

## **Black/White & Brown**

### Brown versus the Board of Education of Topeka

[Fade up on newsreel footage of President Eisenhower addressing a large crowd]

Newsreel Title: "FREEDOM SPEECH: President Pleads for Race Equality"

Newsreel narrator: President Eisenhower addresses the Freedom Fulfillment conference of the National Association for the Advancement of Colored People in Washington, D.C. National leaders of the group hear the president assure his support for their objectives as the NAACP launches the strongest drive in its history.

Pres. Eisenhower: But I believe that this struggle -- this one that in your case now has gone on for lo these many decades -- is producing results. On the part of this administration, I've stated my own personal view many times before the election; I have tried to state it since. Wherever the federal authority clearly extends, I will do the utmost that lies within my power to bring into living reality this expression of equality among all men who are citizens of this country.

Narrator (Bill Kurtis): President Eisenhower's address to the NAACP in the summer of 1954 came two months after the United States Supreme Court handed down one of its most momentous rulings. On May 17<sup>th</sup> of 1954, the Court announced its decision in a landmark case that would radically alter the course of American history, opening a new chapter in race relations and civil rights.

The ruling involved appeals brought before the Supreme Court by plaintiffs in four states and the District of Columbia. Each case was unique and has its own story to tell. This program concentrates on the experiences of those associated with the case that originated in Kansas -- the one that received top billing in the Supreme Court's decision -- Brown versus the Board of Education of Topeka.

### **[Insert Program titles/music]**

Narrator: The decision rendered by the Supreme Court in 1954 is often referred to simply as "Brown v Board." The full title of the ruling cites Oliver L. Brown as the lead plaintiff. A lifelong resident of Topeka, Kansas, Oliver Brown was employed as a welder in the shops of the Santa Fe Railroad. He also served as an assistant pastor at a local church. He passed away in 1961, but his youngest daughter, Cheryl Brown Henderson, continues to play an active role in educating others about this case and her family's role in it.

Cheryl Brown Henderson: The neighborhood we lived in was an integrated neighborhood along First Street. And every morning, the African-American children that lived along that stretch -- that block or two -- would head off in one direction and the white children living next door would head off in another direction. And for the children, I don't think it was problematic, you know kids are very accepting of how they live. The

African-American schools were good schools. The facilities were built by the same person so we're not talking about substandard facilities with leaky roofs and outhouses like they were in the South. The teachers were well trained; many of them had advanced degrees, so we weren't talking about a poor education, you know. We're not talking about having to walk miles because in South Carolina the children walked ten miles. In Topeka, they walked a few blocks and caught a bus. So we weren't talking about real hardships here. We were talking about the principle of the thing.

Narrator: In the 1940s and early '50s, there were eighteen elementary schools for Caucasian children in Topeka and four for African-Americans. The system of segregated schools was based upon a state law enacted in 1879 ... a law that had been challenged many times.

Cheryl Brown Henderson: And that law, in essence, was two tiered. It said that only cities of a certain size, 15,000 or more, could have segregated schools and then **only** elementary schools. So those early cases, many of them that were in small towns like Ottawa and Parsons and Galena, were successful in the state Supreme Court. Because according to state law, they were second-class cities and could not have segregated schools. So Topeka, Wichita, Kansas City -- the larger communities had segregated elementary schools, and that's what the Brown case in Kansas was challenging unlike its companion cases in the other states.

### **everything wasn't just right**

Narrator: In the other states that would become associated with the case known as Brown v Board, there were significant disparities between schools for whites and those for blacks. Such was **not** the case in Topeka, as those who attended the black schools will attest. A former chief of the Topeka fire department, Joe Douglas looks back upon his years in Monroe Elementary with great fondness and appreciation....

Joe Douglas: Well, it was one of the greatest experiences ... looking back over my life, the greatest educational experiences that I could ever have. And I would wish that for every child that you have, could have the kind of nurturing and the kind of individual attention to the fact that you are learning and progressing that I had at that time. The teachers were excellent at that time.

Jack Alexander: And part of that was because these teachers couldn't teach any place other than at black schools so they were constantly honing their skills because they didn't have anything else to do. There was a time when black teachers couldn't even be married.

Narrator: In the early 1970s, Jack Alexander became the first African-American elected as a city official in Topeka, serving as water commissioner. Through sixth grade, he attended Washington Elementary.

Jack Alexander: Yes, I always felt that the black teachers, simply because the pool was so large that you got the best of the best. "

Merrill Ross: I came to Topeka in 1944 to teach at the intermediate level of the black schools.

