

Brown v. Board of Education:* A Selected Annotated Bibliography

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On the fiftieth anniversary of the landmark decision in Brown v. Board of Education, Mr. Manz offers a selected bibliography that concentrates on works that deal with the case's history or discuss the legal, social, and political issues the Supreme Court considered when making its decision. Many of the works listed are authored by noted scholars or by those who in some way were participants in Brown.

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Introduction

¶1 As one of the most significant Supreme Court decisions of the twentieth century, *Brown v. Board of Education*¹ has been the subject of a remarkably large body of literature. Discussions of *Brown* appear in works dealing with a wide variety of topics, including constitutional law and interpretation, the histories of race relations and civil rights, and studies of the Supreme Court. Its popularity among legal commentators is reflected in various electronic databases. A Westlaw search for legal periodical articles with titles referring to *Brown* retrieves more than 160 documents. Similarly, a *WilsonDisc* search for “*Brown v. Board of Education*” produces more than 140 articles.

¶2 This bibliography does not reproduce the lengthy lists of *Brown*-related articles taken from electronic databases or print periodical indexes, or the lists of sources found in book-length treatments of the case. Rather, to keep the number of selected titles to a manageable size, it concentrates on works that deal with the case’s history or discuss the legal, social, and political issues the Supreme Court considered when making its decision. It almost entirely excludes the considerable body of work that discusses the “impact” or “legacy” of *Brown*. Only a very limited number of comprehensive book-length titles are included from that area.

¶3 *Brown v. Board of Education* has an extensive factual background. What is generally referred to as “*Brown*” is actually two separate opinions. The 1954 decision, frequently referred to as *Brown I*,² overruled the “separate but equal doctrine” of *Plessy v. Ferguson*³ and struck down school segregation. It consisted not only of the appeal from the Kansas federal district court decision⁴ in the action by the Browns against the Board of Education of Topeka, but also appeals from decisions on segregated schools in South Carolina,⁵ Virginia,⁶ and Delaware.⁷ *Brown II*, handed down in 1955, was the implementation decision that contained the famous phrase “with all deliberate speed.”⁸ In addition to the four school districts involved in *Brown I*, this decision also addressed the public schools in the District of Columbia.⁹ The case also had numerous participants, including several of the most famous twentieth-century U.S. Supreme Court Justices. Thus, even limiting the scope of materials to historically oriented works, the available body of literature is quite large.

1. 347 U.S. 483 (1954).

2. *Id.*

3. 163 U.S. 537 (1896).

4. *Brown v. Bd. of Educ.*, 98 F. Supp. 797 (D. Kan. 1951).

5. *Briggs v. Elliott*, 98 F. Supp. 529 (E.D.S.C. 1951).

6. *Davis v. County Sch. Bd.*, 103 F. Supp. 337 (E.D. Va. 1952).

7. *Gebhart v. Belton*, 87 A.2d 862 (Del. Ch. 1952).

8. *Brown v. Bd. of Educ.*, 349 U.S. 294, 301 (1955).

9. *Bolling v. Sharpe*, 347 U.S. 497 (1954) (holding segregated schools in the District of Columbia to be in violation of the Due Process Clause).

¶4 Given this complex background, the articles included in this bibliography are those that are generally deemed to be particularly significant, discuss key issues, or are authored by noted scholars or by those who in some way were participants in *Brown*. Similarly, the books listed either are those regarded as major general works about the case or are biographies of participants in the case. Also included are several commentaries from the mid-1950s that are of historical interest. Finally, several documentary collections and two major general bibliographies are listed. Within each of the several categories of materials, the works are arranged alphabetically by author, and include not only appropriate bibliographical information but also a brief annotation explaining the item's treatment of, or relevance to, *Brown*.

General Works

Balkin, Jack, ed. *What Brown v. Board of Education Should Have Said: The Nation's Top Legal Experts Rewrite America's Landmark Civil Rights Decision*. New York: New York University Press, 2001.

Compiled by a professor of constitutional law at Yale Law School, this collection consists of the *Brown* opinion as rewritten by nine constitutional scholars: Jack M. Balkin, Drew S. Days III, Bruce Ackerman, Frank I. Michelman, John Hart Ely, Catherine A. MacKinnon, Michael W. McConnell, Cass R. Sunstein, and Derrick A. Bell. The opinions were written using only the materials that were available as of May 17, 1954. They are structured as the majority opinion, a concurrence, or a dissent. Each contributor deals with the issues of state-enforced public school segregation, segregation by the federal government, and what, if any, remedy is available to the courts.

Berger, Raoul. *Government by Judiciary: The Transformation of the Fourteenth Amendment*. Cambridge, Mass.: Harvard University Press, 1977.

Chapter 7, "Segregated Schools," is devoted almost entirely to *Brown*, with an emphasis on the Justices' consideration of the history and intent of Fourteenth Amendment. Citing various sources, including excerpts from the debates of the 39th Congress, the author concludes that segregation was not outlawed by the Civil Rights Act of 1866, and thus was also not affected by the Fourteenth Amendment. Accordingly, he maintains that Justice Warren "did not merely 'shape' the law, he upended it; he revised the Fourteenth Amendment to mean exactly the opposite of what its framers designed it to mean. . . ." (p.245).

Cottrol, Robert J., Raymond T. Diamond, and Leland B. Ware. *Brown v. Board of Education: Caste, Culture and the Constitution*. Topeka, Kan.: University of Kansas Press, 2003.

Views *Brown* within the context of American culture and history. Beginning with *Roberts v. City of Boston*,¹⁰ decided in 1850, it moves on to *Plessy* and the state of American race relations at the start of the twentieth century. Before the chapters

10. 59 Mass. (5 Cush.) 198 (1850).

covering the *Brown* case itself, there is a discussion of the activities of the NAACP during the interwar years. After the coverage of the decision, there are chapters reviewing the controversies ignited by *Brown*, including the debates over judicial activism, the role of the courts, and constitutional interpretation. The authors conclude that the *Brown* decision changed history, but note that the decision also illustrates the law's limitations because of the inherent difficulties of dealing with society's structural inequalities.

Horwitz, Morton. *The Warren Court and the Pursuit of Justice*. New York: Hill & Wang, 1998.

This brief (132 pp.) study of the Warren Court is intended to introduce the Supreme Court's historical significance. *Brown* is covered in chapter 2, "*Brown v. Board of Education*: Setting the Themes of the Warren Court." The author concludes that the picture of constitutional interpretation presented in *Brown* incorporated both the unchanging and "living" viewpoints of the Constitution.

Howard, John R. *The Shifting Wind: The Supreme Court and Civil Rights from Reconstruction to Brown*. Albany, N.Y.: State University of New York Press, 1999.

Published as part of SUNY's series on Afro-American studies, this work provides a comprehensive overview of the Supreme Court and civil rights issues. Chapters eight and nine relate the story of the *Brown* decision. Included are short profiles of each of the Justices which summarize their views on racial segregation.

