Symposium: 70 Years Later: Revisiting Brown v. Board of Education and the Struggle for Racial Equity in Education

Before *Brown*: Interdisciplinary Strategies for Civil Rights Lawyering

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I am deeply honored to deliver the keynote speech, and I want to extend my gratitude to *The Georgetown Journal of Law & Modern Critical Race Perspectives* for this opportunity. It is especially meaningful to speak at Georgetown Law, seventy-four years after the first Black students were admitted in 1948.[1]

On May 17, 1954, *Brown v. Board of Education*[2] resulted in a radical re-ordering of American society to end state-sponsored apartheid in the United States. Seventy years after *Brown*, the current polarized political climate—along with the Supreme Court's ruling in *Students for Fair Admissions v. Harvard*,[3] which held that race-based affirmative action programs in college admissions violate the Equal Protection Clause of the Fourteenth Amendment—has led to widespread uncertainties around the future of a multiracial democracy. The lingering question is whether there can be a true democracy in this country without the full and free participation and education of all citizens. We are in the middle of a racial reckoning.

Given this context, it is crucial to examine the landscape before the Supreme Court's decision in *Brown,* alongside current legal strategies aimed at dismantling anti-Black racism to secure full citizenship for Black people. When discussing *Brown v. Board of Education*, conversations typically start at the pinnacle: the Supreme

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1. *Georgetown Law Chronology, 1870–2019*, GEO. L. LIBR., https://www.law.georgetown.edu/library/special-collections/archives/georgetown-law-timeline/"\l":~:text=1948,admitted%20to%20the%20law%20school"\h (last visited Jun. 1, 2024).

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

3. *Students for Fair Admissions v. Harvard*, 600 U.S. 181 (2023).

Court's 1954 decision in the case and the aftermath of states' mass resistance[4] to the Court's mandate that the Equal Protection Clause of the Fourteenth Amendment be applied to Black people in America. From this, the conversations then shift to how the promise of *Brown* has not been realized and where we need to focus attention to ensure that the law is aligned with *Brown*'s promise of full citizenship and equal protection for Black, Brown, and all people in America.

In my talk today, I will use Critical Race Theory and historical documents from the Legal Defense Fund's (LDF) archive and other archival records to explore the impact of the *Brown v. Board of Education* decision and its relevance to civil rights lawyering today. Focusing on what happened before *Brown* through archival records orients us as lawyers, scholars, law students, and organizers to what it looks like to engage in much-needed interdisciplinary civil rights lawyering aimed at systemic change. In a time where anti-truth efforts attempt to create an ahistorical narrative of the Fourteenth Amendment, archival records provide firsthand accounts of the history of the ratification of the Fourteenth Amendment, as well as the strategy Thurgood Marshall engaged, which led to the Supreme Court decision. First, I will talk about how Thurgood Marshall developed community-centered lawyering strategies and the impact that had on his advocacy. Second, I will discuss Marshall and LDF's multidisciplinary strategy of not lawyering in isolation. The different actors all coalesced to result in the Supreme Court's *Brown* decision. Ultimately, these strategies demonstrate how lawyers engaged in community with their clients, social scientists, and historians, which resulted in the Supreme Court invalidating its interpretation of the Fourteenth Amendment in *Plessy v. Ferguson*[5]—the case that created two separate and unequal versions of what it meant to be a citizen in the United States.

CENTERING THE COMMUNITIES WE SERVE

Marshall engaged in interdisciplinary advocacy strategies where he lawyered alongside local National Association for the Advancement of Colored People (NAACP) local chapters within communities across the country. He learned this strategy from his mentor, Howard Law School Vice Dean Charles Hamilton Houston.[6] After graduating from Howard Law School, Marshall went to the Mississippi Delta with Houston to visit schools that the children of Black sharecroppers attended.[7] While there, he observed Black children attending schools in deplorable conditions, without plumbing, sometimes encountering human waste.[8]

On a site visit, Marshall met an eight-year-old boy who was mute.[9] Marshall shared his orange with him, but the child tried to eat the orange through the rind

4. Janel George, *Deny, Defund, Divert: The Law and American Miseducation*, GEO. L.J. (forthcoming).

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

6. *The Centennial of Thurgood Marshall*, JOHN F. KENNEDY PRESIDENTIAL LIBR. & MUSEUM (Jun. 16, 2008), https://www.jfklibrary.org/events-and-awards/kennedy-library-forums/past-forums/transcripts/the-centennial-of-thurgood-marshall.

