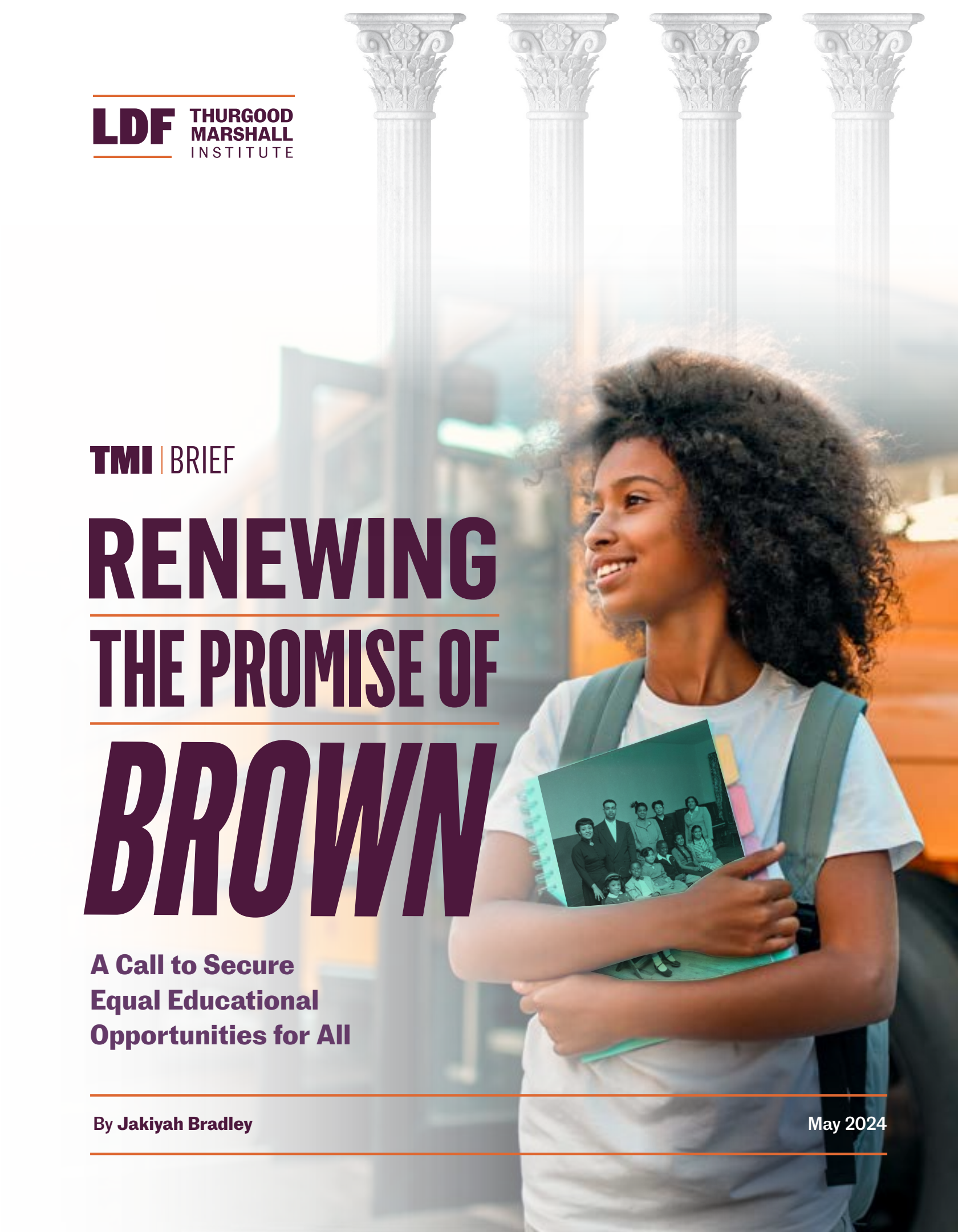
LDF THURGOOD MARSHALL INSTITUTE

TMI | BRIEF

RENEWING THE PROMISE OF *BROWN*

A Call to Secure Equal Educational Opportunities for All



By **Jakiyah Bradley**

May 2024

Nettie Hunt and her daughter Nickie sit on the steps of the U.S. Supreme Court. Nettie explains to her daughter the meaning of the high court's ruling in the *Brown v. Board of Education* case that segregation in public schools is unconstitutional. *Photo by UPI/ Bettmann via Getty Images*

PREAMBLE

This Thurgood Marshall Institute Brief uplifts the seventieth anniversary of the landmark Supreme Court decision *Brown v. Board of Education*. *Brown* was the culmination of groundbreaking legal strategies utilizing the Fourteenth Amendment's Equal Protection Clause to dismantle state-sanctioned segregation in public education. Unfortunately, persistent resistance to eliminating both the "root and branch"[i] of segregation on the local, state, and federal levels has hindered the full realization of *Brown*'s promise. As we celebrate seventy years since the historic *Brown* decision ushered in the dismantling of state-sanctioned apartheid in this country, the Legal Defense Fund (LDF) revisits *Brown*'s constitutional promise to ensure equal educational opportunities for all.

i *Green v. County School Board of New Kent County* (1968), a school desegregation case that the Legal Defense Fund litigated and won, states that school authorities are obligated to eliminate racial discrimination "root and branch." This metaphorically refers to how the system of discrimination is formed (root) and later flourishes and expands (branch).

INTRODUCTION

"There were never any pros and cons on segregation, however. Our only arguments on this subject were over the best methods of doing away with it." – **Thurgood Marshall**[1]

As a child, Thurgood Marshall and his father, William Marshall, often had debates in which they would argue the pros and cons of various issues.[2] When it came to the matter of segregation, however, the conversation shifted from debating both sides to discussing ways to eliminate the practice altogether.[3] Segregation was not a concept they discussed with abstract hypotheticals: Both father and son knew segregation intimately, as it was deeply embedded in the fabric of their lives. Thurgood Marshall was raised in Baltimore, Maryland, during the implementation of the city's 1910 residential segregation ordinance, one of the earliest of its kind in the United States.[4] Later, he was unable to attend the nearby University of Maryland School of Law because of its segregationist admissions policies.[5] Instead, he enrolled in the Howard University School of Law in Washington, D.C., where he would meet his mentor, Charles Hamilton Houston.[6] Although Marshall would eventually become one of the most storied lawyers and jurists in American history, the harms of segregation deeply impacted his life. Like millions of Black students across the United States, Marshall endured and excelled in spite of the indignities and inequalities of racial segregation.

