

BROWN V. BOARD OF EDUCATION RE-ENACTMENT

This activity is a re-enactment of the landmark case *Brown v. Board of Education*.

About These Resources

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How to Use These Resources

Assignments. The teacher gives each speaker a scripted part to read.

Speaking Parts. Twelve students have speaking parts. One speaker is a student greeter and another is a narrator. All others are historical characters (e.g. Thurgood Marshall, Chief Justice Earl Warren).

Practice. The historical figure practices his/her lines with a partner prior to the re-enactment.

Performance. Students take their places at assigned spots where they stand to speak.

For additional information, see:

- Teacher's Domain: [Brown: A Landmark Case](#)

HISTORY OF BROWN V. BOARD OF EDUCATION

The Plessy Decision

Although the Declaration of Independence stated that "All men are created equal," due to the institution of slavery, this statement was not to be grounded in law in the United States until after the Civil War (and, arguably, not completely fulfilled for many years thereafter). In 1865, the Thirteenth Amendment was ratified and finally put an end to slavery. Moreover, the Fourteenth Amendment (1868) strengthened the legal rights of newly freed slaves by stating, among other things, that no state shall deprive anyone of either "due process of law" or of the "equal protection of the law." Finally, the Fifteenth Amendment (1870) further strengthened the legal rights of newly freed slaves by prohibiting states from denying anyone the right to vote due to race.

Despite these Amendments, African Americans were often treated differently than whites in many parts of the country, especially in the South. In fact, many state legislatures enacted laws that led to the legally mandated segregation of the races. In other words, the laws of many states decreed that blacks and whites could not use the same public facilities, ride the same buses, attend the same schools, etc. These laws came to be known as Jim Crow laws. Although many people felt that these laws were unjust, it was not until the 1890s that they were directly challenged in court. In 1892, an African-American man named Homer Plessy refused to give up his seat to a white man on a train in New Orleans, as he was required to do by Louisiana state law. For this action he was arrested. Plessy, contending that the Louisiana law separating blacks from whites on trains violated the "equal protection clause" of the Fourteenth Amendment to the U.S. Constitution, decided to fight his arrest in court. By 1896, his case had made it all the way to the United States Supreme Court. By a vote of 8-1, the Supreme Court ruled against *Plessy*. In the case of *Plessy v. Ferguson*, Justice Henry Billings Brown, writing the majority opinion, stated that:

"The object of the [Fourteenth] amendment was undoubtedly to enforce the equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to endorse social, as distinguished from political, equality. . . If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane."

The lone dissenter, Justice John Marshal Harlan, interpreting the Fourteenth Amendment another way, stated, "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens." Justice Harlan's dissent would become a rallying cry for those in later generations that wished to declare segregation unconstitutional.

Sadly, as a result of the *Plessy* decision, in the early twentieth century the Supreme Court continued to uphold the legality of Jim Crow laws and other forms of racial discrimination. In the case of *Cumming v. Richmond (Ga.) County Board of Education* (1899), for instance, the Court refused to issue an injunction preventing a school board from spending tax money on a white high school when the same school board voted to close down a black high school for financial reasons. Moreover, in *Gong Lum v. Rice* (1927), the Court upheld a school's decision to bar a person of Chinese descent from a "white" school.

The Road to Brown

(Note: Some of the case information is from *Patterson, James T. Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy. Oxford University Press; New York, 2001.*)

Early Cases

Despite the Supreme Court's ruling in *Plessy* and similar cases, many people continued to press for the abolition of Jim Crow and other racially discriminatory laws. One particular organization that fought for racial equality was the National Association for the Advancement of Colored People (NAACP) founded in 1909. For about the first 20 years of its existence, it tried to persuade Congress and other legislative bodies to enact laws that would protect African Americans from lynchings and other racist actions. Beginning in the 1930s, though, the NAACP's Legal Defense and Education Fund began to turn to the courts to try to make progress in overcoming legally sanctioned discrimination. From 1935 to 1938, the legal arm of the NAACP was headed by Charles Hamilton Houston. Houston, together with Thurgood Marshall, devised a strategy to attack Jim Crow laws by striking at them where

they were perhaps weakest—in the field of education. Although Marshall played a crucial role in all of the cases listed below, Houston was the head of the NAACP Legal Defense and Education Fund while *Murray v. Maryland* and *Missouri ex rel Gaines v. Canada* were decided. After Houston returned to private practice in 1938, Marshall became head of the Fund and used it to argue the cases of *Sweat v. Painter* and *McLaurin v. Oklahoma Board of Regents of Higher Education*.

