and

explanatory narration. Chief Justice Earl Warren began the practice of recording arguments in 1955. Irons and Guitton provide excerpts, with narration, of some of the Court's most significant cases since that time. Unfortunately, they did not include the arguments or opinion of *Brown II.* Researchers, however, may find six desegregation cases relevant to the 14th Amendment's guarantee of "equal protection of the laws," particularly *Cooper* v. *Aaron*, *Heart of Atlanta Motel* v. *United States*, *Regents of the University of California* v. *Bakke.*

Morison, H. Graham. Oral history interview with Jerry N. Hess. Harry S. Truman Library. Independence, Missouri. August 1972.

Morison served as Assistant Attorney General and head of the Civil Division in the Truman administration. Ness conducted this interview in four sessions in August 1972, delving into Morison's work in the Justice Department. They discuss the establishment of the Civil Division and early federal prosecutions pertaining to civil rights. The transcript provides a glimpse of some important, but often overlooked, civil rights activity by Truman's administration in the late 1940s.

Schopler, Ernest H., ed. *Cases Argued and Decided in the Supreme Court of the United States, October Term, 1953.* Book 98, Lawyers' Edition. Rochester, N.Y.: The Lawyers Co-operative Publishing Company, 1954.

This reference provides descriptions of legal arguments used in *Brown* v. *Board of Education* and *Bolling* v. *Sharpe*, found on pages 873-887. It serves as a companion guide for the official Supreme Court decision and gives citations for litigation associated with forms of discrimination and racial segregation.

Warren, Chief Justice Earl. Oral history interview with Jerry N. Hess. Harry S. Truman Library. Independence, Missouri. 11 May 1972.

Warren discusses his career in California and Washington, but also speaks about the general erosion of civil rights in the 1920s and 1930s. He credits the Vinson Court for chipping away at the "separate but equal" doctrine, thus paving the way for subsequent desegregation cases to overturn it completely.

_____. The Memoirs of Earl Warren. Garden City: Doubleday & Company Inc., 1977.

The life of Earl Warren touches on many issues that carried great weight in mid-twentieth century America. He reviews his childhood in California, to his adult career as attorney general and governor of the state. Eisenhower appointed Warren as Chief Justice of the U.S. Supreme Court in 1953, an act he later regretted. After his tenure on the court, Warren headed the commission which investigated the assassination of John F. Kennedy. This autobiography explores each of these periods, and provides useful coverage of the *Brown I* and *II* decisions in the mid-1950s.

Wyatt, Walter, Reporter of Decisions. *Cases Adjudged in The Supreme Court at October Term, 1953 (February 1 Through June 7, 1954).* United States Reports, Volume 347. Washington, D.C.: United States Government Printing Office, 1954.

This source, readily available in most university libraries, contains the U.S. Supreme Court decisions for *Brown* v. *Board of Education* and *Bolling* v. *Sharpe* on pages 483-500.

Secondary sources:

Baker, Liva. "With All Deliberate Speed." *American Heritage* 24, no. 2 (February 1973): 42-48.

Liva Baker presents a comprehensive overview of the judicial actions and deliberations of the U.S. Supreme Court regarding the school desegregation cases of the early 1950s. The article particularly provides some good information about Felix Frankfurter's behind-the-scenes role as facilitator in mediations for the 1954 and 1955 decisions. Baker, who has written a biography of Frankfurter, emphasizes the justice's memoranda which suggest the phrase "all deliberate speed," a phrase adopted by Warren in the court's unanimous decree. While scholars may be delighted by the quick account of these lengthy judicial proceedings, they will no doubt bemoan and soundly criticize Baker's complete lack of documentation.

Bass, Jack. *Unlikely Heroes: The Dramatic Story of the Southern Judges of the Fifth Circuit Who Translated the Supreme Court's Brown Decision into a Revolution for Equality.* New York: Simon and Schuster, 1981.

Many contemporaries credited the work of four judges on the Fifth Circuit Court of Appeals for implementing the *Brown* decisions. Bass confirms this contention by exploring the careers of Judges Elbert P. Tuttle (Georgia), John Minor Wisdom (Louisiana), John R. Brown (Texas), and Richard Taylor Rives (Alabama) and their significant desegregation rulings. The book reads very easily, as Bass traces the record of civil rights litigation, Republican party politics, and desegregation successes and setbacks amidst the biographies. In the 1950s and 1960s, this court dealt with the largest case load in the country, by virtue of the legal battles over desegregation and voting rights. These judges, therefore, "translated the Supreme Court's basic school desegregation decision into a broad mandate for racial justice and equality under law" (16-17).

Carter, Robert L., and Thurgood Marshall. "The Meaning and Significance of the Supreme Court Decree." *The Journal of Negro Education 24* (1955): 397-404.

Carter and Marshall, counsel for the NAACP Legal Defense Fund, Inc. explain the two initial Supreme Court decrees in the *Brown* case from the perspective of 1955. They hope that these rulings will initiate a national desegregation program, implemented by state courts that would function as "super school boards until desegregation has been accomplished throughout the United States." The authors believe that the mild-sounding decisions carry the force of law and will result in further litigation through which lower courts will ultimately mandate that local school boards act to integrate their schools.

Cox, Archibald. *The Warren Court: Constitutional Decision as an Instrument of Reform.* Cambridge: Harvard University Press, 1968.

This text contains six lectures presented by Cox in 1967 at a summer school conducted by the Harvard Law School at the University of Hawaii. He looks at the role of the Warren Court through a historically-based analysis of significant cases dealing with civil rights, the reform of the criminal procedure, and personal and political rights in a democracy. Cox addresses the political nature of the Court in key socio-political issues and the expansion of federal judicial power at the expense of the states. Chapters two and three deal more specifically with the school desegregation cases in very dry discussions of the legislative power of the Supreme Court.

Graglia, Lino A. *Disaster by Decree: The Supreme Court Decisions on Race and the Schools.* Ithaca: Cornell University Press, 1976.

Graglia criticizes the U.S. Supreme Court for overstepping its authority of judicial review by directing social policy via rulings to implement desegregation under the pretence of constitutionality. He discusses *Brown I* and *II*, and correlates subsequent decisions which attempted to disband segregation, but which really changed the definitions and goals of desegregation policies. Title VI of the 1964 Civil Rights Act gave new life to desegregation efforts, but Graglia says it was no more successful in the long run than legal opinions at eliminating discrimination. Throughout his monograph, Graglia blasts legislative and judicial mandates of the late-1950s, 1960s, and early-1970s for delaying and changing, rather than implementing, desegregation. Busing, he believes, subverted the original *Brown* rulings by using, rather than ignoring, race to assign students to specific schools and by abandoning neighborhood schools. Despite his polemical style, Graglia makes some valid points about the limited effectiveness of compulsory integration and for court-ordered busing in urban districts which are composed almost entirely of minority populations.

Greenberg, Jack. "The Supreme Court, Civil Rights and Civil Dissonance." *The Yale Law Journal* 77, no. 8 (1968): 1520-1544.

This article provides some explanation of a shift in Supreme Court decisions from broad, moral pronouncements to narrow, specific rulings in the 1950s and 1960s. Greenberg carefully traces pertinent civil rights opinions and cases denied *certiorari*, noting that the Court's decision not to hear a particular case, in itself, amounts to a ruling. He deals with two broad categories, school desegregation cases and civil rights demonstrations. Much of the article reviews the "jurisprudence of protest decisions" stemming from sit-ins and other demonstrations of the modern civil rights movement from the perspective of 1968. Basically, Greenberg argues that after an initial phase where the Court issued broad social mandates, it began to restrict *certiorari* and tightened specific decisions to stem social disorder. Compared to other critics, Greenberg offers a much kinder assessment of the Court's role in these events.

Lefberg, Irving F. "Chief Justice Vinson and the Politics of Desegregation." *Emory Law Journal* 24, no. 2 (Spring 1975): 243-312.

Vinson endorsed the majority findings in *Shelley*, *Sweatt*, and *McLaurin* which found violations of Fourteenth Amendment rights, but he retained the reputation as a conservative in civil rights issues. Lefberg looks at this inconsistency by analyzing Vinson's opinions in these and other discrimination cases, as well as his personal attitudes and values. The chief justice retained an anti-libertarian view, overall, but came down on the side of the aggrieved when constitutional violations had been proven. Lefberg's analysis provides some insight into Vinson's behavior, but perhaps more importantly, gives good coverage of the historical context for the *Shelley*, *Sweatt*, and *McLaurin* opinions which helped break down the barriers of segregation.