Marshall founded LDF in 1940[7] and led the organization's litigation strategy to dismantle segregation and the myriad ways it manifested in American society. LDF was the legal division of the National Association for the Advancement

of Colored People (NAACP) until 1957.[8] From the beginning, LDF brought forth litigation challenging the racism that prevented Black people from accessing their full rights as citizens of the United States. Successful early cases included challenges to unconstitutional, racially restrictive housing covenants in *Shelley v. Kraemer*[9] and racial segregation on interstate buses in *Morgan v. Virginia.*[10]

Eventually, LDF extended its litigation to combat segregation in the public educational system. By moving beyond the "separate but equal" strategy, Marshall and LDF aimed to hold institutions accountable for the lasting harms of racial discrimination and segregation. **LDF's goal of legally dismantling state-sanctioned segregation in U.S. public schools was achieved when the Supreme Court issued its *Brown* decision. *Brown* represented a recognition that public education is a foundation of citizenship and, as such, racially segregated schools cannot be reconciled with the Equal Protection Clause.** Beyond education, this ruling also set a new standard that rejected the legal rationale for the racial caste system—separate but purportedly equal—in the United States.[11]

The first section of this Brief highlights LDF's key strategies that dismantled *de jure* segregation in public schools, and the second section analyzes the true promise of *Brown*. This Brief concludes with a call to honor Marshall's vision of full citizenship for Black people, emphasizing the critical role *Brown*'s legacy continues to play in the ongoing struggle for educational equity.

LDF'S GOAL OF LEGALLY DISMANTLING STATE-SANCTIONED SEGREGATION IN U.S. PUBLIC SCHOOLS WAS ACHIEVED WHEN THE SUPREME COURT ISSUED ITS *BROWN* DECISION.

Black students attend school in a one-room shack due to white authorities' resistance to school desegregation. *Photo by Getty Images*

NAACP officials from seventeen states meet in Atlanta, Georgia, on May 22, 1954, to plan a course of action regarding the Supreme Court ruling banning school segregation. Rev. J.M. Hinton addresses the gathering; NAACP Executive Secretary Walter White bends over the table. Thurgood Marshall stands to the left. *Photo by Getty Images*

The Road to *Brown*: Evoking the Fourteenth Amendment

The NAACP and LDF lawyers,[ii] along with their clients, understood early on that legally dismantling systemic racism would be a marathon rather than a sprint. To end *de jure* segregation, their litigation strategy evolved from attempting to equip Black teachers with equal resources under *Plessy v. Ferguson* to arguing, through the use of social science research, that state-sanctioned segregation inherently violated the Fourteenth Amendment's Equal Protection Clause due to the resulting harm to Black children. Working in tandem with community members, the lawyers' end goal was to achieve Black people's full citizenship under the law. They accomplished this through sustained efforts, progressively guiding the nation toward the victory in *Brown*.

ii The NAACP was founded in 1909, and LDF (previously called NAACP LDF) was founded in 1940. From 1940 to 1957, LDF operated within the NAACP. In 1957, LDF became a separate organization from the NAACP. The organizations are not interchangeable, so this Brief specifies which organization led legal efforts when possible. This Brief will mention both organizations when broadly referring to their cumulative legal efforts.

STRATEGY ONE: Proving that Separate Is Always Unequal

The initial legal strategy to dismantle *de jure* segregation was to challenge the 1896 Supreme Court precedent *Plessy v. Ferguson*, which established the "separate but equal" doctrine.[12] This doctrine maintained that racial segregation did not violate the Fourteenth Amendment as long as it ensured equal accommodations for Black and white individuals.[13] The NAACP lawyers therefore sought equal resources to highlight the financial burden of funding segregated schools for both Black and white students under *Plessy*.

In 1929, the NAACP received a grant to engage in "large-scale legal campaigns to enforce the Constitutional rights of [Black] Americans in the South," including an integral campaign focused on the unequal apportionment of public school funds.[14] The NAACP lawyers hoped that winning these cases would soften the ground to allow for successful future challenges to *Plessy*.[15]

A year later, in 1930, the NAACP hired Nathan Margold to research legal avenues to launch

campaigns that would allow Black people to exercise their constitutional rights. He presented his findings in a 218-page document, known as the Margold Report. The report summarized the rights given to all citizens through the U.S. Constitution and outlined a path forward to dismantle segregation. Most importantly, it confirmed what the NAACP already knew from previous surveys: The Supreme Court's concept of "separate but equal" in *Plessy* never came to fruition in reality because separate did not yield equal results.[16] Margold recommended that the NAACP ramp up its legal work from small-scale cases for equal resources to a broader federal litigation strategy that would rely upon the Fourteenth Amendment of the U.S. Constitution to strike down state-sponsored segregation.[17]

In addition to Margold's findings, the prophetic legal theorizing and sharp lawyering of Black women attorneys, such as Pauli Murray and Constance Baker Motley, also paved the way toward desegregating U.S. public schools. As a law student at Howard University in the early 1940s, Murray authored a seminar paper on whether the Supreme Court should overturn the *Civil Rights Cases* of 1883[18] and *Plessy*.[19] The *Civil Rights Cases* struck down part of the Civil Rights Act of 1875, a law that promised to "protect all citizens in their civil and legal rights."[20] Murray, who saw the former ruling as laying the groundwork for the latter ruling's infamous "separate but equal" doctrine, argued in the paper that challenging *Plessy* was necessary given the times and could be achieved by showing case-by-case that separate facilities are inherently unequal.[21] Murray later learned that LDF attorneys had read and used this paper as they prepared the *Brown* briefs.[22] Murray's brilliance was complemented by Motley's lawyering at LDF, particularly her representation of Black students seeking admission to universities across the South.[23] Motley was part of every major school desegregation case LDF handled from 1945 to 1964[24] and served as one of the architects of LDF's school desegregation strategies. In one prominent case that had a ripple effect in desegregating other universities in the South, Motley successfully litigated a case against the University of Georgia

TOP: Constance Baker Motley is pictured with Arthur Shores while delivering a press conference on a college desegregation case. *Photo by Getty Images*

BOTTOM: Pauli Murray authored a paper that was critical in LDF's conceptualization of ***Brown v. Board***. *Photo by Getty Images*

to admit its first Black students, Hamilton Holmes and Charlayne Hunter-Gault.[25] In addition, Motley wrote the original complaint for *Brown*.[26]

