

**The Supreme Court's opinion** in the 1954 *Brown v. Board of Education* case legally ended decades of racial segregation in America's public schools. Originally named after Oliver Brown, the first of many plaintiffs listed in the lower court case of *Brown v. Board of Education of Topeka, KS*, the landmark decision actually resolved five separate segregation cases from four states and the District of Columbia consolidated under the name *Brown v. Board of Education*. While the attorneys originally argued the cases on appeal to the Court in 1952, the featured document, *School Segregation Cases—Order of Argument*, offers a window into the three days in December 1953 during which they reargued the cases.

A reargument was necessary because the Court desired briefs from both sides in answer to five questions, all pertaining to the attorneys' opinions on whether or not Congress had segregation in public schools in mind when the 14th Amendment was ratified. The document lists the names of each case, the states from which they came, the order in which the Court heard them, the names of the attorneys for the appellants and appellees, the total time allotted for arguments, and the dates over which the arguments took place.

The first case listed, *Briggs v. Elliott*, originated in Clarendon County, South Carolina, in the fall of 1950. Harry Briggs was one of twenty plaintiffs who charged that R. W. Elliott, as president of the Clarendon County School Board, violated their right to equal protection under the 14th Amendment by upholding the county's segregated education law. Briggs featured social science testimony on behalf of the plaintiffs from some of the nation's leading child psychologists, such as Dr. Kenneth Clark, whose famous doll study concluded that segregation negatively affected the self-esteem and psyche of African American children. Such testimony was groundbreaking because only once before in U.S. history had a plaintiff attempted to present such evidence before

the Court. Thurgood Marshall, the noted NAACP attorney and future Supreme Court justice, argued the Briggs case at the district and federal court levels. After the U.S. District Court's three-judge panel ruled against the plaintiffs, the case was appealed to the Supreme Court. Marshall also argued the *Davis v. County School Board of Prince Edward County, Virginia*, case at the federal level. Originally filed in May 1951 by plaintiff's attorneys

the court's May 17, 1954, opinion. The Court concluded that

To separate them [children in grade and high schools] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone.<sup>1</sup>

# Order of Argument in the Case *Brown v. Board of Education*

Kahlil Chism, contributing author, and Lee Ann Potter, editor

Spottswood Robinson and Oliver Hill, the *Davis* case, like the others, argued that Virginia's segregated education laws were unconstitutional because they violated the equal protection clause of the 14th Amendment. And like the *Briggs* case, Virginia's three-judge panel ruled against the 117 students who were identified as plaintiffs in the case.

Listed third in the order of arguments, *Brown v. Board of Education of Topeka* was initially filed in February 1951 by three Topeka area lawyers, assisted by the NAACP's Robert Carter and Jack Greenberg. As in the *Briggs* case, this case featured social science testimony on behalf of the plaintiffs that segregation had a harmful effect on the psychology of African American children. While that testimony did not prevent the Topeka judges from ruling against the plaintiffs, the evidence from this case eventually found its way into the wording of the Warren

Because Washington, DC, is a federal territory governed by Congress and is not a state, the *Bolling v. Sharpe* case was argued as a violation of the Fifth Amendment guarantee of "due process." The 14th Amendment only mentions states, so this case could not be argued as a violation of "equal protection," as were the other cases. When a District of Columbia parent, Gardner Bishop, unsuccessfully attempted to get eleven African American students admitted into a newly constructed white junior high school, he and the Consolidated Parents Group filed suit against C. Melvin Sharpe, president of the Board of Education of the District of Columbia. Charles Hamilton Houston, the NAACP's special counsel, former dean of the Howard University School of Law, and mentor to Thurgood Marshall, took up the *Bolling* case. With Houston's health already failing in 1950 when he filed suit, James Nabrit, Jr. replaced Houston as the original

argued <sup>10:00</sup> 7-8-9  
1953

NOS. 1, 2, 4, 8, 10. O.T. 1953.

SCHOOL SEGREGATION CASES - ORDER OF ARGUMENT

argued by [unclear]

By agreement of the parties and the approval of the Chief Justice, the South Carolina and Virginia cases have been consolidated and will be heard first. The Kansas, District of Columbia and Delaware cases will follow in that order.

	<u>For Appellants</u>	<u>For Appellees</u>
2 - BRIGGS V. ELLIOTT (South Carolina)	Spottswood Robinson ✓ Thurgood Marshall ✓	John W. Davis ✓ T. Justin Moore ✓ J. Lindsay Almond, Jr. ✓ Atty. Gen. of Va. ✓
4 - DAVIS V. COUNTY SCHOOL BOARD (Virginia)	} 4 hours	

Assistant Attorney General J. Lee Rankin for the United States as AMICUS CURIAE - 1 hour.

Mr. Davis or Mr. Moore and Mr. Marshall will reply to Mr. Rankin.

