2000

The Big Bang: Brown vs Board of Education, and Beyond: The Autobiography of Oliver W. Hill, Sr.

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The Big Bang
Brown vs Board of Education, and Beyond:
The Autobiography of Oliver W. Hill, Sr.

by

Oliver W. Hill, Sr.

Edited by
Jonathan K. Stubbs

FOUR-G Publishers, Inc.
2000
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EDITOR'S PREFACE

In some respects, Mr. Oliver W. Hill, Sr., and I are very alike; in others we are quite different. For example, Mr. Hill has stated in the past that I may call him, Oliver. That is broad-minded, progressive and egalitarian. However, on some matters, I am more conventional in my approach; accordingly, I have been unable to refer to Mr. Hill as Oliver. In my southern "down home" African-American cultural tradition, you don't call a person twice your age, and infinitely more wise, by his first name. That said, (gentle reader) you may better understand the genesis of this collaborative effort by Mr. Hill and me.

I first met Mr. Hill briefly in 1986 while planning my move back from Washington, D.C. to Virginia. Elaine R. Jones, Esq. who now directs the Legal Defense Fund with which Mr. Hill has worked for over fifty years, gave me prescient advice: pay a courtesy call at the law firm of Hill, Tucker & Marsh.

Some months later, I met Mr. Hill in the Clerk’s Office of the Circuit Court of Gloucester County, Virginia. Mr. Hill and his protégé, Randall Johnson, Sr. (now Chief Richmond Circuit Judge Randall Johnson) were conducting legal research. It struck me that Judge Johnson, Reuben Hill, Jr. (another African-American attorney in the Clerk’s Office at that time) and I were all beneficiaries of the dedicated efforts of Mr. Hill which had spanned over half a century. I am convinced that subconsciously I decided that if an opportunity presented itself I would try to show my respect and appreciation for his work. After all, but for the efforts of Mr. Hill and others like him, I would not have been blessed with the opportunity to practice law or engage in numerous other personal and professional activities.

In 1989, I began to teach full-time at the University of Richmond School of Law, and early in 1992 decided to approach

Mr. Hill with the idea regarding his transcribed subsequent manuscript of distinguished names. In the lit Education

Followed as a foreword for a superfluous, however, to the conclusion and judicious (particularly much to the A. Leon H Spottswood post and re his, too, in its inception own depart
Mr. Hill with the idea of writing his autobiography. Mr. Hill readily agreed to a series of interviews (some lasting several hours) regarding his life and work. These interviews were painstakingly transcribed by Ms. Anne Smith, my legal assistant, and were subsequently edited into chapters by A. Pierre Jackson, one of my research assistants who has since become a member of the Virginia bar and a dynamic force for progressive change. Incidentally, Mr. Jackson is presently headquartered in Farmville, Virginia, the site of one of the five cases which was consolidated in the litigation which became known as Brown v. Board of Education.

Following this initial restructuring of the book, the manuscript has been edited and commented upon by a number of distinguished individuals. There is a great danger in naming names. Invariably, despite one’s best efforts, someone is left out. To avoid this difficulty, I wish to thank ALL those individuals who read, conducted research for, encouraged and in any way supported the work on this book. I also thank God for life itself, which has lasted long enough to bring this project to fruition.

In my view, these thanks are neither gratuitous nor superfluous; for when Mr. Hill and I began working on this project in 1992, a number of individuals actively supported the endeavor; however, they are not physically present now to appreciate its conclusion. I mention specifically, Mr. Hill’s wife, Bernie, whose judicious reading of the manuscript and sagacious counsel (particularly regarding sometimes colorful choices of words) added much to this version of the text. In addition, retired Chief Judge A. Leon Higginbotham, Jr., graciously consented to write the foreword for the autobiography; however, before he could complete this project, he passed away. Furthermore, retired Chief Judge Spottswood W. Robinson, III, readily agreed to be a sounding post and resource for the writing of the autobiography; however, he, too, has moved to higher ground. Finally, my beloved father, Calvin Kenneth Stubbs, was very interested in the project from its inception, and even as he recognized the imminence of his own departure, he encouraged me to persevere with “the book.”
Editor's Preface