Narrator: Merrill Ross served as a teacher, coach and principal in the Topeka school system for almost 30 years. A native of Kentucky, Merrill saw Kansas as a land of opportunity.

Merrill Ross: In 1940, my dad's sister that had come to Coffeyville, Kansas, to live encouraged me to come to Kansas because she felt that the Kansas schools were a little bit better than what Kentucky schools were offering.

Narrator: On a trip to Ohio to recruit new teachers for Topeka, Merrill met his future wife Barbara. She came to Topeka in 1947 and began teaching at Washington Elementary ... one of the four schools for blacks....

Barbara Ross: I feel they were good schools. They had qualified black teachers ... very qualified. Many people ... well, I'll say some people ... felt that the supplies and things that were furnished in the buildings were not comparable with those in the white schools only because they were probably older buildings. They had the same books and we've heard a lot of things about that. But they had the same books that the others had because so many of the black teachers were on the committees to select the books -- the textbooks. So we know we had the same books that they did.

It's true -- everything wasn't just right because the things in the community weren't just right. We couldn't go eat any place. We couldn't go to the theater and sit any place. We couldn't live in an apartment or go to a motel; we had to stay with a black family when we came here to teach.

Jack Alexander: I think racism was that subtle thing. If I wanted a hamburger, there were places where I could go buy a hamburger -- they'd put it in that sack and I'd have to take it and leave. You could not eat at the downtown lunch counters.

Joe Douglas: The theaters were segregated; restaurants were segregated. There was always somebody tellin' you could or you couldn't come in.

Jack Alexander: I knew that when I go to a theatre ... if I went to the Grand Theatre, I had to sit up in one corner. And if that corner was full, I couldn't even go to the theatre ... even if half of the other theatre was empty.

Joe Douglas: Looking back on it now, you know, it was a lot worse than I could have imagined at that time.

Narrator: In 1942, a new superintendent of schools took control in Topeka. With degrees from Stanford and Columbia University, Dr. Kenneth McFarland became a popular author and public speaker. Sponsored by Reader's Digest and General Motors, he traveled throughout the nation, speaking about what he considered to be core American values. As Topeka's superintendent, he firmly supported the maintenance of the status

quo when it came to race relations. He hired a director of Negro education, who strongly encouraged the African-American students to keep to themselves.

Barbara Ross: And the thing that is so strange, too, is just to have the elementary segregated, go in to junior high and high school integrated, however, their social activities were still separate. There were separate kings and queens and separate basketball teams like that ... because Merrill coached the Ramblers for about 4 years and Topeka High had the Trojans.

Jack Alexander: When I went to Topeka High School, I had no frame of reference about the Topeka Trojans ... I was gonna play for the Topeka Ramblers. We only played against black teams. I guess the thing that I remember most is that we had to stay at people's houses rather than in a hotel. We had to eat ... if there was a black restaurant, we had to eat there. Otherwise, accommodations weren't that good. ... That system, I think, just kinda passed down. I guess for myself, I would have to say I followed what I saw in front of me. You know, I had parents who told me I could do anything, but I could watch them and also see that they couldn't.

[Insert poem by Langston Hughes]

Langston Hughes: "I, too, sing America. I am the darker brother. They send me to eat in the kitchen when company comes, but I laugh and eat well and grow strong. Tomorrow I'll be at the table when company comes. Nobody'll dare say to me 'eat in the kitchen' then. Besides, they'll see how beautiful we are and be ashamed. I, too, am America."

Narrator: The poet Langston Hughes spent his childhood years in Topeka and nearby Lawrence, Kansas. This leading figure of the Harlem renaissance drew upon the adversity he encountered as a youth to fuel his passion for a more civilized world. His prose and poetry was a harbinger of the change that was afoot in America.

Jack Alexander: One of the bigger things which started to affect it was also the change in the military that was happening at that time. We had guys going in and coming out and were experiencing other things. But yeah, I think from that point on, things started to change."

### **a rallying cry**

[Newsreel footage of Pres. Truman speaking]

Newsreel Narrator: In a Lincoln's Day address to a gathering of ten thousand before the memorial to the Great Emancipator in Washington, President Truman strongly advocates freedom and equality for all United States citizens.

Pres. Harry Truman: Our immediate task is to remove the last remnants of the barriers which stand between millions of our citizens and their birthright. There is no justifiable reason for discrimination because of ancestry or religion or race or color.