7. *Id.*

8. *Id.*

9. *Id.*

because he did not know how to peel and eat an orange.[10] Marshall was confused. Houston had to explain to Marshall that the child was uneducated and lacked needed resources in the Delta. In a letter Marshall wrote to his mom about his encounter with the boy, he began internalizing what the role of a lawyer is:

> Dear Mom, Dean Houston used to say during law school that a lawyer who's not a social engineer is nothing but a social parasite. And I didn't understand it, because I wanted to be Lawyer Marshall and make you proud of me, but today I met a kid who didn't know what an orange was. The kid wasn't in school. And I think somebody should tell his story. Somebody should be a voice for this child. The law should know the impact that segregation has on this child.[11]

In 1943, Marshall went on to litigate his first school desegregation case for the Hillburn School District in New York.[12] Hillburn is a small town about forty miles northwest of New York City.[13] Marshall worked alongside the NAACP local chapter, local attorneys, and parents to develop the strategy for this case.[14] In the 1940s, LDF was part of the national NAACP—NAACP was composed of local chapters that worked in tandem with local lawyers.[15]

In Hillburn, the president of the local chapter of the NAACP worked in the community by attending school board meetings, taking detailed demographic information on the schools, and recording the school board's segregation policies.[16] Unlike the white school, the school for Black children in Hillburn had no library, no playground, and no indoor plumbing.[17] In one report on the Hillburn School District, the NAACP documented:

> The colored school was much different: [A] little neat, nice looking four room wooden structure. One room has some braces to support tor [sic] strengthen one wall. These braces had been put up since the building was erected. Two classes are held by individual teachers, both in the same room. The building was clean, well heated, well lighted and has running water for drinking purposes in the halls and one toilet for the teachers indoors. The pupils' toilet facilities has [sic] no running water and were about 25 feet removed from the building and made, altogether, a walk of about 150 or 200 feet from the steps to the little houses. They were clean but unlighted and unheated. For ventilation purposes one window had been broken out and wooden bars placed across it. There was very little space for recreational purposes.[18]

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10. *Id.*

11. *Id.*

12. Peter C. Alexander, *Seeking Educational Equality in the North: The Integration of the Hillburn School System*, 68 ARK. L. REV 13 (2015).

13. *Id.*

14. *Id.* at 25.

15. NAACP Legal Defense Fund's Archival Website, *Recollection*, Timeline available at https://ldfrecollection.org/learn/timeline/(last accessed 12/10/2025).

16. Alexander, *supra* note 12, at 20-23.

17. Nancy Cutler, *Thurgood Marshall's work in Hillburn taught him valuable lessons about civil rights advocacy*, ROCKLAND/WESTCHESTER J. NEWS (May 17, 2019), https://www.lohud.com/story/news/local/rockland/2019/05/17/thurgood-marshall-hillburn-brook-school-segregation-civil-rights/3704500002/.

18. Alexander, *supra* note 12 at 16.

Marshall, along with local NAACP chapters, developed a nationwide desegregation strategy that involved documenting the condition of the segregated schools Black children attended.[19] Marshall "felt that chronicling the impact of segregation on children and families was critical to the success of LDF's litigation."[20]

In 1943, the local chapter reached out to Marshall, who was a young lawyer working for the NAACP's national chapter in New York.[21] Marshall worked in collaboration with Hillburn parents to develop a plan: "Marshall's plan sought to enroll one colored student at the white school and, once the child was denied admission, urge colored parents to boycott the Hillburn school system until all children could attend the white school."[22] After the student was denied, the parents went on strike to keep their children out of the segregated school system.[23] The school authorities filed lawsuits in family court against the parents for keeping their children out of school.[24] "The court declared twenty-two parents guilty but suspended their fines on the condition that they send their children to an accredited school."[25] The protest was not easy for the parents. "[B]lacks, weakened financially by the Depression, feared economic reprisals if they moved against their black school."[26]

The parents asked the school board to desegregate the schools, but the school board refused. The denial was appealed to the New York Commissioner of Education, who ordered the desegregation of the school district.[27] This was the beginning of Marshall's work in the community to desegregate schools.