Reutter, E. Edmund, Jr. *The Supreme Court's Impact on Public Education.* New York: Phi Delta Kappa and National Organization on Legal Problems of Education, 1982.

This work offers concise summations of some extremely complex and important decisions. Reutter covers seven broad themes in very short order, including financial aid for secular private and parochial schools, race and religion in education, teacher and student rights, structure and finance of school districts. He handles these issues much too quickly. If researchers consult this source at all, they should first have a firm grasp of the intricacies of the case or issue because Reutter omits

some important points and glosses over others. This source provides a short glossary and contains excerpts from certain sections of the U.S. Constitution and civil rights legislation. The excerpts, like the main text, are a bit too abbreviated.

"The Nation: To All on Equal Terms." *TIME* 63, no. 21 (May 24, 1954): 21-22.

This weekly news magazine gave the *Brown* decision fairly brief, but pointed coverage. Illustrations of the Justices and of Thurgood Marshall complement an article, which quotes Warren's opinion and covers initial Southern reaction to the finding. Another brief essay may be found under "Education: The Last Turning?" on pp. 98-99 of this issue.

Ulmer, S. Sidney. "Earl Warren and the Brown Decision." *The Journal of Politics* 33, no. 3 (1971): 689-702.

This article discusses Warren's influence on the Brown decision. Ulmer conducted his research after the opening of the Harold H. Burton Papers at the Library of Congress. This data provided "inside" information about Warren's concerns about social problems associated with racial segregation and the influence that he exerted on his fellow justices to gain unanimous agreement to strike down *Plessy*. This essay gives a blow-by-blow description of discussions held by the Justices as they came to terms with their own personal opinions about segregation.

Wilkinson, J. Harvie, III. *From Brown to Bakke: The Supreme Court and Integration, 1954-1978.* New York: Oxford University Press, 1979.

In contrast to many, this work suggests that progress towards racial equalization could not have been made without the influence of the Supreme Court. Wilkinson says *Brown* begat the mightiest and the lowliest in America, forming a mystical union to achieve a common good. He discusses how the two came together by reviewing Court action and public response from the initial desegregation decree, through busing plans, and ultimately Allan Bakke's reverse discrimination claim. Wilkinson writes very well, thus providing an enjoyable treatise on potentially dull legal debates.

_____. *Serving Justice: A Supreme Court Clerk's View.* New York: Charterhouse, 1974.

Wilkinson reviews his own personal experiences during the 1971 and 1972 terms as a clerk for Justice Lewis E. Powell, Jr. while describing the official functioning of the Supreme Court, as a whole. He received the call from Powell, a family friend in Richmond, Virginia, immediately after Powell's appointment in 1972. Wilkinson focuses on three aspects; the clerk, the justice, and the court. The book relates an insider's view of the type of work done by Court personnel, appellate procedures, and the deliberation process. It was, indeed, a pleasure to read.

Woodward, Bob, and Scott Armstrong. *The Brethren: Inside the Supreme Court.* New York: Simon and Schuster, 1979.

Although this work focuses on the functioning of the Burger Court during the period 1969 to 1976, it provides some useful information about the actual workings of the U.S. Supreme Court. The authors reveal frustration on the part of some Justices with the failure of the 1955 mandate for desegregation "with all deliberate speed." Justices of the Burger Court wrestled with the issue of busing as a viable means of achieving true desegregation, with mixed success.

-- THE EISENHOWER ADMINISTRATION --

Primary sources:

Branyan, Robert L., and Lawrence H. Larsen, eds. *The Eisenhower Administration, 1953-1961: A Documentary History.* Volumes I & II. New York: Random House, Inc., 1971.

These two editors compiled specific documents taken from collections in the Eisenhower Library. They divided this reference work into thematic topics, with brief explanatory introductions at the beginning of each. Volume I provides Ike's "State of the Union" addresses for 1953-1956, but Volume II contains the most useful documentation under the heading, "The Crisis over Civil Rights."

Brownell, Herbert. Oral history interview with Thomas Soapes. Dwight D. Eisenhower Library. Abilene, Kansas. 1977.

Dr. Soapes guides Brownell through discussions of administrative matters, significant issues, events, and key personnel. As Eisenhower's Attorney General, Brownell closely advised the president about procedural matters throughout his administration. Conversations about Eisenhower's reaction to the *Brown* decisions and Faubus' grandstanding are of particular interest.

Dwight D. Eisenhower: Records as President, White House Central Files, 1953-1961. Dwight D. Eisenhower Library. Abilene, Kansas.

The White House Central Files are subdivided into the General and Official Files. The Official Files contain official correspondence between White House officials (including Eisenhower) and their counterparts in government, as well as with significant individuals. General Files do not hold as many useful documents, but do contain letters and telegrams sent to Ike by private citizens expressing their concerns about integration and school closures in southern states. They also include files pertaining to "the Negro question" and "the NAACP."

Eisenhower, Dwight D. *The White House Years: Mandate for Change, 1953-1956.* Garden City: Doubleday & Company, Inc, 1963.

Researchers will be disappointed, but perhaps not surprised, at Eisenhower's brief mention of civil rights matters in this first volume of his autobiography (see pp. 234-236). He provides coverage of the 1953 campaign, installation of new executive officers, foreign policy concerns (regarding Korea, the Middle East, NATO, and Indochina), domestic affairs, and his bid for re-election in 1956. The work provides limited contextual background for the school desegregation cases.

_____. *The White House Years: Waging Peace, 1956-1961.* Garden City: Doubleday & Company, Inc., 1965.

This second volume of Ike's *The White House Years*, covers the events of his second administration. In a rather lengthy fashion, Eisenhower discusses the high points, his decision to retain Nixon as vice-president, Middle East tension re: Israel and the Suez Canal, Cold War diplomacy, proposed nuclear arms control, etc. In the midst of foreign policy, he also deals with domestic issues.

Chapter VI, in particular, deals with civil rights, 1955-1961, particularly the Faubus incident.

Ferrell, Robert H, ed. *The Diary of James C. Hagerty: Eisenhower in Mid-Course, 1954-1955.* Bloomington: Indiana University Press, 1983.

James Hagerty served as Eisenhower's press secretary throughout his two terms as president. Hagerty kept a personal diary for only two of those years, 1954 and 1955. His diary contains very little information on *Brown*, with only one entry, that for 18 May 1954 (pp. 53-54) which says that Eisenhower was personally disappointed with the Supreme Court's decision, but as president, upheld its legal authority. Most of the entries provide information on McCarthy, foreign policy, cold war era politics, etc.

Hagerty, James. Oral history interview by Ed Edwin. Columbia University Oral History Project. Dwight D. Eisenhower Library. Abilene, Kansas. 1967-1968.

Historians owe a great debt to Hagerty for providing seven interviews (comprising four volumes) to Ed Edwin in 1967 and 1968. A trained journalist, he joined Ike's campaign via the Dewey camp, serving as Eisenhower's press secretary through both administrations. Hagerty discusses both key national affairs and day-to-day White House logistical problems. This broad span covers such topics as foreign relations with Korea, Mexico, the USSR, Vietnam, political wrangling in the 1952 Republican convention, selection of Nixon as vice-president, 1960 election. *Brown* researchers will find some coverage of domestic affairs in Volume II (Interview #4), pertaining to civil rights issues, the Little Rock incidents, and Ike's general attitudes towards presidential responsibilities, the separation of powers, and school desegregation. Volume IV (Interview #6) provides some mention of Martin Luther King, Jr.'s death.

Morrow, E. Frederic. *Black Man in the White House: A Diary of the Eisenhower Years by the Administrative Officer for Special Projects, The White House, 1955-1961.* New York: Coward-McCann, Inc., 1963.

Morrow joined Eisenhower's campaign staff in August 1952, became the Adviser on Business Affairs in the Department of Commerce in 1954, and one year later moved to the White House as the first African American staff member. This climb was a slow one, however, because Morrow met with reluctance and hesitancy on the part of Eisenhower's staff with each step. This autobiography traces, in diary format, Morrow's days in the White House, where he acted as liaison with African American leaders and civil rights groups from 1955 to 1961. Although loyal to Eisenhower, Morrow expresses frustration with the administration's halting civil rights record and with Ike's reluctance to regard him as a fully trustworthy professional.