The legal strategies spearheaded by the NAACP and LDF ultimately forced policymakers to decide whether they wanted to continue the expensive and unjust practice of segregation, or to ensure that Black students could easily access high-quality public schools that were racially integrated. Before *Brown*, maintaining segregated public schools had a high monetary cost, as school districts would finance and operate separate schools based on race. In 1952, researchers at Washington University's Department of Sociology and Anthropology examined the monetary cost of segregation in Missouri's public schools, and specifically what it would cost if the schools were made to be equal but remained separated by race.[27] To determine whether the all-Black and all-white schools were equal, the researchers analyzed schools' maintenance costs, teacher salaries, building and equipment conditions, and extent of crowding. Their analysis found that the all-Black and all-white schools were in fact not equal, that it would be extremely expensive to bring the all-Black schools to the same standards as the all-white schools, and that integrating schools instead would yield considerable financial savings.[28]

The acknowledgement of the high monetary costs of segregation, along with the Margold Report, provided a blueprint for ending state-sanctioned school segregation in the United States.[29] In some states, like Virginia, lawyers pursued a legal strategy of equalization to highlight how expensive it would be to have separate educational systems for Black and white students that were equal in funding and resources.[30] The Virginia chapter of the NAACP filed a series of cases in Virginia federal courts requesting equal resources.[31] However, equalization still allowed for state-sanctioned segregation to endure because the relief requested in the lawsuits was for new resources to flow into underfunded schools. This remedy did not address the underlying racism that caused unequal resources in the first place. Although providing separate resources, such as one law school building for Black students and another one for white students, proved to be expensive, some institutions in states like South Carolina accepted the higher costs because they wanted to avoid desegregating schools.[32] To the dismay of segregationists, however, LDF was intentionally using this strategy of pursuing equalization in the courts as a steppingstone to later fully attack *Plessy*'s "separate but equal" doctrine.[33]

In their quest to secure a brighter educational future for all children, Marshall and his colleagues also considered and prepared for how the backlash to the end of state-sanctioned school segregation would impact Black teachers. LDF combined the skills and wisdom of field personnel and lawyers to ensure that as children benefited from desegregated schools, their Black teachers would not be harmed in the process or be fired due to their race. As early as 1950, LDF began preparing for a post-*Brown* world by engaging in field studies and test suits in various states where public schools were making the transition from segregation to integration.[34] In January 1955, soon after the *Brown* ruling, LDF created the Department of Teacher Information and Security to "protect the Negro teacher from arbitrary and discriminatory loss of employment."[35] The department had four main goals: 1) liaising and cooperating with organizations of Black teachers and other allied organizations; 2) highlighting and participating in conferences of educators who were interested in the future of Black teachers; 3) compiling education laws and court decisions regarding teachers' employment rights and the duties of their employers; and 4) drafting blueprints for legal action in response to teacher problems in various states.[36] The department proactively cataloged teacher concerns that were brought to their attention, compiled a library of useful materials, and helped develop legal avenues to advance the job security of Black teachers.[37] The department's work affirmed LDF's commitment to safeguarding the place of Black teachers in schools even within a changing educational landscape.

N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

MONTHLY REPORT

January 1955

January, besides giving birth to a new year, also gave birth to two new additions to the Inc. Fund. On January 3, 1955, the Fund announced the establishment of a Social Science Department and a Department of Teacher Information and Security. Both departments were created to provide expert assistance to the staff and community organizations in their effort to facilitate the change from segregated to integrated school systems.

The Social Science Department will make original studies and collate existing materials into reports which will be distributed to school officials and civic and professional organizations. The work of the Department is expected to provide the scientific basis for implementation techniques. Its activities will be directed by a panel of social scientists who is headed by Dr. Alfred McClung Lee; and its administrative secretary is June Shagaloff, formerly a Fund field secretary.

The title of the other new-comer, the Department of Teacher Information and Security, explains the particular area in which it will be active. Headed by Dr. John W. Davis, the former President of West Virginia State College and a pioneer in the field of integrated education, the Department is structured to formulate and answer the administrative and legal problems which many anticipate will fall upon the lot of the Negro teacher with the advent of wide-scale desegregation. Its staff is presently engaged in cataloging teacher problems and their possible solutions, compiling a library of materials, and developing legal bases upon which the job security of Negro teachers can be defended during the period of transition in the schools.

Other developments summarized below include the initiation of two housing suits, oral argument before two appellate courts, the completion of a major brief, and considerable activity in several trial courts.

CRIMINAL CASES

Higgs v. State of Connecticut

During January further progress has been made toward a review of Higgs' conviction for the rape of a wealthy Stamford suburbanite. The trial record has been designated for printing by the Supreme Court of Errors and staff counsel are drafting an assignment of errors committed at the trial. Moreover, preliminary work has been done on the brief which will be due within 30 days after the printed record is filed with the court.

Internal LDF document announcing the creation of the Social Science Department and the Department of Teacher Information and Security in 1955. *From LDF Archives*

While Marshall and his colleagues aimed to mitigate the potential consequences of the backlash of desegregation for Black teachers, they also recognized the vital importance of the Fourteenth Amendment to their litigation strategy. During a speech at the NAACP Wartime Conference in 1944, Marshall described the Fourteenth Amendment as a prohibition "against action by the states and state officers violating civil rights."[38] He further asserted the particular importance of the Reconstruction Amendments, including the Fourteenth Amendment, to Black people because they were, at times, the only protection for those looking to address state-sanctioned discrimination on the basis of race.[39]

A few years later, the Fourteenth Amendment was put to the test at the Supreme Court in *Brown*. *Brown*, which encompassed five cases filed on behalf of students, called for the end of state-sanctioned segregation in public education under the Fourteenth Amendment's Equal Protection Clause.[40] While each case had unique facts and legal issues specific to individual school districts, all cases were being appealed to the Supreme Court when the Court consolidated the cases and agreed to hear the cases collectively in December 1952. In December 1953, the Court called for a second oral argument to clarify the legislative intent of the Fourteenth Amendment.[41] The cases addressed how Black students were outright denied admission to nearby white schools due to their race and/or witnessed their all-Black schools being under-resourced compared to nearby white schools.