Pearson v. Murray (Md. 1936)

Disappointed that the University of Maryland School of Law was rejecting black applicants solely because of their race, beginning in 1933 Thurgood Marshall (who was himself rejected from this law school because of its racial acceptance policies) decided to challenge this practice in the Maryland court system. Before a Baltimore City Court in 1935, Marshall argued that Donald Gaines Murray was just as qualified as white applicants to attend the University of Maryland's School of Law and that it was solely due to his race that he was rejected. Furthermore, he argued that since the "black" law schools which Murray would otherwise have to attend were nowhere near the same academic caliber as the University's law school, the University was violating the principle of "separate but equal." Moreover, Marshall argued that the disparities between the "white" and "black" law schools were so great that the only remedy would be to allow students like Murray to attend the University's law school. The Baltimore City Court agreed and the University then appealed to the Maryland Court of Appeals. In 1936, the Court of Appeals also ruled in favor of Murray and ordered the law school to admit him. Two years later, Murray graduated.

Missouri ex rel Gaines v. Canada (1938)

Beginning in 1936, the NAACP Legal Defense and Education Fund decided to take on the case of Lloyd Gaines, a graduate student of Lincoln University (an all-black college) who applied to the University of Missouri Law School but was denied because of his race. The State of Missouri gave Gaines the option of either attending an all-black law school that it would build (Missouri did not have any all-black law schools at this time) or having Missouri help to pay for him to attend a law school in a neighboring state. Gaines rejected both of these options, and, employing the services of Thurgood Marshall and the NAACP Legal Defense and Education Fund, he decided to sue the state in order to attend the University of Missouri's law school. By 1938, his case reached the U.S. Supreme Court, and, in December of that year, the Court sided with him. The six-member majority stated that since a "black" law school did not currently exist in the State of Missouri, the "equal protection clause" required the state to provide, within its boundaries, a legal education for Gaines. In other words, since the state provided legal education for white students, it could not send black students, like Gaines, to school in another state.

Sweat v. Painter (1950)

Encouraged by their victory in Gaines' case, the NAACP continued to attack legally sanctioned racial discrimination in higher education. In 1946, an African American man named Herman Sweat applied to the University of Texas' "white" law school. Hoping that it would not have to admit Sweat to the "white" law school if a "black" school already existed, elsewhere on the University's campus, the state hastily set up an underfunded "black" law school. At this point, Sweat employed the services of Thurgood Marshall and the NAACP Legal Defense and Education Fund and sued to be admitted to the University's "white" law school. He argued that the education that he was receiving in the "black" law school was not of the same academic caliber as the education that he would be receiving if he attended the "white" law school. When the case reached the U.S. Supreme Court in 1950, the Court unanimously agreed with him, citing as its reason the blatant inequalities between the University's law school (the school for whites) and the hastily erected school for blacks. In other words, the "black" law school was "separate," but not "equal." Like the Murray case, the Court found the only appropriate remedy for this situation was to admit Sweat to the University's law school.

McLaurin v. Oklahoma Board of Regents of Higher Education (1950)

In 1949, the University of Oklahoma admitted George McLaurin, an African American, to its doctoral program. However, it required him to sit apart from the rest of his class, eat at a separate time and table from white students, etc. McLaurin, stating that these actions were both unusual and resulting in adverse effects on his academic pursuits, sued to put an end to these practices. McLaurin employed Thurgood Marshall and the NAACP Legal Defense and Education Fund to argue his case, a case which eventually went to the U.S. Supreme Court. In an opinion delivered on the same day as the decision in *Sweat*, the Court stated that the University's actions concerning McLaurin were adversely affecting his ability to learn and ordered that they cease immediately.

