

***LESSON PLAN FOR ATTORNEY VOLUNTEERS ON THE LEGACY OF
THE *BROWN V. BOARD OF EDUCATION* DECISION**

SPRING 2004

**Questions and format based upon "Dialogue on Brown v. Board of Education,"
ABA Div. Of Education (2003)*

OBJECTIVE:

The objective is for the students to discuss, with attorney volunteer guidance, one or more of the following Discussion Options that explore the significance of *Brown v. Board of Education*:

- Issues of Racial Diversity: Should Schools Serve as Laboratories for Social Change?
- What is Equality Under the Law?
- What Role Should the Law Play in Maintaining or Changing the Status Quo?

The role of the attorney is to facilitate an exchange of ideas for students so that they critically think about the above issues in terms of their own experiences as opposed to a lecture format. The time allotted (typically 45 minutes for a high school class, sometimes more) is obviously limited so pick a topic but be willing to be flexible depending on the interests of the class. Different groups will pick up on different aspects of the legacy of *Brown v. Board of Education*.

MATERIALS:

The following are *options* for the attorney and/or teacher. Select from the following as you and the teacher see fit. All resources listed, except those under "Additional Materials," can be found on line at the State Bar of Wisconsin website or the ABA website.

- "Dialogue on *Brown v. Board of Education*," by the American Bar Association. (This can be found on the ABA website, www.abanet.org/publiced/features/home.html. Pages 1 & 2 provide a quick summary of the *Brown* decision. If the teacher and attorney feel this is sufficient for discussion purposes, copies of pages one and two could be quickly made and handed out to students.)
- "Background on *Brown v. Board of Education*," a compilation of information from various sources. (This can be found as an attachment on the State Bar website at www.wisbar.org. This is a more detailed discussion of the case and may be handed out to students if the attorney and/or teacher feel more background is needed.)
- "Biographies: Earl Warren (1891-1974)," a biography of the U.S. Supreme Court Chief Justice obtained from www.landmarkcases.org Street Law Inc., and the Supreme Court Historical Society (2000)
- "Biographies: Thurgood Marshall (1908-1993)," a biography of the director of the NAACP Legal Defense and Education Fund and later U.S. Supreme Court Justice obtained from www.landmarkcases.org Street Law Inc., and the Supreme Court

Historical Society (2000) with additional contributions by Cal Stone, retired social studies teacher, Madison Metropolitan School District.

- Juan Williams, *Poetic Justice*, N.Y. Times, Jan. 18, 2004, at Sect. 4A; Page 25; Column 4; Education Life Supplement, an article by Williams regarding Justice Thurgood Marshall's reaction to not being allowed to attend the University of Maryland Law School because of his race.
- "A Guide for Attorneys Teaching *Brown v. Board of Education*," prepared by Cal Stone, retired social studies teacher, Madison Metropolitan School District, 2004.

Additional Materials That May Be of Interest But Are Not on State Bar Website:

- JAMES T. PATTERSON, *BROWN V. BOARD OF EDUCATION A CIVIL RIGHTS MILESTONE AND ITS TROUBLED LEGACY* (David Hackett Fischer, James M. McPherson eds., Oxford University Press 2001) (2001).
- www.jsonline.com/links/brown The Milwaukee Journal Sentinel has a series of articles entitled *Still Separate and Unequal* that discusses the case and its impact locally
- www.brownat50.org A site by the Howard University School of Law including a chronology and educational resources.
- www.landmarkcases.org More information and classroom activities on *Brown v. Board of Education* and *Grutter v. Bollinger*.

PREPARATION PRIOR TO CLASSROOM VISIT:

- If your visit has not already been arranged, send a letter to the contact teacher in the social sciences department of the School District informing him or her of your objectives and share information regarding materials for use in the classroom such as those located on the ABA website at www.abanet.org/publiced/features/home.html. Feel free to also direct the teacher's attention to the State Bar's website materials at www.wisbar.org. The State Bar has provided you with a form letter (note: the letter assumes you have already made an initial contact by phone).
- The contact teacher should familiarize the students with the history of the *Brown* decision either through the first two pages of the ABA article, "The Story of *Brown V. Board of Education*" or the other materials provided by the State Bar of Wisconsin. In short, the contact teacher should have the students read whatever materials you or the teacher wish to assign in order to facilitate discussion.

PROCEDURE FOR CLASSROOM VISIT:

1. After a brief introduction of who you are and your background (education, current occupation and your role as a facilitator) make sure that you let the students know that

you are there to hear what they think about *Brown v. Board of Education* and its impact on society in the United States.

2. One good technique to use when beginning the discussion is to ask some factual questions about “what they know.” For instance:

a) Based on the reading materials what do we know about the Supreme Court decision in *Plessy v. Ferguson*?

(The *Plessy* case held that segregation was acceptable if the separate facilities provided for blacks were equal to those provided for whites. This meant that across the U.S. the use of public schools, transportation facilities, residential neighborhoods, theatres, restaurants, public bathrooms, and drinking fountains were legally segregated by race under the Constitution. Only one Justice, John Marshall Harlan, dissented warning that such a system would result in more aggressions against black citizens. This type of legalized segregation was also known as “Jim Crow” law.)

b) What did the *Brown v. Board of Education* case legally change?

(In *Brown*, the court concluded that in the field of education the doctrine of separate but equal had no place. Chief Justice Warren for a unanimous court wrote, “separate educational facilities are inherently unequal.”)