_____. Oral history interview with Thomas Soapes. Dwight D. Eisenhower Library. Abilene, Kansas. 23 February 1977.

Soapes begins his interview with a discussion of Morrow's work at the Department of Commerce. They quickly moves on, however, to his years on Eisenhower's White House staff. Researchers may find the interview to be quite interesting, particularly when accompanied by Morrow's autobiography. Although loyal to his commander-in-chief, Morrow does reveal some tensions associated with his African American heritage.

Rabb, Maxwell. Oral history interview with Steven Lawson. Columbia University Oral History. Dwight D. Eisenhower Library. Abilene, Kansas. 6 October 1970.

This transcript contains valuable information about Rabb's involvement in civil rights matters during the Eisenhower administration. Although he served primarily as secretary to the Cabinet, Rabb also handled these matters. He discusses Eisenhower's attitudes/opinions, to some extent, E. Frederic Morrow's work, and efforts to desegregate naval bases in Norfolk and Charleston.

_____. Oral history interview with David Horrocks. Dwight D. Eisenhower Library. Abilene, Kansas. 13 May 1975.

This transcript contains very little on civil rights issues. Rabb primarily discusses his role as secretary to the Cabinet, a new position created by Eisenhower to organize these weekly meetings. Descriptions of the deliberation process make fascinating reading, but do not directly pertain to *Brown* research. The transcript ends with a lengthy discussion of negotiations with Congressmen for the passage of the Refugee Relief Act of 1953.

Whitman, Ann. File. Dwight D. Eisenhower: Papers as President, 1953-1961. Dwight D. Eisenhower Library. Abilene, Kansas.

Ann Whitman served as Ike's administrative secretary throughout his two terms. This collection includes several sub-units, or series, such as the Whitman diary, the Dwight D. Eisenhower diary, the Cabinet Series, Names Series, and Press Conference Series. It provides valuable documentation of correspondence, telephone calls, meetings, public announcements, and inter-office memoranda.

Secondary sources:

Ambrose, Stephen E. *Eisenhower: The President.* Volume II. New York: Simon and Schuster, 1984.

Ambrose has written a masterpiece. He divided his work into two parts, the first on Eisenhower, the soldier, and the second, as president. Ambrose admittedly reveres Eisenhower, but his biography offers some valid criticisms of the hero. Volume II contains some information on *Brown* and Ike's opinion that the administration of schools was best left to the states. Despite his own personal disagreement, however, Eisenhower felt duty-bound to enforce the Supreme Court's decision to strike down segregated school systems.

Burk, Robert F. "Dwight D. Eisenhower and Civil Rights: Reflections on a Portrait in Caution." *Kansas History* 13, no. 3 (Autumn 1990): 178-189.

Burk says that Eisenhower's stance on civil rights contained many layers, moving from public persona to intensely personal. Experiences from his boyhood in Kansas shaped Ike's views of African Americans and his apparent inability to accept them as equals. A second layer of opinion stemmed from political concerns, where "the partisan Eisenhower" recognized the importance of racial issues in the political game. Privately, the president refused to see racial problems in moral terms. Burk says that the competitive climate of the Cold War led Ike to take a stand in Little Rock in an attempt to change the U.S.'s racist image among the world community.

_____. *The Eisenhower Administration and Black Civil Rights.* Twentieth-Century America Series. Knoxville: The University of Tennessee Press, 1984.

After World War II, Americans became more interested in, or conscious of, the concept of civil rights. Burk looks at the racial policies of the Eisenhower administration within this context of growing social awareness. He portrays Ike's actions as merely symbolic, arguing that the president was more interested in securing votes and building the Republican Party in the South than in safeguarding the rights of all citizens. Burk claims that conservatives continue to employ these policies established in the 1950s. Michael Mayer has criticized Burk for this quasi-traditional view, adding that Burk's "treatment, however, is less than comprehensive" (Mayer, "With Much Deliberation...," 44, n.2).

Duram, James C. *A Moderate Among Extremists: Dwight D. Eisenhower and the School Desegregation Crisis.* Chicago: Nelson-Hall, 1981.

The phrase, "a moderate among extremists," expresses Duram's thesis regarding Ike's stance on the school desegregation issues of the 1950s. Duram argues that Eisenhower consistently took a moderate course because of his cautious nature, his definition of effective leadership, and his belief that the executive branch held only limited authority in the state-federal relationship. This monograph examines Ike's perception of problems resulting from the U.S. Supreme Court's *Brown I* and *II* decisions through a comparison of his public versus private statements. Duram places his analysis within a broader historical context and addresses the administration's reactions to critical events of the 1950s.

_____. "The Beginnings of Ambivalence: Dwight D. Eisenhower and the Federal Aid to Education Issue, 1949-1953." *Kansas History* 13, no. 3 (Autumn 1990): 166-177.

Eisenhower believed that certain principles should dictate the respective roles of state and federal governments. One principle pertained to direct aid for public education by the federal government, seen by Ike as interference in reserve powers left to the states. Duram says that Eisenhower's brother, Milton, reinforced Ike's opinions about the potential dangers of federal aid to public schools. During his presidency, Eisenhower maintained a "wait-and-see" attitude on education and the administration's goal to cut the federal government did nothing to change that position. Duram examines the political wrangling that went on within the administration over the federal aid issue. Through it, individuals questioned the role of the Office of Education, one of the triad in HEW. This article gets very tedious, but does shed some light on Eisenhower's reluctance to stay out of educational issues, even when they rose to the forefront in 1954.

Ferrell, Robert H. *Harry S Truman: A Life.* Missouri Biography Series. Columbia: University of Missouri-Columbia Press, 1994.

Dr. Ferrell writes a very enjoyable and informative narrative on the life of this oft-times beleaguered president. The biography provides a contemporary, late twentieth century account of Truman's experiences and relationships. It briefly addresses the impact of civil rights on his presidency and the interplay between Truman and civil rights activists. Perhaps most interestingly, Ferrell provides useful background information about members of Truman's administration who took part in these events long after Truman left Washington, as members of the Supreme Court and Eisenhower administration.

Mayer, Michael S. "With Much Deliberation and Some Speed: Eisenhower and the *Brown* Decision." *The Journal of Southern History* 52, no. 1 (February 1986): 43-76.

In this article, Mayer provides a clearly-written narrative of events associated with *Brown I* and *II* on the federal level and responses by the Eisenhower administration. He brings in contradictory interpretations by other historians and makes sense of them, arguing that Ike believed in the morality and need for desegregation, but via a slow process from the graduate level downward and without direction by the administration (60). Mayer also discusses the involvement of the Justice Department, where Browning, Sobeloff, and Elman phrased the government's anti-segregation position. Their views contrasted, however, with those within the White House. He finds that Ike's greatest civil rights contribution lay in appointments to Justice and to federal judgeships. Mayer sorts out events, opinions, and positions in this very pertinent article.

Moore, William Howard. "Do We 'Like Ike'?: Historians and the Eisenhower Presidency." *Kansas History* 13, no. 3 (Autumn 1990): 190-197.

Moore offers a historiographic review of research on Ike, the president, soldier, and person. He provides brief summations of several works and discusses the biases and academic bents of the authors. It provides good bibliographical data and insight into various interpretations.

School News 36 (1953-1954). U.S. Department of Health, Education, and Welfare, Office of Education. Washington, D.C.

This periodical served as the public mouthpiece of the Department of Health, Education, and Welfare regarding the issue of integration. Volume 36 (nos. 5-9) spans 1953 and 1954, containing articles on integration successes, the Supreme Court ruling, trends in school reorganization, and patterns of segregation. Later volumes would also prove helpful in determining the Eisenhower administration's official policy regarding these issues and its public "spin" on associated events--as well as revealing, by the absence of serious discussion, the department's reluctance to tackle these tough issues head-on.

-- DESEGREGATION AND RESISTANCE --

Primary sources:

Beals, Melba Pattillo. *Warriors Don't Cry: A Searing Memoir of the Battle to Integrate Little Rock's Central High.* New York: Pocket Books, 1994.

Beals writes a very touching memoir of her experiences as one of nine students who integrated Central High School in 1957. Her written words flow easily as she recalls the excitement in 1955 at the opportunity to attend Central, the disappointment of Faubus' stance against integration, and the fear on "Mob Monday" when federal troops first escorted her to school. Beals credits her mother and grandmother's support and encouragement, bolstered by religious conviction and inner strength, for getting her through the 1957-1958 academic year. Rather than admit defeat of successful integration by these nine students, Faubus closed Little Rock's schools from 1958 to 1960. At the behest of the NAACP, foster families across the country "adopted" several of these Central

High students. Beals moved in with a white family in California and tried, unsuccessfully, to leave the pain of Little Rock behind. Readers will find a riveting story in *Warriors Don't Cry*, one that reads like fiction, but unfortunately one that is only too real.