Narrator: In 1948, President Truman issued executive orders desegregating the federal government and the armed forces. Many of those who first began to express a desire for change in the larger society were black veterans who felt it was high time that all Americans be afforded the same rights. It was apparent that one of the first things that could be changed was the system of segregated schooling. While many black families in Topeka may have been satisfied with their schools, a move got under way to challenge the system. It was led by the U.S. Army veteran McKinley Burnett....

Cheryl Brown Henderson: So basically, McKinley Burnett who was the NAACP chairperson really issued a rallying cry, if you will, for two years – 1948 to 1950. Mr. Burnett attended every single school board meeting. He would take petitions with him on occasion, but really trying to get on that public comment part of the agenda so that he could talk about this business of simply opting to integrate the public elementary schools in Topeka. Well, unfortunately, Mr. Burnett never had a chance to be heard out. He never had a chance to say his piece.

Narrator: McKinley Burnett was 52 years old when he took over the leadership of the Topeka chapter of the NAACP in 1948. According to the book *Simple Justice*, he was employed as a stock clerk in the local Veterans Administration hospital.

Maurita Davis: I can remember he did not take a vacation. He saved his vacation time to go to the board meetings, board of education meetings because they would set them at a time when he had to be at work. So he couldn't come. But he, as I say, saved all of his leave, so he could come to the board meetings. So, as the book tells about him going to a school board meeting right before they filed and him giving them an ultimatum saying: "If you don't ... we will file the case." And one man ... one of the school board members said: "Well, I'll you, Mr. Burnett, let's just go outside and fight." And my father said, "No, that's not the way I settle things."

Narrator: After patiently enduring the continued snubbing by the Topeka school board, McKinley Burnett decided to forge ahead with a legal challenge. He joined forces with the Scott family law firm, founded by Elisha Scott -- a black attorney who had been actively litigating discrimination cases in Kansas since the days of the first world war.

Charles Scott: My grandfather graduated from law school in 1916 -- Washburn Law School. And decades before Brown, he was bringing cases in Kansas and throughout the country to gain admission for black children to attend public schools.

Narrator: Following in their father's footsteps, John and Charles Scott joined his law firm after *their* graduation from Washburn University Law School, continuing to press for integration and racial equality.

Charles Scott: My father, my uncle -- John Scott, and an attorney named Charles Bledsoe -- they were exploring ways to mount a challenge to challenge segregation in the Topeka public school system.

Narrator: In addition to McKinley Burnett and the attorneys at the Scott law firm, another person played a key role in this effort to desegregate public schools -- her name was Lucinda Todd. Michael Blevins remembers her as his fifth grade teacher in an integrated classroom of the late 1950s....

Michael Blevins: I knew at the time that she was an awesome teacher. I remember the first day of school, walking in to her class and being...I know my...I can still sense this, my jaw dropping open with her grace, with her beauty, with her dignity and her affection. She was truly committed all of her life to elementary age children.

Narrator: Mrs. Todd was unhappy with the status quo in Topeka for a number of reasons. Her primary reason for becoming involved with the NAACP related to her concern about the educational opportunities afforded her daughter....

Michael Blevins: They did not have music programs in the black elementary schools. And Nancy was very gifted musically -- Mrs. Todd's daughter. And it incensed Mrs. Todd that Nancy did not have access to basic music programs in school like white kids had.

Narrator: With a great deal of passion and enthusiasm, Lucinda Todd accepted a job as McKinley Burnett's assistant at the Topeka NAACP. She hosted visitors from out of town and often provided a meeting space in her own home.

Michael Blevins: They met once in a while somewhere else, but most of the time they met in the Todd home in the dining room around a dining room table.

Narrator: Although the local NAACP chapter wasn't large, its members included a number of well-educated professionals affiliated with the prominent psychiatric clinic established by C.F. Menninger and his sons, Will and Karl.

Maurita Davis: A lot of people don't know it but Menninger in Topeka was certainly a monetary help and they came out. And at that time, I think they were all psychiatrists. And I think there was only one black ... I can't recall his name ... psychiatrist, but they came to the meetings with their presence and their money. They certainly did.

Narrator: In consultation with the national office of the NAACP, the local group in Topeka decided to proceed with a class action lawsuit.