3. After these initial background questions choose from one or more of the following “Discussion Options” (depending on time limitations and interest) that have been chosen from the ABA materials. The Discussion Options are as follows: 1) Issues of Racial Diversity: Should Schools Serve as Laboratories for Social Change? 2) What is Equality Under the Law? 3) What Role Should the Law Play in Maintaining or Changing the Status Quo? Some topics are general enough that students may be able to comment and critically discuss issues of integration with little context of the facts surrounding *Brown*.

Other topics may require some type of material to initiate discussion. In order to give some insight into the legal and historical facts surrounding *Brown*, various quotes regarding the concept of equality under the law and issues of integration from Justices of the U.S. Supreme Court have been provided. It might be useful to hand out copies of the quotes for reference purposes while in the classroom. For that reason, the quotes have been separated from the rest of the questions. The attorney and/or the teacher may want to break students into groups and assign each a question. After a period of time, the group would then report to the rest of the class with help from the attorney and/or teacher. The process is up to you and the instructor. Hopefully, these quotes will act as starting points from which to discuss complicated areas of the law. The idea is to engage in discussion not come to a specific conclusion.

Finally, there is a brief historical note regarding various tactics within the Civil Rights movement from the legal battles in the courtroom to protests in businesses and the streets. It is not meant to be comprehensive but merely to highlight some of the differences and

similarities in techniques used to bring about social change in the laws of our nation. This could also be handed out to students for review prior to facilitating Discussion Option 3: What Role Should the Law Play in Maintaining or Changing the Status Quo?

DISCUSSION OPTION 1

ISSUES OF RACIAL DIVERSITY: SHOULD SCHOOLS SERVE AS LABORATORIES FOR SOCIAL CHANGE?

1. Is a diverse student body important in an educational setting? How might attitudes be different if one never meets people of different economic, social, racial, or religious backgrounds?
2. Why do you think schools were the focus of the litigation that led to the decision in *Brown v. Board of Education*? Remember that many public facilities, transportation systems, and private restaurants as well as theatres were segregated. Is it more important for schools to be diverse and desegregated than the rest of society?
3. Based on your experiences (in school or out) how well do you think you and your peers are prepared to meet, socialize and/or work with other diverse people?

DISCUSSION OPTION 2

WHAT IS EQUALITY UNDER THE LAW?

1. What does “created equal” mean to you? People are obviously very different, so what exactly do we mean by “equality”? Equality of opportunity? Equal treatment under the law? Equal treatment for similarly situated individuals?
2. The doctrine of separate but equal upheld in *Plessy* put African Americans at a severe disadvantage. The practice of racial preference upheld in *Grutter* (see summary of case below) gave African Americans and other minorities an advantage in Law School admissions policies. The dissent in both cases argued that the Constitution is colorblind. What does that mean? Is the Constitution colorblind? Should it be? Could it be when slavery was legally permissible in much of the U.S. until the Civil War and the Supreme Court endorsed segregation laws until 1954?
3. Justice Thomas mentions “many other kinds of arbitrary admissions procedures.” These include preferences granted to:
 - Children of alumni (legacies)
 - Athletes
 - Students with certain special skills (including musical ability and artistic talent)
 - Students from other parts of the country (and from rural areas)Why do you think colleges might favor such students?

4. How do you think higher education in the United States would be different if the legislature enacted laws banning legacy preferences and other kinds of preferences?

DISCUSSION OPTION 3

WHAT ROLE SHOULD THE LAW PLAY IN MAINTAINING OR CHANGING THE STATUS QUO?

1. Given the civil disobedience techniques such as marches, restaurant counter sit-ins, and bus boycotts that largely occurred in the 1960's after the *Brown v. Board of Education* decision, what do you make of the various organizing techniques used to fight racial discrimination? For example, what if civil rights were only fought for through the court system and not civil disobedience? How do such techniques vary and how are they similar? How did these techniques support one another? For example, would the Civil Rights Act of 1964 or the Voting Rights Act of 1965 been enacted by Congress without protests throughout the United States?
2. Even though segregation exists today, discuss and compare life for those that lived prior to and during the time of the decision in *Brown v. Board of Education*, and the quality of life today. What has changed? What has not changed? What role did the Supreme Court decision in *Brown* play in those changes? What other factors do you think contributed to the way the U.S. changed or did not change in terms of racial integration?
3. While progress has been made in achieving racial equality, a fully integrated society has not yet been realized. The long-term impact of segregation is still present in the U.S. Statistics show that U.S. schools continue to be segregated by race as a result of housing patterns, levels of incomes, etc. Is this segregation harmful to our nation's schools? What should national, state or local government do about it?
4. There have been other forms of government-ordered remedies besides integration of schools. The U.S. has paid reparations to Japanese Americans confined to internment camps during the Second World War. Germany has paid reparations to survivors of the Holocaust. Should the descendants of slaves be paid reparations for the economic, physical, and social harm suffered by their ancestors? What about black Americans living today who suffered the impact of segregation firsthand? To what extent can monetary reparations compensate for past economic, physical, emotional and social harm?

Declaration of Independence, 1776

“We hold these truths to be self-evident; that all men are created equal.”

Plessy v. Ferguson, 163 U.S. 537 (1896)

Note: In *Plessy v. Ferguson*, the question before the Supreme Court was whether a Louisiana law providing for separate railway cars for whites and blacks violated the Constitution.

“The object of the [Fourteenth] amendment was undoubtedly to enforce the absolute 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 enforce 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.”