Kilpatrick, James Jackson. *The Southern Case for School Segregation*. New York: Crowell-Collier Press, 1962.

This book received a wide circulation during the early 1960s. It was written by the editor of the *Richmond News-Leader* who at the time was considered one of the leading spokesmen of the segregationist cause. The author objects to the *Brown* decision on the grounds of practicality and gradualism. More specifically, he attacks the Court for ignoring eighty years of precedents, and for its use of social science evidence in deciding the case.

Klarman, Michael J. *From Jim Crow to Civil Rights: The Supreme Court and Racial Equality*. New York: Oxford University Press, 2004.

Beginning with *Plessy*, the author examines the impact of the Supreme Court's decisions on race relations within the social and political context of the times. As in his earlier *Virginia Law Review* article,¹¹ he concludes that *Brown* radicalized Southern politics, led to the election of segregationist politicians, and fostered violent confrontation, all of which helped produce northern support for civil rights legislation.

Kluger, Richard. *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality and Justice*. New York: Knopf, 1975.

A comprehensive history of the *Brown* decision that is regarded as the pioneering effort in shaping the issues for later writers, this book often has been cited by later works. It is of particular value since much of the author's material was

11. Michael J. Klarman, *Brown, Racial Change, and the Civil Rights Movement*, 80 VA. L. REV. 7 (1994).

drawn from many personal interviews. Its more than eight hundred pages begin with slavery in pre-Revolutionary America and end with the continuing efforts to integrate the schools in the 1970s.

Patterson, James T. *A Civil Rights Milestone and Its Troubled Legacy*. New York: Oxford University Press, 2001.

The author traces the history of the struggle against segregated schools by the NAACP beginning in the 1930s and 1940s. He devotes entire chapters to the *Brown* decision, the fight against integration by Southern whites, the events of the 1960s, favorable school desegregation rulings by the Burger Court in the 1970s, the controversy over school busing, the *Bakke* decision,¹² and the mixed views on racial progress voiced during the 1990s.

Schwartz, Bernard. *The Unpublished Opinions of the Warren Court*. New York: Oxford University Press, 1985.

In chapter 11, "*Brown v. Board of Education* (1954, 1955): The Drafting Process in a Landmark Case," the author describes the process that produced the final opinion in *Brown I*. He compares Justice Warren's draft opinion with the final version, noting that the two versions are basically similar. He repeats the process with the *Brown II* implementation decision, again finding that the original version and the final opinion are quite alike. The draft opinions for *Brown I* and *Brown II*, taken from the Warren Papers in the Library of Congress, are reprinted as part of the chapter.

Urofsky, Melvin I. *Division and Discord: The Supreme Court Under Vinson and Stone, 1941–1953*. Columbia, S.C.: University of South Carolina Press, 1997.

This book's final chapter, "The Road to *Brown*," provides a brief history of racial segregation in the United States, a discussion of segregation cases decided by the Vinson Court, and initial reactions of the Justices to the school segregation cases, particularly the views of Felix Frankfurter. The author maintains that advances in civil rights made since 1953 would not have been possible without the decisions made by the Stone and Vinson Courts.

Wasby, Stephen L., Anthony A. D'Amato, and Rosemary Metrailler. *Desegregation from Brown to Alexander: An Exploration of Supreme Court Strategies*. Carbondale, Ill.: Southern Illinois University Press, 1977.

The emphasis of this work is on the means by which the Supreme Court worked to achieve its stated goals, not on its internal deliberations. The main focus of the authors' research was the oral arguments, based on the belief that the Justices' questions revealed strategic concerns. Chapters 2–4 cover the events leading up to *Brown* and the first two rounds of oral arguments in *Brown I* and *Brown II*.

Williams, Juan. *Eyes on the Prize*. New York: Viking, 1987.

An illustrated history prepared to accompany a PBS documentary of the same title, this book surveys the struggle for civil rights from 1954 to 1965. Chapter 1, "God Bless the Child," includes coverage of the *Brown* decision. The chapter has photos of all the children involved with the case and of Thurgood Marshall's

12. Regents of the Univ. of Calif. v. Bakke, 438 U.S. 265 (1978).

team of attorneys. Special inserts include an interview with Kenneth Clark about the “Dolls Test,” which reported on the psychological effects of school segregation, and an excerpt from *The Southern Case for School Segregation*,¹³ by former *Richmond News Leader* editor James Jackson Kilpatrick.

Wilkinson, J. Harvie, III. *From Brown to Bakke: The Supreme Court and School Integration: 1954–1978*. New York: Oxford University Press, 1979.

Provides a history of the Supreme Court’s role in integrating public schools beginning with *Brown*. The author regards *Brown* as the “most important political, social, and legal event in America’s twentieth century history” (p.6). Part one covers *Brown* itself, part two deals with the effort to desegregate schools in the South from 1955 to 1970, and part three focuses on the busing controversies of the 1970s, concluding with the *Bakke* decision. Wilkinson maintains that the Supreme Court’s school cases demonstrate its pragmatism, noting that in all the landmark cases the Court was influenced by white racial sensibilities, and that in *Bakke* they dictated the result.

Wolters, Raymond. *The Burden of Brown: Thirty Years of School Desegregation*. Knoxville, Tenn.: University of Tennessee Press, 1984.

This book chronicles the post-*Brown* failure of school integration in the communities that were involved with the case. The author describes how Washington, D.C., schools became re-segregated as the whites left; the “Massive Resistance” in Prince Edward County, Virginia, which led to the closing of all schools in 1959 and the establishment of a whites-only private academy; the abandonment of the public schools by whites in South Carolina; and the “white flight” in New Castle County, Delaware, caused by school busing. He maintains that only in Topeka was there even a modicum of success, and concludes that *Brown* should now “be understood to mean what most people thought it meant in 1954, and desegregation would mean what Congress certainly intended when it enacted the Civil Rights Act of 1964: the prohibition of official racial segregation, not the prohibition of racially neutral policies that do not lead to a substantial amount of racial mixing” (p.288). He also is critical of “the sorry record that disingenuous judges and naïve educational reformers have made in the five districts” (p.289).

Biographies, Autobiographies, and Memoirs

The largest amount of information about *Brown* available in biographies, autobiographies, and memoirs is found in works dealing with the attorneys who participated in the case. Biographies of Supreme Court Justices may also be useful, but many, including some well-known titles, mention the decision only in passing. A recent example is the well-publicized and controversial *Wild Bill: The Legend and Life of William O. Douglas*,¹⁴ which documents Douglas’s many alleged personal failures, but only briefly mentions racial discrimination cases and offers nothing about the Justice’s role in the *Brown* deliberations. This also is true of several

13. See *supra* p. 248 for annotation.

14. BRUCE ALLEN MURPHY, *THE LEGEND AND LIFE OF WILLIAM O. DOUGLAS* (2003).

works on Felix Frankfurter by well-known scholars, including Philip Kurland's *Mr. Justice Frankfurter and the Constitution*¹⁵ and H.N. Hirsch's *The Enigma of Felix Frankfurter*.¹⁶ Similarly, Eugene Gerhart's *America's Advocate: Robert H. Jackson*¹⁷ provides ample coverage of Jackson's role at the Nuremberg Trials, but says nothing about *Brown*.