Cheryl Brown Henderson: So they came up with an idea that they would spend the summer of 1950 recruiting people so that by the fall of 1950, when school was about to start, they would have their class of litigants, plaintiffs, petitioners ... whichever phrase you prefer. So at the end of that summer after talking to fellow church members, NAACP members, personal friends, knocking on doors, they had assembled a group of 13 people. Of course, Mrs. Todd, because she was at the strategy meeting, was able to say right at the meeting "Sign me up" that 'I will in fact be a volunteer,' which in many ways makes her the first plaintiff in the Topeka case. But in the fall of 1950 with this group of 13 families, a total of 20 children coming from these 13 families, they were instructed by the NAACP legal team to locate the nearest white school to your home; take your child or children and a witness and try to enroll; and then come back and tell us what transpired.

### **The plaintiffs**

Narrator: Most of those who signed on as plaintiffs in the case are no longer living, so it's up to their survivors to relay their stories. In the courtroom where the trial took place, they talk about what they know of the events that transpired half a century ago. Within this group, Zelma Henderson is the only surviving plaintiff....

Zelma Henderson: I had two children and we lived in North Topeka and the buses picked them up from the east side of North Topeka and carried them to the far west side to McKinley School.

Narrator: Having grown up in a small town in western Kansas, Mrs. Henderson had never attended a segregated school. From *her* experience, it seemed more natural that schools be integrated, and she was quite willing to sign on as a plaintiff when asked....

Zelma Henderson: I knew the attorneys. And when they came to North Topeka, they needed someone to represent McKinley. And they knew that I had always gone to an integrated school and that I had could prove that the system worked.

Narrator: The mothers of Claude Emerson and Victoria Benson also agreed to take part in this lawsuit as they attempted to enroll their children in nearby schools that were off-limits to African-Americans.

Claude Emerson: My mother did -- she did try to enroll us in ... that was Lowman Hills. Because we used to have to walk past Lowman Hills to go to Buchanan School, which Lowman Hills was about four blocks away from us. You see, we were in an integrated neighborhood, too. And it was just, you know, you passed the school, which was a bigger school than the one that we had to attend. And some of our friends went to that school who were not black and we had to go to this school.

Victoria Benson: I, too, lived about a block from Lowman Hills School, but we went to Buchanan. My mother was always a go-getter and she was dear friends of McKinley Burnett and his wife. And that's how we became a part of the plaintiffs. We also lived just about a half a block from the Scott ... John Scott.

Narrator: All of the plaintiffs who signed on were female except for Oliver Brown, a close friend of Charles Scott...

Leola Montgomery: At first he didn't want to do it because of all the ladies, you know, and he was one man. He just really didn't want to do it. But they prevailed on him and he finally consented to be one of the plaintiffs.

Narrator: Linda Thompson still remembers the day that her father, Oliver Brown, attempted to enroll her at Sumner Elementary, a school that was a short walk from their home....

Linda Thompson: I remember going... well. like I say we lived in an integrated neighborhood and I had all of these playmates of different nationalities. And so when I found out that day that I might be able to go to their school, I was just thrilled, you know. And I remember walking over to Sumner School with my dad that day and going up the steps of the school and the school looked so big to a smaller child. And I remember going inside and my dad spoke with someone and then he went in to the inner office with the principal and they left me out ... to sit outside with the secretary. And while he was in the inner office, I could hear voices and hear his voice raised, you know, as the conversation went on. And then he immediately came out of the office, took me by the hand and we walked home from school. I just couldn't understand what was happening because I was so sure that I was going to go to school with Mona and Guinevere, Wanda, and all of my playmates.

Leola Montgomery: He came back and reported to me what had transpired -- that the principal over there told him it wasn't he who was against the integrated schools, but it was the school board and there was nothing that he could do about it at that time.

Cheryl Brown Henderson: So at that point, the plaintiffs, after this test, pretty much got to go back to their everyday lives. It was left to the legal team to come up with all the legal strategy and do all the research to put together a case. But in February of 1951, February 28<sup>th</sup> I believe, it was actually filed. And it was at that point that the case became known for my dad, Oliver Brown. So the legal name of the case is Oliver L. Brown, et al, which in legal terms means "and others", versus the Board of Education of Topeka, Kansas.

### **Federal District Court**

Narrator: In 1951, the federal district court was located in the same building as the post office in downtown Topeka. Within a week after attorney Charles Bledsoe paid fifteen dollars to formally file the complaint, a three-judge panel was designated to hear the case. They scheduled the trial to commence on June 25th, 1951.