It is also important to understand that *Brown* was one of five consolidated cases. Each case had a different path to the Supreme Court, grounded in different forms of community-led grassroots organizing. The lawyers employed a similar strategy to that of Hillburn: the local NAACP chapters would document the conditions of the schools, parents would apply for their children to attend desegregated schools or petition for equal funding, and parents would partner with local attorneys and engage with the national chapter to develop litigation strategies.

In *Spottswood Thomas Bolling, et al. v. C. Melvin Sharpe, et al.*,[28] Black parents were at the center of efforts to have their children enrolled in the newly constructed, all-white high school in Washington, D.C.[29] The District of Columbia needed its own case because the Fourteenth Amendment only applied to states, whereas the

19. Jakiyah Bradley, *Renewing the Promise of Brown: A Call to Secure Equal Educational Opportunities for All*, Thurgood Marshall Institute, May 2024 available at https://tminstituteldf.org/renewing-the-promise-of-brown/"\l "easy-footnote-bottom-28-7880 (last accessed 1/11/2025).

20. *Brown v. Board of Education: The Case that Changed America*, NAACP LEGAL DEF. FUND, https://www.naacpldf.org/brown-vs-board/ (last visited Jun. 1, 2024).

21. Alexander, *supra.* note 12 at 22-23; CARLETON MABEE, BLACK EDUCATION IN NEW YORK STATE: FROM COLONIAL TO MODERN TIMES 262 (1979).

22. Alexander, *supra.* note 12 at 23.

23. *Id.*

24. *Id.*

25. MABEE, *supra* note 21, at 264.

26. *Id.* at 263.

27. Alexander, *supra* note 12, at 23.

28. *Bolling v. Sharpe*, 347 U.S. 497 (1954).

29. *Id.*

Fifth Amendment applied to the federal government. This is known as the Howard Law case because Howard provided legal support through Houston, former Howard Law faculty member, and Professor James Nabrit, who filed the federal lawsuit for the parents.

In *Harry Briggs Jr., et al. v. R.W. Elliott, et al.*, Black parents in South Carolina petitioned Clarendon County to provide school buses for the Black students as they did for white students in the district.[30] The school board refused to provide the children buses, which resulted in the children having to walk up to eight miles to school each way.[31] The parents also wanted their children to receive "educational facilities, curricula, equipment, and opportunities"[32] that were equal to those for the county's white children. The school board denied their requests, arguing that providing buses was a tax burden for white families.[33]

In Delaware, there were two consolidated desegregation cases, *Ethel Louise Belton, et al. v. Francis B. Gebhart, et al.* and *Sarah Bulah, et al. v. Francis B. Gebhart, et al.*[34] In *Belton*, Black parents did not want their children bused twenty miles to the only school for Black children in the state, which lacked adequate resources compared to the white schools in the district.[35] In the *Bulah* case, one of the plaintiffs was a white mother of an adopted Black child, Shirley Bulah.[36] Each day, Bulah watched school buses in the area pick up white children,[37] but they never came for her child even after she petitioned for buses to be sent for her Black child.

Dorothy E. Davis, et al. v. County School Board of Prince Edward County, Virginia, et al. resulted from a student walkout protesting the condition of their high school—the only student-initiated case.[38] Their school was built in 1939 and did not have basics like a gym, cafeteria, science labs, athletic fields, or basic plumbing. The school board did not provide proper funding to update the school.[39] On April 23, 1951, several students walked out in protest, vowing not to come back unless the school board constructed a new school.[40] After the student protest, lawyers for Virginia's NAACP chapter met with the students and filed a federal lawsuit.[41]

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30. *Briggs v. Elliott*, 342 U.S. 350 (1952).