When the Supreme Court called for a second oral argument to clarify the legislative intent of the Fourteenth Amendment, the preparation included:

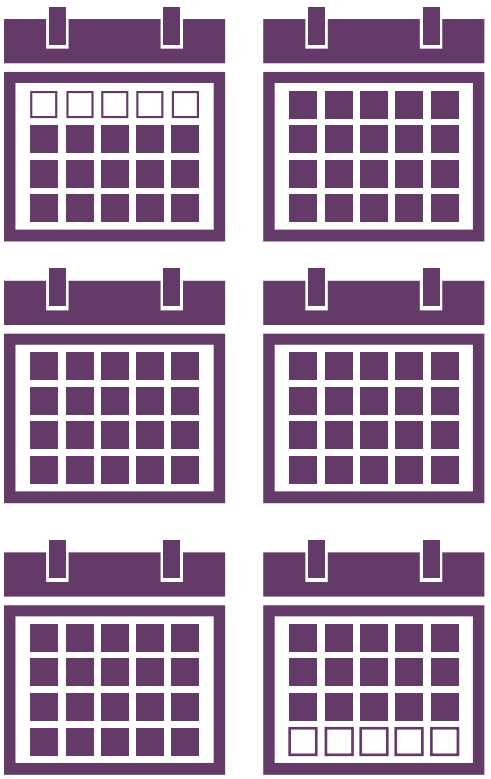
- Twenty-two weeks of research[42]
- Six lawyers, six secretaries, and two clerks involved[43]
- Approximately $14,000 collected through fundraising in large newspapers[44]
- 325,000 miles across the country traveled among all the lawyers[45]
- More than 200 plaintiffs[46]

Thurgood Marshall sits with journalist Daisy Bates and several members of the "Little Rock Nine" the first students to integrate Central High School.
Photo by Getty Images

FOR THE SECOND ORAL ARGUMENT, THE PREPARATION INCLUDED:

22

weeks of research



325,000

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FIVE CASES CONSOLIDATED IN *BROWN v. BOARD OF EDUCATION*

Thurgood Marshall, chief attorney for NAACP and LDF's founder and first Director-Counsel, at NAACP regional meeting in Atlanta. *Photo by Getty Images*

***Spottswood Thomas Bolling, et al. v. C. Melvin Sharpe, et al.* – Washington, D.C., filed to the U.S. District Court for the District of Columbia on November 9, 1950**[47]

Black parents living in Washington, D.C., petitioned the D.C. Board of Education to racially integrate John Philip Sousa Junior High School, and their petition was denied. A year later, the parents demanded that their children be permitted to enroll in the newly constructed all-white high school.[48] The parents sought the help of Charles Hamilton Houston and his Howard Law colleague James Nabrit, who filed a federal lawsuit. The trial court dismissed their case, stating that the school board's actions were constitutional and did not violate the Fifth Amendment.[iii] Afterwards, the parents appealed to the U.S. Supreme Court.[49]

***Harry Briggs Jr., et al. v. R.W. Elliott, et al.* – Clarendon County, South Carolina, filed to the U.S. District Court for the District of South Carolina on December 22, 1950**[50]

In Clarendon County, South Carolina, Black parents argued that the school district should provide buses to their Black children, like white students. With no access to free bus service, Black children were forced to walk to school, sometimes traveling as far as eight miles each way. School officials justified this differing treatment by emphasizing the larger share of taxes paid by white families, who would be burdened by having to pay a disproportionate share of the bus service for Black children too.[51] In response, twenty Black parents filed a lawsuit in federal court.[52] The parents argued that the schools for Black children were inferior to the schools for white children, and that this disparity violated the U.S. Constitution's Fourteenth Amendment.[53] They further asserted that the South Carolina constitutional requirement to racially segregate Black and white children also violated the

iii The District of Columbia, like the federal government, is not subject to the Fourteenth Amendment, which applies only to the states. However, courts have interpreted the Fifth Amendment, which does apply to the federal government and the District of Columbia, to encompass all the rights and privileges provided in the Fourteenth Amendment.

Fourteenth Amendment.[54] The parents demanded that Black children receive "educational facilities, curricula, equipment, and opportunities"[55] that were equal to those for Clarendon County's white children. The U.S. District Court in South Carolina ordered the school district to equalize the facilities, but because the Black children were still denied admission to white schools, the parents appealed.[56]

***Oliver Brown, et al. v. Board of Education of Topeka, Shawnee County, Kansas, et al.* – Shawnee County, Kansas, filed in the U.S. District Court for the District of Kansas on February 28, 1951**[57]

Prior to the filing of this lawsuit in 1951, there were eleven school integration cases throughout Kansas challenging the conditions of segregated schools where Black students learned in substandard facilities with unequal resources.[58] As part of their larger integration strategy, the NAACP of Topeka, Kansas, formed a coalition of Black parents who tried to enroll their children in the schools closest to their homes—which were white-only schools. When the children were denied admission, lawyers filed a class action lawsuit on behalf of thirteen parents and their twenty children[59] against the Topeka Board of Education on the grounds that the school board's segregationist policies violated the Fourteenth Amendment's Equal Protection Clause.[60] When the federal District Court ruled against the Black parents, they appealed.[61]

Students are seated in a classroom at Moton High School in 1951. At the time Moton High School was for Black students in Prince Edward County, Virginia. This photo was used as Plaintiff's Exhibit No. 32 in *Dorothy E. Davis, et al. v. County School Board of Prince Edward County, et al.*

Second photo: Students are seated in a classroom at Worsham High School in 1951. At the time Worsham High School was a school for white students in Prince Edward County, Virginia. This photo was used as Plaintiff's Exhibit No. 22 in *Dorothy E. Davis, et al. v. County School Board of Prince Edward County, et al.*
Photos courtesy of the National Archives

BOLLING v. SHARPE
BRIGGS v. ELLIOTT
BROWN v. BOARD OF EDUCATION OF TOPEKA
DAVIS v. COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY
BELTON (BULAH) v. GEBHART

Dorothy E. Davis, et al. v. County School Board of Prince Edward County, Virginia, et al. – Prince Edward County, Virginia, filed in the U.S. District Court for the Eastern District of Virginia on May 23, 1951[62]

On April 23, 1951, several students at Moton High School walked out in protest, vowing not to return until the school board built a new school. Moton was the first high school for Black students in Prince Edward County, Virginia. The high school lacked basic facilities, like a gym, cafeteria, and science labs. The Moton students wanted a high-quality new building and did not explicitly call for school desegregation. Two days after the walkout, lawyers for Virginia's NAACP chapter met with the students and agreed to take on the students' case. The lawyers filed a lawsuit in May 1951 arguing that the segregation of schools violated the Fourteenth Amendment. The case was heard by a three-judge panel at the U.S. District Court, and they rejected the NAACP's claims of segregation, finding no harm to either race when Black and white children are separated in schools. The case was later appealed to the U.S. Supreme Court.[63] Virginia State Attorney General James Lindsay Almond Jr., the lead lawyer for the state in this case,[64] would later become Virginia's governor and a champion of the Massive Resistance movement to block school integration.[65]