Ron Griffin: On the front end they wanted to determine whether separate and equal, which was the standard, had been furnished to youngsters attending public schools in Topeka, Kansas. As the case evolved with the inclusion of Robert Carter and others, the



question presented was whether segregation stigmatized children and wounded them in a psychological way ... and made state-sponsored segregation something that was constitutionally unsupportable.

Narrator: Robert Carter was one of two attorneys from the headquarters of the NAACP to become directly involved in this case. He and Jack Greenberg came to Kansas from New York after Lucinda Todd wrote a letter to the national office, apprising them of the situation in Topeka and requesting their assistance.

Lucinda Todd (voiced by Gwen Ifill): August 29th, 1950 ... Mr. Walter White, Executive Secretary, NAACP. 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 permissible 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. Sincerely yours, Lucinda Todd.

Walter White (voiced by Bill Shaffer): September 13th, 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.

Narrator: Not long after this exchange of correspondence, Greenberg and Carter were heading west to assist with the litigation of the case in Kansas. Now a federal judge in New York City, Robert Carter took a job with the NAACP in 1944, following his discharge from the Army. Having obtained law degrees from Howard University and Columbia University prior to the war, Carter became one of the chief architects of the NAACP's strategy to dismantle the existing system of racial segregation. Back in 1896, the Supreme Court had ruled -- in the case known as Plessy versus Ferguson -- that separate facilities for white and "colored people" *were* permissible so long as they were judged to be equal.

Robert Carter: The argument that I conceived was that the separate-but-equal doctrine was invalid; that it was not ... it had been conceived in transportation, had not been applied to education. And although the courts had assumed that it would apply to education, it had not really ever been. And my theory was ... or argument was that once it was applied to education, the courts would see that it had no application and overrule it.

Cheryl Brown Henderson: But that was part of the team that came out here. So Charles Scott together with Jack Greenberg and Robert Carter put together those final pieces, organized and recruited the expert witnesses and then moved the case forward. Of course, his brother, John Scott, and Charles Bledsoe were key in putting together the legal part of this as well.

Charles Scott: They solicited – my dad and others – solicited various psychologists and social scientists to show that segregation had a psychologically detrimental impact upon black children. That is, it impaired or retarded their educational development.

Cheryl Brown Henderson: Louisa Holt who was a psychologist ... I believe she was working between Menninger's and the University of Kansas -- she was the one that really brought in this idea of the psychological harm done when you segregate children and the stigma it seems to carry when the segregation is done solely on the basis of race.

Robert Carter: That was the whole strategy this thing had been conceived of, which is the reason we had her and people like her to testify in these cases.

Narrator: The judges of the district court acknowledged the validity of the argument related to the psychological impact of segregation, but they could *not* issue a decision contrary to the Supreme Court and its ruling in the Plessy case of 1896. On August 3rd of 1951, the U.S. District Court in Kansas upheld the right of the Topeka school board to maintain segregated schools.

Ron Griffin: The three-judge district panel, as you know, decided that the schools were both separate and equal, but in a part of the three-judge district court opinion, there is some reference to the evidence submitted of the psychological damage done by state sponsored segregation. And that eventually appeared in the Supreme Court opinion.

Cheryl Brown Henderson: The unique thing about the Kansas case, again ... and I guess because we lived this, living in Topeka. But the unique thing for us here in Kansas, the presiding judge of this three-judge panel that comprised of Federal District Court here in Topeka, Walter Huxman, had been the governor of Kansas before he became a federal district court judge. And again, I think because he'd been the governor of Kansas, he was very familiar with that Kansas law, you know, enacted in 1879. He was probably also familiar with the fact that Fairfax, one of the first African-American legislators, had challenged that law unsuccessfully. So we had this history in the state legislature of enacting a law, challenging a law, you know. He had been the governor of Kansas; now he was in a position to really examine that and determine whether or not it was something really that needed to go. And I think Judge Huxman, especially after hearing Louisa Holt, really thought long and hard about how he could craft his opinion in such a way that the Supreme Court would have to make a definitive decision about this notion of segregated public schools. So I think it was very politically savvy on his part -- not to go against custom or go even against the current law but to still write it in such a way that left the question open.

Judge Carter: It was something of a victory because Judge Huxman decides the case ... wrote the opinion, and what he said in effect was that but for Plessy versus Ferguson he would rule for us because he thought that the segregation was harmful. But he felt he couldn't do it under the circumstances.

