

# WILL WE OVERCOME?

BY CHERYL BROWN HENDERSON





## Why, 62 years after *Brown v. Board of Education*, does this country still struggle with race, ethnic and gender equality?

As children growing up in Topeka, Kan., in the 1940s and 1950s, my sisters and I came of age under the watchful eye of civil rights pioneers such as McKinley Burnett, president of the Topeka NAACP, who in 1948 continued the Kansas campaign against racially segregated schools, started decades earlier by Elisha Tinnon.

In 1881, *Tinnon v. Ottawa, Kansas, School Board* opened the door for nearly a dozen early challenges to segregated schools in 10 Kansas cities, with three early cases in Topeka: 1903, *Reynolds v. the Topeka Board of Education*; 1921, *Wright v. the Topeka Board of Education*; and 1941, *Graham v. the Topeka Board of Education*. Burnett was among the leading civil rights activists in our city.

After years of state Supreme Court challenges to segregation in Kansas public schools, Burnett convinced the local NAACP it was time to seek federal intervention. His decision to file suit against the Topeka Board of Education in federal court would lead to a monumental conclusion. Attorneys and brothers Charles and John Scott, with Charles Bledsoe, worked alongside Burnett and NAACP secretary Lucinda Todd. Their strategy involved recruiting families with elementary-school-aged children to serve as plaintiffs. By fall 1950, 13 African-American families in Topeka joined the NAACP's effort by signing on as plaintiffs.

At the time, none of the parents knew they were participants in unprecedented change, becoming part of what is often called "The Case of the Century." One of the parents recruited was my father, Oliver Brown. He would represent my eldest sister. In 1950, for him, history literally knocked at the door when NAACP attorney Charles Scott, a childhood friend, came to our home for the express purpose of asking dad to join their

campaign to end racially segregated schools.

My parents were a traditional family, raising two small girls and awaiting the arrival of a third. They were 29 and 32 years old. After some deliberation, Dad accepted his friend's impassioned invitation to stand against racial segregation to help ensure his children would have an equal educational opportunity. As instructed, parents, including my father, attempted to enroll their children in eight of the 18 Topeka elementary schools segregated for white children. That simple act began their journey into civil rights history.

On Feb. 28, 1951, the case of *Oliver L. Brown et. al. v. the Board of Education of Topeka* was filed in federal district court, reviewed by a three-judge panel led by former Kansas Gov. Walter Huxman. When the federal district court ruled in favor of the Topeka Board of Education, the NAACP appealed to the U.S. Supreme Court, seeking a definitive interpretation of the 14th amendment to the Constitution as it applied to public schools.

My father's participation was almost coincidental, yet the fact remains it is his name attached to what is said to be one of the most pivotal judicial decisions in U.S. history. In 1953, my father was ordained by the African Methodist Episcopal (AME) Church and assigned to pastor St. Mark AME Church in North Topeka. Shortly after his ministerial assignment, on May 17, 1954, the U.S. Supreme Court announced its decision in *Brown v. Board of Education of Topeka* in favor of the consolidated cases from Delaware, Kansas, South Carolina, Virginia and Washington, D.C. The court ruled that racial segregation in public schools was unconstitutional. In 1959, my father was assigned to Benton Avenue AME Church in Springfield, Mo. Two years after our move, in 1961, he died at the age of 42.

## Where Are We Now?

In the decades that followed we have experienced the passing of case strategists, many of the plaintiffs and most of the attorneys, including Thurgood Marshall, whose legal brilliance resulted in the *Brown* decision.

Absent first-person narrative, most accounts of this history have been shaped by supposition. It has become painfully clear that media-created versions of *Brown v. Board of Education*, which bear little resemblance to reality, have eclipsed the facts. Both electronic and print media thrive on simplicity, sometimes omitting what is not convenient to the spin of their reporting. Even in our classrooms children aren't provided in-depth analysis of the *Brown* decision and the ensuing aftermath – the modern Civil Rights Movement. Our nation seems more interested in burying this aspect of its past than using its lessons.