- Justice Henry Billings Brown, majority opinion

“Our Constitution is color-blind and neither knows nor tolerates classes among citizens.”

-Justice John Marshall Harlan, dissenting

Brown v. Board of Education, 347 U.S. 483 (1954)

“We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.”

-Chief Justice Earl Warren, for a unanimous court

Grutter v. Bollinger, no. 02-241 (2003)

The issue before the court in *Grutter v. Bollinger* was whether the University of Michigan Law School could use race as a consideration in admitting students.

“Government may treat people differently because of their race only for the most compelling reasons . . . Today we endorse [the] view that student body diversity is a compelling state interest that can justify the use of race in university admissions.”

-Justice Sandra Day O’Connor, majority opinion

“[R]acial classifications are *per se* harmful and . . . almost no amount of benefit in the eye of the beholder can justify such classifications.”

-Justice Clarence Thomas, dissenting

“[I]n the national debate on racial discrimination in higher education admissions, much has been made of the fact that elite institutions utilize a so-called ‘legacy’ preference to give the children of alumni an advantage in admissions . . . The Equal Protection Clause does not, however, prohibit the use of unseemly legacy preferences or many other kinds of arbitrary admissions procedures. What the Equal Protection Clause does prohibit are

classifications made on the basis of race. So while legacy preferences can stand under the Constitution, racial discrimination cannot.”

-Justice Clarence Thomas, dissenting

Notes Regarding Tactics Within the Civil Rights Movement

United States Supreme Court Justice Thurgood Marshall, was one of the lawyers for the plaintiffs in *Brown v. Board of Education*. At that time, Marshall was head of the Legal Defense and Educational Fund (LDF) of the National Association for the Advancement of Colored People (NAACP). As the leader of this group of attorneys, Marshall focused on winning court cases to fundamentally change the inequality between different racial groups. However, it was not easy championing civil rights through the courts in such a hostile environment. The LDF needed the support of a culture of resistance to discrimination in order to recruit plaintiffs for their legal strategy.

It took a great deal of courage for African Americans to volunteer as plaintiffs in legal suits for whites were certain to retaliate. Plaintiffs that did volunteer were fired from their jobs, denied credit by lenders and were subject to violence. In South Carolina, Reverend Joseph Albert DeLaine, a black minister who led the move for desegregated schools in Clarendon County, had his house burned down and later his church. At one point Reverend DeLaine was shot at in the middle of the night and had to flee across state lines. Nevertheless, it was important for DeLaine to be a plaintiff because he was a high profile leader in Clarendon County and in his church. This type of grass roots organizing in communities led to people becoming plaintiffs, for they all wanted to increase opportunities for their children and their communities.

Prior to and after *Brown v Board of Education*, civil rights activists were also working outside the court system to change the legal segregation of blacks and whites (Jim Crow laws) in all aspects of society including the use of public facilities, transportation and public schools. This was particularly true during the 1960's when numerous examples of "direct action" (a phrase used to describe directly protesting discrimination through boycotts, marches etc.) occurred. For example, in 1960 in Greensboro, North Carolina, four freshmen from North Carolina A&T College entered the local Woolworth department store to protest against being barred from the lunch counter due to their race. They conducted sit-ins to force management to change its segregation policy. "Within weeks, 54 sit-ins were underway in 15 cities and 9 states in the South. Some 3,000 were sent to jail." In Greensboro, Woolworth "backed down in July of 1960 after suffering an estimated loss of \$200,000.00 or 20% of anticipated sales during a black boycott that accompanied the sit-ins."¹ This was in contrast to court cases that often took years before they were decided- and then there were the issues of implementation and enforcement of the decision.

There were numerous other examples of civil disobedience such as the Montgomery Bus Boycott, where Dr. King earned notoriety by boycotting buses not based on the legal issues in *Brown* but on non-violent and religious ideals. Later Dr. King marched on Washington to demand voting rights and laws against discrimination in all aspects of society and argued the case against discrimination in a moral and religious context demanding that the United States live up to its promise of equality for all people.

Sometimes these varying techniques supported one another and other times they were in conflict. Yet all of these tactics were crucial in fundamentally changing society and influencing how we see ourselves as a nation and model of democracy.

¹ JAMES T. PATTERSON, *BROWN V. BOARD OF EDUCATION A CIVIL RIGHTS MILESTONE AND ITS TROUBLED LEGACY* 120 (David Hackett Fischer, James M. McPherson eds., Oxford University Press 2001) (2001).

SAMPLE LETTER

_____, 2004

Dear _____:

Thank you for allowing me to assist in facilitating a discussion on the landmark U.S. Supreme Court decision in *Brown v. Board of Education*. As we near the fiftieth anniversary of the decision, the State Bar of Wisconsin, with materials from the American Bar Association, is encouraging lawyers as well as judges from across the state to engage high school students in a stimulating discussion concerning one of the most significant cases in U.S. history.

My primary focus will be to encourage students to think critically about the legacy of the decision as well as the general role of law in issues of race, equality and society. The State Bar does not offer one view of the case but instead hopes to encourage a variety of opinions in order to encourage students to see the decision as relevant to today's events and issues as society continues to wrestle with the concept of equality for all people under the law.