### **The Supreme Court**

Narrator: After the District Court ruled against the plaintiffs, an appeal was filed on their behalf. The U.S. Supreme Court agreed to review the case, proceeding to combine it with four other cases of a similar nature -- a case from South Carolina, where a group of African-American families complained of substandard school buildings and inequitable resources; a case from Virginia, where more than one hundred students went on strike to protest overcrowded and inadequate facilities; a dual case from Delaware involving a black high school and a one-room elementary said to be of inferior quality; and a case from the District of Columbia, where a group of African-American junior high students had been refused admission to schools reserved for whites.

Cheryl Brown Henderson: So those four cases were all there on the docket and they were all seeking the same judicial remedy in many ways. So the court combined those cases and decided they would all be heard under the heading of one of the cases. It's our understanding that the court very purposely selected *Brown v. Board of Topeka* because Kansas was not a southern state ... wanted to take it out of that context of North and South. When you will remember the Civil War and all of the other battles between the southern customs versus north, and rightfully so in many ways. So *Brown* versus the Board of Education was not the only case -- part of that myth as well; it was one of a group of cases.

Narrator: As the case from Topeka was combined with those from the other states, the NAACP's legal team moved forward under the direction of Thurgood Marshall, who had been a student of Charles Houston, former dean of the law school at Howard University in Washington, D.C. They and their associates formed the core of the NAACP's Legal Defense Fund, which had been developing a case against segregation long before this particular case made it to the Supreme Court.

Roger Wilkins: And it was during the Houston-Marshall time that they began the series of suits that ultimately led to the cluster of cases now called *Brown v. Board of Education*.

Cheryl Brown Henderson: Charles Houston died in 1950, so he really didn't see the fruits of his early labor, if you will. But he had mentored Thurgood Marshall. Thurgood Marshall then was hired as director counsel; in essence, took his teacher and mentor's job and role and knew very well what the strategy needed to be and how to move this forward.

Roger Wilkins: And there was a big argument in NAACP in these school cases -- shouldn't we just go for equalization? Because if you go straight on in to *Plessy* against *Ferguson* -- that case that has existed since 1896, in which the Supreme Court ruled that the dictates to the 14<sup>th</sup> Amendment were satisfied with separate but equal facilities and it had been relied on in a number of the cases -- If you lose, this whole program of litigation relying on the 14<sup>th</sup> Amendment is gone ... we've just lost the whole ballgame. That was the conservative. The other said: 'ultimately, separate but equal is a non sequitur. And it's the separation that's killing our kids!'

Narrator: In Briggs versus Elliott -- the case involving segregated schools in Clarendon County, South Carolina -- Thurgood Marshall served as lead attorney arguing on behalf of the plaintiffs. One of the judges in this case made it clear that Marshall needed to firmly and directly challenge the separate-but-equal doctrine, particularly with reference to the 14th Amendment's guarantee of "equal protection under the law."

Roger Wilkins: If you think Plessy is wrong, you've got to frame a complaint which goes right to the heart of it and asks this court the question -- does the doctrine 'separate but equal' really satisfy the 14<sup>th</sup> Amendment?' Marshall, forced by the judge and perhaps following his own heart; but he had a constituency after all, then came back and challenged Plessy head on.

Robert Carter: We had no expectation that any of the courts ... lower courts ... would rule for us. Our only hope was that we would be able to build enough case to get **to** the Supreme Court. That was the first thing we had to try to do -- to get to the Supreme Court.

Roger Wilkins: The case was argued in the 1952 term of the court and the court headed by Chief Justice Vinson could not come to a conclusion, and so it punted the way courts do and said, 'go answer a bunch of questions.' And so that summer the NAACP lawyers worked very hard to answer those questions. And before the court reconvened, Chief Justice Vinson died. And President Eisenhower appointed Earl Warren of California to succeed Vinson.

[Newsreel footage of Warren appointment]

Newsreel narrator: Governor of his state for ten years, Earl Warren will be the second Republican on the Supreme Court. He will preside over a tribunal which is faced with history-making decisions.

### **Hearts and Minds**

Narrator: Back at the Supreme Court, the U.S. Justice Department weighed in in favor of the plaintiffs as it submitted a friend-of-the-court brief stressing that the Constitution itself was color-blind and that matters of segregation merited close scrutiny...

Ron Griffin: It was a national security issue. You have to remember the 1950s was the onset of the Cold War. And the United States as the leader of western nations was in a life and death struggle with the Soviet Union and nations in the Eastern Block over competing views about how the world ought to be organized. And the trophies to be won were new and independent nations in Africa. And if the United States and its promise of democracy and freedom and equality could not be supported by substantial evidence that it was practicing all of that at home, it would be very difficult for the President of the United States and for the State Department to profess that these new nations should join the West in its plan to rebuild the world.