Having thanked all those who participated in any way to bring this book to fruition, and therefore hopefully having partially gotten myself off of the hook associated with being a forgetful professor, I nevertheless wish to thank specifically some individuals who have been involved in this work. First, I am grateful to the author himself, Mr. Hill, for putting up with me for seven years and going over the text of the manuscript word by word, sentence by sentence, line by line, paragraph by paragraph and page by page on at least half a dozen occasions. Mr. Hill's attention to detail, positive outlook upon life, and determination to continue struggling for justice for all has been an inspiration to me and an educational experience which has served as a capstone to my professional development in the law. Mr. Hill has persevered with this endeavor despite the deaths of loved ones and several significant health challenges.

Secondly, I wish to thank my legal assistant, Anne Smith, who has corrected the book too many times to be counted. Thirdly, I wish to express my gratitude to my colleagues at the University of Richmond School of Law, and especially Okianer Christian Dark, who provided mentorship and encouragement in this project, John Paul Jones, who likewise provided advice and encouragement and W. Hamilton Bryson, whose pioneering biographical work in Virginia legal history provided inspiration.

Further thanks are due to Professor Daryl Dance of the University of Richmond English Department, who read early and late drafts of the book manuscript and provided generously of her time and keen insights regarding the text; Adolphus L. Williams, Jr., Esq., my mentor and friend, who similarly provided comments on early and late versions of the manuscript; and A. Pierre Jackson, Esq., my former student and research assistant and now colleague at the Bar, who worked assiduously in bringing this project to its present state.

Ms. Esther Vassar volunteered to chair fundraising efforts for the publication of the book and provided expert editorial assistance as well. Through Ms. Vassar's efforts a number of individuals and corporate sponsors stepped forward to provide
Preface

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For encouragement and support additional thanks are due to the Old Dominion Bar Association and to members of Mr. Hill’s firm, particularly Mr. Hill’s law partners, especially Henry Marsh, Esq., Clarence Dunnaville, Esq., and the late Harold Marsh, Esq. Unfailing cheerfulness and assistance from the Hill, Tucker, and Marsh support staff is also greatly appreciated, especially that of Mr. Hill’s legal assistant, Ms. Margaret Cosby and the irrepressible Dr. Diane Marsh.

Editor’s Preface

tangible financial support for this compelling cause. Specifically thanks are due to The Freddie Mac Corporation, which provided generous material support; Jim Ukrop, Chairman of the Ukrop Corporation for a substantial grant; Dominion Resources and its forward thinking Senior Vice President, Eva Teig; U.S. Senator Charles “Chuck” Robb whose unwavering support has been invaluable; and the judges of the Oliver W. Hill, Sr. Court Building, namely Chief Judge Angela Edwards Roberts, and Judges Harold W. Burgess, Jr., Audrey J. Franks, Kimberly B. O’Donnell, Richard D. Taylor, Jr. and Ann Holton.

Similarly, the American Bar Association Book Publishing Division furnished editorial support in the early stages of the manuscript development and extended itself in numerous other ways to further the prospects of publication. Within the legal academy, thanks are due colleagues too numerous to name, and while I thank them all I specifically wish to express gratitude to my supportive friends Linda S. Greene, Alice Gresham-Bullock, Steven W. Hobbs, Bryan Fair, Leland Ware, Warner Lawson, J. Clay Smith, Jr., Joseph D. Harbaugh, Taylor Reveley, Gregory Williams, Charles Ogletree, Jack Greenberg, Stephen Carter and John Pagan. For expert technical help, research assistance and collegial support, I am also deeply indebted to Allen Moye. Other present and former students whom I wish to thank are the following: A. Gray Collins, Esq., Melanie Shepherd, Esq., Elbert Mumphrey, Esq., Deborah Hines, Esq., Carla Jean-McNeil Jackson, Connie L. McCalla, Ramona Taylor, Courtney Sydnor, Chris Bain, Esq., Rophenia Crawley, Terrance Deans, Carla Simmons, Esq., Randall Johnson, Jr., Esq., Dawn Johnson, Esq., Nadine Carter, Esq., Vanessa Wilson, and Tara Minter, Esq.