Brown v. Board of Education (1954, 1955)

The case that came to be known as *Brown v. Board of Education* was actually the name given to five separate cases that were heard by the U.S. Supreme Court concerning the issue of segregation in public schools. These cases were *Brown v. Board of Education of Topeka*, *Briggs v. Elliot*, *Davis v. Board of Education of Prince Edward County (VA.)*, *Boiling v. Sharpe*, and *Gebhart v. Ethel*. While the facts of each case are different, the main issue in each was the constitutionality of state-sponsored segregation in public schools. Once again, Thurgood Marshall and the NAACP Legal Defense and Education Fund handled these cases.

Although it acknowledged some of the plaintiffs'/plaintiffs claims, a three-judge panel at the U.S. District Court that heard the cases ruled in favor of the school boards. The plaintiffs then appealed to the U.S. Supreme Court.

When the cases came before the Supreme Court in 1952, the Court consolidated all five cases under the name of *Brown v. Board of Education*. Marshall personally argued the case before the Court. Although he raised a variety of legal issues on appeal, the most common one was that separate school systems for blacks and whites were inherently unequal, and thus violate the "equal protection clause" of the Fourteenth Amendment to the U.S. Constitution. Furthermore, relying on sociological tests, such as the one performed by social scientist Kenneth Clark, and other data, he also argued that segregated school systems had a tendency to make black children feel inferior to white children, and thus such a system should not be legally permissible.

Meeting to decide the case, the Justices of the Supreme Court realized that they were deeply divided over the issues raised. While most wanted to reverse *Plessy* and declare segregation in public schools to be unconstitutional, they had various reasons for doing so. Unable to come to a solution by June 1953 (the end of the Court's 1952-1953 term), the Court decided to rehear the case in December 1953. During the intervening months, however, Chief Justice Fred Vinson died and was replaced by Gov. Earl Warren of California. After the case was reheard in 1953, Chief Justice Warren was able to do something that his predecessor had not—i.e. bring all of the Justices to agree to support a unanimous decision declaring segregation in public schools unconstitutional. On May 14, 1954, he delivered the opinion of the Court, stating that "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. . ."

Expecting opposition to its ruling, especially in the southern states, the Supreme Court did not immediately try to give direction for the implementation of its ruling. Rather, it asked the attorney generals of all states with laws permitting segregation in their public schools to submit plans for how to proceed with desegregation. After still more hearings before the Court concerning the matter of desegregation, on May 31, 1955, the Justices handed down a plan for how it was to proceed; desegregation was to proceed with "all deliberate speed." Although it would be many years before all segregated school systems were to be desegregated, *Brown* and *Brown II* (as the Courts plan for how to desegregate schools came to be called) were responsible for getting the process underway.

RE-ENACTMENT

1) **Student Greeter:** You may wonder what difference landmark Supreme Court decisions make in our lives – today. You might be surprised to find out that students our age have brought cases to the Supreme Court. Did you know that one of the most famous cases in American history – *Brown v. Board of Education* – started with an elementary school girl? Linda Brown was one of the many brave students in the 1950s and 1960s who challenged what was happening around them. She has something to say to us that matters even today.

2) **Linda Brown:** Hi, I'm Linda Brown. Even though there was an elementary school close to my house, my sister and I had to go to an all-Black school much farther away. We had to get up really early and walk, then take a bus, to the Monroe School in Topeka, Kansas.

We weren't allowed to go to the Sumner School that was closer to us because it was for white children only. Even though some schools in my community were open to everybody, a Kansas law allowed the Board of Education of Topeka to establish segregated elementary schools like the all-white Sumner School in my neighborhood and the all-black Monroe School that I had to attend.

With the help of our lawyer Thurgood Marshall, my family and I sued the Board of Education. Children in other states had the same problem as we did, so when we took our case to the Supreme Court of the United States, the Court combined our cases.

The Court struck down the laws allowing segregated schools. The Justices said that separate is not equal. They ruled that laws segregating students by race were unconstitutional. Today we'll hear from the people whose courage, intelligence, and determination changed history for all of us, starting with Mr. Homer Plessy.