Cheryl Brown Henderson: The United States really presented itself to the world as the moral voice of human rights, you know -- "Do as we say." But they couldn't really suggest "Do as we do". Because we had discrimination; we had segregation; we had nightriders and lynching and cross burnings and a form of terrorism, if you will. So we really couldn't go that far.

Roger Wilkins: The U.N. was in the United States, and all of a sudden you're beginning to have black ambassadors who had to ride between Washington and New York and face segregation on the highway. And the Soviet Union, with whom we were competing in this newly formed Cold War ... we were competing for what we called the Third World. And the Soviet Union was going in to black and brown Third World and saying "They're racist; we're not."

Cheryl Brown Henderson: So it really did behoove the Supreme Court to render this decision as it did. In many ways, it did the country a favor with respect to its position globally -- to end this practice, legally, of segregating based solely on the basis of race.

Robert Carter: I thought there was a possibility we would lose and be on the status quo. There were a number of people, of course, who thought 'oh, no, you're going too far, you're going to be set back.' I had no feeling about that. I know we weren't going to be beyond the status quo where we were. But I was prepared for that. And I was prepared for victory too.

Chief Justice Earl Warren (voiced by Walter Cronkite): We come then to the question presented.

Narrator: Chief Justice Earl Warren delivered the opinion of the court.

Justice Warren: 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.

Narrator: Warren then quoted the words of Judge Huxman from the district court in Kansas....

Judge Huxman (voiced by Jim Lehrer): 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 education and mental development of Negro children and to deprive them of some of the benefits they would receive in a racially integrated school system.

Judge Warren: Whatever may have been the extent of psychological knowledge at the time of *Plessy v Ferguson*, this finding is amply supported by modern authority. Any

language in *Plessy v Ferguson* contrary to this finding is rejected. We conclude, unanimously, that in the field of public education, the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.

Thurgood Marshall: People in the South are just as law-abiding as anybody else....

Narrator: Following the Court's announcement of its ruling, Thurgood Marshall and members of the NAACP's legal team addressed reporters on the steps of the Supreme Court.

Thurgood Marshall [newsreel footage]: We do believe that this decision in itself will encourage the people to take further steps without litigation in many areas. And that's what I think is important....

### **all deliberate speed**

Narrator: In 1955, a year after its initial ruling, the Supreme Court called all of the parties back before the court to review desegregation plans and how they would be implemented. The jubilation experienced by those who were pleased with the Court's ruling was tempered by the manner in which this pronouncement -- often referred to as "Brown Two" was phrased -- with no specific date for ending segregation and with words indicating that changes did not necessarily have to take place immediately.

Cheryl Brown Henderson: The court, in essence, said to the country 'we want Brown versus the Board of Education decision implemented with all deliberate speed.' Now I for one have looked up the word 'deliberate' in the dictionary. And it means, "slow." But it doesn't just mean 'slow'; it means painstakingly slow. So in some ways, I think the court was still trying to be mindful of the South and southern customs. And they knew full well that it was going to be a really difficult pill for the South to swallow. And they were willing to say, 'we've rendered this decision; it's the law of the land; but we recognize that for you all, it's going to take some time.'

Robert Carter: It was done because they felt that there was some statesmanship, I suppose, and there was some fear that with segregation being ended in the South that this would ease the way and allow for the Southerners to get used to it. Instead, what it did was to allow them to galvanize opposition.

Cheryl Brown Henderson: Southern elected officials got together and wrote a document called "The Southern Manifesto." And there were 81, I believe, all total -- House and Senate -- that signed this document. In essence it said that the Supreme Court had overstepped its bounds; the South was not unhappy with its custom; and that they were going to use every legal means at their disposal to overturn this decision.

Roger Wilkins: And so all of the southern senators with the exception of Gore of Tennessee, Keefover of Tennessee and Johnson of Texas, signed a manifesto saying "no."

Excerpt from Southern Manifesto (Voiced by Bill Moyers): We regard the decision of the Supreme Court in the school cases as a clear abuse of power.

Narrator: A relatively brief document, the Southern Manifesto was made public in March of 1956.

Manifesto continues: We decry the Supreme Court's encroachments on rights reserved to the States and to the people, contrary to established law and to the Constitution. ... We pledge ourselves to use all lawful means to bring about a reversal of this decision, which is contrary to the Constitution, and to prevent the use of force in its implementation.