There are several materials that you may choose from in order to prepare your students for our discussion of the *Brown* decision. For example, the American Bar Association's "Dialogue on *Brown V. Board of Education*" is an excellent overview and can be found at www.abanet.org/publiced/features/home.html. One option is for your students to read pages one and two of the materials for a brief overview of the *Brown* decision as an assignment prior to my visit. There are additional pieces of information on the *Brown* decision located on the State Bar of Wisconsin's website at www.wisbar.org. This may help the students in learning about the basic facts related to the case. It will also give you and the students an idea of some of the topics we will be discussing. If you are incorporating this visit in your lesson plans on other issues concerning civil rights or the history of the United States, please feel free to add to or direct the discussion as needed.

I look forward to my visit and this opportunity to discuss the legacy of *Brown v. Board of Education* with your students. If there are any instructions on entering your school building please let me know at your convenience. If you have any questions or concerns, please feel free to contact me.

Sincerely,

Background on Brown v. Board of Education

May 17, 2004, is the fiftieth anniversary of the United States Supreme Court's landmark decision in *Brown v. Board of Education of Topeka, Kansas*. The decision brought an end to the legal doctrine of "separate but equal," established by the same court nearly sixty years earlier in *Plessy v. Ferguson*. At the heart of *Brown v. Board of Ed* was the desire to ensure equal protection of the laws for all Americans. This article will provide background information as a basis for a dialogue on what has been required and what has been achieved in pursuit of this goal in our nation's schools.

Plessy v. Ferguson (1896)

After the Civil War ended in 1865, there was a twelve year period of time called "Reconstruction", where the U.S. Army occupied and controlled the states of the old Confederacy. During Reconstruction, former slaves gained new opportunities such as voting, holding political offices, going to school, and owning their own farms and businesses. Even in this short period of time, across the south many former slaves were becoming successful within the larger society and there was the beginning of a successful black middle class. However, soon southern states began again to systematically exclude black people from opportunities such as voting and attending school.

In the 1890's, a black man, Homer Plessy, challenged a Louisiana law that required railroad companies to provide equal, but separate, accommodations for the white and African American races. Plessy asserted that the Louisiana law violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, which provides that "*No State shall ... deny to any person within its jurisdiction the equal protection of the laws.*"

The Supreme Court of the United States decided against Plessy. It ruled that as long as segregated facilities were qualitatively equal, segregation did not violate the Fourteenth Amendment. In its decision, the Court classified segregation as a matter of social equality, out of the control of the justice system, which was concerned with maintaining legal equality. The Court stated:

The object of the [Fourteenth] amendment was undoubtedly to enforce the absolute 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 enforce 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.

However, one justice on the Supreme Court, Justice Harlan, wrote a dissent. (A dissent is an opinion written by one justice, or perhaps more, that disagrees with the majority decision.) He wrote:

The destinies of the two races, in this country are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law. What can more certainly arouse race hate, what more certainly create and perpetuate a feeling of distrust between these races, than state enactments which, in fact, proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens? That, as all will admit, is the real meaning of such legislation as was enacted in Louisiana.”

Arguing that “*our Constitution is color-blind, and neither knows nor tolerates classes among citizens,*” Justice Harlan accurately predicted further “*aggressions, more or less brutal and irritating, upon the admitted rights of colored citizens.*”

Justice Harlan’s warning was fully realized after 1896. States and cities, with the Supreme Court’s support from the *Plessy* decision, passed “Jim Crow” laws intended to enforce segregation of blacks and other people of color from many of the facilities and opportunities enjoyed by white citizens across the United States. In the south, public schools, busses and trains, public and private theaters, restaurants, and even public rest rooms and drinking fountains were designated for “whites only”, while separate—and supposedly equal—facilities were set aside for “coloreds”. Any hope of changing these laws through democratic processes was stripped away as states erected legal barriers to the exercise of the vote by black citizens. In the north, *Plessy* was used to exclude non-whites from living in certain residential neighborhoods. This resulted in segregated housing and subsequently in public schools that were racially imbalanced—predominantly black or white—in other words, racially segregated. And in courthouses across the land, blacks were systematically excluded from service on juries

Resistance to *Plessy* and Jim Crow laws (1896-1950)

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

This group of black attorneys included Houston himself, Robert L. Carter, William T. Coleman, William Henry Hastie, George Hayes, Oliver Hill, Constance Baker Motley, James Nabrit, Jr., Spottswood W. Robinson III, and—perhaps most famous of all—Thurgood Marshall, who later became a Supreme Court justice. They were joined by others committed to the fight against segregation, including Jack Greenberg of the NAACP Legal Defense Fund. These lawyers progressively chipped away at the legal structure fortifying segregation. All-white jury pools, covenants that restricted ownership of property in certain neighborhoods by race, laws disenfranchising black voters, and segregated graduate and professional schools were all challenged, often successfully. Attention then turned to the politically charged arena of public school segregation.

The legal strategy focused first on insisting that states take *Plessy* standard seriously. “White” and “colored” schools were certainly separate, but in most cases they were far from equal. District by district, legal challenges were brought insisting black schools be brought up to par with their “whites only” equivalents. This strategy, however, required fighting district by district and did not directly challenge the doctrine of “separate but equal.”

Two Missouri cases in particular demonstrated the potential for impact but also the long-term futility of this strategy. The State of Missouri had denied a black man admittance to the state’s only law school because he was black. The LDF took the case to the United States Supreme Court and successfully argued that Missouri would have to either admit the applicant to the all-white school, or provide a separate but equal law school for black applicants. Rather than admit a black man to a white law school Missouri actually developed plans for a new black law school—though the applicant subsequently withdrew his application. In the second Missouri case a black man applied to be admitted to state’s all-white School of Journalism. Rather than admit him, the state shut down the existing journalism school. Though the LDF was winning court cases using *Plessy*, the victories were often hollow.