Cooper, William G., Jr. Oral history interview with John Luter. Columbia University Oral History. Dwight D. Eisenhower Library. Abilene, Kansas. 28 December 1970.

Cooper served as head of the Board of Education in Little Rock during the school integration crisis. In this role, he functioned as respondent in the U.S. Supreme Court case, *Aaron* v. *Cooper*. The interview with John Luter provides interesting reading and good contextual material regarding the lengthy debate over integration in Little Rock.

The Center for National Policy Review. Papers. Manuscript Division, The Library of Congress. Washington, D.C.

William L. Taylor, a civil rights attorney, created this agency in 1970 as a civil rights "watchdog" to monitor federal programs and legislation, and to disseminate information about government actions which affected minority rights. This collection holds records from 1959 to 1986, primarily Taylor's correspondence and speeches, administrative documents, *amicus curiae* briefs filed in various cases, and printed secondary materials. These papers may interest researchers working on desegregation cases/issues in the 1960s and 1970s, but only provides some secondary articles for those working on *Brown* v. *Board*. Please note that the donor has restricted access to this collection and so researchers must first obtain written permission to view it.

Secondary sources:

Barkan, Elliott R. "Race, Religion, and Nationality in American Society: a Model of Ethnicity--From Contact to Assimilation." *Journal of American Ethnic History* 14, no. 2 (Winter 1995): 38-75.

Barkan seeks to provide a model for the process of assimilation because competing definitions abound. One common definition would prove very useful in this pluralistic society where ethnicity is often politicized. This discussion examines various stages of the assimilation process and provides some basic, academic definitions. Barkan's discussion of "integration" is most pertinent to this study. It is an intermediate process, which entails more than "the absorption of cultural practices, norms, and values of the host (or dominant) society" (48). Integration involves a blending, incorporation, or dualism, and occurs when the larger society accepts those who enter it. Dualism often raises uncomfortable feelings, however, because the individual may sense that he/she is on the margins of society, not truly included in it. Assimilation, then, is the final stage, characterized by acceptance on both sides. Barkan concludes that American society continues to struggle with the process because its members have not reached the stage of assimilation.

Beittel, A.D. "Some Effects of the 'Separate but Equal' Doctrine of Education." *The Journal of Negro Education* 20, no. 2 (Spring 1951): 140-147.

Beittel discusses the processes and purposes of segregation as means for maintaining white supremacy and teaching the "lesson" of white superiority. He makes the point that separate education makes equal education impossible. Kenneth Clark testified to this sociological truth in the Virginia,

Delaware, and South Carolina hearings, but Beittel emphasizes it in 1951, prior to those events. He goes on to assess the psychological effects of segregation on blacks as well as whites, summing up the discussion with an appraisal that shows the costs of segregation far out-weighing any perceived benefits.

Bell, Derrick A., Jr. "*Brown v. Board of Education* and the Interest-Convergence Dilemma." *The Harvard Law Review* 93 (1980): 518-533.

This essay poses both a response to comments by Professor Herbert Wechsler that were published soon after the 1954 *Brown I* decision and an analysis of the apparent failures of court-mandated desegregation. Wechsler agreed with the moral statement of the decision, but not the legal foundation upon which the Court based its decision. Although this view was subsequently discredited, Bell argues that it retains some validity in light of the success by many communities to subvert true integration through a variety of tactics. As long as white and black interests converged, as they did in 1954, integration could be accomplished. When interests diverged, failure was assured. Although this article sometimes reads like a private conversation with little regard for the uninformed reader, Bell presents some interesting comments about the relative failures of *Brown, vis a vis* the implementation of true desegregation in public education.

Black, Earl. "Southern Governors and Political Change: Campaign Stances on Racial Segregation and Economic Development, 1950-1969." *The Journal of Politics* 33, no. 3 (1971): 703-734.

Black looks at responses/actions related to racial segregation and economic development by governors elected in the eleven former Confederate states between 1950 and 1969. He gleaned campaign information from two major newspapers, with some exceptions, from each state. Black used this data to categorize each governor as a strong, moderate, adaptive, marginal, or non-segregationist. He found that the late-1950s marked the height of segregationist rhetoric, culminating in the Little Rock crisis, with a mellowing by the late-1960s after some measures toward integration had been taken. The role of the federal government and African American voting patterns contributed to the decline of segregationist rhetoric in gubernatorial campaigns. Economic development in non-agricultural sectors also influenced the change. Black's quantitative analysis presents much more data than that summarized here, in an interesting, well-organized and readable essay.

Board of Student Editors. "...With All Deliberate Speed." In John H. McCord, ed., *With All Deliberate Speed: Civil Rights Theory and Reality.* Urbana: University of Illinois Press, 1969.

This essay introduces a collection of lectures first published in the *University of Illinois Law Forum.* Relying heavily on Kelley and Harbison's *The American Constitution* (1963), these authors cover the legal history of civil rights law, from 1866 to 1969. The essay provides good reference material about legislative attempts to gain civil rights in the late-nineteenth century and to desegregate public accommodations and housing in the twentieth.

Branton, Wiley A. "Little Rock Revisited: Desegregation to Resegregation." *The Journal of Negro Education* 52, no. 3 (1983): 250-269.

Branton, counsel for the plaintiffs in the Little Rock desegregation case, *Cooper v. Aaron*, recounts

events associated with the case and the resultant national crisis over Orval Faubus's refusal to integrate the city's schools. He gives a virtual day-by-day account of events associated with the attempted enrollment of black students in Central High School in late-August and September 1957 and Faubus's strategy to prevent their enrollment. Interestingly, in 1982, Branton's son was involved in a legal fight to prevent the resegregation of Little Rock's schools. The school board proposed to create four all-black elementary schools as a means to stave off "white flight" from the city. At the time of publication, the entire case had not been resolved.

Bullock, Henry Allen. *A History of Negro Education in the South, From 1619 to the Present.* Cambridge: Harvard University Press, 1967.

Bullock's title is quite misleading because his work begins in earnest with Reconstruction. He claims that Northern educators compromised their principles, acceding to supremacist demands for separate schools, in order to guarantee at least some form of education for African Americans (93). The monograph covers the establishment of educational funds, political machinations, curricula, and "black" discontent with diminished opportunities. While Bullock provides useful information about education in the late-nineteenth and early-twentieth centuries, his analysis is very dated. He reviews the contributions of the school desegregation cases and ends his study on an optimistic note, claiming from his 1967 perspective that the U.S. Supreme Court rulings and 1964 Civil Rights Act assured equalization in the near future.

Carter, Robert L. "Equal Educational Opportunity for Negroes--Abstraction or Reality." In John H. McCord, ed., *With All Deliberate Speed: Civil Rights Theory and Reality.* Urbana: University of Illinois Press, 1969.

Unfortunately, readers will have to wade through a very dry essay to find Carter's central argument. Writing in 1969, he bemoans the delay in achieving desegregated public schools by discussing *Briggs* v. *Elliott* and post-*Brown* legal rulings which either directly or circuitously delayed integration. Carter expresses a lot of frustration, but also contributes some valuable details about significant rulings (1954-1969). He points out that the fundamental problems of *Brown II* stem from the fact that the Supreme Court placed the onus of interpretation of *Brown I* on lower courts, it omitted uniform standards, and it placed implementation in the hands of those who least supported desegregation. Carter claims that the adoption of HEW guidelines in 1965-1966 directly resulted from the failure of federal courts to enforce compliance of desegregation "orders." *Green* v. *County School Board* (1968) also raised hopes because it placed the burden on school boards to do all that was necessary to eradicate segregation. Demographic patterns, however, may make the elimination of *de facto* segregation impossible.

_____. "Some Principles Related to the Problem of Desegregation." *The Journal of Negro Education* 23 (1954): 339-347.

Clark testified in the South Carolina and Delaware cases as an expert on the sociological effects of segregation, saying that, by nature, separate facilities were inherently racist ones which instilled poor self-concepts in African American children. After the *Brown I* decision, Clark analyzed several instances of desegregation. In this article, Clark breaks down "principles related to desegregation" and "theoretical implications" of desegregation processes for the social scientist.

"Desegregation." Clipping file. School of Law Library, Washburn University. Topeka, Kansas.

This file contains newspaper articles from the Topeka *Capital Journal* regarding the on-going *Brown III* case and the delayed integration of Topeka's public schools.