31. *Id.*

32. *Federal Records Pertaining to Brown v. Board of Education Topeka, Kansas (1954): Records of the Judicial Branch*, NAT'L ARCHIVES [hereinafter *Brown Records*], https://www.archives.gov/publications/ref-info-papers/112-brown-board-educ/judicial-records.html (last visited Jun. 1, 2024).

33. *Brown v. Board of Education - Oral History - Part 2*, KAN. HIST. SOC'Y, https://www.kshs.org/p/brown-v-board-of-education-oral-history-part-2/14003#Briggs (last visited Jun. 1, 2024).

34. *Id.*

35. *Belton v. Gebhart*, BROWN V. BOARD: THE UNTOLD STORIES, https://brown65.the74million.org/beltonvgebhart (last visited Jun. 1, 2024).

36. *Brown Records*, *supra* note 32.

37. *The Five Cases: Belton (Bulah) v. Gebhart*, NAT'L PARK SERV., https://www.nps.gov/brvb/learn/historyculture/delaware.htm (last visited Jun. 1, 2024).

38. *The Five Cases: Davis v. County School Board*, NAT'L PARK SERV., https://www.nps.gov/brvb/learn/historyculture/virginia.htm (last visited Jun. 1, 2024).

39. *Id.*

40. *Id.*

41. *Id.*

The, parent and the students' grassroots organizing, alongside the lawyering strategies can serve as a starting point to develop to continue to engage in systemic reform aimed at dismantling anti-Black racism today. The NAACP lawyers, which later became LDF, worked alongside local chapters and local attorneys to document school conditions with painstaking detail. The parents were the leaders on the frontlines. Legal advocacy today operates to center the law and decisionmakers in granting relief, which results in replicating societal hierarchies. As legal scholars Angela Onwuachi-Willig and Anthony V. Alfieri state in *(Re)Framing Civil Rights Lawyering*:

> Due to the demands in colorblind lawyering-process traditions to overlook race, and thus ignore racism, these legal actors frequently fail to see how their own framing of case narratives and client stories regularly reifies racialized tropes and images that have become so deeply entrenched in our society that they become invisible to those not directly impacted by them. In other cases, these legal actors feel compelled to restate and recite the familiar narratives and tropes that can free their clients or obtain other desired legal outcomes precisely because such narratives are required by those in power to obtain the desired outcomes. As a result, these lawyers often end up, either unwittingly or involuntarily, race-coding or stereotyping the identity of clients, offenders, and victims.[42]

Reframing civil rights lawyering requires examining strategies before *Brown,* where lawyering was a community centered praxis grounded in centering the client's narrative. The transformative power of the client's voice to shape litigation strategies is revolutionary because it disentangles the power structures inherent in the law where certain arguments are required to win a case. Marshall's first interactions with the child in the Mississippi Delta, and the parents and students in the Brown consolidated cases, provide insights into how you, as law students, can engage in client centered lawyering. I encourage you to explore lesser-known cases to inform your approach as a lawyer, especially as law students, because often we do not recognize how law school pedagogy can widen the gap between lawyer and community.

MOVEMENT LAWYERING REQUIRES AN INTERDISCIPLINARY PRAXIS

Between December 9-11, 1952, the Supreme Court heard the first oral arguments in *Brown.*[43] Six months later, in June 1953, the Court restored the case to its docket, requesting re-argument by the parties to address whether there was any evidence that Congress believed when ratifying the Fourteenth Amendment that the Amendment would abolish segregation in public schools.[44] If we pause for a second, especially our

42. Angela Onwuachi-Willig et al., *(Re)Framing Race in Civil Rights Lawyering*, 8 YALE L.J. 2052 (2021).
43. Brief for Appellants at 13, Brown v. Board of Education, 347 U.S. 483 (1954) (1), 1953 WL 48699.
44. *Id.* at 13–14. The specific language of the five questions were framed as follows:

1. What evidence is there that the Congress which submitted and the State legislatures and conventions which ratified the Fourteenth Amendment contemplated or did not contemplate, understood or did not understand, that it would abolish segregation in public schools?
2. If neither the Congress in submitting nor the States in ratifying the Fourteenth Amendment understood that compliance with it would require the immediate abolition of segregation in public schools, was it nevertheless the understanding of the framers of the Amendment.

law students in the audience, given your legal education thus far, how might you go about answering this question? The typical lawyer answer might be through legal research, through legislative history on Westlaw or Lexis.

After assessing these questions, LDF assembled a team of experts to conduct research during the summer, including: Dr. John A. Davis, a professor of political science at Lincoln University; Dr. Mabel Smythe, an economist; psychologists Drs. Kenneth and Mamie Clark; and scholars Dr. John Hope Franklin, Dr. C. Vann Woodward, and Dr. Horace Mann Bond.[45] The team included over 200 academics to respond to the Supreme Court's inquiry.

Bond, a social science researcher and historian, was the lead researcher.[46] He brought to the team his experience conducting a two-year field study of Black student achievement in North Carolina, Alabama, and Louisiana, where he visited more than 700 schools, administered standardized tests, and photographed and documented the educational experiences of close to 10,000 students.[47] Historian Franklin was brought on board for his "command of the tangled realities behind the phrase 'separate but equal.'"[48]

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a. that future Congresses might, in the exercise of their power under Sec. 5 of the Amendment, abolish such segregation, or
b. that it would be within the judicial power in light of future conditions, to construe the Amendment as abolishing such segregation of its own force?

3. On the assumption that the answers to questions 2 (a) and (b) do not dispose of the issue, is it within the judicial power, in construing the Amendment, to abolish segregation in public schools?
4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment
   a. would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or
   b. may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?
5. On the assumption on which questions 4(a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4(b),
   a. should this Court formulate detailed decrees in these cases;
   b. if so what specific issues should the decrees reach;
   c. should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;
   d. *should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees? Id.*

45. *Brief for Appellants, Brown v. Board, 1953,* LIBR. OF CONG., www.loc.gov/exhibits/brown/brown-brown.html#obj73 (last visited Jun. 9, 2024).

46. *Education of the Negro: A Depression Era Photographic Study by Dr. Horace Mann Bond*, UNIV. OF GA.: RICHARD B. RUSSELL LIBR. FOR POL. RSCH., https://www.libs.uga.edu/russell-library/exhibits/bond (last visited Jun. 1, 2024).

47. *Id.*

48. Peter Appelbome, *John Hope Franklin, Scholar and Witness*, N.Y. TIMES, (Mar. 28, 2009), https://www.nytimes.com/2009/03/29/weekinreview/29applebome.html.

LDF Archivist Ashton Wingate and the archives team has scoured through LDF's archives and found a series of documents highlighting the research the interdisciplinary team used to answer the Supreme Court's inquiry into the Fourteenth Amendment. The team of academics examined the congressional record and investigated the opinions of individual Congress members on the purpose of the Fourteenth Amendment. For example, LDF's archives include pictures of the tomb of U.S. Rep. Thaddeus Stevens, with an inscription on his headstone that reads:

> I repose in this quiet and secluded spot, not from any natural preference for solitude, but finding other cemeteries limited as to race, by charter rules, I have chosen this that I might illustrate in my death the principles which I advocated through a long life, equality of man before his Creator.[49]

Stevens was buried in an integrated cemetery and was described as "a champion for a free public school system in Pennsylvania and an abolitionist."[50]

The result of the academics' research is documented in LDF's archives: "We have decided that we will take the position that the Fourteenth Amendment was intended to deprive the states of the power to (1) maintain a class or caste and (2) differentiate on the basis of race."[51]