Students are seated in Moton High School's auditorium in 1951. At the time Moton High School was for Black students in Prince Edward County, Virginia. This photo was used as Plaintiff's Exhibit No. 42 in *Dorothy E. Davis, et al. v. County School Board of Prince Edward County, et al.* *Photo courtesy of the National Archives*

Ethel Louise Belton, et al. v. Francis B. Gebhart, et al. and *Sarah Bulah, et al. v. Francis B. Gebhart, et al.* – Delaware, filed in the Delaware Court of Chancery in July 1951[66]

In *Belton*, Black parents in Hockessin, Delaware, were concerned about sending their Black children to a segregated school that was an hour-long bus ride each way and was not as well-resourced as a nearby school for white students.[67] The *Bulah* case was unique in that Sarah Bulah, the lead plaintiff, was a white woman with an adopted Black child.[68] Each day in Claymont, Delaware, Bulah watched school buses in the area pick up white children,[69] but they never came for her child even after she petitioned for bus service. Instead of being heard at the U.S. District Court, the two cases were consolidated into one and heard at the state's Court of Chancery. Chancellor Collin Seitz ruled that the parents, the plaintiffs in the case, were denied equal protection under the law[70] and later ordered for the parents' children, not all Black children in the area, to be admitted to their respective all-white schools.[71] Afterwards, Delaware's Board of Education members, the defendants in the case, appealed to the Supreme Court of Delaware and the parents simultaneously filed a cross-appeal. The case was heard by Chief Justice Clarence Southerland, whose ruling affirmed Chancellor Seitz's ruling: The Delaware Board of Education did not have the right to deny admissions to parents' children on account of their race.[72] With those decisions, the Claymont School Board and school administrators admitted a small number of Black children to public schools, officially integrating them, in 1952. However, one day after integration, the Delaware Attorney General ordered local Superintendent Harvey Stahl to send the Black students home as the Delaware Board of Education appealed Chancellor Seitz's decision to the U.S. Supreme Court. Stahl said no, and the Black students remained in their newly integrated school.[73]

Dr. Kenneth Clark is pictured with a participant in the Doll Test experiment. Dr. Clark and his team presented participants with dolls with a range of skin tones and asked them to identify which dolls they believed were nice, bad, and most like themselves. *Photo courtesy of the Gordon Parks Foundation*

STRATEGY TWO:

Engaging Social Science Research

Led by Marshall, LDF relied on the expertise of social scientists, including historians Dr. John Hope Franklin and Dr. Horace Bond, in the *Brown* litigation.[74] In a 2005 interview, Dr. Franklin recalled that Marshall asked him to join the legal effort after the Supreme Court remanded the case for re-argument in 1953.[75] The Court asked the lawyers to clarify whether the Fourteenth Amendment's Equal Protection Clause prohibited the operation of separate public schools for white and Black children.[76] Marshall asked the historians to examine testimony and debates from the Joint Committee on Reconstruction after the Civil War, which led to the Fourteenth Amendment's ratification. The historians scoured through legislative records, but unfortunately did not find anything specifically discussing equality in the school system. They did, however, find evidence that legislators like Rep. Thaddeus Stevens and Sen. Charles Sumner believed that the Fourteenth Amendment authorized the desegregation of schools.[77] Stevens had served on the Joint Committee and urged his colleagues to support the Fourteenth Amendment because it would usher in legal equality for Black Americans.[78] In fact, Stevens' commitment to racial integration continued to his death: In July 1953, Dr. Bond sent to the LDF legal team a photograph of Stevens' tombstone,[79] located in the only burial ground in

Lancaster, Pennsylvania, where, at the time, Black and white people could be buried side by side.[80]

Dr. Kenneth Clark and Dr. Mamie Clark, two Black psychologists, also contributed to the *Brown* litigation by illustrating how school segregation fostered negative feelings among Black children about themselves and their race.[81] Even prior to *Brown*, the Clarks had long studied the detrimental social and psychological impacts that racial segregation had on young children,[82] and they brought this expertise to the *Briggs*,[83] *Davis*, *Belton*, and *Bulah* cases.[84] The Clarks studied the impact of racism on children through a series of tests, including the well-known doll test.[85] During the test, researchers presented Black children with dolls across a spectrum of skin tones (from light/white to dark/Black) and asked which dolls they believed were nice, bad, and most like themselves. The researchers found that Black children tended to favor the white dolls and believed the Black dolls were bad, and they thought they looked most like white dolls even though they were Black.[86] The Clarks concluded that even as young children, Black people were taught that they were inferior due to their race.[87]

The Doll Test was key evidence in the *Brown v. Board* litigation in showing the detrimental social and psychological effects on children. *Photo courtesy of the Gordon Parks Foundation*

As part of the PBS program *Eyes on the Prize: America's Civil Rights Movement*, Dr. Kenneth Clark recounted that the plaintiffs' lawyers in *Briggs* had read their prior research and wanted to know if the Black students of Clarendon County would have similar results.[88] The 1951 *Briggs* District Court opinion noted that Dr. Kenneth Clark interviewed children in Clarendon County and found that Black children's inferior status harmed the development of their individual personalities, and that this injury was likely to last as long as they were in an environment that treated them as inferior.[89] In his testimony, Dr. Clark summarized his study findings as such: first, that the Black children of Clarendon County have been subjected as inferior to their white counterparts, and that subjugation has negatively impacted the development of their individual identities; and second, that this harm that racism has inflicted upon the children will endure as long as they are in racially segregated schools.[90]

The Clarks' research was influential: In its final opinion for *Brown*, the Supreme Court cited Dr. Kenneth Clark's 1950 paper "Effect of Prejudice and Discrimination on Personality Development" and other social science research as evidence that segregation negatively impacts the development of Black school-aged children.[91]

Brown's Promise and Roadblocks

"We come then to the question presented: 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." – **Chief Justice Warren in *Brown* opinion**[92]

In May 1954, the Supreme Court unanimously ruled in *Brown* that state-mandated racial segregation of students in public schools was unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.[93] The Supreme Court's decision mandated an end to segregation in America, starting with public schools. *Brown* aimed to eliminate the harms of a racial hierarchy in U.S. public schools amidst Jim Crow laws that divided the country between those who were subjected to the indignities of racial inferiority and those who were given the full privileges of citizenship. However, the promise of *Brown* was quickly diminished when states refused to follow the Supreme Court's ruling. Although the *Brown* decision affirmatively protected Black children from state-sanctioned segregation, the Court's ruling raised a conundrum: the same states and localities that created and fervently supported racial segregation were now asked to dismantle those same apartheid systems.[94]

Brown represented a pivotal moment in American history because it challenged the segregation of public schools based on race.. The systemic nature of racism in the United States, however, has hindered *Brown*'s full realization. While court decisions like *Brown* set forth the possibility of a more equitable society, they are just the beginning of the journey toward achieving racial equality in America.