Members of the Warren Court

Horace H. Burton

Berry, Mary. *Stability, Security and Continuity: Mr. Justice Burton and Decision-Making in the Supreme Court*. Westport, Conn.: Greenwood Press, 1978.

The only book-length biography covering the entire career of Justice Horace Burton, who was a strong supporter of states' rights for most of his career. It contains a relatively limited discussion of the *Brown* decision, noting Burton's role.

Hugo Black

Black, Hugo, Jr. *My Father: A Remembrance*. New York: Random House, 1975.

Based primarily on the author's own memory, not research, this book includes one chapter that covers Black's Supreme Court career in an anecdotal manner. It describes in detail the negative consequences to Black and his family in Alabama after the *Brown* decision. Also discussed are Black's relationships with Douglas and Frankfurter. In contrast, the memoirs of Hugo and Elizabeth Black¹⁸ mention *Brown* only in passing.

Dunne, Gerald. *Hugo Black and the Judicial Revolution*. New York: Simon and Schuster, 1977.

Although there is an account of the *Brown* deliberations in chapter 14, it is not as detailed as that provided in other sources and does not provide any special emphasis on Black's role.

Newman, Roger K. *Hugo Black: A Biography*. New York: Pantheon Books, 1994.

The product of twenty years of research, this work is the first full-scale biography of Black. Chapter 29 covers *Brown*,¹⁹ describing how Black's thinking on political rights changed. He first held that changes would only come gradually through "time, education, and the evolution of ideas" and that the "real core of the problem was economic" (p.428). Also covered are the inner workings of the Court while *Brown* was under consideration. The author notes Black's opposition to the phrase "with all deliberate speed," and describes the negative reaction to his support of the majority opinion by his former colleagues in the South.

15. PHILIP B. KURLAND, *MR. JUSTICE FRANKFURTER AND THE CONSTITUTION* (1971).

16. H.N. HIRSCH, *THE ENIGMA OF FELIX FRANKFURTER* (1981).

17. EUGENE GERHART, *AMERICA'S ADVOCATE: ROBERT H. JACKSON* (1958).

18. HUGO L. BLACK & ELIZABETH BLACK, *MR. JUSTICE AND MRS. BLACK: THE MEMOIRS OF HUGO L. BLACK AND ELIZABETH BLACK* (1986).

19. The material dealing with *Brown* also was published in Roger K. Newman, *Black and Brown*, 29 U.S.F. L. REV. 635 (1995).

William O. Douglas

Douglas, William O. *The Court Years, 1937–1975*. New York: Random House, 1980.

Douglas's discussion of *Brown* in chapter 5, "Separate But Unequal," is limited since it concentrates on the post-*Brown* struggles for civil rights in the South. Douglas maintains that he and some other Justices opposed the use of the phrase "with all deliberate speed," and says that it became a signal for delay. He also claims that resistance to *Brown* was encouraged by President Eisenhower, who he says, "played golf too long with the wrong people" (p.120).

Felix Frankfurter

Simon, James F. *The Antagonists: Hugo Black, Felix Frankfurter and Civil Liberties in America*. New York: Simon and Schuster, 1989.

In this study of the personal and professional lives of both Hugo Black and Felix Frankfurter, chapter 7, "Fever Patients," presents a basic account of their roles in the *Brown* deliberations.

Sherman Minton

Gugin, Linda C., and James E. St. Clair. *Sherman Minton: New Deal Senator, Cold War Justice*. Indianapolis: Indiana Historical Society, 1997.

This book is a comprehensive biography of the former Indiana congressman and senator who was appointed to the Supreme Court in 1949 by President Truman. Although it is conceded that Minton's overall legal impact was "minimal," the authors maintain that the Justice played an important role in the segregation cases. In the few pages covering *Brown*, the authors describe Minton's role in the Court's deliberations, noting that from the start he forcefully argued that racial classifications were not reasonable. They also note that *Brown* was one of the few times in Minton's career that he abandoned his philosophy of judicial restraint.

Stanley Reed

Fassett, John D. *New Deal Justice: The Life of Stanley Reed of Kentucky*. New York: Vantage Press, 1994.

In this lengthy biography of Justice Reed, the author's intention is to cover both his major and minor cases in order to impart an understanding of the wide diversity of issues faced by the Court. Chapter 30, "The Evolution of a Reluctant Krytocrat," covers *Brown*. It makes clear Reed's deep interest in the school segregation issue, illustrated by the four boxes of materials pertaining to the subject he collected between 1945 and 1953 that are now housed in the Reed papers at the University of Kentucky. The book also includes an excerpt from Reed's proposed dissent and a "Memo to Justice Reed re Integration Materials" from his law clerk.

Earl Warren

Schwartz, Bernard. *Super Chief, Earl Warren and His Supreme Court: A Judicial Biography*. New York: New York University Press, 1983.

This work offers a history of the Warren Court compiled from the papers of former Justices, and from interviews with approximately thirty former Supreme Court law clerks, living members of the Warren Court, and various other persons. A thorough history of *Brown* appears in chapter 3, "Warren and the *Brown* Case."

Warren, Earl. *Memoirs*. Garden City, N.Y.: Random House, 1977.

Chapter 9, "The Supreme Court Years," includes an extensive discussion of *Brown* from its appearance on the Court's docket to its aftermath. Warren discusses Eisenhower's rule, relating an episode at a White House dinner that he believes evidenced the president's resentment of the decision. He takes issue with those who question the integrative effectiveness of *Brown*. He notes the difficulties in implementing *Brown*, but indicates that he regarded the effect of *Brown* as "stupendous," leading to many meaningful "spinoffs" in the federal courts. Warren also claims that the decision stimulated Congress to pass equal rights legislation. He credits Black, Reed, and Clark for the unanimity of the decision.

White, G. Edward, *Earl Warren: A Public Life*. New York: Oxford University Press, 1982.

A comprehensive biography of the former Chief Justice in which the author seeks to challenge the conventional view of Warren as a conservative politician whose views underwent a marked change during his service on the Supreme Court. He concludes that the seeming paradox between the Chief Justice's perceived modest abilities and his actual achievements can be explained by the fact that there was far more to Warren than he has often been given credit for. In chapter 6, "The Crucible of *Brown v. Board of Education*," the author maintains that it was *Brown* that "enabled Warren to establish his presence on the Supreme Court" (p.161).

Attorneys

Herbert Brownell

Brownell, Herbert, and John P. Burke. *Advising Ike: The Memoirs of Attorney General Herbert Brownell*. Topeka: Kan.: University Press of Kansas, 1993.

