

"To Win Equality by Law: Brown v. Board at 50"  
Law Day 2004  
April 30, 2004  
Judith S. Kaye

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➔ Albany High School Select Choir.

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When American Bar Association members this year gathered to choose a nationwide theme for Law Day, I can't imagine there was a bit of debate. The choice was obvious. Law Day celebrates our great heritage of liberty, justice and equality under law. What better example, what better subject, than the 50th anniversary of one of our nation's landmarks, Brown v. Board of Education. A unanimous opinion of the United States Supreme Court, barely 10 pages long, Brown changed the course of America by inspiring the civil rights movement and significant advances toward racial equality.

But, in truth, speaking about Brown presents a decided difficulty. So much has already been said over the past half-century, most especially in the last few months, as we prepare to celebrate the Golden Anniversary on May 17. Yet, remarkably, as we tell and retell the story, still we continue to learn something new--I surely do.

I'd like to spend my few minutes here today telling you some of the new things I've learned lately about Brown, in the hope that they reveal something new for you too.

Before this year, I had not fully appreciated the brilliant legal strategy that ultimately culminated in Brown. Dedicated, patient and persevering lawyers, inspired by Charles Hamilton Houston, actually began implementing their visionary plan in the 1930's, recognizing that the courts presented the best option for changing the law and achieving social justice.

Houston saw that a head-on challenge to the "separate but equal" doctrine of Plessy v. Ferguson was unlikely to succeed, given how entrenched segregation was, especially in the South. His idea, instead, was to challenge the separate educational facilities for Blacks as unequal. He knew that genuinely equal facilities would be so costly that ultimately the entire notion of "separate but equal" would have to give way.

The first challenge was in Maryland, where Houston enlisted the help of a fledgling lawyer, Thurgood Marshall. The University of Maryland Law School had refused to admit a Black student on the basis of race, and there was no "separate but equal" law school in Maryland for him to attend. As a result of the lawsuit, the University of Maryland Law School was compelled to open its doors to Donald Murray.

Then came Missouri. In Missouri, the state offered to reimburse the tuition of a Black law student--Lloyd Gaines--in a neighboring state instead of allowing him into Missouri's own law school. "Not equal," said the United States Supreme Court.

Then came Oklahoma. Oklahoma allowed a Black doctoral candidate--George McLaurin--to attend the state university but actually had him sit out in the hallway apart from the rest of the class, or sit at his own table in the library and cafeteria. Again, the Supreme Court said "not equal."

Then came Texas. When Texas quickly set up a whole separate Black law school just to accommodate one student--Heman Sweatt--the Supreme Court again rejected the effort as failing to provide "substantially equal" education. The disparities were just too great.

Then, finally, came Brown v. Board of Education--a head-on challenge to the constitutionality of the "separate but equal" doctrine. But Brown had its own remarkable twists and turns.

After argument in the Supreme Court in 1952, the Court requested further briefs and argument on five questions. But before the second argument was heard, Chief Justice Fred Vinson passed away, replaced by Chief Justice Earl Warren. Chief Justice Warren understood the vital importance of unanimity. He

even visited his colleague Justice Robert H. Jackson in the hospital--after Jackson's heart attack--to discuss the first draft of the Brown opinion. Chief Justice Warren's opinion became the Opinion of the Court, unanimously declaring that "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

The idea of gradually chipping away at Plessy had finally triumphed, although choosing a successful strategy wasn't the only problem confronting the lawyers who walked the two-decade long road to Brown. Thurgood Marshall, for one, was nearly lynched in Tennessee and was told none-too-politely in Louisiana, by a man with a large gun, to leave town before sundown.

Plaintiffs themselves also displayed incredible courage. The fact is, Brown would never have happened without families willing to fight the odds and take risks, knowing the wrath they would endure for the right to first-class citizenship and a place in an integrated school. They faced economic boycotts, job loss and denial of credit; another family was removed from land they had sharecropped for decades; others faced threats of violence. A minister in South Carolina who helped

bring one of the cases in Brown had his church burned to the ground.

All in all, a truly remarkable story, well worth telling and retelling, especially on a day we honor the Rule of Law and our great heritage of equality under law.

So for the past, and especially for the future, here are my five themes from the remarkable story of Brown v. Board of Education.

First, how fortunate we are that, throughout history, people have been willing to lay down their lives in defense of our liberties and our ideals. That includes courageous plaintiffs in civil rights litigation. We owe them a great debt of gratitude.

Second, how amazing and inspiring it is that a few dedicated, patient and persevering lawyers--despite unbelievable odds--were able to change the face of America. And surely dedicated, patient and persevering lawyers today continue to battle injustice and secure our nation's ideals.

Third, this is also an occasion for a tip of the hat to the nine Supreme Court Justices who swallowed hard--some undoubtedly harder than others--to speak as one. More than ever I admire the wisdom of those jurists--their decision on the merits to be sure, but important too, the crisp, unadorned,

imperative tone of their unanimous clarion call for justice. Clarity, simplicity, unanimity mattered enormously on May 17, 1954.

Fourth, especially in the years immediately following *Brown*, critics insisted that "the law can't change people." Well, plainly the law can change people. The law can change attitudes. *Brown* proved that. But we also know that the mandate of *Brown* is not a self-fulfilling prophecy. Still we need courageous plaintiffs, dedicated lawyers, wise and conscientious judges and caring citizens to assure that our nation's ideals remain a day-to-day reality.

Fifth and finally, celebrating *Brown*--telling and retelling the story--reminds us of the importance of the Rule of Law. No doubt of it. Throughout the history of this great nation, the Rule of Law we honor on Law Day has proved that it is the most effective guarantor of a free and peaceful society, the most effective weapon against those who would dishonor it.

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Before presenting the Lieutenant Governor, I'd like to introduce four special people in the audience.

The Robert H. Jackson Center and the New York State Bar Association Law, Youth, and Citizenship Program this year conducted an Essay Contest on *Brown v. Board of Education* for

high school students, and we are fortunate to have four of the winners with us today: Christina Kieffer (Rochester), Maegan Sherlock (Liverpool), Anne Marie K. McClain (Highland), and Maxime Vales (Brooklyn). The fifth winner, Maia Moyer (Fort Covington), could not be here today. Superb efforts such as yours help to keep alive the vital message of Brown, and assure that the freedoms we celebrate today will endure.

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➡ *Introduce Lieutenant Governor....*