This multidisciplinary approach highlights the praxis required to dismantle systemic racism. Lawyers cannot engage in their work in isolation, behind their computers and desks.[52] Given the systemic nature of racism, which involves interactions across multiple institutions and many domains, the law is not the single magic pill that will alone eradicate racism. The work requires a theoretical framework and interdisciplinary collaboration to understand historically and contemporarily how seemingly innocuous societal choices entrench racial subordination.[53]

The work is far from over, as reiterated over the course of today's symposium. There are currently more than two hundred desegregation cases pending in federal court, one hundred of which are being litigated by LDF attorneys.[54] Research has

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49. *First Friday Mini-Adventure: Thaddeus Stevens' Tomb*, UNCHARTED LANCASTER, https://unchartedlancaster.com/first-friday-mini-adventure/first-friday-mini-adventure-thaddeus-stevens-tomb/ (last visited Jun. 1, 2024).

50. *Id.*

51. *NAACP Legal Defense and Educational Fund records, 1915-1968*, LIBR. OF CONG., https://catalog.loc.gov/vwebv/search?searchCode=LCCN&searchArg=mm%2081065570&searchType=1&permalink=y (last visited Jun. x, 2024) (LDF Archives containing a letter from Robert L. Carter to Horace Bond outlining the approach to interpreting the intent of the Fourteenth Amendment that played a significant role in persuading the Supreme Court that the framers of the amendment intended to deprive states of the power to differentiate on the basis of race.).

52. MARI J. MATSUDA ET AL., WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT 6 (1993) (This principle builds on the interdisciplinary nature of CRT that "borrows from several traditions, including liberalism, law and society, feminism, Marxism, poststructuralism, critical legal theory, pragmatism, and nationalism.").

53. KHIARA M. BRIDGES, CRITICAL RACE THEORY: A PRIMER (2019).

54. NAACP LDF (@NAACP_LDF), X, (Feb. 6, 2023, 4:15pm), https://x.com/NAACP_LDF/status/1754977049490415832 ("Nearly 70 years later, the work of Brown v. Board of Education is far from

demonstrated that "the significant gains in school integration made after the civil rights movement continue to be reversed, with an increase in the number of Black and Brown students who attend intensely segregated schools."[55] As discussed in a recent Thurgood Marshall Institute report, seventy years after *Brown*, "[t]oday's public schools are more racially isolated than at any point in the last forty years. . . . The inferior resources and unequal opportunities available to Black students at segregated schools constrain their opportunity to thrive and demonstrate their full potential."[56]

In conclusion, the journey to achieve the *Brown* victory exemplifies the power of multidisciplinary advocacy and community-led engagement in the pursuit of justice. The strategies employed by Marshall and others demonstrate the transformative potential of leveraging the law, storytelling, multidisciplinary research, and community mobilization to defend and advance the full dignity and citizenship of Black people in America. This work is not only about securing rights for a few, but about creating a society where every individual's rights are respected and protected. As we navigate a challenging political and legal landscape, let us remember that the fight for equal citizenship is ongoing. Let us use the lessons learned before *Brown* to remember that lawyering involves centering the voices and understanding the communities on the frontlines with whom we are working, collaborating across disciplines, and advocating for justice with renewed vigor. The fight for racial justice is ongoing, and it requires our collective and sustained efforts. We are all *Brown*, and together, we can build upon the legacy of Thurgood Marshall and others who fought tirelessly for equality to help us build a multiracial, multiethnic democracy.

finished. Over 200 school desegregation cases remain open on federal court dockets and LDF alone has nearly 100 of these cases.").

55. *LDF Statement on New Research Showing an Increase in School Segregation in the South*, NAACP LEGAL DEF. FUND (May. 25, 2017), https://www.naacpldf.org/press-release/ldf-statement-on-new-research-showing-an-increase-in-school-segregation-in-the-south/.

56. Jackie O'Neil, *The Legacy and Opportunity of Affirmative Action*, THURGOOD MARSHALL INST. (May 2023), https://tminstituteldf.org/redressing-educational-inequality-the-legacy-and-opportunity-of-affirmative-action/.