In chapter 11, "Building the Foundations of Equality," the former attorney general describes the work of the Justice Department in preparing the *Brown*-related historical study of the Fourteenth Amendment, and his consultations with Eisenhower over the administration's position on segregated schools. He also relates how the Supreme Court rejected the department's suggestion that school districts be required to submit desegregation plans within ninety days of the *Brown II* decision, arguing that the failure to do so created uncertainty among educators and public officials and helped lead to the violence at Little Rock and elsewhere.

John W. Davis

Harbaugh, William. *Lawyer's Lawyer: The Life of John W. Davis*. New York: Oxford University Press, 1973.

This book chronicles the long career of the attorney who argued the South Carolina case²⁰ in *Brown*. Davis, a Wall Street lawyer and former solicitor general of the United States (1913–18), had been the 1924 Democratic presidential candidate. At the time of *Brown*, he was the nation's most experienced Supreme Court advocate, having argued 139 cases before the Court since 1913. In chapter 28, "The Segregation Case of 1954," the author relates how Davis, against the advice of several friends, took the case because of his conservative social attitudes, his belief that segregation was constitutional, and his certainty that he would win. The chapter also covers the early history of the *Briggs* case as contested in South Carolina.

Jack Greenberg

Greenberg, Jack. *Crusaders in the Courts*. New York: Basic Books, 1994.

Written by a member of the NAACP's Legal Defense Fund (LDF), this work chronicles the author's thirty-five-year career with that organization. It provides an inside view of its many courtroom battles for civil rights between 1950 and 1983. *Brown* is covered in part two, "Edging Toward a Showdown," and part three, "*Brown* Decided: Eyes on the Future." Included are detailed looks at the lower court cases that were consolidated in *Brown* and the LDF's strategy at the Supreme Court level. Greenberg concludes that although the *Brown* decision only instructed states that they could no longer maintain segregated schools, it destroyed the legitimacy that *Plessy* had accorded to segregation, and served as an example of how the law could be utilized on behalf of human rights.

Thurgood Marshall

Ball, Howard. *A Defiant Life: Thurgood Marshall and the Persistence of Racism in America*. New York: Crown Publishers, 1998.

This book concentrates more on Marshall's cases and decisions than on his personal life. In chapter 6, "The Public Education Battles Begin: *Brown v. Board*," it traces the history of *Brown* from the development of the NAACP's legal strategy through the South's post-decision "massive resistance."

Bland, Randall W. *Justice Thurgood Marshall: Crusader for Liberalism, His Judicial Biography*. Bethesda, Md.: Academia Press, 2001.

In this much-expanded version of an earlier book²¹ based on his dissertation, the author seeks to examine Marshall's legal practices, activities, and opinions, and to evaluate his influence as director-counsel of the NAACP and as a Supreme Court Justice. *Brown* is covered in chapter 3, "A Decade of Decision."

20. *Briggs v. Elliott*, 98 F. Supp. 529 (E.D.S.C. 1951).

21. RANDALL W. BLAND, *PRESSURE AND PUBLIC LAW: THE LEGAL CAREER OF THURGOOD MARSHALL, 1934–1991* (1973).

Goldman, Roger, and David Gallen. *Thurgood Marshall: Justice for All*. New York: Carroll & Graf, 1992.

Consists of three major parts: "Recollections of Thurgood Marshall," featuring reprinted commentary on the Justice by nine authors; an essay by Goldman entitled "The Jurisprudence of Thurgood Marshall"; and "The Opinions of Thurgood Marshall (reprints of fifteen opinions). The main discussion of *Brown* is in "Decade of Decision: 1945–1955," one of four chapters reprinted from the first edition of Randall W. Bland's *Private Pressure on Public Law: The Legal Career of Thurgood Marshall*,²² a study of Marshall's career through 1973.

Tushnet, Mark V. *Making Civil Rights Law: Thurgood Marshall and the Supreme Court, 1936–1961*. New York: Oxford University Press, 1994.

This work concentrates on Marshall's work as a civil rights lawyer. The author, who was the Justice's law clerk during the 1972 term, makes extensive use of the NAACP papers. He covers *Brown* in chapters 11–15, and describes and discusses the strategy and work of the NAACP, and the internal deliberations of the Supreme Court.

Williams, Juan. *Thurgood Marshall: American Revolutionary*. New York: Times Books, 1998.

Written by a television commentator, this work is regarded as the most significant and comprehensive study of Marshall's life. The preparation of the book benefitted from the author's series of interviews with the often-reclusive Marshall in 1989, his advice on whom to interview, and access, arranged for the author by Marshall himself, to materials in the Columbia University oral history project. The events leading to *Brown* and the discussion of the case itself are found in chapter 20, "Planning a Revolt," and chapter 21, "The Case of the Century."

Constance Baker Motley

Motley, Constance Baker. *Equal Justice Under Law*. New York: Farrar, Straus and Giroux, 1998.

Motley was a former member of the NAACP Legal Defense Fund (LDF) in New York who later served as a New York state senator (1964–65), Manhattan borough president (1965–66), and federal district court judge. Three chapters cover the *Brown* decision. In "Prelude to *Brown*," the author describes her experiences in the South litigating various civil rights cases, and the LDF's involvement with the lower court cases that became *Brown*. "*Plessy v. Ferguson*: Our Nineteenth Century Legacy" covers *Plessy* and its legal legacy. The next chapter, "*Brown v. Board of Education of Topeka, Kansas*: Our Twentieth Century Legacy," provides a relatively brief history of the LDF's work on the *Brown* case and a discussion of the decision itself.

Paul E. Wilson

Wilson, Paul E. *A Time to Lose: Representing Kansas in Brown v. Board of Education*. Topeka, Kan.: University Press of Kansas, 1995.

22. *Id.*

Authored by the former Kansas assistant attorney general who prepared the state's appellate briefs in *Brown* and then argued the case for Kansas before the Supreme Court. It covers the trial in federal district court, the preparation of the defense of the district court decision in the Supreme Court, the oral arguments before the Court in December 1952 and 1953, and the *Brown II* decisions involving efforts to implement the decision. Overall, the author attempts to portray *Brown* within the context of the times and to tell the story of the case from the perspective of the losing side. He covers the same ground in an article appearing in the *Journal of Supreme Court History*.²³

Legal Periodical Articles

Amsterdam, Anthony G. "Thurgood Marshall's Image of the Blue-Eyed Child in *Brown*." *New York University Law Review* 68 (1993): 226–36.

Amsterdam focuses on Thurgood Marshall's oral argument in *Brown*, noting that although Marshall argued that separation is inherently unequal and that segregation statutes were "Black Codes," his main theme was that segregation statutes involved an irrational classification. Amsterdam maintains that although the irrational classification argument had its weaknesses, by utilizing it Marshall brought "racial discrimination into the case as a vice that the Justices themselves must either practice or put aside" (p.235).

Bell, Derrick. "*Brown v. Board of Education* and the Interest-Convergence Dilemma." *Harvard Law Review* 93 (1980): 518–33.