1 - BROWN V. BOARD OF EDUCATION (Kansas)	Robert L. Carter	Paul E. Wilson, ✓ Asst. Atty. Gen.
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	<u>For Petitioners</u>	<u>For Respondents</u>
8 - BOLLING V. SHARPE (Dist. of Col.)	George E.C. Hayes ✓ James M. Nabrit, Jr. ✓	Milton D. Korman ✓

10 - GEBHART V. BELTON (Delaware)	H. Albert Young ✓ Attorney General	Jack Greenberg ✓ - Louis L. Redding
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TOTAL: 11 hours

attorney. By the time the case reached the Supreme Court on appeal, George E. C. Hayes had been added as an attorney for the petitioners, beside James Nabrit, Jr.

The last case listed in the order of arguments, *Belton v. Gebhart*, was actually two nearly identical cases (the other being *Bulah v. Gebhart*), both originating in Delaware in 1952. Ethel Belton was one of the parents listed as plaintiffs in the case brought in Claymont, while Sarah Bulah brought suit in the town of Hockessin, Delaware. While both of these plaintiffs brought suit because their African American children had to attend inferior schools, Sarah Bulah's situation was unique in that she was a white woman with an adopted black child, who was still subject to the segregation laws of the state. Local attorney Louis Redding, Delaware's only African American attorney at the time, originally argued both cases in Delaware's Court of Chancery. NAACP attorney Jack Greenberg assisted Redding. *Belton/Bulah v. Gebhart* was argued at the federal level by Delaware's attorney general, H. Albert Young.

Reargument of the *Brown v. Board of Education* cases at the federal level took place over December 7, 8, and 9, 1953. While the featured document notes that *Briggs v. Elliott* was the first case argued, it does not reveal that throngs of spectators were already in line outside the Supreme Court by sunrise on the morning of December 7, although arguments did not actually commence until one o'clock that afternoon. Spottswood Robinson began the argument for the appellants, and Thurgood Marshall followed him. Virginia's assistant attorney general, T. Justin Moore, followed Marshall, and then the court recessed for the evening.

On the morning of December 8, Moore resumed his argument, followed by his colleague, J. Lindsay Almond, Virginia's attorney general. According to some legal scholars, Marshall was so moved by John Davis's forcefully condescending argument against the appellants, that Marshall concluded his rebuttal by stating that "the only way that this court can decide this case in opposition to our position... is to find that for some reason, Negroes are inferior to

all other human beings."<sup>2</sup> The document also notes that the United States Attorney General J. Lee Rankin presented the U.S. government's *amicus curiae* brief on behalf of the appellants, which showed its support for desegregation in public education. In the afternoon Robert Carter began arguments in the Kansas case, and Paul Wilson, attorney general for the state of Kansas, followed him in rebuttal.

On December 9, after James Nabrit and Milton Korman debated *Bolling*, and Louis Redding, Jack Greenberg, and Delaware Attorney General H. Albert Young argued *Gebhart*, the Court recessed at 2:40 p.m.<sup>3</sup> The attorneys, the plaintiffs, the defendants, and the nation waited five months and eight days to receive the unanimous opinion of Chief Justice Earl Warren's court, which declared, "in the field of public education, the doctrine of 'separate but equal' has no place."<sup>4</sup> The *Brown* decision was a watershed in American legal and civil rights history because it overturned the "separate but equal" doctrine first articulated in the *Plessy v. Ferguson* decision of 1896.<sup>5</sup> By overturning *Plessy*, the Court ended America's fifty-eight-year practice of legal racial segregation and paved the way for the integration of America's public school systems.

## Teaching Activities

### 1. Focus Activity

On the board or overhead projector, draw three columns and label the first "Know," the second "Want to Know," and the third "Learned." Ask students to tell you what they know about *Brown v. Board of Education*, write their answers in the first column, and direct them to do the same on their own papers. Next, ask them what they want to know, and write their responses in the second column. Finally, as an assessment activity following your instruction on the *Brown* decision, encourage students to return to their charts and complete the "Learned" column.

### 2. Vocabulary Development

Provide students with a copy of the featured document. Ask them to locate the following terms in the document and to use classroom resources (dictionary,

thesaurus, textbook) to define each term: *segregation, consolidated, appellants, appellees, amicus curiae, petitioners, and respondents.*

### 3. Document Analysis and Discussion

Direct students to read the featured document and lead a class discussion about it using the following questions:

- What type of document is it?
- Why was it written?
- What dates are listed in the document?
- What does "O.T. 1953" mean?
- How many cases does the document list?
- In which state did each case originate?
- How much time was allotted to argue the cases?
- Do you recognize any of the people named in the document?