Lack of knowledge breeds racial mistrust. There is little understanding and awareness of the sacrifice by those who were on the front lines of school desegregation and the fight for civil rights.

To understand the question of why, 62 years after the *Brown* decision, we haven't overcome barriers to race, ethnicity and gender equality, we must first grapple with the story of how our nation and its leaders responded to the Supreme Court's edict. Present-day equality struggles are rooted in our past.

May 17, 2014, marked the 60th anniversary of the Supreme Court's decision in *Brown v. Board of Education*. Ultimately that decision compelled the United States to reckon with its history and confront the unfulfilled promise of equality first articulated in our founding documents. May 31, 2015, marked the 60th anniversary of the *Brown II* decision, when the Supreme Court issued its "with all deliberate speed" reiteration and pronouncement of expectations for implementation of the previous year's *Brown* decision.

The *Brown* decision dismantled the legal framework for racial segregation, which in practice subverted constitutional principles of freedom, liberty and equal treatment under the law. However, even then there were people on both sides of the debate. Many people viewed *Brown*

as a mid-20th-century course correction that ushered in a modern America forced to confront the promise of equality and educational opportunity for all of its citizens. Still others believed the United States should remain a country where racial segregation would be legal, keeping African-Americans and other people of color outside the equal protection of the law, and a country that endorsed majority privilege and dominance.

The 1955 murder of 13-year-old Emmett Till grossly underscores push back by the white majority and a willingness to act on a set of beliefs. The men who dragged young Till from his uncle's home in the middle of the night publicly boasted about their actions, yet a jury of their peers found no guilt. For this group states' rights superseded the meddling of the U.S. Supreme Court.

Their beliefs found allies within the ranks of Congress, where in 1956 nearly 100 members of that body wrote a document defying the *Brown* decision. The Southern Manifesto was a congressional resolution condemning the 1954 Supreme Court decision in *Brown v. Board of Education*. The resolution called the decision "a clear abuse of judicial power" and encouraged states to resist implementing its mandates. It stated in part, "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." It went on to commend the motives of those states that declared the intention to resist forced integration by any lawful means.

Now, 62 years after the *Brown* decision, the intent and purpose of the Southern Manifesto continues to resonate in our communities and in our schools. The NAACP Legal Defense fund, at the time led by attorney Thurgood Marshall, had not anticipated the relentless and protracted level of resistance to what seemed to be a simple matter of fairness. The aftermath has left us with a series of strategic decisions by those in power, resulting in struggling public schools, particularly when those schools are predominately populated by students of color and/or students from low-income communities. American schools are collapsing under the weight of an antiquated system of

school finance, pockets of poverty and racial isolation in the urban core.

In light of this, how will our public school counselors, teachers, principals, superintendents, advocates and allies foster academic achievement and embrace the ever-growing racial, ethnic and gender diversity in our public schools?

As Oliver Brown's daughter, I am often called on to comment on issues of race, ethnicity, gender, educational justice and geopolitical matters. When interviewing me in 2004 for an article in the *Journal of Developmental Education*, Nancy Carliuolo from the Rhode Island Office of Higher Education asked me if American schools in 2004 were still "unequal, most under-resourced and still located in tax-poor urban areas."

To paraphrase my answer, I said, "Yes, integration in public schools has never been fully achieved. Ironically *Brown v. Board of Education* holds more resonance in other sectors of society, for example, every time a person of color freely checks into a hotel or is served at a restaurant. However, the *Brown* decision does not resonate as resoundingly in public education, where it was intended to have the greatest impact.

"Integration was never a total reality. After the *Brown* decision, in some communities school boundaries were redrawn, and under court order some of our children were bused away from their home neighborhoods and no longer attended neighborhood schools. Certainly, this situation was not the ideal scenario everyone had imagined."