After critiquing Herbert Wechsler's view that the real issue in *Brown* was associational,²⁴ Bell notes that it was a strong convergence of interests that helped determine the outcome in *Brown*. These included the economic and political advantages at home and abroad that would accrue from the elimination of segregation, the possibility that the principles of equality and freedom much proclaimed during World War II would finally achieve some real meaning in the United States, and the realization of some Southern whites that the South could never become a truly modern society if it continued to uphold state-sponsored segregation. However, Bell maintains that after *Brown* there was a growing divergence in black and white interests. In the area of education, Bell believes the best educational benefits may now be obtained through the improvement of desegregated schools and creation or preservation of model black schools.

Berten, David Powers. "An Econolegal *Brown v. Board of Education*." *Wisconsin Law Review*, 1989, 589–605.

In this student comment, the author attempts to compare traditional law with econolaw by presenting an alternative *Brown* opinion that is based on an economic analysis of the law. The fictional opinion strikes down compulsory segregation, but upholds the Kansas permissive segregation statute because "[i]t is economically more efficient to administer school systems which permit citizens to satisfy their preference for segregation than to impose an additional—albeit

23. Paul E. Wilson, *A Time to Lose*, 24 J. SUP. CT. HIST. 170 (1999).

24. See Herbert Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1 (1959).

nonpecuniary—cost on white citizens” (p.592). The author concludes that economic law shifts the focus of law toward influencing future events and admits its inability to change an individual’s underlying beliefs.

Bickel, Alexander. “The Original Understanding and the Segregation Decision.” *Harvard Law Review* 69 (1955): 1–65.

This article is based on research done by the author when he served as one of Justice Frankfurter’s two law clerks during the October 1952 term. Prepared at Frankfurter’s request in 1953, the author’s report was then circulated to the other members of the Court. The article thoroughly examines the legislative history of the Freedman’s Bureau Bill and the Civil Rights Act of 1866. It notes that a narrow view of the 1866 Act would lead to the conclusion that it did not apply to segregation, but argues that the legislation actually left open the question of providing greater protections than afforded by the 1866 Act. By adopting this view when considering *Brown*, the author believes that the Court opened the way for a decision based on national conditions in 1954, not 1866.

Black, Charles L. “The Lawfulness of the Segregation Decisions.” *Yale Law Journal* 69 (1959): 421–30.

Argues that *Brown* and the Warren Court’s other segregation decisions were correctly decided on the basis of the Equal Protection Clause of the Fourteenth Amendment. The author notes that segregation “comes down in apostolic succession from slavery” (p.424) and is “historically and contemporaneously associated . . . with practices which are indisputably and grossly discriminatory” (p.425). Accordingly, segregation, which enforces inequality, must be in violation of a constitutional amendment that requires equality.

Braucher, Robert. “The Supreme Court, 1954 Term—Foreword.” *Harvard Law Review* 69 (1955): 120–31.

Braucher’s commentary on *Brown II* is somewhat critical of the Court’s delay in dealing with the implementation issue, concluding that “it is very doubtful that much was accomplished by the last year of reargument” (p.123).

Brownell, Herbert. “*Brown v. Board of Education* Revisited.” *Journal of Supreme Court History*, 1993, 21–28.

Brownell, who served as attorney general during the Eisenhower administration, relates how the Justice Department prepared and argued its amicus brief in *Brown*. He also discusses the department’s strategy for enforcing the Court’s decision.

Burt, Robert A. “What Was Wrong with *Dred Scott*, What’s Right about *Brown*.” *Washington and Lee Law Review* 42 (1985): 1–25.

This article presents a comparative analysis of the *Dred Scott*²⁵ and *Brown* decisions. In addition to its approval of slavery, the author faults Chief Justice Roger Taney’s *Dred Scott* opinion because it awarded total victory to the pro-slavery forces and in effect attempted to shut off debate on the slavery question. He maintains that the underlying message of the opinion was that the Union should be dissolved. In contrast, he approves of *Brown II* because the Warren Court did not specify what the appropriate resolution of the segregation question should be,

25. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857).

but instead remanded the question for further consideration in the federal district courts. This, he says, created orderly public forums where both sides could confront one another and debate the issue.

Chernack, Gregory S. "The Clash of Two Worlds: Justice Robert H. Jackson, Institutional Pragmatism, and *Brown*." *Temple Law Review* 72 (1999): 51–109.

Before dealing with Jackson's role in *Brown*, the author discusses the Justice's concerns about the Supreme Court's role and presents his approach to cases involving individual rights. He then analyzes Jackson's *Brown* memorandum, which the Justice had considered submitting as a concurring opinion. Chernack concludes that Jackson's concerns about *Brown* reflected his institutional pragmatism.

Cound, John J. "A Very New Lawyer's First Case: *Brown v. Board of Education*." *Constitutional Commentary* 15 (1998): 57–64.

This is an account by a junior member of the solicitor general's team which prepared the Justice Department's brief in *Brown*. The author's area of research included determining if it "was within the judicial power, in construing the [Fourteenth] Amendment, to abolish segregation in public schools" (p.58) in the event that the legislative history of the Fourteenth Amendment provided no answer to the question.

Elman, Philip, and Norman Silber. "The Solicitor General's Office, Justice Frankfurter, and Civil Rights Litigation, 1946–1960: An Oral History." *Harvard Law Review* 100 (1987): 817–52.

This article consists of the transcript of an interview of Elman conducted by Silber. Elman was Justice Felix Frankfurter's law clerk during the 1941 and 1942 terms, and then served with the Solicitor General's Office from 1944 to 1961, where he handled all civil rights cases in the Supreme Court to which the United States was either a party or amicus curiae. There is emphasis on Frankfurter's activities, but Elman also discusses the parts played by Earl Warren and the other Justices, the NAACP, and the lawyers involved in arguing the cases. He concludes that *Brown* would have been decided the way it was regardless of anything that was said during oral argument. He also maintains that the NAACP won despite making the wrong arguments at the wrong time in the wrong cases.

Fairman, Charles. "The Supreme Court, 1955 Term—Foreword: The Attack on the Segregation Cases." *Harvard Law Review* 70 (1956): 83–94.

The author defends the Warren Court against attacks that it received for its decision in *Brown*. The article includes excerpts from the "Southern Manifesto," a document highly critical of *Brown* that was signed by most of the senators and representatives from eleven Southern states.

Fassett, John D. "Mr. Justice Reed and *Brown v. The Board of Education*." *Yearbook of the Supreme Court Historical Society*, 1986, 48–63.

The author, who served as Justice Reed's law clerk during the 1953 term, describes the research projects on segregation issues that he carried out for the Justice. Fassett reports that Reed had originally planned to write a dissent in *Brown*, and includes the entire text of that document in the article. As for the *Brown* decisions, he regards the unanimity of the Court as far more significant than anything that appeared in the opinions themselves.

Greenberg, Jack. "If . . ." *Journal of Supreme Court History* 24 (1999): 181–200.