In 1950, therefore, the NAACP resolved that nothing other than education of all children on a nonsegregated basis would be an acceptable outcome. Rather than use *Plessy* to achieve equality, the NAACP decided to argue that separate schools did not have the potential to be equal because of the sociological and psychological effect that segregation had on black children. Work began on laying the final groundwork for *Brown v. Board of Education*.

Brown v. Board of Education of Topeka, Kansas (1954)

1. Facts of the Case

In the early 1950s, Linda Brown was a young African American student in the Topeka, Kansas, school district. Every day she and her sister, Terry Lynn, had to walk through the Rock Island Railroad Switchyard to get to the bus stop for the ride to the all-black Monroe School. Linda Brown tried to gain admission to the Sumner School, which was

closer to her house, but her application was denied by the Board of Education of Topeka because of her race. The Sumner School was for white children only.

At the time of the Brown case, a Kansas statute permitted, but did not require, cities of more than 15,000 people to maintain separate school facilities for black and white students. On that basis, the Board of Education of Topeka elected to establish segregated elementary schools. Other public schools in the community were operated on a nonsegregated, or unitary, basis. Topeka was one of the very few school districts where black facilities were comparable to white facilities in terms of the facilities, books and other educational support received by black and white children. This very fact clearly presented the issue of the effect that segregation had on black children.

The Browns felt that the decision of the Board denying Linda admission to Sumner School violated the Constitution. They sued the Board of Education of Topeka, alleging that the segregated school system deprived Linda of the equal protection of the laws required under the Fourteenth Amendment. Thurgood Marshall argued the Brown's case.

The case was first heard in a federal district court, which is the lowest court in the federal system. The federal district court found that segregation in public education had a detrimental effect upon black children, but denied that there was any violation of Brown's rights because of the "separate but equal" doctrine established in the *Plessy* decision. The court found that the schools were substantially equal with respect to buildings, transportation, curricula, and educational qualifications of teachers.

The Browns appealed their case to the United States Supreme Court claiming that the segregated schools were not equal and could never be made equal. The Court agreed to hear the case and combined it with similar cases from South Carolina, Virginia, and Delaware which had also lost in the federal district courts. School conditions in these four test cases varied. For example, in South Carolina, unlike Topeka, there were stark differences between "colored" and "white" schools. In all four states, however, the schools were segregated by law, and the NAACP's position was that equality could not be achieved until segregation was brought to an end. Each case represented individual acts of courage by families willing to face local resistance—even hostility---to bring an end to segregation.

2. The Decision

Although the four decisions went against the NAACP in the federal district courts, its position was strengthened by some of the decisions. In South Carolina, Judge Julius Waties Waring dissented from the opinion of his two colleagues who also heard the case, declaring that "segregation is per se inequality." And the court in Kansas had found that segregation has a detrimental effect on colored children, especially when it is enforced by law.

The four cases were argued in the United States Supreme Court in 1952. The Court requested reargument of the case in 1953. Before the reargument could occur, Chief

Justice Vinson died and was replaced by Chief Justice Earl Warren. Under his guidance, a unanimous Court on May 17, 1954, issued its decision declaring that segregation of the public schools was unconstitutional.

Chief Justice Earl Warren wrote:

Here . . . 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. Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of these cases. We must look instead to the effect of segregation itself on public education. . . .

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. . . . 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. . . .

*To separate them [children in grade and high schools] 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 to ever be undone. . . . Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson*, this finding is amply supported by modern authority. . . .*

We conclude that in the field of public education the doctrine of “separate but equal” has no place. Separate educational facilities are inherently unequal.

This Background on *Brown v. Board of Education* combines “Dialogue on *Brown v. Board of Education*,” ABA Division for Public Education (2003) (www.abanet.org/publiced) with excerpts from www.landmarkcases.org Street Law Inc., and The Supreme Court Historical Society (2000) and contributions from Cal Stone, retired social studies teacher in the Madison Metropolitan School District.

Biographies: Earl Warren (1891–1974)

Earl Warren was Chief Justice of the Supreme Court of the United States during one of the most turbulent times in our nation's history. During his tenure, the Court dealt with controversial cases on civil rights and civil liberties and the very nature of the political system.

Warren was born in Los Angeles, but grew up in Bakersfield, California where his father worked as a railroad car repairman. He worked on the railroad himself in the summer, which left him with knowledge about working people and their problems, as well as with the anti-Asian racism then rampant on the West Coast.

Warren attended the University of California at Berkeley and its law school. After serving a brief stint in the army during World War I, he worked for the Alameda County district attorney's office for eighteen years. During that time he proved to be a tough prosecutor, but he was also sensitive to the rights of the accused and personally fought to secure a public defender for people who could not afford one. A 1931 survey concluded that Earl Warren was the best district attorney in the United States.

From 1938 to 1942, Earl Warren was attorney general of California and was then elected governor. Warren is remembered mostly for his role in demanding the evacuation of Japanese from the West Coast. Though the action seemed inconsistent with his future decisions, Warren maintained during his lifetime that it seemed like the right action at the time. In his memoirs, however, he acknowledged error.

