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The Fateful Turn Toward
Brown v. Board of Education

Clayborne Carson

"One day during class discussion, in a flash of poetic insight" Howard University law student Pauli Murray recalled, "I advanced a radical approach that few legal scholars considered viable in 1944—namely, that the time had come to make a frontal assault on the constitutionality of segregation per se instead of continuing to acquiesce in the Plessy doctrine while nibbling away at its underpinnings on a case by case basis and having to show in each case that the facility in question was in fact unequal." The other students and the veteran civil rights lawyers who participated in Howard's Civil Rights Seminar initially derided Murray's bold suggestion. "My approach was considered too visionary, one likely to precipitate an unfavorable decision of the Supreme Court, thus strengthening rather than destroying the force of the Plessy case," she later concluded. Murray recalled that no one accepted her $10 wager "that Plessy would be overruled within twenty-five years."

Murray's recollection provides a useful starting point for understanding the significance of the NAACP's decision to attack the separate-but-equal principle rather than to pursue whatever gains were consistent with Plessy. Few Americans would have expected the rapidity or effectiveness of the assault on the doctrine of legally enforced segregation that occurred during the years after Murray offered her suggestion. The Supreme Court's unanimous Brown v. Board of Education ruling in 1954 broke decisively with the Plessy precedent and became the most influential civil rights ruling of the twentieth century. Its forceful affirmation of egalitarian racial ideals inspired black Americans to initiate a decade of mass struggles that overcame the southern Jim Crow system and culminated in the passage of historic civil rights legislation. These southern struggles in turn enabled women and many minority groups to gain new legal protections modeled on the civil rights gains of African Americans.

Brown was a controversial departure from the NAACP's previous efforts to force segregationists to equalize, or actually make separate schools equals, the facilities available to African Americans. Viewed from the perspective of the half
century of American race relations since Brown, the ruling seems prophetic in perceiving Jim Crow as a vulnerable anachronism yet unperceptive regarding the resilience and prevalence of ingrained patterns of racial subordination. Dual segregated school systems no longer isolate black students in inferior schools, but, according to recent statistics, more than 70 percent of black students still attend schools that are predominantly black. Comparable levels of segregation are evident for Latino students. And predominantly black or Latino schools are generally inferior to those attended by white students. Brown's ideal of public education as "a right which must be made available to all on equal terms" is still far from being realized.

The ambiguous legacy of Brown has led not only to second thoughts about its rationale but also renewed interest in the deliberations that led to the NAACP's shift from the equalization strategy to the frontal attack against Plessy. The initial reluctance of NAACP leaders to approve this shift of strategy helps us to understand why Brown's ideals remain unrealized. In 1930, when attorney Nathan Margold laid out a plan for the NAACP's antidiscrimination campaign, he made clear that the goal was not "to deprive Southern states of their acknowledged privilege of providing separate accommodations for the two races." Instead of seeking such an unrealistic goal, he suggested that NAACP lawyers should limit themselves to challenging segregation "as now provided and administered"—that is, by insisting that segregationists provide equal facilities for black Americans.

When Charles Houston left his post as dean of Howard's law school in 1935 to become the NAACP's first full-time attorney, he acknowledged that the group's ultimate goal was "the abolition of all forms of segregation in public education." But he agreed with Margold's cautious assessment of what was feasible: "Where segregation is so firmly entrenched by law that a frontal attack cannot be made, the association will throw its immediate force toward bringing Negro schools up to an absolute equality with white schools. If the white South insists upon its separate schools, it must not squeeze the Negro schools to pay for them." Even after Thurgood Marshall replaced Houston later in the 1930s as the director of NAACP's legal effort, he continued to follow a strategy of increasing the cost of segregation by requiring states to provide equal as well as separate facilities. As head of the NAACP's legal arm, the Legal Defense and Education Fund, Inc., he often sought advice from Houston, Howard law school dean William Hastie, and other Howard law officials. After achieving major victories in Smith v. Allright (1944), in which the Supreme Court ruled against the exclusion of black voters from the Democratic Party primary in Texas, and Shelley v. Kraemer (1948), which made racial covenants in housing legally unenforceable, Marshall then stepped up his attack against segregated graduate schools at public institutions by assembling ample evidence that the opportunities available to professional black residents of many states were not equal to those provided for white residents.

In June 1950 Marshall and his expanding legal staff won two landmark victories when the Supreme Court ruled in their favor in Sweatt v. Painter and McLaurin v. Oklahoma State Regents for Higher Education et al. In the former case, the Court rejected the arguments of Texas officials that a segregated law school established in a basement at Prairie View University could provide Heman Sweatt with a legal education equivalent to the opportunities he would receive if admitted to the University of Texas Law School. The Court also accepted the arguments of George McLaurin, who was admitted to the University of Oklahoma's School of Education but was forced to sit apart from white students in classrooms and other facilities.