This article consists of a mythical account of *Brown* written by a former member of the NAACP's Legal Defense Fund who worked on the case. It describes race relations in the United States as they might have developed if the NAACP had lost the *Brown* case. His scenario suggests that after failed efforts to equalize the racially separate school systems, the Supreme Court would finally have declared segregated schools unconstitutional in 1973.

Hockett, Jeffrey D. "Justice Robert H. Jackson and Segregation: A Study of the Limitations and Proper Basis of Judicial Action." *Yearbook of the Supreme Court Historical Society*, 1989, 52–67.

Hockett analyzes Justice Jackson's unpublished memorandum on *Brown*. He believes that Jackson's views were "more consonant with constitutional history and accorded more closely with the public's conception of permissible exercise of judicial power" (p.63). He therefore maintains that although the memorandum was vulnerable to criticism on certain points, the Supreme Court should have adopted some of Jackson's arguments. In his view this would have avoided or blunted many of the criticisms of Chief Justice Warren's opinion.

Hutchinson, Dennis J. "Unanimity and Desegregation: Decisionmaking in the Supreme Court, 1948–1958." *Georgetown Law Journal* 68 (1979): 1–96.

Hutchinson provides a study of the rise and fall of unanimity on the Supreme Court from 1948 and 1958 that concentrates on the *Brown* decision. Unlike earlier studies of the judicial deliberations, this article benefited from the author's access to the papers of Justice Tom C. Clark. Hutchinson disagrees with those who claim that Earl Warren was primarily responsible for unanimity in *Brown*. Instead, he takes the position that the Court's unanimity was the result of a gradual process that began as early as 1950, with the decision in *Sweatt v. Painter*,²⁶ *McLauren v. Oklahoma State Regents*,²⁷ and *Henderson v. United States*.²⁸ The article's appendixes include Justice Clark's memorandum on *Sweatt* and *McLauren*; Justice Clark's conference notes on the "Segregation Cases"; and the memorandum on the District of Columbia case from the Chief Justice.

Kelly, Alfred H. "The Fourteenth Amendment Reconsidered: The Segregation Question." *Michigan Law Review* 54 (1956): 1049–86.

In this thorough study of congressional deliberations on the Fourteenth Amendment, the author concludes that the meaning of the Amendment was in "an extremely fluid state throughout the Reconstruction era, as it was in the minds of so many men who voted for the amendment in 1866" (p.1086). On the broader issue of constitutional interpretation, he concludes that the "notion of a static constitution is ultimately a fiction," and that social and political evolution has "brought the force and intent of the amendment with respect to race and caste far nearer to the old antislavery ideal out of which the language of the first section grew" (p.1086).

26. 339 U.S. 629 (1950) (involving a black applicant denied admission to the University of Texas Law School).

27. 339 U.S. 637 (1950) (involving a segregated doctoral program at the University of Oklahoma).

28. 339 U.S. 816 (1950) (involving a black railroad passenger denied dining car service).

Kennedy, Randall. "A Reply to Philip Elman." *Harvard Law Review* 100 (1987): 1938–48.

The author takes strong issue with Philip Elman's criticism²⁹ of the NAACP's strategy in *Brown* and his claim that nothing the attorneys said or did affected the outcome. He maintains that Elman's version of the events is replete with inaccuracies and important omissions. Kennedy credits Elman and the Solicitor General's Office for taking a stand against segregation, but he believes that Elman's version of the events gives him and the Solicitor General's Office undue credit and at the same time belittles the work of the attorneys who led the fight against segregation from 1930 to 1960.

Klarman, Michael J. "*Brown*, Racial Change, and the Civil Rights Movement." *Virginia Law Review* 80 (1994): 7–150.

In part one of the article, the author maintains that long-term political, economic, and social forces were steadily undermining Jim Crow practices in the South. In part two, he argues that *Brown*'s true importance in promoting racial change was that it produced a political climate conducive to the violent suppression of the civil rights movement, which in turn created strong support for racial equality elsewhere in the nation. In the same issue of the *Virginia Law Review*, Klarman defends these views against critics in a brief reply article.³⁰

McConnell, Michael. "Originalism and the Desegregation Decisions." *Virginia Law Review* 81 (1995): 947–1140.

McConnell disputes the widely held view that the Supreme Court could not rely on the original meaning of the Fourteenth Amendment in deciding *Brown*. He believes that such scholars as Michael J. Klarman, Robert Bork, and Mark V. Tushnet are incorrect when they state that the drafters of the Amendment never intended that it should apply to school segregation. Instead, citing congressional votes on what would become the Civil Rights Act of 1875, he says that segregated schools were believed to be a violation of the Fourteenth Amendment by a majority of the political leaders who had supported it. McConnell concludes by criticizing the Warren Court for giving the impression in *Brown* that it was "struggling against the historical understanding and original meaning of the Constitution" (p.1132).

McConnell, Michael. "The Originalist Case for *Brown v. Board of Education*." *Harvard Journal of Law and Public Policy* 19 (1996): 457–64.

Although the author concedes that the consensus among scholars is that the Fourteenth Amendment permitted segregated schools, his review of the legislative history of what was to become the Civil Rights Act of 1875 leads him to a different conclusion. McConnell maintains that deliberations and votes during the early 1870s reveal that "[l]arge majorities of both houses of Congress, and even larger majorities of supporters of the Fourteenth Amendment, concluded that it forbade de jure segregation of the public schools" (p.464).

29. See Philip Elman & Norman Silber, *The Solicitor General's Office, Justice Frankfurter, and Civil Rights Litigation, 1946–1960: An Oral History*, 100 HARV. L. REV. 817 (1987).

30. Michael J. Klarman, *Brown v. Board of Education: Facts and Political Correctness*, 80 VA. L. REV. 185 (1994).

Mody, Sanjay. "Brown Footnote Eleven in Historical Context: Social Science and the Supreme Court's Quest for Legitimacy." *Stanford Law Review* 54 (2002): 793–829.

This student note argues that the Warren Court did not rely on the social science evidence listed in footnote eleven of *Brown I* in order to find segregation unconstitutional. The author finds this evidence irrelevant to the Court's decision, contending that the Justices used the social science data to make the decision more persuasive. He concludes that "the Justices, anxious about the social and jurisprudential consequences of their ruling, were themselves seduced by the exalted claims of mid-twentieth century social science" (p.794).

Motley, Constance Baker. "The Historical Setting of *Brown* and Its Impact on the Supreme Court's Decision." *Fordham Law Review* 61 (1992): 9–17.

The author, a former member of the NAACP's Legal Defense Fund team, provides an overview of the cases leading up to *Brown* and discusses the role of Thurgood Marshall in the case. She notes that an unanticipated result of *Brown* was its psychological impact on African Americans in the South, leading to a grassroots revolt against segregation.

Pollak, Louis H. "Racial Discrimination and Judicial Integrity: A Reply to Professor Wechsler." *University of Pennsylvania Law Review* 108 (1959): 1–34.