Warren served three terms as governor of California and played a key role in Dwight Eisenhower's nomination for the presidency in 1952. Eisenhower rewarded Warren with the Chief Justice position in 1953. Warren took over a court that was deeply divided between those justices who advocated a more active role for the court and those who supported judicial restraint. He proved skillful at "massing the court" and securing consensus as is evidenced by the unanimous decision in the *Brown v. Board of Education* case, one of the first cases that he had to deal with as Chief Justice.

The *Brown* case was the first in a long string of judgments that marked a more active role for the Supreme Court of the United States in American life. The Warren Court took on the defense of individual rights as no court before it. Warren considered this a proper role for the courts; he never saw the role of the judiciary as passive, or somehow inferior to the other two branches of government.

Warren's opinion in *Brown* has been criticized for its lack of constitutional analysis. In *Brown* the key finding does not appeal to precedent or to the history of the Fourteenth Amendment. Rather there is an emphasis on common sense, justice, and fairness that can be seen in Warren's reliance on social science and psychological research. Warren was not antigovernment, but he believed that the Constitution prohibited the government from

acting unfairly against the individual. In taking this position, he carved out a powerful position for the Court as a protector of civil rights and civil liberties.

From: www.landmarkcases.org Street Law Inc., and The Supreme Court Historical Society (2000).

Biographies: Thurgood Marshall (1908–1993)

Thurgood Marshall was the great-grandson of a slave and the son of a dining car waiter and a schoolteacher. He was the first African American justice of the Supreme Court of the United States. He studied law at Howard University Law School in Washington, D.C. under Charles Hamilton Houston, who has been credited with transforming Howard into a laboratory for civil rights litigation.

Marshall graduated first in his class from Howard in 1933, and he was drafted by Houston to help with the civil rights battles then being waged by the National Association for the Advancement of Colored People (NAACP). He first served as special counsel for the NAACP and then as the director of the NAACP Legal Defense and Education Fund. He was the mastermind behind the litigation strategy that challenged racial oppression in education, housing, transportation, electoral politics, and criminal justice. In one of his most famous cases and victories, he represented Linda Brown in the *Brown v. Board of Education* (1954) case.

In 1961, President Kennedy nominated Marshall to be circuit judge on the U.S. Court of Appeals for the Second Circuit. Southern senators vehemently opposed his nomination, but Marshall was finally confirmed. He had served four years on the circuit court when President Johnson named Marshall to be the first African American solicitor general of the United States. The solicitor general is the chief courtroom lawyer for the executive branch, arguing cases on behalf of the administration.

In 1967, President Johnson nominated Marshall to be associate justice of the Supreme Court of the United States. He served in this position until 1991. During his tenure, Marshall was a strong advocate for equal protection of the law. He was an ardent supporter of affirmative action and probably influenced court decisions that upheld the use of affirmative action in some cases. Marshall believed that the Constitution was inherently defective in its acceptance of slavery and gave much credit to those who “refused to acquiesce in outdated notions of ‘liberty,’ ‘justice,’ and ‘equality,’ and who worked to better them. The true miracle of the Constitution was not the birth of the Constitution, but its life.”

“It was Marshall who won the most important legal case of the century, *Brown v. Board of Education*, ending legal segregation of black and white children in public schools. The success of the *Brown* case sparked the 1960s civil rights movement, led to the increased number of black high school and college graduates and the incredible rise of the black middle class in both numbers and political power in the second half of the century.” (from Juan Williams, *Thurgood Marshall American Revolutionary*, Times Books, 1998).

“It was Marshall who ended legal segregation in the United States. He won Supreme Court victories breaking the color line in housing, transportation and voting, all of which overturned the “separate-but-equal” apartheid of American life in the first half of the century.” (Williams, 1998)

Added Note: Thurgood Marshall as a Student

As youngster and a teen, Marshall had shown little promise as a student. He was not especially serious about school and experienced his share of getting in trouble with principals and teachers. On one memorable occasion, while he was in high school, his punishment was to read and understand the U.S. Constitution. Later he was to become one of the most scholarly and successful of the country's Constitutional lawyers, and the Constitution became his greatest tool in efforts to achieve social change and racial equality.

Actually, even Marshall's undergraduate college achievement was only average, and it wasn't until law school at Howard University that his dedication and talent for scholarship and for understanding and using the law became apparent. This transformation—from average student to being a bright and committed student—occurred in conjunction with efforts by the Howard University Law School to implement extremely high expectations and demands of the law students. In fact, the three-year course of study at Howard was so demanding that of the 35 students who began with Marshall, only Marshall and five others completed the program.

From: www.landmarkcases.org Street Law, Inc., and The Supreme Court Historical Society (2000), with contributions by Cal Stone, retired social studies teacher in the Madison Metropolitan School District.

For a story on Thurgood Marshall's reaction to not being able to attend the University of Maryland Law School because of his race, see the article on the next page" Poetic Justice."

The New York Times, January 18, 2004

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SECTION: Section 4A; Page 25; Column 4; Education Life Supplement

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HEADLINE: THE COURTS;
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BYLINE: By Juan Williams; Juan Williams is senior correspondent for National Public Radio, political analyst for Fox News, and author of “Thurgood Marshall: American Revolutionary” and “Eyes on the Prize.”

BODY:

In 1930, Thurgood Marshall, a lanky honors graduate fresh from Lincoln University in Pennsylvania, realized that the law school he hoped to attend did not accept black students. Though the University of Maryland School of Law was just blocks from his parents’ home in West Baltimore, he decided it would be a waste of time and upsetting to even bother to apply.