3) **Homer Plessy:** My name is Homer Plessy. I was arrested for not giving up my seat to a white man on a train in New Orleans. I decided to challenge my arrest in court. My lawyer argued that separating blacks from whites on the train violated the Fourteenth Amendment.

My case made it all of the way to this court. The Court ruled against me in the case of *Plessy v. Ferguson*. The Court said that the states could legally segregate the races, as long as each race was treated "equally." This came to be known as "separate but equal." You can imagine how disappointed I was because for many years courts used my case as an example of supporting segregation.

4) **Charles Hamilton Houston:** My name is Charles Hamilton Houston. I was a professor and civil rights lawyer. I saw how segregation between African Americans and whites led to unequal conditions. I made up my mind to establish a record of court victories that showed that separate institutions are NOT equal. This argument was taken up by several of my law students, including Thurgood Marshall and Oliver Hill.

5) **Oliver Hill:** My name is Oliver Hill and I was a lawyer. I went to court and won equal pay for black teachers and equal transportation rights for black students. I also won a case that showed the run-down and unequal conditions of schools attended by black students. It was one of the five cases included in the *Brown v. Board of Education* case, which later outlawed segregation in public schools.

6) **Constance Baker Motley:** My name is Constance Baker Motley. When I was a girl, I wasn't allowed to go to a public skating rink or to the beach because of my race. So I decided to become a civil rights attorney. I worked with Thurgood Marshall on *Brown v. Board of Education*. Some people called me a lion for civil rights. In 1966 – about the time some of your parents were born – I became the first African American woman to become a federal judge.

7) **Dr. Kenneth B. Clark:** My name is Dr. Kenneth B. Clark. My wife Dr. Mamie Clark and I were psychologists who worked together on what were known as the "doll experiments." They were used by Thurgood Marshall to show that racial segregation sets the stage for African Americans to lose out on equal opportunities.

8) **Dr. Mamie Clark:** I am Dr. Mamie Clark. Our work started with my master's degree paper. In our experiments, we had African American children look at a set of white dolls and black dolls. They had to tell us which dolls they liked and wanted to play with. Most African American children chose the white dolls. They described them as better than the black dolls. These experiments showed the terrible impact that racism has – even on children.

9) **Thurgood Marshall:** My name is Thurgood Marshall. The first time I saw the Constitution was when I was forced to read it as a punishment for a prank at school. Reading the Constitution was supposed to teach me not to pull pranks. Instead, it inspired me to become a lawyer and fight against discrimination. I went to the Howard University School of Law. After graduation, I worked for the NAACP and successfully argued many cases before the U.S. Supreme Court.

Brown v. Board of Education was actually five school cases under one name, which showed that separate schools were not equal. Eventually, I became the first African American Justice to serve on the Supreme Court. Today you are going to hear a summary of my argument to the Supreme Court in *Brown v. Board of Education*.

10) **Thurgood Marshall Closing Argument Reader:** I got the feeling when I heard the discussion in this court yesterday that when you put a white child in a school with a whole lot of colored children, the white child would fall apart, or something. Everybody knows that is not true. Those same kids in Virginia and South Carolina—and I have seen them do it—they play in the streets together, they play on their farms together, they go down the road together, but they separate to go to school, they come out of school and play ball together. But they have to be separated in school. There must be some magic to it. You can have them voting together, you can have them live in the same neighborhoods. You can have them going to the same state university and the same college, but if they go to elementary and high school together, the world will fall apart.

11) **Chief Justice Earl Warren:** My name is Earl Warren. I was the Chief Justice of the United States at the time that the case of *Brown v. Board of Education* was argued. After hearing the case, all nine of us decided that segregation was not legal. Here is a section of the Court's decision, in the words of some eighth graders.

12) **Chief Justice Earl Warren: Opinion Reader:** Education is the key to good citizenship. In school, children learn cultural values, prepare for careers, and to be successful in life. It is doubtful that any child can succeed in life if denied education. Education is a right that must be made available to all on equal terms. Separate schools are unequal.