Responding to Herbert Wechsler's 1959 *Harvard Law Review* article,³¹ Pollak takes issue with Wechsler's contention that *Brown* and the other segregation cases were not decided by neutral judicial principles. He views Wechsler's framing of the issue as one of competing claims of right of association and nonassociation as tantamount to suggesting that "no supportable opinion could have been written in *Brown*" (p.24).

Ripple, Kenneth F. "Thurgood Marshall and the Forgotten Legacy of *Brown v. Board of Education*." *Notre Dame Lawyer* 55 (1980): 471–84.

Written on the occasion of the twenty-fifth anniversary of the *Brown* decision and Thurgood Marshall's tenth anniversary as a Supreme Court Justice, this article includes an examination of the cases brought by the NAACP between 1936 and 1948. The author stresses the difficulties Marshall faced in achieving his goal of having *Plessy* overruled. He describes how the future Justice presented the courts "with a litigation theory which would permit them to grant relief without squarely confronting the necessity of overruling the precedent that 'separate' is 'equal'" (p.474).

Rosenberg, Gerald N. "Brown Is Dead! Long Live Brown! The Endless Attempt to Canonize a Case." *Virginia Law Review* 80 (1994): 161–71.

The author maintains that the influence of *Brown* has been overstated and completely disagrees with Michael J. Klarman's position, expressed in the lead article of this issue of the *Virginia Law Review*,³² that the post-*Brown* election of segregationists led to the violence that aided the civil rights cause in the rest of the United States. In Rosenberg's view, these officials had little, if anything, to

31. Wechsler, *supra* note 24.

32. Klarman, *supra* note 11.

do with the violent response to the civil rights movement. Instead, he believes it was the violent response to the civil rights movement by Southerners generally that brought action by the federal government.

Sacks, Albert M. "The Supreme Court 1953 Term—Foreword." *Harvard Law Review* 68 (1954): 96–103.

In this first *Harvard Law Review* commentary on *Brown I*, Sacks hails the decision as a triumph of principle—equal treatment regardless of race—and declares that "[s]eparate but equal' is a self-contradicting phrase" (p.96). He also expresses approval for the impression the Court gave of moving with slowness and great deliberation. He adds that if the amount of time required to reach a decision was the result of the need to achieve unanimity, "it was well taken" (p.98).

Schwartz, Bernard. "Chief Justice Rehnquist, Justice Jackson, and the *Brown* Case." *Supreme Court Review*, 1988, 245–67.

Argues that the Rehnquist memorandum, "A Random Thought on the Segregation Case," supporting the separate-but-equal doctrine, was actually a statement of Rehnquist's views, not those of Justice Jackson. A major basis of this argument is the text of the last version of Jackson's draft concurrence that holds that changed conditions required a ruling that segregation was unconstitutional.

Snyder, Brad. "How the Conservatives Canonized *Brown v. Board of Education*." *Rutgers Law Review* 52 (2000): 393–494.

Snyder asserts that the moving force behind the "canonization" of *Brown* came from conservatives. He maintains that conservatives, such as Chief Justice Rehnquist, realized that they needed to embrace *Brown* to be confirmed, but that once on the Court they interpreted the case in such a way as to push it into the background of equal protection jurisprudence.

Sobel, Richard. "A Colloquy with Jack Greenberg about *Brown*: Experiences and Reflections." *Constitutional Commentary* 14 (1997): 347–64.

This article is based on discussions in the author's seminar on civil rights at Princeton University in 1995. In response to Sobel's questions, Greenberg discusses his personal experiences as a member of the NAACP's Legal Defense Fund team, and gives his views on the *Brown* decision and its historical significance.

"Symposium: *Brown v. Board of Education*." *Southern Illinois University Law Journal* 20 (1995): 1–115.

Several alternative or hypothetical *Brown* opinions are presented among the ten articles prepared for a symposium commemorating the fortieth anniversary of the *Brown* decision. Included are those by Wenona Yvonne Whitfield, "*Brown v. Board of Education*: A Substitute Opinion" (pp.15–17), resolving the case by having white and black students switch facilities; Steven D. Smith, "*Brown v. Board of Education*: A Revised Opinion" (pp.41–51), deciding the case on principles of racial equality; Patrick J. Kelley, "An Alternative Originalist Opinion for *Brown v. Board of Education*" (pp.75–92), arguing that the belief at the time of its passage, that the Fourteenth Amendment did not apply to segregation, is not controlling; Earl A. Maltz, "A Dissenting Opinion to *Brown*" (pp.93–98), arguing that segregated schools are not unconstitutional because the authors and supporters of the Fourteenth Amendment did not intend it to apply to

segregation; and Thomas B. McAfee, “*Brown* and the Doctrine of Precedent: A Concurring Opinion” (pp.99–108), arguing that the application of precedent supports the *Brown* opinion.

Talmadge, Herman E. “School Systems, Segregation, and the Supreme Court.” *Mercer Law Review* 6 (1955): 189–200.

This article is notable as an example of the anti-*Brown* responses of Southern political leaders. The author, at the time a former Georgia governor and future senator, presents a plan to preserve segregated schools based on the belief that *Brown* did not apply to private schools. He proposes keeping segregated schools by granting state funds to private schools and by selling and leasing existing school buildings to such institutions. He also expresses support for a congressional bill that would have deprived the federal courts, including the Supreme Court, of jurisdiction over state-operated schools.

Tushnet, Mark V., and Katya Lezin. “What Really Happened in *Brown v. Board of Education*.” *Columbia Law Review* 91 (1991): 1867–1930.

Presents a beyond-the-scenes account of the *Brown* decision based in part on the papers of Earl Warren, William O. Douglas, and Robert Jackson. Before analyzing the positions of Frankfurter and Jackson, the authors present what they claim is the standard version of *Brown*. They maintain that this version overemphasizes the divisions on the Court, and “neglects the important role Jackson played in structuring the way in which Frankfurter thought about the problems of segregation and remedy” (p.1930).

Wechsler, Herbert. “Toward Neutral Principles of Constitutional Law.” *Harvard Law Review* 73 (1959): 1–35.

This article, by the Harlan Fiske Stone Professor of Constitutional Law at Columbia, was originally delivered as the Oliver Wendell Holmes Lecture at Harvard in April 1959. The author, a leading academic critic of *Brown*, discusses the standards of judicial review and concludes that “courts have the power, and duty to decide all constitutional cases in which the jurisdictional and procedural requirements are met” (p.1). With regard to *Brown*, he argues that findings of psychological harm were central to the Warren opinion but seriously affected its credibility. Wechsler concludes that the case did not really turn on the facts as presented, but on the sense that racial segregation was a denial of equality to a minority group. He maintains that the real legal issue in the case is the right of association as opposed to a claimed right of nonassociation.

Wilson, Paul E. “Ad Astra Per Aspera: *Brown v. Board of Education of Topeka*.” *UMKC Law Review* 68 (2000): 624–36.

After reviewing the origins of the *Brown* case in Topeka, the author recounts his experiences arguing the case for the state of Kansas at the Supreme Court. He concludes by describing how efforts to effectively desegregate the Topeka school system dragged on into the 1990s before success was achieved.