### 4. Group Research, Writing, and Role Play Activity

Provide students with information from the background essay about each of the five cases that constituted the *Brown* Supreme Court decision of 1954. Divide students into five groups, assign each group one of the cases, and instruct members of each group to conduct further research into their assigned case. Instruct each group to draft a "point-counterpoint" summary of the issues as both the plaintiffs and defendants in their case presented them. Finally, encourage two volunteers from each group to assume the role of attorneys in their case and present the arguments to the class. [The resources listed at the end of the article may be helpful.]

### 5. Individual Writing Activity

Remind students that the intention of the Supreme Court's *Brown* opinion was to legally eliminate segregated school systems in America. Direct the class to find out whether or not the Court instructed the states on exactly how and when to desegregate, and what the result was (*Brown II*, May 31, 1955; Little Rock, Arkansas). Direct the students to find out, statistically, how integrated America's public schools are today. Ask them to find out if there are, presently or in the recent past,

any desegregation cases before the Court. Finally, direct each student to write a two-page position paper on whether or not the *Brown* agenda of desegregating America's public schools is finished. Encourage student volunteers to share their papers with the class.

#### 6. Extended Research Activities

Divide the class into five research teams, and refer them to the bibliography below to find answers to the assigned questions. Assign each team one of the following assignments and direct them to report back to the class:

**TEAM 1:** Describe for the class the process by which a case goes from the district court level to the federal level. What sequence of events must occur before a case reaches the Supreme Court? What must the plaintiffs do to get their case before the Supreme Court? How does the Supreme Court decide which cases it will hear? How often does this usually occur?

**TEAM 2:** Each of the cases were assigned a number, i.e., "Nos. 1, 2, 4, 8, 10." Find out the process by which cases appearing before the Supreme Court are assigned a number, and why, since these cases were heard together, they weren't numbered consecutively. Additionally, find out why the cases were heard in the order listed in the document (2, 4, 1, 8, 10).

**TEAM 3:** According to the document, "By agreement of the parties and the approval of the Chief Justice, the South Carolina and Virginia cases have been consolidated and will be heard first." Find out why it was agreed upon to consolidate the South Carolina and Virginia cases. What aspects of these cases made their consolidation a good idea? Discover and describe for the class the process by which the parties came to agreement and sought approval from the Chief Justice (i.e., Was there a form that they had to fill out? Did they have to go before the Chief Justice in person? Was this process completed solely via correspondence?).

**TEAM 4:** According to the document, Assistant Attorney General J. Lee Rankin presented the United States government's *amicus curiae* brief on behalf of the appel-

lants in the *Brown* case. Locate a copy of this brief and summarize for the class the government's reasons for submitting this brief.

**TEAM 5:** Prepare a brief biography sheet (three or four sentences for each) of the following players mentioned in the document: J. Lindsay Almond, Jr., Robert L. Carter, John W. Davis, Jack Greenberg, Milton D. Korman, Thurgood Marshall, J. Lee Rankin, and Spottswood Robinson. Be sure to include each person's year of birth and death, his official title during the time that he was involved with the *Brown* cases, their role in the case, and any other information about him that you found significant. 📄

#### Bibliography

Armor, David J. *Forced Justice: School Desegregation and the Law*. New York: Oxford University Press, 1995.

Cottrol, Robert J., Raymond T. Diamond, and Leland B. Ware. *BROWN v. BOARD OF EDUCATION: Caste, Culture, and the Constitution*. Lawrence, KS: University Press of Kansas, 2003.

Wilkinson, J. Harvie. *From BROWN to BAKKE: The Supreme Court and School Integration, 1954-1978*. New York: Oxford University Press, 1979.

Supreme Court of the United States, online: [www.supremecourtus.gov](http://www.supremecourtus.gov)

FindLaw for Students, online: [stu.findlaw.com](http://stu.findlaw.com)

U.S. Census Bureau, online: [www.census.gov](http://www.census.gov)

#### Notes

1. *Brown v. Board of Education*, 347 U.S. 483 (1954). Records of the U.S. District Court of Kansas, Record Group 21, National Archives Central Plains Region, Kansas City, MO.
2. Cottrol, Robert J., Raymond T. Diamond and Leland B. Ware. *BROWN v. BOARD OF EDUCATION: Caste, Culture, and the Constitution*. Lawrence, KS.: University Press of Kansas, 2003.
3. Cottrol, Diamond, Ware.
4. *Brown*, 347.
5. *Plessy v. Ferguson*, 163 U.S. 537 (1896). *Plessy v. Ferguson*, Judgment decided May 18, 1896; Records of the Supreme Court of the United States, Record Group 267; *Plessy v. Ferguson*, 163, #15248, National Archives Building, Washington, DC.

*Note: The featured document comes from Records of the Supreme Court, Record Group 267, National Archives and Records Administration, and is available (as are documents from all five cases) on microfilm number M1954. General information about the microfilm offerings from the National Archives can be found online at [www.archives.gov/research\\_room/media\\_formats/microfilm](http://www.archives.gov/research_room/media_formats/microfilm).*

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