Even after these favorable rulings, Marshall was still undecided about whether the time had come for a frontal assault on segregation in public education. Some black educators feared that desegregation would lead to loss of jobs, since few black teachers and even fewer black principals held positions in predominantly white public schools. Given that most black intellectuals had themselves been educated in segregated or predominantly black schools, it is hardly surprising that they were divided over the supposed benefits of integrated education. Even NAACP co-
founder W.E.B. DuBois had once advised that "the Negro needs neither segregated schools nor mixed schools. What he needs is Education," while he conceded that "the mixed school is the broader, more natural basis for the education of all youth," he nonetheless maintained, "But other things seldom are equal, and in that case, Sympathy, Knowledge, and the Truth, outweigh all that the mixed school can offer."

When Marshall gathered his associates in June 1950 to decide how to proceed, some of them questioned whether it was wise to risk seeking a reversal of the Plessy precedent. "There was lots of resistance in the branches because real progress toward equalization was now beginning to be made in schools and other facilities like parks, libraries, and swimming pools," NAACP official Herbert Hill recalled. Southern white leaders had sought to avoid NAACP litigation by increasing funding for black schools. Marshall himself understood that the stakes were high. "His prevailing sense, I think, was that we just couldn't afford to lose a big one," NAACP lawyer Oliver Hill explained.

Once he overcame his initial doubts, however, Marshall became convinced that the Sweatt decision was a sign that the Supreme Court was prepared to change course. A majority of justices had concurred with the argument that Sweatt's isolation from other students made his educational opportunities inherently unequal. The logic of the Court's ruling, Marshall believed, could be applied broadly. He wrote in 1951 "since it would seem that integration is of equal if not greater importance at the elementary, high school, and college levels, the whole structure of segregation in public education seems to have been dealt a shattering blow." He noted that social scientists were "almost in universal agreement that segregated education produces inequality." Marshall concluded therefore that segregation was a stigma that could not be eliminated by increased funding for segregated schools, since segregation itself "contributes greatly to the unwholesomeness and unhappy development of the personality of Negroes which the color caste system in the United States has produced."

Although grassroots activism in black communities served as a stimulus for Marshall's carefully orchestrated effort to overturn Plessy, it is important to note that Marshall was not responding to widespread black demands for school desegregation. During the 1940s, the March on Washington Movement led by A. Philip Randolph had focused on other racial goals, such as ending racial discrimination in employment and military service. Leftist groups such as the Civil Rights Congress stressed the campaign to end lynching and other forms of racial violence. When 16-year-old Barbara Johns and other students walked out of all-black Moton High School in Farmville, Virginia, during 1951, they demanded better facilities rather than desegregation. The Farmville protest became one of the Brown legal suits only after NAACP attorney's insisted that the students and their parents agree to challenge school segregation.

As the articles in this issue make clear, the Brown decision was the culmination of a concerted legal campaign and an extensive grassroots mobilization. The efforts in Washington, D.C., that culminated in the Bolling v. Sharpe case as well as the other local challenges in South Carolina, Delaware, Virginia, and Kansas that collectively became the Brown case were part of a sustained black protest movement against segregation. The Brown ruling of nine white justices could only partly express the discontents of the black plaintiffs, and unanimous opinion did not anticipate the deep divisions among Americans of all races over racial policies. Thus the symbolic importance of the Brown decision as an affirmation of American racial ideals ultimately exceeded its value as a statement of American racial realities. Brown's promise and its limitations can only be grasped by what culminated when the Supreme Court issued its ruling in the Brown case. Marshall recognized that desegregation would take time. "I don't want any of you to fool yourselves, it's just begun, the fight has just begun," he told his staff.

Because the Brown decision was a decisive departure from the Plessy separate-but-equal principle, it was an important turning point in African-American history. The Court's ruling against school desegregation encouraged African Americans to believe that the entire structure of
white supremacy was illegitimate and legally vulnerable. Although the Court's unwillingness to set firm timetables for school desegregation undercut Brown's immediate impact, African Americans, especially the generation that came of age during the 1950s and 1960s, implemented and expanded the limited scope of the Brown decision through individual and collective challenges to the entire Jim Crow system. Small-scale protests escalated during the decade after 1954 to become a sustained mass movement against all facets of segregation and discrimination in the North as well as the South. This in turn prepared the way for a still more far-reaching expansion of prevailing American conceptions of civil rights and of the role of government in protecting those rights. During the past 40 years, women, Latino and Asian immigrants, disabled people, and many other minority groups have gained new legal protections modeled on the civil rights gains of African Americans.11

Nevertheless, 50 years after the Brown decision, most black American school children still attend predominantly black public schools that offer fewer opportunities for advancement than the typical predominantly white public schools. Few African Americans would wish to return to the pre-Brown world of legally enforced segregation, but in the half century since 1954 only a minority of Americans has experienced the Promised Land of truly integrated public education. With the benefit of hindsight, the nation would have been better served if the Brown decision had evinced a more realistic understanding of the deep historical roots of America's racial problems. Rather than assuming that desegregation of public schools would be achieved with "all deliberate speed," the Supreme Court—and the NAACP lawyers who argued before it—should have launched a two-pronged attack not only against racial segregation but against inferior schools, whatever their racial composition.

NOTES

7. Ibid.