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Editor's Preface

This book benefitted from the expert photographic assistance and eagle eye of Herbert "Sonny" Rudlin of Adams Camera Shop in Richmond. Thanks is also due to Dr. Clifford Muse, Archivist of Howard University, for his generous assistance in obtaining photographs of Mr. Hill's longtime friends and mentors Dean Charles Hamilton Houston, Judge William H. Hastie and Professor Leon A. Ransom.

I acknowledge with deep gratitude the good cheer and thoughtfulness of Mr. Hill's immediate family, especially Oliver, Jr. and his wife, Renee, as well as Thomas Ferrell, Maia King, Jelani Ferrell, Jamaa Bickley-King, and Jananda Hill.

A few final personal notes. The support of my family, both personal, genetic, and spiritual has been invaluable. My wife, Pamela (Lovely One), our daughter, Amanda (Little Lovely One), my mother, E. P., my brother, M.A., and my new mom, Mom Lessie, as well as others, (you know who you are), thank you very much.

As a personal tribute to Mr. Hill, following the last chapter of the book and endnotes, I have written a short story on the human race and human rights.

As editor, while I have done my best to make the book as polished as possible, I readily accept the responsibility for flaws in the present text.
Preface

From the expert photographic effort "Sonny" Rudin of Adams Books is also due to Dr. Clifford Banks, for his generous assistance to. Hill's longtime friends and from Houston, Judge William H. Hansom.

I gratefully the good cheer and immediate family, especially Oliver, as Thomas Ferrell, Maia King, King, and Jananda Hill.

The support of my family, both has been invaluable. My wife, Myer, Amanda (Little Lovely One), M.A., and my new mom, Mom (now who you are), thank you

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AUTHOR'S INTRODUCTION

In writing this book I had several objectives in mind. First, I wish to correct the mistaken notion that the African American civil rights movement started in the 1960's with the sit-ins or perhaps a bit earlier in Montgomery, Alabama with Dr. Martin Luther King, Jr. Contrary to popular belief, the African American civil rights struggle dates back to the mid-seventeenth century when an African American slave woman fought for the freedom of her child by bringing a lawsuit asserting that the child was free because the father was a free Negro. Contemporaneous with her action was a lawsuit initiated by a black slave for freedom from a black slaveholder. From those beginnings, Negroes have engaged in an unrelenting struggle for human freedom and dignity employing a variety of responses including, running away, nonviolent protests, and armed insurrections. In addition, Negroes have participated with courage and valor in all armed conflicts involving the United States from colonial days to the present.

In this book, I will discuss (among other things) the civil rights struggle in the twentieth century. For now, I wish to point out that Virginia is an example of the pervasive unremitting difficulties that Negroes have had in obtaining full protection of their constitutional rights. Here are a few examples of what I mean. In 1901 and 1902, a constitutional convention was held in Virginia for the express purpose of disenfranchising Virginia's Negro citizens and reestablishing segregation. Carter Glass, a leading segregationist politician, candidly addressed his fellow delegates at the convention about the primary purpose of the proceedings: "Discrimination! Why that is exactly what we propose; that exactly, is why this Convention was elected—to discriminate to the very extremity of permissible action...with a
view to the elimination of every Negro voter who could be gotten rid of, legally, without materially impairing the numerical strength of the white electorate."¹ Speaking candidly to his fellow segregationists, Senator Glass said: "This plan will eliminate the darkey as a political factor in this state in less than five years... [T]he article of suffrage which the convention will today adopt does not necessarily deprive a single white man of the ballot, but will inevitably cut from the existing electorate four fifths of the Negro voters."²

After making ample provision for disenfranchising Negro voters, and ensuring segregation in public education and transportation, the promulgators of this nefarious document became fearful that if it were submitted to the voters for approval that it would be defeated. Instead it was unlawfully rammed down the throats of the Virginia populace by proclamation. In Jones v. Montague,³ the Supreme Court of the United States sustained this travesty.