Wilson, Paul E. “Speech on *Brown v. Board of Education*, May 1, 1981.” *University of Kansas Law Review* 30 (1981): 15–25.

In this verbatim transcript of one of the annual talks the author gave on *Brown* at the University of Kansas Law School, Wilson discusses the history of race relations and school segregation in Kansas, and his role in arguing *Brown*.

Wilson, Paul E. "The Genesis of *Brown v. Board of Education*." *Kansas Journal of Law and Public Policy* 6 (1996): 7–22.

Written by the attorney who argued the *Brown* case for the state of Kansas in the Supreme Court, this article focuses on events in that state. He describes the history of race relations in Topeka, the role of the Brown family, why the NAACP chose Kansas as the site for a test case, and the trial in the United States District Court, District of Kansas.

Nonlegal Periodical Articles

Breathett, George. "Black Educators and the United States Supreme Court Decision of May 17, 1954 (*Brown versus the Board of Education*)."
Journal of Negro History 68 (1983): 201–08.

Reprints, with added commentary, "A Statement Adopted By a Group of Southern Negro Educators, Hot Springs, Arkansas, October 27, 1954." In this statement, which was almost entirely ignored by the press, educators from schools, colleges, boards of education, and professional associations hailed the *Brown* decision, expressed their concern for quality education for everyone in the South, and called for an immediate implementation of desegregation.

Carter, Robert L., and Thurgood Marshall. "The Meaning and Significance of the Supreme Court Decree." *Journal of Negro Education* 24 (1955): 397–404.

The authors evaluate the *Brown II* implementation decision and project the NAACP's future course of action. They regard *Brown II* as about as effective a formula as could be expected. They describe it as "temperate" (p.399), but maintain that the decision concedes nothing to the segregationists. Carter and Marshall state that setting a deadline for implementation would have resulted in a false sense of security that segregation would end within a specified time, while opening the decision to criticism that it was "arbitrary, unrealistic and unfair to the South" (p.402).

Mayer, Michael. "With Much Deliberation and Some Speed: Eisenhower and the *Brown* Decision." *Journal of Southern History* 52 (1986): 43–76.

Mayer examines the roles played by President Eisenhower, Attorney General Herbert Brownell, and the other members of the Justice Department while both *Brown I* and *Brown II* were before the Supreme Court. He also covers the administration's reaction to the decision, Eisenhower's personal views on desegregation, and his relationships with various Southern governors. Mayer disagrees with those who portray Eisenhower as an obstructionist on civil rights issues. He maintains that the president did not oppose desegregation in principle. Instead, he claims that Eisenhower's reservations about the Court's decision in *Brown* arose from its methods rather than its intent.

Ulmer, S. Sidney. "Earl Warren and the *Brown* Decision." *Journal of Politics* 33 (1971): 689–702.

The author utilizes the papers of Justice Harold H. Burton to examine the role of Earl Warren in *Brown*. He reviews the initially divergent views of the other Justices, particularly those from the South, and concludes it was Warren who was responsible for their eventual unanimous support of the *Brown* decision.

Documentary Collections

In addition to the print sources listed below, Yale Law School's Curiae.Law Web site (<http://curiae.law.yale.edu>) includes a very large number of documents from both *Brown I* and *Brown II*. Available documents include jurisdictional statements, petitions for cert, merits brief, amicus briefs, reply briefs, motions, and record transcripts.

Landmark Briefs and Arguments of the Supreme Court of the United States: Constitutional Law, edited by Philip B. Kurland and Gerhard Casper. Arlington, Va.: University Publications of America, 1975.

Volumes 49 and 49A of this set contain the appellant's briefs, the briefs of the Topeka Board of Education and the state of Kansas, and the amicus briefs. The oral arguments are from the initial arguments, the reargument, and the *Brown II* implementation decision. Omitted are appendixes and certificates of service. However, the index to the appellant's 1952 brief, "The Effects of Segregation and the Consequences of Desegregation: A Social Science Statement," is provided.

Removing a Badge of Slavery: The Record of Brown v. Board of Education, edited by Mark Whitman. Princeton, N.J.: Markus Wiener Publishing Co., 1993.

Compiled by a professor of history at Towson State University, this collection includes trial documents and the Supreme Court briefs and oral arguments for the four cases that constituted *Brown I*. Also included is the amicus brief filed by the American Jewish Congress. Documents relating to the reargument include the oral arguments, briefs from *Briggs v. Elliott* and *Davis v. County School Board*, and the supplemental brief for the United States. There also is a collection of essays commenting on *Brown*, documents from related cases, and excerpts from articles. Also of interest are the memoranda prepared by both Justices Jackson and Frankfurter prior to the issuance of the *Brown* opinion, and the letter written to Senator James O. Eastland by future Chief Justice Rehnquist in 1971 regarding his 1952 memo, "Random Thoughts on the Segregation Cases."

Thurgood Marshall: His Speeches, Writings, Arguments, Opinions, and Reminiscences, edited by Mark V. Tushnet. Chicago: Lawrence Hill Books, 2001.

Included in this collection of fifty-four documents are the initial 1952 brief and the oral argument in *Brown*. Also included are two articles from the *Journal of Negro Education*: "An Evaluation of Recent Efforts to Achieve Racial Integration in Education Through Resort to the Courts,"³³ including discussions of the Clarendon County, Wilmington, and Prince Edward County test cases; and "The Meaning and Significance of the Supreme Court Decree."³⁴

33. Thurgood Marshall, *An Evaluation of Recent Efforts to Achieve Racial Integration in Education Through Resort to the Courts*, 21 J. NEGRO EDUC. 316 (1952).

34. Robert L. Carter & Thurgood Marshall, *The Meaning and Significance of the Supreme Court Decree*, 24 J. NEGRO EDUC. 397 (1955).

Bibliographies³⁵

Hall, Kermit. *A Comprehensive Bibliography of American Constitutional and Legal History, 1896–1979*. Millwood, N.Y.: Kraus International Publications, 1984.

This bibliography includes published works of “an analytically historical nature,” but excludes articles in law reviews that deal with theoretical legal issues and constitutionalism and articles in quasi-scholarly reviews and journals. Articles relating to *Brown* are generally found listed in the chapter on constitutional doctrine under the heading “Civil Liberties and Civil Rights.” A two-volume supplement covering 1980 to 1987 was published in 1991.

Martin, Fenton S., and Robert U. Goehlert. *The U.S. Supreme Court: A Bibliography*. Washington, D.C.: Congressional Quarterly, 1990.

This bibliography primarily lists research monographs, dissertations, and articles from major journals. The citations are not restricted to the legal area, but are also drawn from such fields as history, political science, and social science. For the most part, articles relating to *Brown* are included in the section titled “The Court and Equal Rights” under the heading “Education.” Other relevant articles are listed under the names of the individual justices.

35. In addition to the items included in this section, the various serious studies of *Brown*, or its major participants, generally contain unannotated bibliographies or bibliographical essays.