DuBois, W.E. Burghardt. "Does the Negro Need Separate Schools?" *The Journal of Negro Education* 4 (1935): 328-335.

DuBois writes a very pointed article in which he addresses contemporary concerns evoked by desegregation efforts. Although written in 1935, his arguments seem very current. DuBois stresses the fundamental need for quality education available to all African Americans. He argues that this may be obtained best from "separate" schools because white teachers may discriminate against African American students. Ahead of his time, DuBois calls for a revision of the curriculum to include history, anthropology, psychology, etc. for and from the African American perspective. Upon its publication, several colleagues criticized DuBois for adopting a stance against desegregation. His message is a more positive one, however, that calls for good education for blacks, and suggesting the possibility that it might best be obtained in separate, not integrated schools.

Gates, Robbins L. *The Making of Massive Resistance: Virginia's Politics of Public School Desegregation, 1954-1956.* Chapel Hill: The University of North Carolina Press, 1962.

Gates looks at a brief, two-year period of Virginia's resistance to the Supreme Court's initial conclusion that "separate but equal" practices were unconstitutional. He focuses on the political process as a means to analyze the "making of massive resistance." The study provides information on voting patterns throughout the state and key individuals involved in the crisis.

Gordon, William M. "School Desegregation: A Look at the 70's and 80's." *Journal of Law & Education* 18, no. 2 (Spring 1989): 189-214.

This article provides a review of litigation that resulted in the practice and subsequent rejection of busing to end *de facto* segregation. Gordon discusses the unsuccessful use of magnate schools to integrate public schools in Baton Rouge, Chicago, and St. Louis. The metropolitan approach was tried in Richmond, Detroit, and Louisville whereby interdistrict school systems mixed students from inner-city and suburban areas. Gordon criticizes "magnet school" approach to desegregation, preferring the interdistrict metropolitan plan instead.

Halpern, Stephen C. *On the Limits of the Law: The Ironic Legacy of Title VI of the 1964 Civil Rights Act.* Baltimore: The Johns Hopkins University Press, 1995.

Title VI prohibits discrimination in programs that receive federal funds. This component of the 1964 Civil Rights Act at first received little attention, but later became one of the most contentious. Halpern examines this by looking at each administration, from 1964 to 1994, and the application of Title VI to school desegregation. The enforcement of Title VI contributed to the transition from "desegregation" to "integration" as the primary goal. Halpern argues that litigation, which used white tools for a black cause, effectively channeled African American rage against an unfair system. In doing so, it diverted attention from the real issue of injustice by imposing a legal paradigm for equality. The implementation of equality through litigation has failed, and the social goals of educational opportunity and socio-economic advancement, therefore, have been lost in the process.

Hill, Herbert, and James E. Jones, Jr., eds. *Race in America: The Struggle for Equality.* Madison: The University of Wisconsin Press, 1993.

Hill and Jones published a collection of sixteen papers presented by significant scholars of the civil rights field at a conference held at the University of Wisconsin-Madison in November 1989. The conference celebrated the thirty-fifth anniversary of *Brown* and the twenty-fifth anniversary of the 1964 Civil Rights Act. Kenneth Clark and Robert Carter look upon their participation in the landmark litigation with mixed feelings, noting the dramatic constitutional victory has been tempered in its impact. Derrick Bell and Nathaniel R. Jones cite the enthusiasm and promise of litigation following *Brown*, but note the long-term disappointment of deferred enforcement. The collection offers a mixed review of life after *Brown*. Essays outline the new roles assumed by the state and its judicial system in desegregation and affirmative action, but conclude that the actualization of equality of opportunity has yet to be achieved.

The Journal of Negro Education 20-24 (1951-1955).

These volumes contain several interesting essays, both editorial and reportorial in nature, regarding strategy to end segregationist practices and progress made to-date. Some articles have been listed separately in this bibliography, but serious researchers may find additional relevant and important essays in these and later volumes.

Knox, Ellis O. "Racial Integration in the Public Schools of Arizona, Kansas and New Mexico." *The Journal of Negro Education* 23 (1954): 290-295.

This article gives only brief mention of the situation in Kansas, and even less on that in Topeka. But, it states that the city's school board voted in 1953 to end segregation in two elementary schools, but voted to maintain segregation in twelve additional elementary schools in 1954. Knox spends most of his energy on the situation in Arizona.

Kozol, Jonathan. *Savage Inequalities: Children in America's Schools.* New York: Crown Publishers, Inc., 1991.

Well-known as a critical analyst of this country's educational system, Kozol compares conditions in several major school districts, including East St. Louis, Chicago, San Antonio, New York, and Washington, D.C. He visited some of the poorer public schools in these cities from 1988 to 1991, finding that they lack sufficient funding, adequate facilities, educational materials, and quality instruction. In most of these schools, segregation prevails with minority populations enduring the worst conditions and suffering the greatest emotional trauma. The book tells some sad and embarrassing tales about the state of public education in the United States. Kozol refers to the *Brown* decision, but clearly shows that it made no difference in the lives of children who attend these schools.

Locke, Alain. "The Dilemma of Segregation." *The Journal of Negro Education* 4 (1935): 406-411.

Locke poses an early argument for the use of legal action to break down the "separate but equal" doctrine. In this brief article, he analyzes the doctrine's fallacy, points out the dilemma of short versus long-term gain in social equality, and offers a strategy of legal recourse. Locke claims that despite short-term benefits of separate schooling and legal setbacks, progress can be made toward full integration. In 1935, this essay offered readers some very forward-thinking arguments, countering DuBois's opinion [also published in this volume] that separate schools might better serve African American youth.

New Republic 130-135 (1954-1956).

This publication contains many articles relevant to key issues represented by the school desegregation cases. Researchers should glean volumes 130-135 in particular, spanning 1954-1956) for essays about the Court's ruling, Southern resistance, strategy by the NAACP to effect integration, and profiles of officials in the Eisenhower administration and their official reactions. Later issues, of course, also cover the desegregation crisis and emergent civil rights movement.

Orfield, Gary. *Must We Bus?: Segregated Schools and the National Policy* Washington, D.C.: The Brookings Institution, 1978.

Orfield looks at desegregation from a social science perspective. He first reviews significant court cases which led to busing as the primary tool for implementing desegregation plans, and then looks at the demographics. Suburbanization due to "white flight," quality of life issues, etc., complicates balanced racial integration. This study provides statistical analyses of public perceptions of busing and other desegregation techniques, and compares these perceptions with actual situations. Desegregation has no significant effect on academic achievement of white children. Busing is safer and less expensive than some believe. Boundary changes often can change the racial ratio in small districts, thereby eliminating the need for busing. Large metropolitan areas pose the greatest challenge for integration because class and geographical issues complicate matters. Orfield also discusses enforcement attempts and successes by the courts, Congress, Justice Department and Department of Health, Education, and Welfare (HEW). The greatest contribution of this work lies in its comprehensive analysis of a social problem, one that only can be solved by the same group that views it as a "problem" through false and value-laden perceptions.

_____, Susan E. Eaton, and the Harvard Project on School Desegregation. *Dismantling Desegregation: The Quiet Reversal of Brown v. Board of Education.* New York: The Free Press, 1996.

Gary Orfield left his classic study on busing with the declaration that American society will either integrate its diverse peoples peacefully, or remain racially and ethnically fragmented. Undertaken 25 years after busing and 45 years after *Brown*, this study seeks to understand why public schools experienced re-segregation in the late 1980s. Several authors contribute essays which attempt to ferret out trends and perceptions which might explain this reversal. Some present case studies of implementation plans in Detroit, Kansas City, Norfolk, and Prince George's County, Maryland. The upshot is that magnet schools, neighborhood schools, busing, and racial quotas have failed to effect integration. Negative perceptions about desegregation strategies remain and they undermine any potential progress. The dual issues of segregation in public schools and in housing remain strongly politicized in this country and that fact only complicates hopes for a peaceful transition to an integrated society.

Osborne, Irene. "Toward Racial Integration in the District of Columbia." *The Journal of Negro Education* 23 (1954): 273-281.

The U.S. Supreme Court finding in *Bolling* v. *Sharpe* mandated that public schools in Washington, D.C. be integrated. Osborne looks at progress from the 1954 perspective, describing change in public accommodations, children's organizations, and in population (resulting in the in-migration of blacks and out-migration of whites).

Parrish, C.H. "Desegregation in Public Education--A Critical Summary." *The Journal of Negro Education* 24 (1955): 382-387.