In fact, within one hundred days of the promulgation of the Constitution, over one hundred and twenty-five thousand Negro voters were purged from the voting rolls.⁴ Of the nearly one hundred and fifty thousand Negro voters in the state, by October 15, 1902, only twenty-one thousand remained on the rolls. When the poll tax became effective in 1903, this small remnant of Negro voting strength was reduced further.⁵ The poll tax provided that to vote in an election, a voter had to pay one dollar and fifty cents per year for each of the three preceding years. The tax had to be fully paid at least six months before the election was held. The requirement that the poll tax must be paid six months prior to the election was one of many gimmicks designed to trap the unwitting prospective voter.

Despite such unconstitutional discrimination, Negroes fought back. For instance, in 1904, the local electric trolley company in Richmond adopted regulations which segregated Negroes who rode the trolleys. Negroes responded by boycotting the trolleys, and they walked for nearly a year. The boycott was organized in large part by John T. Mitchell, Jr., a local Negro journalist.
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Another pre 1950s or 1960s Negro attempt to attain full
constitutional protections of citizenship rights is reflected in City
of Richmond v. Deans, in which the United States Supreme
Court upheld the ruling of the lower federal courts that a Richmond
zoning ordinance unconstitutionally sanctioned certain types
of residential segregation. The Deans case relied on the earlier
Supreme Court decision of Buchanan v. Worley, which had held
unconstitutional a Louisville ordinance prohibiting whites from
moving into majority black blocks and vice versa. These rulings
were not, however, effective in curbing the widespread and
pernicious effects of residential apartheid.

It is an interesting historical footnote that in response to
the segregationist positions of both the Democratic Party and
the Republican Party, in 1921, Negroes in Virginia nominated an
d black ticket to run in the general election for statewide offices.
Leading the ticket were, John Mitchell, Jr., editor of the black
dpaper, "The Planet," (gubernatorial nominee), Theodore Nash
of Newport News (nominee for lieutenant governor), and J. Thomas
Newsome, Esq. (nominee for attorney general). The ticket also
cluded Maggie L. Walker (the first woman to become president
of a bank in the United States) as nominee for superintendent
of public instruction. Her place on the ticket was especially
auspicious because women had just received the right to vote
during the previous year. J. Z. Baccus ran on the ticket for
secretary of the commonwealth, and J. L. Lee ran for
Commissioner of agriculture. Notwithstanding the
unconstitutional disenfranchisement of nearly one hundred and
fifty thousand blacks in Virginia, the all black ticket made a
respectable showing.
In *West v. Bjiley*, in 1930, the Fourth Circuit ruled that Negroes could participate in formerly all white Democratic primaries. The Democratic primary was tantamount to a general election because the Democrats were such a dominant party in Virginia politics. Joseph Pollard, a Negro lawyer, and Alfred E. Cohen, a Jewish lawyer brought this case, and in so doing helped open an electoral door for Negroes in the Fourth Circuit. Nevertheless, in many places the law was not enforced. Accordingly, as I will discuss later, another Negro lawyer named Thomas Hewin, Jr. and I had to go to Greensville County, Virginia in 1939 to ensure that Negroes could in fact exercise the voting rights that the courts previously had upheld.