As recently as 2007, the U.S. Supreme Court in *Parents Involved in Community Schools v. Seattle School District No. 1* dealt

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another blow to integration efforts, rendering unconstitutional school assignment plans that use individual student race or ethnicity as the sole factor in school assignment, punctuating the steady decline in support for school desegregation policies.

In the case, the court ruled that the racial balancing efforts of the Seattle school district, which were undertaken voluntarily, in the absence of evidence that either district had deliberately practiced *de jure* racial discrimination, were impermissible and unconstitutional violations of the Equal Protection Clause. Consequently, districts that had been using such policies to achieve and maintain racial and socioeconomic balance across campuses were denied the primary weapon with which they had historically combated racial and socioeconomic segregation.

But supporters of such voluntary plans found some hope in Justice Anthony Kennedy's concurring opinion. While finding the two particular plans were unconstitutional, Kennedy said race could still be used in narrow circumstances to ensure integrated schools. "A district may consider it a compelling interest to achieve a diverse student population," he said.

Our governing leaders at all levels have lost sight of the importance of education. In my view the most significant statement in the court's opinion in *Brown* makes clear the overall importance of education. It was eloquently laid out in the high court's unanimous decision in *Brown*. In 1954, writing for the court, Chief Justice Earl Warren issued this powerful statement about education that is just as poignant today:

*Today education is the most important function of state and local governments. ... It is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training and in helping him adjust normally to his environment. In these days it is doubtful that any child can be reasonably*

*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.*

Today the combination of conservative courts and a legislative branch lacking political will have pushed us backward and left us with few tools to address these issues. The immediate concern is how to go about using our political apparatus in ways that bring people together, not deepen the stratification among our communities.

There has been almost no real enforcement of the federal fair-housing law, and housing and mortgage discrimination remain enormous problems. Policymakers haven't worked to ensure that building badly needed housing would go hand in hand with school improvement initiatives. Such collaboration would help ensure subsidized housing is placed where nearby schools have track records of excellence. Instead federal subsidies and tax levies often result in building housing for low-income families in areas where the high school's dropout rates have not been abated, virtually ensuring failure for their children. These are neighborhoods without the tax base to support world-class schools.

The few racially and ethnically diverse suburban communities that have been successful in maintaining strong businesses and keeping strong real estate markets, high-quality schools and other fundamental assets tend to be places that have conscious positive leadership seeing racial integration as a community value and mobilizing against the forces that threaten to derail such efforts, wrote Steven Brown in a 2015 article titled *Brown v. Board of Education: Marching Back to the Future*.

The U.S. is becoming increasingly racially, ethnically and in many ways gender diverse. Our government has largely ignored these shifts and the value of successfully moving toward genuine integration in all aspects of society and closing gaps in learning and educational attainment to ensure a competitive global economic edge.

The situation is similar to the challenge facing the civil rights movement at the beginning of the 1960s – a need to focus the public's attention on developing an agenda for positive change. This requires seri-

ous political leadership from Washington, state capitals and regional organizations.

If we are to truly form that much-touted "more perfect union," the first step is to have direct, honest and candid discussions that link the past's inequalities to the present's conditions.

The issue of race, ethnic and gender equality still matters immensely. It influences opportunities and outcomes in our society and remains an unanswered question in terms of policies.

During this pivotal moment for our nation, people are still lined up on both sides of the issue regarding how much equality matters. In actuality, there should be little room to question the importance of equality in the wake of highly publicized, cavalier killings of unarmed African-American men, women and boys in Missouri, New York, Ohio and South Carolina. When politicians speak of exclusion based on ethnicity and governors sign legislation legalizing gender-based discrimination, it's more than past the time to change.

We must use our votes and our voices to challenge the status quo of all forms of racial, ethnic and gender disparity to gain traction in the fight for social justice. Until we do that, we will continue pondering why, 62 years after *Brown v. Board of Education*, our society and our schools remain separate and unequal. ❏

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