Parrish surveys the situations in several southern and border states that resulted from the landmark *Brown* decision. Desegregation plans were implemented in some, but were resisted vigorously in states located in the Deep South. Some segregated African Americans in Missouri chose to retain separate schools. Throughout the country, several school systems reduced the number of African American teachers.

Reid, Herbert O., Sr. "State of the Art: The Law and Education Since 1954." *The Journal of Negro Education* 52, no. 3 (1983): 234-249.

Reid examines the impact of the 1954 school desegregation ruling and subsequent litigation that attempted to eradicate *de facto* segregation. He states that racial separation pre-dated *Plessy* v. *Ferguson* and post-dated *Brown* v. *Board*. Reid says that the Supreme Court did not address the desegregation question between 1955 and 1967, thereby overlooking several cases which, did, indeed deal with this issue. The Court honed the definition of "purposeful discrimination" and determined remedy in piecemeal fashion through the 1970s. Congressional legislation, specifically Title VI of the 1964 Civil Rights Act, added some strength to desegregation efforts, as did the establishment of the Civil Rights Division of the Justice Department and Office of Civil Rights in HEW. Reid criticizes the lack of enforcement, however, for the small, but significant battles won in the courtroom.

Sarratt, Reed. *The Ordeal of Desegregation: The First Decade.* New York: Harper & Row, Publishers, 1966.

Reed provides a "journalistic account" of the period between the 1954 Supreme Court decision and the 1964 Civil Rights Act. He keyed the material to the players and so the book's chapters are organized by corresponding topics; such as, the governors, legislators, colleges, lawyers, editors, businessmen, organized whites, and the Negro protest. It is a quite fascinating, albeit brief, look at immediate results of and reactions to the *Brown* decision, relating a sort of "where are they now" view of those touched most immediately by the "ordeal of desegregation."

Swartz, Bernard. *Swann's Way: The School Busing Case and the Supreme Court.* New York: Oxford University Press, 1986.

Swann v. *Charlotte-Mecklenberg Board of Education* was in litigation from 1965 to 1970. It was the first Supreme Court case to stipulate that an extensive busing program be incorporated in a public school desegregation plan, thereby establishing a precedent for such practice. Schwartz takes his readers through the chain of events that resulted in the landmark decision, from consolidation of the metropolitan school district through the petition that the plan maintained a system of segregation, to the final busing order. During litigation of *Swann*, *Green* v. *County School Board* finding ruled that "freedom of choice" plans failed the *Brown II* implementation order. This gave strength to the African American plaintiffs in Charlotte. Schwartz writes very well, providing a very readable narrative and a particularly interesting look at the dynamics of the Burger Court.

Thompson, Charles H. "Editorial Comment: Negro Teachers and the Elimination of Segregated Schools." *The Journal of Negro Education* 20, no. 2 (Spring 1951): 135-139.

Thompson expresses concerns that "white" threats to eliminate "black" teaching positions will

dampen enthusiasm for pursuing desegregation. He cites examples from New Jersey and Louisville to support his argument that African American teachers will be retained after integration occurs. Writing from the perspective of 1951, Thompson seeks to encourage his colleagues to continue their efforts for desegregation, rather than bending to white pressure out of economic fear.

Valien, Preston. "The Desegregation Decision--One Year Afterward--A Critical Summary." *The Journal of Negro Education* 24 (1955): 388-396.

Valien reviews the two *Brown* decisions and discusses their impact. Border states adopted a "wait and see" attitude, while southern states rejected the Court's authority. The author also discusses the integration of teachers' organizations. Some teacher integration occurred in border states, with teachers of both races teaching mixed-race classes. The article ends on a hopeful tone, listing future trends whereby integration enhances communication between the races and strengthens the democratic foundation of the country.

Walker, Harry J. "Some Basic Factors Involved in the Development of Community Acceptance of Desegregated Schools." *The Journal of Negro Education* 23 (1954): 372-383.

A professor of sociology, Walker explores sociological dynamics involved in the processes of desegregation and integration. He distinguishes between the two, clarifying that the U.S. Supreme Court had eliminated legal barriers to desegregation, but that integration involved social change on the local level. The article discusses key factors that made the 1950s a dynamic period of change in the United States, but Walker also describes social mores and attitudes that (from a 1954 perspective) may delay true integration in the deep South. Interestingly, Virginia was viewed as a state that would engage in desegregation rather peacefully.

Williams, Juan, Roger Wilkins, and Kristen L. Hayes. "Integration Turns 40." *Modern Maturity* 37, no. 2 (April/May 1994): 24-34.

Three separate articles comprise "Integration Turns 40." Juan Williams discusses the continued existence of racially segregated schools, some by choice (e.g.: Hispanics) and others as a result of "white flight" from inner cities. Roger Wilkins addresses the social ills of economic poverty and social disintegration among African Americans. He stresses the importance of the family unit as a bastion against such problems. In a very brief essay, Kristen L. Hays looks at the effects of *Brown* on Topeka. The case was reopened in 1979 and a desegregation plan ordered in 1994.

-- THE MODERN CIVIL RIGHTS MOVEMENT --

Secondary sources:

Ashmore, Harry S. *Civil Rights and Wrongs: A Memoir of Race and Politics, 1944-1994.* New York: Pantheon Books, 1994.

In his introduction, Ashmore states that his work is not intended to be a history of the struggle for

civil rights, but that it is a memoir. This book covers a broader time span than some of Ashmore's other books. In it, he surveys key events pertaining to desegregation and race relations, and correlates these to political events in the mid-twentieth century. Ashmore does a good job of relating the *Brown* decisions to subsequent actions, such as the desegregation of public accommodations and the implementation of busing in the 1970s.

Blaustein, Albert P., and Robert L. Zangrando. *Civil Rights and the American Negro: A Documentary History.* New York: Washington Square Press, 1968.

Although an older text, this work includes several key documents useful to any study of Brown or African American political history. Readers may find the *Plessy* ruling, the various Civil Rights Acts, each of the five cases incorporated in *Brown* v. *Board of Education*, documents pertaining to the controversy over Little Rock's Central High School, and 1966 federal guidelines on the desegregation of public schools. This resource, therefore, could be listed under a number of categories in this bibliography.

Branch, Taylor. *Parting the Waters: America in the King Years, 1954-1963.* New York: Simon and Schuster, 1988.

The "King years" actually begin prior to Martin Luther King's ascension as leader of the modern civil rights movement. Branch begins with Vernon Johns, who served as pastor of the Dexter Avenue Baptist Church prior to King and whose niece, Barbara Johns, led the student strike in Prince Edward County, Virginia, to protest segregation. His narrative then covers significant events and civil rights activism through those who participated in the movement. Using a journalistic approach, Branch provides mini-biographies of key players within the broader historical contexts of civil rights and U.S. history.

Evers, Mrs. Medgar, with William Peters. *For Us, the Living.* Garden City: Doubleday & Company, Inc., 1967.

This book, published only four years after Medgar Evers' death, takes the reader through a very poignant portrayal of his life and work. Myrlie Evers (now Williams) discusses their work for the NAACP field office in Mississippi, their personal lives together, his murder, failed attempts to prosecute Byron de la Beckwith, and her subsequent move to California. Her story, co-written by William Peters, will move even the most detached and stalwart of readers.

Hampton, Henry, and Steve Fayer, with Sarah Flynn. *Voices of Freedom: An Oral History of the Civil Rights Movement from the 1950s through the 1980s.* New York: Bantam Books, 1990.

This text developed out of the hundreds of oral history interviews conducted for the "Eyes on the Prize" documentary series. Researchers can benefit greatly from this compilation of interviews with a wide variety of individuals, from judges to townspeople, who participated in this civil rights revolution.

McCusker, Kristine M. "'The Forgotten Years' of America's Civil Rights Movement: Wartime Protests at the University of Kansas, 1939-1945." *Kansas History* 17, no. 1 (Spring 1994): 26-37.

Late in the nineteenth century, the racial climate on the University of Kansas' campus was open and integrated. *McCusker points to specific actions by university administrators to restrict African American access to facilities in the 1910s as marking the change in racial attitudes.* Students protested these restrictions and the incident was publicized in *The Crisis*, but attention died down. During World War II, however, students began to question the limits of democratic freedom in the U.S. (represented by racist policies at the university), in light of the fight against Hitler's socialist war machine abroad.

Sitkoff, Harvard. *The Struggle for Black Equality, 1954-1980.* New York: Hill and Wang, 1981.