In 1930, under the leadership of Charles Hamilton Houston and many corroborating lawyers of the NAACP, a strategy was planned and organized to overturn the infamous *Plessy v. Ferguson* decision. A public education and legal action program which spanned twenty-four years culminated in the landmark decision of *Brown v. Board of Education* in 1954. While *Brown* has had a profound impact upon American law and society on many levels, one of the most important effects of *Brown* regarding the civil rights movement of the 1950's and 1960's is that *Brown* destroyed both the legality of Negro segregation and substantially removed much of the stigma associated with it. Without the *Brown* precedent, the legal basis for the bus boycotts, sit-ins, and many other protests activities to affirm Negro rights would have been, at best, precarious.

To help facilitate understanding of some of the modern aspects of the civil rights movement, one cannot underestimate the significance of the politically risky action of President Harry S. Truman, in issuing an executive order to desegregate the military. Truman's actions helped create a moral climate and a practical example of how desegregation could work and represented the first time that a national political figure took a stand for the civil rights of Negroes and other oppressed people, even though such a stand could have cost Truman his political life.
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A further catalyst for the civil rights movement which is too little appreciated is the passage of the Civil Rights Act of 1964 and more specifically the central role that President Lyndon Baines Johnson played in lobbying for, ensuring and facilitating that bill becoming law. In the early 1960's, Lyndon Johnson had stated to a meeting of governmental employees on intergroup relations, that a trip that Johnson had taken to underdeveloped countries made him more aware of the plight of Negroes in the United States. Johnson said that if he ever had an opportunity to do something about it, he would try to alleviate those conditions. Following Kennedy's assassination and despite the furious and united opposition of southern Democratic leaders, Johnson stood firm despite threats that he would be defeated in the general election of 1964. In my judgment both Truman and Johnson demonstrated a rare combination of moral and political courage in advocating and defending the rights of those who have traditionally been oppressed by the American social and legal system.

Turning to other aspects of the historical context in which I have been active, I was born on May 1, 1907 in Richmond, Virginia forty-two years after the end of the bloodiest war in American history: the American Civil War. Chattel slavery had existed in the United States for over two hundred years, and a few months after the Civil War ended, the United States finally abolished chattel slavery through adopting the Thirteenth Amendment to the Constitution. The following year (1866) Congress passed a Civil Rights Act giving Negroes many basic rights on the same plane as white people. Only thirty-nine years before my birth, people of color in the United States obtained legal equality under the Fourteenth Amendment. Just thirty-seven years before I was born men of color were allowed to vote under the Fifteenth Amendment.

The United States Supreme Court gave early indications that the new amendments to the federal constitution were directed toward protecting the rights of people of color in the United States. Thus, the Slaughterhouse Cases, Strauder v. West Virginia, and Ex Parte Virginia, specifically acknowledged that the post-Civil
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War amendments were directed toward protection of the former slaves. However, this relatively progressive attitude of the Supreme Court was short-lived. In 1883 (a quarter-century before my birth) the United States Supreme Court decided the infamous Civil Rights Cases. In those cases, the Supreme Court narrowly interpreted the Fourteenth Amendment to apply only to state action. The Court invalidated the attempt of the Civil Rights Act of 1875 to proscribe racial discrimination by private individuals in matters affecting the general public—like accommodations, transportation and theatres. The narrow and grudging interpretation given the Fourteenth Amendment by the 1883 Supreme Court, was one in a long line of destructive precedents which had the effect of pushing Negroes back towards slavery. In this regard the Supreme Court failed to not only protect the fundamental human rights of Negroes under the U.S. Constitution but also the Court abdicated its responsibility to follow the common law. The United States (including Virginia) is a common law jurisdiction, and under the English common law travelers have a right to food and lodging provided the traveler can pay for them. Rather than recognize the applicability of this well established common law doctrine to Negroes, the Court made new law effectively ghettoizing and segregating Negroes. Today we hear a lot of talk about activist courts but segregationists on the United States Supreme Court created activist judicial doctrines long before the desegregation doctrine (which is consistent with the Constitution) emerged during the Warren Court (1954-1969).