Marshall went to Howard University Law School, a private school 40 miles away in Washington, founded to educate former slaves. He couldn’t afford to live in Washington so he had to commute. His mother, a kindergarten teacher in the inferior schools open to black children, pawned her wedding ring to pay the higher tuition. Marshall graduated from Howard No. 1 in the class of 1933.

But he held a grudge against the law school that had never given him a chance. In the late 1970’s, Marshall told an interviewer from Columbia University’s Oral History Archives that he had dreamed about “getting even with Maryland for not letting me go to its law school.”

Years later, sitting with me for one of the last interviews before his death in 1993, Marshall admitted that he was still angry. His face tensed and his eyes, watery from glaucoma, focused sharply at the memory. A quiet, reclusive man who loved to tease and joke, the justice quickly turned serious and used profanity to describe the administrators who had enforced the law school’s whites-only policy. But Marshall had already settled the score.

In 1933, Nathan Margold, a young Harvard law graduate, had written a report for the N.A.A.C.P. that concluded that the best way to defeat segregation was not to challenge

the segregation law itself but to show a violation of the equal rights promised to all citizens under the Constitution. By law, black schools and white must be equal in every way. Marshall read the study several times. "The report stayed with me," he told me. "The South would go broke paying for truly equal, dual systems."

Up to then, there had been no major legal challenge to the black plight in education. One suit, against the University of North Carolina, had employed a similar tactic but had failed to move forward on a technicality. But Marshall believed that in the right state with the right student, the strategy could blow apart school segregation.

Only a year after graduating from Howard Law School, the 25-year-old Marshall put the strategy to the test. He persuaded a black Amherst College graduate, Donald Gaines Murray, to apply to Maryland's law school. As expected, Murray was rejected because of his skin color. But the rejection fit into Marshall's plan. He directed Murray to write a letter to the regents asking why an Amherst graduate with good grades who was the grandson of a prominent Maryland bishop could not get into the state university's law school. The regents responded: wait for a planned law school for blacks to be built or go out of state to Howard. The regents had fallen into a legal trap. Marshall used the letter, an explicit ban on black students, as the basis for a lawsuit against the university.

The case went to court in June 1935. Marshall argued that in 1896 the Supreme Court had ruled that blacks and whites could be segregated but must have equal facilities. No equal facility existed to educate Murray in the laws of the state of Maryland. The next day, a Baltimore City Court stunned lawyers on both sides by ruling that Murray must be admitted to the University of Maryland.

The case became a template for legal attacks on segregation in professional and graduate schools, from the University of Missouri to Texas and Oklahoma. Those cases eventually ended up in the Supreme Court, and in June 1950 the court ruled in favor of the N.A.A.C.P. The majority opinion from the justices laid down a new standard for segregated schools: they had to be truly equal -- in resources, faculties and even tradition -- or the existing white school had to be integrated.

In the weeks after the decision, Marshall, now head of the NAACP Legal Defense Fund, held a conference for lawyers supporting his cause. Prominent black lawyers nationwide as well as top law professors from Harvard, Yale, Columbia and Howard met in New York for lengthy debates on the next step in the assault on segregated schools. They agreed to take a leap of legal logic and argue that any racially separate school violated the Constitution's promise of equal protection for all citizens, regardless of race. N.A.A.C.P. chapters across the country offered up examples of disparities between black and white schools:

In Clarendon County, S.C., white schools got 60 percent of the school board's funds even though three-quarters of the schoolchildren were black. The local courts ruled against Marshall and the N.A.A.C.P. in the case, *Briggs v. Elliott*.

In Prince Edward County, Va., there was one high school for blacks, and it had no cafeteria or gym and was crammed with twice the number of students it was built to house.

In Topeka, Kan., a 7-year-old girl, Linda Brown, had to walk past a white school and across railroad tracks to catch a bus to take her to a black school.

The Supreme Court added two other cases that touched on the same issue of school segregation. In Delaware, the state government was appealing a lower court order to integrate schools, and in the District of Columbia, black parents were challenging segregation in public schools operating under federal jurisdiction.

With the cases clustered under the title *Brown v. Board of Education*, Marshall went before the court, arguing that since the end of slavery, black Americans had sought equal education and equal opportunity. The only justification for segregated schooling, he said, was a racist desire to keep people who were formerly in slavery “as near that state as is possible.”

In its unanimous ruling, read from the bench by Chief Justice Earl Warren on May 17, 1954, the court said of the nation’s black schoolchildren: “To separate them from others of similar age and qualification solely because of their race generates a feeling of inferiority as to their status in the community that may affect their habits and minds in a way very unlikely ever to be undone. We conclude unanimously * separate educational facilities are inherently unequal.”

Marshall was there as the decision was read. He told a fellow lawyer, “We hit the jackpot.”

In 1980, the University of Maryland School of Law opened a new library and named it for the Baltimore native on the United States Supreme Court, Thurgood Marshall. The dean, Michael Kelly, repeatedly called Justice Marshall to invite him as the honored guest for the opening. The school had even commissioned a bust of him to be placed in the entryway. Marshall refused to attend, and when the university asked other members of the court to the ceremony in Baltimore, Marshall wrote to his colleagues: “I will not go there. I am very certain that Maryland is trying to salve its conscience for excluding the Negroes from the University of Maryland for such a long period of time.”