This is an excellent review of the modern civil rights movement. Sitkoff begins with the demise of *Plessy* v. *Ferguson* as the catalyst for further civil action against discrimination. The authors take their readers through the high points of the movement; including the Montgomery bus boycott, petitions for voting rights, sit-ins, and freedom rides. Sitkoff draws parallels between Martin Luther King's emphasis on non-violent resistance and the teachings of Jesus, Thoreau, and Gandhi, which influenced the young minister. The monograph tracks the influence within the movement, as it switched through time from the more conservative approach of the SCLC, to the student-centered SNCC, and liberals who advocated "Black Power." Sitkoff, with contributing editor, Eric Foner, published a second edition in 1993 which traces civil rights activism through 1992.

-- RELEVANT NEWSPAPERS --

Researchers will find important articles in these, and undoubtedly other, newspapers. Coverage coincided with significant events in the progress of the hearings as well as with each tenth anniversary marking the May 17, 1954, *Brown I*, ruling.

Atlanta Journal-Constitution.

Charleston News & Courier

Los Angeles Times.

Richmond Times-Dispatch.

The Call [Kansas City].

The Chicago Tribune.

The Kansas City Star & Times.

The New York Times.

The Topeka Plaindealer.

The Washington Post.

Topeka Capital Journal [formerly, *Topeka Daily Capital*].

Topeka State Journal.

Virginian Pilot.

Wilmington News-Journal.

-- CULTURAL RESOURCES MANAGEMENT --

Primary sources:

Brown Foundation Collection. Kansas Collection. University of Kansas Libraries. Lawrence, Kansas.

Led by Cheryl Brown Henderson, the Foundation lobbied for the designation of Monroe Elementary School as a National Historic Landmark and for its inclusion in the National Park System. This small collection contains administrative records and correspondence related to these efforts, but little which would contribute to investigations of Monroe Elementary School, the Brown family, or the Topeka desegregation case. The Foundation has collected photographic prints of several key players involved in the school desegregation cases.

"Sumner and Monroe Elementary Schools." Case Files. Kansas State Historic Preservation Office. Topeka, Kansas.

These files provide information about the documentation, physical conditions, and preservation of Monroe and Sumner Elementary Schools. One can find seven black and white, survey-type photographs, circa 1970s, as well as a "paper trail" of correspondence regarding the acquisition of Monroe by the National Park Service.

Secondary sources:

Barker, E. Shannon, James O. Horton, and Dwight T. Pitcaithley. "Humanities and the National Park System." *CRM* 18, no. 2 (1995): 6-7.

This short article announces a significant shift in cultural resource management in the National Park Service (NPS) from a strong emphasis on political history to one which includes events, individuals, and trends in U.S. social history. The authors briefly describe the drafting and implementation of the seminal report, "Humanities and the National Parks: Adapting to Change" issued by the National Park System Advisory Board, which initiated changes in NPS research and interpretive planning.

Baynes, Randall, *et. al.* "Brown v. Board of Education of Topeka: Management Alternatives Study and Environmental Assessment." United States Department of the Interior, National Park Service, Midwest Region. March 1992.

This early planning document was completed at the request of members of the Kansas Congressional delegation. It includes a brief survey of associated cultural resources, a statement of significance, an environmental assessment, a suitability assessment, and a copy of the NHL nomination for Sumner and Monroe Elementary Schools. The report provides management objectives and alternatives drafted prior to the inclusion of the site as a unit of the National Park Service.

Blythe, Robert W., Maureen A. Carroll, and Steven H. Moffson. "Martin Luther King, Jr. National Historic Site, Historic Resource Study." United States Department of the Interior. National Park Service, Southeast Regional Office, Cultural Resources Planning Division. August 1994.

This historic resource study focuses more on architecture than history. The authors cover critical events associated with the development of the black community along Auburn Avenue and with King's national and local leadership in two brief chapters. The rest of the study details architectural resources in the Martin Luther King, Jr., and Sweet Auburn Historic Districts, providing building descriptions, brief histories, maps, photographs, and National Register nominations of the historic districts.

Bureman, Mike, et. al. "General Management Plan/Development Concept Plan/Interpretation and Visitor Experience Plan: Brown v. Board of Education National Historic Site." United States Department of the Interior. National Park Service. Denver Service Center. August 1996.

Bureman served as lead professional of an interdisciplinary team, primarily composed of NPS interpretive planners, architects, landscape architects, and members of the Brown Foundation. This document satisfied many NPS policy mandates concerning the drafting of long-range plans for management and interpretation of the national historic site. It provides a prospectus for rehabilitation of Monroe School, with suggestions for the use of its interior space, as well as instructional concepts and information which staff will convey to its visitors.

Butowsky, Dr. Harry A. "The U.S. Constitution: A National Historic Landmark Theme Study." United States Department of the Interior. National Park Service, History Division. Washington, D.C. December 1986.

Dr. Butowsky conducted a search of properties associated with key constitutional themes, and specifically with the evolution of the U.S. Constitution through its interpretation in landmark litigation. The study coincided with the 200th anniversary of the drafting of the Constitution. Documentation for some of the most outstanding examples, in the form of National Historic Landmark (NHL) nominations, are reproduced here.

Franklin Weekley, Rachel. "Beyond Image and Icon: History's Bounty at the Brown v. Board of Education National Historic Site." *CRM* 19, no 2 (February 1996): 36-38.

This essay dipped into the potentially vast discussion pertaining to the juxtaposition of memory and

history. Since 1954, Linda and Oliver Brown have been elevated to cultural icon status. They serve as symbols for participants in all of the school cases, and as early protagonists in the modern civil rights movement. By representing these other players, the Browns, and others in the forefront, can be used to teach about the less-well known who might have been overlooked.

_____. "From Segregation to Preservation: Monroe Elementary School." *CRM* 20, no. 2 (February 1997): 37-40.

The case study traced the evolution of Monroe from public school, to warehouse, and ultimately to national historic site. Now an NHL, the building's association with *Brown* v. *Board of Education* was largely forgotten by the 1970s. The building barely avoided the auction block in 1991. Once its historical significance was publicly recognized, events fell into place for its preservation as a unit of the National Park System.

Fleming, John E. "African-American Museums, History, and the American Ideal." *The Journal of American History* 81, no. 3 (December 1994): 1020-1026.

Fleming extemporizes on the need for museums to interpret both the bright and dark spots of American history. A survey of historians found that *Brown* v. *Board of Education* ranked as one of the brightest. African American museums bear the mandate to link the values and culture of the black community with its history, and to interpret those through the key artifacts. Fleming reiterates that three institutions, the family, school, and church, embody the cultural values of Africa America. Exhibitions which elaborate on these themes provide pertinent lessons about the past.

Freeman, Allen. "Farmville: A Burden of History." *Historic Preservation* 48, no. 1 (January/ February 1996): 62-67.

Members of the African American community in Prince Edward County, Virginia, rallied to save Robert Russa Moton High School from demolition. The inferior conditions of the facility sparked a student strike on April 23, 1951, and subsequent legal action to end segregation. *Davis* v. *The County Board of Prince Edward County, Virginia*, became one of the celebrated school cases which brought down the "separate but equal" edict and constitutional underpinnings of *de jure* segregation. Moton High, then, retains a very high level of historical significance for its association with these events and should be preserved accordingly.

Garrison, J. Ritchie. Unpublished paper. "Under an Armistice: A Report on the Redding House, 203 East Tenth Street, Wilmington, Delaware." Prepared for the State of Delaware, Department of State, Division of Historical and Cultural Affairs. June 1992.

Researchers can gain some vital information about the family and home shared for a brief period by three siblings; Saunders, Louis, and Gwendolyn Redding. The Reddings facilitated educational opportunities for African American in Delaware and Louis represented the respondents in *Gebhart* v. *Belton* (1952) before the Supreme Court. Garrison describes some crucial difficulties of preserving this property, namely the resistance of Gwendolyn Redding. He, nevertheless, outlines a brief architectural description, collections statement, and family history. Garrison also provides recommendations to protect the property and Louis Redding's papers, along with a realistic assessment of potential problems with preservation efforts in this instance.

Newman Ham, Debra, ed., *et. al.* *The African-American Mosaic: A Library of Congress Resource Guide for the Study of Black History & Culture.* Washington, D.C.: The Library of Congress, 1993.

A professional team has compiled a wonderful guide to the library's graphic and textual resources pertaining to African American history and culture. Ham, serving as editor, organized chapters chronologically. In each, contributors provide a general background history, placing primary resources in context, and recommending secondary resources to supplement research at the Library of Congress.