It is worthwhile noting that the Civil Rights Cases were decided toward the end of the so-called Reconstruction Period. That was one period in American history in which Negroes had an opportunity to participate more fully in the civil and political life of the community. For example, during the Reconstruction Period, (roughly 1866-1888) Negroes were elected to the Virginia State Legislature, Richmond and other City Councils, local Boards of Supervisors, and justices of the peace. In 1867, twenty-five Negroes were elected as delegates to the Underwood Constitutional Convention to frame a constitution for Virginia. This convention crafted a state constitution which allowed male Negroes an opportunity to participate more fully with the Constitution.

In 1888, the United States Supreme Court, in the so-called Ferguson case, decided that Negroes and whites in Virginia, though Negroes were said to be as separate as they were in the South. In a grandmother by him. My grandmother and white people be like the ante-bellum Compromise was to be as separate and white people be like the law.
Introduction

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stitution which allowed male 

Negroes and most white males, including many of those allied 

with the Confederacy, to vote.

In 1869, the General Assembly totaling approximately two 
hundred members included nearly thirty Negroes. During 
Reconstruction, the Negro legislators introduced bills to enhance 
all citizens’ opportunities for public education and to replace 
verbal voting in public elections with a paper ballot. They also 
sought to appoint a state geologist to help develop Virginia’s 
mineral wealth; and tried to curb excesses in using corporal 
punishment in the criminal justice system (the infamous 
“whipping posts”).11 These legislators promoted Negro 
participation on juries and introduced legislation creating the 
first publicly supported institution of higher learning for blacks 
in Virginia, The Virginia Normal and Collegiate Institute (now 
called Virginia State University).12 The efforts of these legislators 
were remarkable, and resulted in some successful legislation, 
though Negroes never held anywhere near a legislative majority 
in Virginia. Education and land ownership were primary objectives 
of the newly freed slaves.

On a personal note, during this time my maternal 
grandmother met a Semitic American man and became pregnant 
by him. My grandmother gave birth to their daughter, my mother, 
in 1888. My grandfather later became a doctor. My grandparents’ 
all too human behavior was probably illegal and undoubtedly 
frowned upon. Under the law, my mother came into the world in 
the twilight zone of so-called illegitimacy. She was born seven 
years before Booker T. Washington’s controversial 
“Atlanta Compromise” speech. Washington had proclaimed that Negroes 
and white people in the United States could, in common matters 
be like the hand, but on matters involving social issues they could 
be as separate as the fingers. This so-called compromise position 
really helped prepare the way for the advent of even more 
widespread Jim Crow segregation measures throughout the 
South. In fact, the year after Washington’s speech, in Plessy v. 
Ferguson, the United States Supreme Court upheld the doctrine 
of separate but equal.
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As previously mentioned, in 1901 and 1902, just a few years after *Plessy*, and five years before my birth, a constitutional convention was held in Virginia for the express purpose of disenfranchising Virginia’s Negro citizens and reestablishing segregation. Segregationists succeeded in their nefarious purpose and, three years before my birth, in *Jones v. Montague*, the Supreme Court made a mockery of its motto of equal justice under law by upholding the segregationists' constitution.

The Supreme Court continued its narrow, stingy interpretation regarding the rights of African Americans in *Hodges v. The United States* which, in effect, held that the Thirteenth Amendment ought to be narrowly construed so as to in essence invalidate Congress enactment of Civil Rights legislation to protect Negroes from the terrorist activities of groups like the White Camellias and the Ku Klux Klan. These groups had terrorized the newly freed slaves throughout the South, and had in some cases assassinated, mutilated and raped Negroes, in addition to destroying their real and personal property. The Klan employed violence against whites who occasionally allied themselves with Negroes. *Hodges* was decided one year before my birth.

At the beginning of the Twentieth Century, in a prophetic statement in *The Souls of Black Folk*, W.E.B. DuBois said that the problem of the Twentieth Century was the problem of the color line. Four years later I was born into the midst of this problematic human condition.

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