If the school didn’t want anything to do with the young Thurgood Marshall, he told me, then he didn’t want anything to do with them now. He would not soon forgive his home state for denying him an education, but as far as he was concerned, he had repaired the scales of injustice that had weighed against him personally.

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A Guide for Attorneys Teaching *Brown v. Board of Education*

(Prepared by Cal Stone, retired social studies teacher in the
Madison Metropolitan School District, 2004)

This guide is designed to be a supplement for attorneys using the “Lesson Plan for Attorney Volunteers on the Legacy of *Brown v. Board of Education*” in high school classrooms.

A General Strategy for Facilitating Discussion

Having a guest attorney lead a class discussion is an uncommon event for a high school class. In new and unusual situations, high school students are very quick to try to figure out what is expected of them. For example, if on one hand you begin the class with a lecture, the student will quickly surmise that the student role is to be a listener, a passive recipient of information. If, on the other hand, you are able to quickly begin a conversation with the class, the group’s assumption will be that the student role is to be active participants in a discussion. Law-related education lends itself well to lively classroom discussions of issues, and such discussions are not uncommon in social studies classrooms.

When you first come into the classroom, it is likely that student attention will be focused on determining just what kind of discussion this is to become. What they suspect is that they are going to be asked to play “guess what the teacher is thinking?” (In this instance what the lawyer is thinking). We’ve all had to play this game. The instructor asks a question that has a “right” answer and many possibilities for wrong answers. The class continues to guess what the correct answer is until the teacher indicates that someone got it right. Then the instructor introduces a new question and the process is repeated.

It is possible for classes to have a more genuine exchange of ideas. Questions about public policy and law present the opportunity for students to discuss a range of issues for which there are often no right or wrong answers. Rather, each student’s discussion may be based on individual *values and beliefs* that reflect a point of view different from the values and beliefs of others. In a productive issues-oriented classroom discussion students are not just expressing their own views, but are attending to and beginning to understand the views of others. This requires careful listening as well as asking questions of others that clarify meaning, and identify the various points of view as well as the values and beliefs expressed in the discussion. As a guest and short-term teacher you will not have developed a trusting relationship with the class and may be seen by some students as at least somewhat intimidating. Consequently your role is limited. You are urged to be very cautious about directly challenging the views expressed by students. Rather, your most productive use of the classroom time will probably be your focus on demonstrating understanding of the student’s point of view by asking clarifying questions and directing comments back to students that echo their comments and point of view. What you will find is that diverse points of view will emerge from among the students

themselves that will effectively challenge the students to think seriously about the issues. Just getting the class to generate and consider clear, diverse points of view is a worthy goal for a guest teacher.

B. Setting the Stage for the Discussion (3 or 4 minutes)

- Ask that the teacher have the students read the Background Materials on *Brown v. Board of Education*, either in class or as homework, before, and in preparation for, the class that you will lead.
- Introduce yourself to the class (e.g., your college, law school and major law interests) but keep it short, and end by making a transition to the case at hand—“I am very happy to be here and have been looking forward to discussing *Brown v. Board of Education* with you.”
- Indicate that you want an active discussion that is in the best tradition of legal discussions—where people feel free to “express, defend, and perhaps reexamine their own opinions” and that this means (from page 8 on “*ABA Dialogue on Brown v. Board of Education*”):
 - 1) Showing respect for other’s views,
 - 2) Being brief so that all who wish can express their views,
 - 3) Not allowing disagreements to become personal,
 - 4) Letting people express their views without interruption, and
 - 5) Making sure that everyone who wishes to respond to what’s been said has an opportunity.
- Ask—“Does everyone understand that we’re planning on having an active discussion using some ground rules designed to keep the discussion productive and focused?”

C. Getting the Ball Rolling

It is recommended that as you begin the discussion, the focus is only on *Plessy* and *Brown*.

- As you begin, have in mind a series of questions—many open-ended—as well as some factual questions based on the reading. In order to set a conversational tone begin with the open-ended questions. The attached lesson plan provides you with a number of questions and additional sources for questions you might ask. During the discussion you can weave in information from the background materials that you think is particularly significant or of interest. You will undoubtedly have

other ideas from your own training and experience that can become part of the classroom conversation.

- As the lesson plan mentions, one strategy is to begin with questions that will bring out what the students know. Additional starting questions might be:
 - **Looking at the reading for today, with its discussion of the *Plessy* and *Brown*, let's first work together to understand the 1896 *Plessy* decision and discuss its implications? Who has some thoughts on *Plessy*?**
 - **What does our reading say about the history of the *Brown* decision? Who took responsibility for challenging the *Plessy* decision which had been the law of the land for over 50 years? How did this successful challenge come about?**

D. Keeping the Ball Rolling

As the classroom discussion is taking place it will be very helpful to the class for you to write on the blackboard (or on a flip chart) brief summaries of the various opinions expressed by students. In doing this, use your own words to capture the student's opinion, but then ask the student "Does this capture what you have said?" This confirms to students that you are listening closely to and understand their comments, it creates a record of the class's work progress, and it will be used by students to go back to, and further discuss, previous thoughts and ideas.

Note: The class may seek your opinion on various issues being discussed. It is probably best if you indicate that you want the class's opinions to be the major focus of the lesson but that at the end of the class period you will briefly discuss your personal perspective on some of the issues.

Be assured that the teachers and the students will look forward to, and greatly appreciate, participating with you in a discussion about *Brown* which addressed one of country's most critical issues and where the law was the engine of social and racial progress.