> *"In addition to the so-called lawful means of attempting to delay the enforcement of the Supreme Court's ruling, we are witnessing the actions of unlawful groups. These groups, despite the difference in names, are no more and no less than revised versions of the old Ku Klux Klan. . . . Many of them have the support of all southern state government officials who have once again condoned them as being over and above the law of the land. This presents a clear-cut issue. There is not room enough in this country for our government and groups aimed at opposing our government through unlawful means. Both cannot survive."*
>
> — Thurgood Marshall at the NAACP 46th Annual Convention, 1955[95]

The Supreme Court's ruling against state-sanctioned segregation in *Brown* sparked the "Massive Resistance." This term has been attributed to Sen. Harry F. Byrd of Virginia, who led a movement of individuals and groups that defiantly opposed *Brown*.[96]

In "Remembering Massive Resistance to School Desegregation," legal scholar Mark Golub expounds upon the lengths to which resistors manipulated the Supreme Court ruling to fit their needs.[97] Some states, particularly those in the

EFFORTS TO PROTECT EQUITABLE ADMISSIONS POLICIES

On June 29, 2023, the Supreme Court issued a decision in *SFFA v. President & Fellows of Harvard College* that positioned race-conscious admissions policies in higher education as racially discriminate. LDF supports race-conscious admissions policies because they allows academic institutions to take race into consideration when reviewing someone's admissions application. In its opinion, the Court stated that race-conscious admissions policies do not comply with the Equal Protection Clause of the Fourteenth Amendment by untruly stating that these policies could see some students' race, e.g., white or Asian, as a negative factor. Additionally, the Court gave an ahistorical description of *Brown*, incorrectly stating that race-conscious admissions policies are at odds with *Brown* when they in fact complement each other in the journey to achieve true education equity.

South, passed resolutions to categorize *Brown* as an constitutional amendment and not a Supreme Court ruling.[98] These legislative resolutions[99] attempted to use the power of states' rights, a power granted to states under the Tenth Amendment,[100] to render *Brown* ineffective. According to this interpretation of the U.S. Constitution, states ratified constitutional amendments but retained their powers to control public entities, including public schools, through the Tenth Amendment. Therefore, in their resolutions, states argued that they never consented to surrendering the power to operate racially segregated public schools by way of ratifying the Fourteenth Amendment. While the states agreed that the Fourteenth Amendment broadened the federal government's powers, they argued that it did not strip states of their right to enforce school segregation.[101]

Even before the Supreme Court's decision in *Brown*, local and state politicians were openly preparing to defy any possible directive that dismantled state-sanctioned segregation. In 1953, for example, Georgia Governor Herman Talmadge planned to immediately stop all appropriations to schools that did not practice segregation and then turn those schools over to private agencies that would receive state funds to operate them as segregated schools.[102] That same year, South Carolina Governor James Byrnes similarly threatened to abandon the public school system should the Supreme Court outlaw segregation in public schools.[103]

After *Brown*, multiple members of Congress from the South signed the 1956 "Declaration of Constitutional Principles," also known as the Southern Manifesto, which attacked the *Brown* ruling by framing it as an unprecedented overstep

of judicial powers. Additionally, the manifesto underscored their beliefs that the Fourteenth Amendment did not extend to education and that overturning *Plessy*, which had been a precedent for nearly sixty years, constituted an abuse of power.[104] In the midst of the congressional resistance, President Dwight D. Eisenhower declined to endorse the *Brown* ruling and refused to condemn segregation as morally wrong.[105]

The 1968 Supreme Court case *Green v. County School Board of New Kent County* demonstrated the extent to which southern school districts would engage in Massive Resistance.[106] Under the guise of parental rights—similar to contemporary fights for parental control over which books are in their children's classrooms and school libraries—some districts created "freedom of choice" plans following the *Brown* decision that allowed parents and students to complete a form to choose their preferred school. Although these plans created the misleading impression that they were gradually shifting the racial balance within schools, in reality they resulted in the admission of only a small number of Black students into formerly all-white schools.[107] In the *Green* decision, the Court expressed disbelief that Virginia's New Kent County School Board had only just begun desegregating its school system more than a decade after the *Brown* ruling. In a unanimous decision, the Court declared that the freedom of choice plan through which the school board sought to desegregate public schools was insufficient under the requirement to integrate schools with "all deliberate speed."[108] The Court stated:

> "In three years of operation, not a single white child has chosen to attend Watkins school, and, although 115 Negro children enrolled in New Kent school in 1967 (up from thirty-five in 1965 and 111 in 1966) eighty-five percent of the Negro children in the system still attend the all-Negro Watkins school. In other words, the school system remains a dual system. Rather than further the dismantling of the dual system, the plan has operated simply to burden children and their parents with a responsibility which *Brown II*[iv] placed squarely on the School Board. The Board must be required to formulate a new plan and, in light of other courses which appear open to the Board, such as zoning, fashion steps which promise realistically to convert promptly to a system without a 'white' school and a 'Negro' school, but just schools."[109]

Resistance to school desegregation did not contain itself to the years immediately following *Brown*; it persists today. Without affirmative advocacy to advance desegregation, sentiments that can be traced back to the era of Massive Resistance still flourish and take hold in today's fight to secure education equity. In 2022, the U.S. Government Accountability Office (GAO) analyzed ten years of data and found that when schools severed ties with their existing school districts to form new ones, these new districts often had extreme racial and wealth gaps.[110] This phenomenon, known as "district secession," tends to be concentrated in the U.S. South, although it occurs across the nation.[111] Education scholars Genevieve Siegel-Hawley, Kendra Taylor, and Erica Frankenberg note that, in recent years, these secessions "reflect a narrowing conception of what is 'public' about public education as newly created districts seek to preserve relative racial and economic advantages for more homogeneous white areas."[112] In one prominent example, six different municipalities have seceded from the same Alabama school district since *Brown*, fundamentally changing the student demographics and creating a collection of white school systems separate from the original district. In 2016, LDF was forced to go to trial to stop a seventh secessionist municipality, Gardendale, from leaving its county school system in order to maintain the predominantly white demographics of its local schools.[113]

iv *Brown II* was a 1955 U.S. Supreme Court ruling which stated that states should integrate their public schools "with all deliberate speed."