Cheryl Brown Henderson: When you have a document like that coming out of the United States Congress – the legislative branch – public officials in the South had all the ammunition they needed to defy what the court was now suggesting was the law of the land ... and they did just that. Virginia, for example, public officials closed schools after Brown within two to three years ... closed schools for five years – all public schools.

Narrator: In some parts of the country, resistance continued. In 1957, President Eisenhower sent federal troops to assist with the integration of Central High School in Little Rock, Arkansas. Two years later, approaching the fifth anniversary of the Brown decision, the president was asked to assess the progress made in the implementation of the ruling.

President Eisenhower (Newsreel footage): I think we ought to do -- all of us -- work at this, but I continue to say -- the real answer here is in the heart of the individual -- just law is not going to do it. We have never stopped sin by passing laws. And in the same way, we are not going to take a great moral ideal and achieve it merely by law.

### **this wonderful little story**

Narrator: Undeniably, Brown v Board has left a lasting impression on American society. In conjunction with the observance of the 50th anniversary of the Supreme Court's decision, the National Park Service has renovated Monroe School in Topeka and opened a new museum there, where visitors can learn about this case and its contribution to the struggle for civil rights in this nation.

Cheryl Brown Henderson: What the Brown decision did was -- it broke the silence. It made the country start talking about racism and segregation and discrimination and second class citizenship and all of those things. Because if you look at Brown and everything that came after -- the Civil Rights Act ten years later in 1964; the Voting Rights Act, one year later; even before that after the Montgomery bus boycott -- the Supreme Court decision that ended the practice of segregation in transportation; all of those things emanate from the Brown decision.

Narrator: The resources available through the National Park Service site at Monroe School will provide visitors with the opportunity to learn more about this case, dispelling some of the myths that have been associated with it. One of the more common

misconceptions has been that the case was based solely upon the experiences of the Brown family in Topeka.

Cheryl Brown Henderson: People would come to this community looking for this wonderful little story, because it's what they believed Brown was ... something that took 105 years to really materialize and all these attorneys. They really thought it was about this little story. And this little story in their minds was that a little girl wanted to go to school down the block, and she couldn't because she was African-American. And her father was angry about that and he sued the school board; and Thurgood Marshall rode in and decided to represent them; and the Supreme Court did the right thing. Now, the sad thing about that is – when you think about all the sacrifices that were made to bring something about like a Brown v. Board of Education, it trivializes something so important to this county and it negates the role played and the legal brilliance on the part of the team that came up with how best to attack Jim Crow. It also keeps people in the dark about the nearly 200 plaintiffs out there -- many of whom lost jobs; their homes were burned; they were run out of their home communities because they signed a petition to be part of a court case. Where are they in this cute little story? And I think that, a lot of times people want to come up with things that are not threatening and even make them feel warm and fuzzy, but have nothing to do with the truth. The truth is seldom as sugary as people would have it be. So I think that this gives us an opportunity to peel back the layers, dispel the myth, and start talking about the gut-wrenching work, the tough decisions that were made to bring something about like a Brown versus the Board of Education.

Roger Wilkins: My own view is that we shouldn't be celebrating Brown as some kind of monument. **Yes**, it was important. **Yes**, it changed the nation. **Yes**, Marshall should be honored for what he was. And **yes**, those brave plaintiffs -- the Briggs plaintiffs down in South Carolina, the Brown plaintiffs here -- **yes**, they should be honored. But this should be a moment for re-dedication. Because we ... ultimately -- the NAACP and NAACP Legal Defense Fund -- were about justice, decency, and adherence to the founding ideals of this country. We haven't achieved that yet. And if we don't start soon and hard and massively and seriously, we won't complete it in this century.

[Program Credits roll]  
(with brief comments on the side)

Maurita Davis: Now, it wasn't the fact -- I hear them say right now that you learn more sittin' by a white person. That's not true and that wasn't what it was all about.

Robert Carter: Many people look upon it as having changed the face of the United States in terms of race relations.

Ron Griffin: Brown versus the Board of Education was the inspiration behind opening up pools and restaurants and interstate transportation.



Cheryl Brown Henderson: Had it not been for the Brown decision, you have to ask yourself, you know, 'would there have been a civil rights movement?' And if there had been a civil rights movement, to what extent would it have been able to result in other court cases and other successful pieces of legislation?

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