"NPS-28: Cultural Resource Management Guideline." Release No. 4. United States Department of the Interior. National Park Service. July 1994.

This policy manual explains NPS policy regarding the management of cultural resources within the National Park System. In doing so, it also reviews relevant legislation, provides general guidance for resource protection, and describes specific research tools (i.e.: historic resource studies) which can contribute to the wise management of historic resources. NPS-28 serves as a core document for NPS professionals because it assimilates law, policy, and planning.

Paige, John C., *et. al.* "Underground Railroad: Special Resource Study, Management Concepts/Environmental Assessment." United States Department of the Interior. National Park Service. Denver Service Center. September 1995.

The NPS received a congressional mandate in 1990 to survey and analyze significant historic resources related to the underground railroad. This is defined as every available route which African Americans used to escape the bonds of slavery prior to, and during, the Civil War. This study draws attention to related resources, their historical contexts, African Americans who used them to

reach freedom, and persons who aided them along their journeys. Such analysis identifies nationally significant resources and assesses their eligibility for addition to the National Park System.

Powell, Anne Elizabeth. "Unfinished Business." *Historic Preservation* 46, no. 3 (May/June 1994): 56-61, 99-101.

Powell writes about the commemoration of the fortieth anniversary of the *Brown* decision. She discusses the history of the case and its effects on the broader civil rights movement, but notes the delays in true racial integration. The article touches on the establishment of the historic site and provides 1994 photographs of Monroe Elementary School.

Pratt, Robert A. "Segregation Overruled." *National Parks* 67, nos. 9-10 (September/October 1993): 34-39.

This brief article gives a very good, very concise historical overview of events leading up to the legal challenge enacted in *Brown*, focusing on associated cultural resources. It draws on Kluger's *Simple Justice* for local history on race relations in Topeka. Published by the National Parks and Conservation Association, this periodical notes the establishment of the Brown v. Board of Education National Historic Site and remarks on initial planning objectives for the park's interpretative programs.

Savage, Beth L., ed. *African American Historic Places.* Washington, D.C.: The Preservation Press, National Trust for Historic Preservation, 1994.

Savage divided this beautiful reference into two major sections. Eight authors provide essays on aspects of African American history and preservation in the first section. The remainder of the book contains succinct descriptions of properties, organized by state and county and cross-referenced by theme, that are currently listed on the National Register of Historic Places. Several contributors collaborated to make this a very useful guide.

Smith, Roland, Sarah Heath, Denise Hopkins, Scotney Fenton, and David Hurley. "Monroe Elementary School, Shawnee County, Kansas." Historic American Buildings Survey. Draft Report No. KS-67. United States Department of the Interior. National Park Service. Midwest Region. 1992.

The HABS report contains two major sections, plus architectural drawings, maps, and documentary photographs of the building. The first section provides a general history of African Americans in Topeka, the construction and use of Monroe, and the trail of the desegregation case. The second section gives an architectural analysis and description of the building. While the report provides a good, cursory overview of the school's physical condition and its historic context, both architects and historians have pointed out serious errors and misleading statements made therein.

Stevens, Donald L., Jr. "Cultural Resources Inventory and Assessment of Historical Research Related to Brown v. Board of Education National Historic Site." United States Department of the Interior. National Park Service, Midwest Region. Office of Planning and Resource Preservation, Cultural Resources Management, Branch of History. February 1994.

Dr. Stevens offers a comprehensive assessment of the key events in the *Brown* case, its historical significance, history themes represented by the National Historic Site, and an overview of pertinent research on the topic. He also provides a summary of "cultural resources study needs" in accordance with National Park Service policy mandates. Researchers would be wise to note Stevens' extensive bibliography and the appended outline of interpretive themes written by Dr. Harry Butowsky.

Tagger, Barbara, *et. al.* "Selma to Montgomery National Trail Study: A Study of the Voting Rights March of 1965." United States Department of the Interior. National Park Service, Southeast Regional Office. April 1993.

The Selma to Montgomery National Trail was established by legislation included in the Omnibus Bill, passed in October 1996. This preliminary study provided documentation of the physical resources, the historical context of the voting rights march of 1965 (which occurred along this corridor), and a record of events associated with the protest march.

Washington, Sandra, *et. al.* "Nicodemus, Kansas: Special Resource Study." United States Department of the Interior, National Park Service, Midwest Region. May 1993.

The National Park Service undertook this special resource study to assess the district's potential suitability for inclusion as a unit of the park system. It contains a brief history which touches on African American migration in the 1870s and the colony's founding in 1877. Resource inventories list the district's historic

properties and provides some preliminary assessments of their physical condition.

Williams, Sherda, and David Barnes. "Monroe Elementary School, Topeka, Kansas." Cultural Landscape Inventory, Levels I & II. United States Department of the Interior. National Park Service, Midwest Regional Office. February 1995.

This report contains cursory information on Monroe's construction in 1926, maintenance, and use of the building through 1992. Its greatest strength lies in the extensive reminiscences of Topekans who attended Monroe Elementary and those who worked at the school. These individuals discuss land-use patterns and building maintenance. Williams edited Barnes' Level II inventory report to provide readers with useful charts, maps, and illustrations and added a Determination of Eligibility for the cultural landscape, which amends the property's 1991 NHL nomination.

NRHP and NHL Nominations of Associated Properties:

Brizzolara, Susan. "Iron Hill School Number 112C." Newark, New Castle County, Delaware. National Register of Historic Places Nomination. United States Department of the Interior. National Park Service. North Atlantic Region. 24 April 1995.

Butowsky, Dr. Harry A. "Sumner Elementary School." Topeka, Shawnee County, Kansas. National Register of Historic Places Nomination. United States Department of the Interior. National Park Service. Midwest Region. 4 May 1987.

_____. "Supreme Court Building." District of Columbia. National Register of Historic Places Nomination. United States Department of the Interior. National Park Service. National Capital Region. 1987.

_____ and Martha Hagedorn-Krass. "Sumner Elementary School & Monroe Elementary School." Topeka, Shawnee County, Kansas. National Historic Landmark Nomination. United States Department of the Interior. National Park Service, History Division. Washington, D.C. 6 November 1991.

Chapel, Dan, and Dianna Kirk. "Little Rock High School." Little Rock, Pulaski County, Arkansas. National Register of Historic Places Nomination. United States Department of the Interior. National Park Service. Midwest Region. 19 August 1977.

Garrison, J. Ritchie. "Under an Armistice: A Report on the Redding House." Preservation Prospectus. Prepared for the Division of Historical and Cultural Affairs, Department of State, State of Delaware. June 1992.

Greenlee, Marcia M. "Dexter Avenue Baptist Church." Montgomery, Montgomery County, Alabama. National Register of Historic Places Nomination. United States Department

of the Interior. National Park Service. Southeast Region. 7 January 1974.

Jackson, Jarl K., and Julie L. Vosmik. "Robert Russa Moton High School." Farmville, Prince Edward County, Virginia. National Register of Historic Places Nomination. United States Department of the Interior. National Park Service. Southeast Region. 24 October 1995.

Lee, Antoinette J. "M Street High School." District of Columbia. National Register of Historic Places Nomination. United States Department of the Interior. National Park Service. National Capital Region. 23 October 1986.

Maley, Patricia A. "Howard High School." Wilmington, New Castle County, Delaware. National Register of Historic Places Nomination. United States Department of the Interior. National Park Service. North Atlantic Region. 2 January 1985.

Mertins, Ellen, and Mary Ann Neeley. "Pastorium, Dexter Avenue Baptist Church." Montgomery, Montgomery County, Alabama. National Register of Historic Places Nomination. United States Department of the Interior. National Park Service. Southeast Region. 10 March 1982.

Pankratz, Richard D. "The Menninger Clinic Building." Topeka, Shawnee County, Kansas. National Register of Historic Places Nomination. United States Department of the Interior. National Park Service. Midwest Region. 13 February 1975.

_____. "State Capitol." Topeka, Shawnee County, Kansas. National Register of Historic Places Nomination. United States Department of the Interior. National Park Service. Midwest Region. 3 September 1971.

Pfanz, Donald C. "Lincoln Memorial." District of Columbia. National Register of Historic Places Nomination. United States Department of the Interior. National Park Service. National Capital Region. Listed, 15 October 1966. Documented, 24 March 1981.

Power, J. Tracy, and Andrew W. Chandler. "Summerton High School." Summerton, Clarendon County, South Carolina. National Register of Historic Places Nomination. United States Department of the Interior. National Park Service. Southeast Region. 26 August 1994.

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