Recognizing Full Citizenship Rights for Black People in the United States

"I think that before this country takes up the position that I must demand complete equality of right of citizens of all other countries throughout the world, we must first demonstrate our good faith by showing that in this country our Negro Americans are recognized as full citizens with complete equality."

– Thurgood Marshall, 1948 letter to the editors of *The Dallas Morning News*[114]

Despite great strides toward reaching *Brown*'s promise, U.S. public schools remain largely segregated seventy years after the Supreme Court's seminal decision. In the aforementioned 2022 study, the U.S. Government Accountability Office (GAO) concluded that while K-12 public schools in the United States have become more diverse, schools remain segregated across racial, ethnic, and economic lines.[115] To determine the extent of segregation in public schools, the GAO researchers analyzed demographic data from the Department of Education by school type, region, and community type for the school years 2014-2015 through 2020-2021. One of their key findings was that fourteen percent of students attended schools where at least ninety percent of the students were of a single race/ethnicity.[v116]

Since the *Brown* decision, systemic racism and a series of decisions by the Supreme Court have hindered the ability to fully desegregate the public school system. Research from education scholars who study at the intersection of race and education equity helps explain why *Brown* has not yet been fully realized. Critical Race Theory scholar Kimberlé Crenshaw's retrenchment theory, for example, describes the nation's uneven progress in advancing racial justice.[117] In a 1988 article, she wrote that acknowledging racism as "a central ideological underpinning of American society" is necessary in understanding power dynamics and oppression within the United States.[118] Similarly, education equity legal scholar Janel George argues that cycles of racial progress followed by regression are a hallmark of the normalcy of racism in the United States.[119] George explains that during the periods of backlash to racial equity reforms in education, state and local lawmakers seek to revert back to racial hierarchies that place Black people at the bottom.[120] She writes, "The law can serve a legitimating function for laws that can operate to emancipate historically oppressed people, as well as for laws that further entrench oppression and racial inequality."[121] George uses the example of the 2007 Supreme Court case *Parents Involved in Community Schools v. Seattle School District No. 1*[122] to illustrate the paradox of the law serving to either help or hinder racial equity in education. In an opinion striking down race-conscious school admissions designed to promote diverse schools, Chief Justice John Roberts engaged in a race-neutral and ahistoric reading of *Brown*, stating, "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race."[123]

v The study used the following race/ethnicity categories: white, Hispanic, Black, Asian, and American Indian/Alaska Native.

ONGOING DESEGREGATION EFFORTS

All together, these examples demonstrate how school desegregation efforts have been cyclical and incremental, with progress followed by backlash. Despite these obstacles, LDF continues the decades-long struggle for full racial integration and educational equity in school desegregation cases throughout the South, working in partnership with Black families to ensure their children receive the quality education they deserve.

LDF CASE #1: *Thomas et al. v. St. Martin Parish School Board* – Louisiana[124]

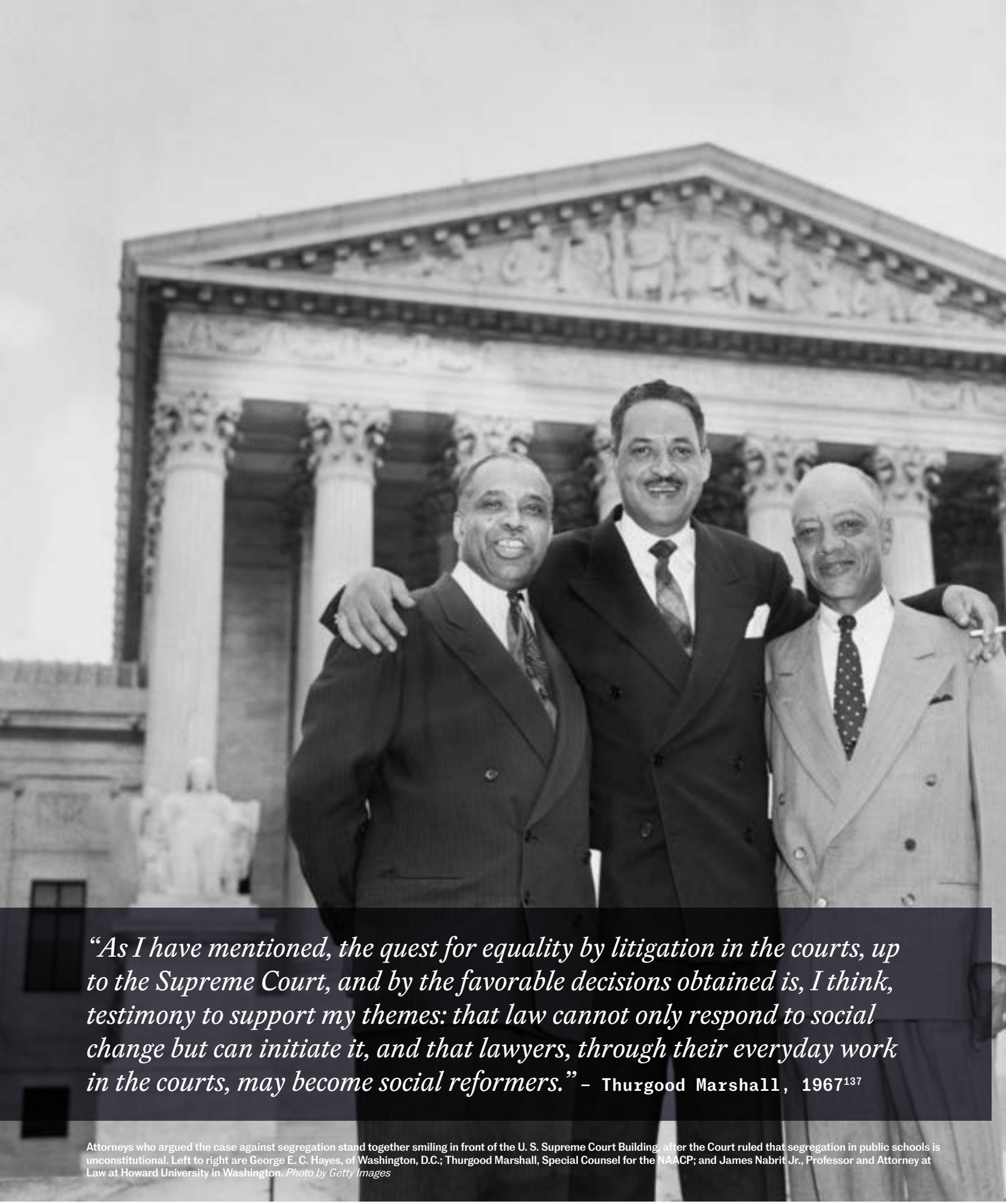
Several years after *Brown*, Louisiana school districts had made little progress toward desegregation. In 1965, plaintiffs in *Thomas v. St. Martin Parish School Board* filed a federal class action lawsuit on behalf of Black students challenging the district's segregated schools. After fifty-eight years of litigation, in June 2023, the Court approved a settlement agreement (or consent decree) between the plaintiffs and the school board. LDF was successful in convincing a federal court to order the school district in St. Martin Parish to address racial discrimination and disparities in school discipline, teacher hiring and retention, and student access to college preparation courses. In addition, the agreement requires the school board to open magnet school programs at St. Martinville Primary School and the Early Learning Center beginning in the fall of 2024. On August 1, 2023, a federal District Court in Louisiana issued a ruling ordering the school board to follow the plaintiffs' proposed plan to advance desegregation efforts in the district.[125]

LDF CASE #2: *Horton v. Lawrence County Board of Education* – Alabama[126]

In 1966, Walter Horton, who had five school-aged children in the Lawrence County school system in Alabama, filed a federal lawsuit to end the district's dual system of segregated education, and the case has been in litigation since then.[127] In 2022, the school district filed a motion with the court to declare that the district had reached unitary status, meaning it had eradicated the racially dual system and fulfilled its desegregation obligations under *Brown*.[128] The Lawrence County NAACP opposed the motion, citing concerns around discriminatory hiring practices and the closure of a predominantly Black high school, R.A. Hubbard High School. In October 2023, LDF negotiated a settlement for the district to progressively achieve unitary status over three years.[129] The settlement agreement provides for increased Black faculty and staff, the establishment of honor societies at all high schools, the financing of school infrastructure improvements, student transportation to extracurricular activities, and a revised disciplinary code of conduct to reduce school suspensions.[130] The school board voted unanimously in favor of the settlement agreement.[131]

LDF CASE #3: *Barnhardt et al. v. Meridian Municipal Separate School District* – Mississippi[132]

In 1965, eleven years after *Brown*, a group of Black students and parents from the Meridian Municipal Separate School District in Mississippi filed a federal lawsuit to end the district's racially dual education system.[133] In 1969, after several years of litigation, the federal court imposed a remedial desegregation plan. On April 12, 2018, plaintiffs—parents of Black children enrolled in the Meridian Public School District, represented by LDF and Fred Banks Jr. of Phelps Dunbar LLP—filed a federal lawsuit in opposition to the Meridian Public School District's motion for a declaration of unitary status. The district sought to terminate the federal court's oversight and to declare it had satisfactorily desegregated the district. In August 2023, the District Court approved a joint settlement agreement between the parents and the school district.[134] Under the settlement, the school district agreed to examine the racial differences in its gifted program to ensure the program is administered fairly and without regard to race, and to develop and implement a plan to recruit, hire, assign, and retain racially diverse faculty and staff.[135] Most importantly, the agreement requires the school district to implement restorative justice measures to end the school-to-prison pipeline, including requiring law enforcement officers working in the schools to participate in implicit bias training.[136]



"As I have mentioned, the quest for equality by litigation in the courts, up to the Supreme Court, and by the favorable decisions obtained is, I think, testimony to support my themes: that law cannot only respond to social change but can initiate it, and that lawyers, through their everyday work in the courts, may become social reformers." – **Thurgood Marshall, 1967**[137]

Attorneys who argued the case against segregation stand together smiling in front of the U. S. Supreme Court Building after the Court ruled that segregation in public schools is unconstitutional. Left to right are George E. C. Hayes, of Washington, D.C.; Thurgood Marshall, Special Counsel for the NAACP; and James Nabrit Jr., Professor and Attorney at Law at Howard University in Washington. *Photo by Getty Images*

CONCLUSION

In the spirit of Charles Hamilton Houston and Thurgood Marshall, everyone—lawyers and nonlawyers alike—should strive to be social reformers. The movement to achieve education equity in the United States will require more than winning court cases; it will take a reckoning of the racism woven into the fabric of this nation. Marshall and his fellow lawyers in *Brown* decided to challenge the "separate but equal" ruling of *Plessy* because they understood that they were litigating in a nation where Black people were seen as inferior within a racial hierarchy. Their strategy in *Brown* showcased a powerful combination of working in community through litigation and research: Groundbreaking studies like the doll test revealed that even at a young age, Black children are aware of discrimination, internalize it, and can express their understanding of it.[138]

Outlawing racial discrimination in education opened the doors to a more equitable society, where democracy can thrive for generations to come. *Brown* provided the nation a path to creating a multiracial and multi-ethnic democracy where Black people have full dignity and citizenship, and it is Americans' collective duty today to make that path clear. To achieve the true promise of *Brown*, policymakers must endeavor to guarantee that all people have the same opportunities under the Fourteenth Amendment.

In 2003, LDF's then-President and Director-Counsel Elaine Jones explained that while the public assumes that education is a fundamental right, there is no affirmative statement that shows Americans are entitled to it.[139] Fully realizing *Brown* requires building upon prior progress so that all children receive a high-quality education—in which children are taught historically accurate lessons in inclusive and culturally responsive education environments. It also requires addressing how racism has historically impeded efforts to end state-sanctioned segregation and how it continues to impact the current public education system. If the adage that the youth are our future is true, it is imperative to ensure that all children, regardless of race, have the educational resources and opportunities to reach their full potential.

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SUPREME COURT OF THE UNITED STATES

Nos. 1, 2, 4 and 10.—October Term, 1953.

1	Oliver Brown, et al., Appellants, *v.* Board of Education of Topeka, Shawnee County, Kansas, et al.	On Appeal From the United States District Court for the District of Kansas.
2	Harry Briggs, Jr., et al., Appellants, *v.* R. W. Elliott, et al.	On Appeal From the United States District Court for the Eastern District of South Carolina.
4	Dorothy E. Davis, et al., Appellants, *v.* County School Board of Prince Edward County, Virginia, et al.	On Appeal From the United States District Court for the Eastern District of Virginia.
10	Francis B. Gebhart, et al., Petitioners, *v.* Ethel Louise Belton, et al.	On Writ of Certiorari to the Supreme Court of Delaware.

[May 17, 1954.]

Mr. Chief Justice Warren delivered the opinion of the Court.

These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware. They are premised on different facts and different local conditions,

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