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REFLECTIONS

REFLECTIONS ON *BROWN* AND THE FUTURE

*Oliver W. Hill, Sr., Esq. **

I am happy to offer a few reflections on *Brown v. Board of Education*.¹ In addition, I will briefly discuss our future as human beings. First, a few facts.

The planning for *Brown* began in the late 1920s under the administration of Dr. Mordecai Johnson, the first Negro president of Howard University.² Dr. Johnson and Justice Louis Brandeis had a conversation in which they discussed the need to protect the rights of Negroes under the United States Constitution and the importance of well-trained Negro attorneys to accomplish this goal.³ Brandeis stated that many cases which came before the Supreme Court of the United States had such poor records that the Court could do little to protect the rights of Negroes.⁴ Following this conversation, Dr. Johnson decided to create a first-class

* B.A., 1931, Howard University; J.D., 1933, Howard University School of Law. Beginning in 1934, Mr. Hill spent a long and full career fighting for the dignity and fundamental rights of all Americans, as reflected in his being an architect of the school children's successful litigation strategy in *Brown v. Board of Education*. For his tireless and impassioned work he was honored in 1999 with the Presidential Medal of Freedom, the highest award bestowed on a civilian by the United States government.

The author wishes to thank Professor Jonathan K. Stubbs at the University of Richmond School of Law for his editorial and research assistance with this article.

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

2. See GENNA RAE MCNEIL, *GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS* 69 (1983).

3. *Id.* at 72.

4. RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* 125 (1976).

law school at Howard which could produce well-educated Negro lawyers able to ensure that the Constitution protected the rights of all Americans, particularly those of Negroes.⁵ At the time of the conversation with Justice Brandeis, Howard University had an evening law school primarily staffed by white adjunct faculty.⁶

To carry out his project of developing a first-class law school, Dr. Johnson hired Charles Hamilton Houston.⁷ Houston had been active in the struggle for justice for Negroes,⁸ and was also the first black to serve as a member of the *Harvard Law Review*.⁹ Houston in turn recruited other well-trained faculty, such as Bill Hastie, the second black member of the *Harvard Law Review*,¹⁰ Dr. Leon Andy Ransom, a Negro honors graduate of Ohio State University Law School who later received the doctor of juridical science from Harvard;¹¹ and George E.C. Hayes, a brilliant trial lawyer who served as co-counsel with James Nabrit, Jr. in *Bolling v. Sharpe*.¹² Nabrit was an excellent lawyer and teacher who, while teaching at Howard University, created the first civil rights seminar offered in a law school in the United States.¹³

Inspirational law teachers/activists and many visiting lawyers helped stimulate me as I entered the first full daytime law school at Howard University in 1930, along with Thurgood Marshall and about thirty other students. From the beginning, several of us had a common purpose—the eradication of segregation in American society.

Charlie Houston impressed upon us from the first day that a lawyer who is not a social engineer is a parasite upon society. We worked extremely hard, attending law school six days a week. We were told that we would have to appear in the courts not just before some hostile white judges, but that we would also have to

5. *Id.*

6. See OLIVER W. HILL, SR., *THE BIG BANG, BROWN V. BOARD OF EDUCATION AND BEYOND: THE AUTOBIOGRAPHY OF OLIVER W. HILL, SR.* 73 (Jonathan K. Stubbs ed. 2000).

7. KLUGER, *supra* note 4, at 125.

8. See MCNEIL, *supra* note 2, at 35–45.

9. KLUGER, *supra* note 4, at 115.

10. *See id.* at 127.

11. *See id.*

12. 347 U.S. 497 (1954). *Bolling* was the Washington, D.C. case argued with the four consolidated cases which comprised *Brown*.

13. KLUGER, *supra* note 4, at 127.

litigate cases against some very good white lawyers. Charlie and the faculty required that we give nothing less than our best.

After we graduated in 1933, members of our class, as well as other graduates before and after us, worked hard to ensure that segregation would be found unconstitutional. Our efforts, as well as those of other lawyers and clients across the country, especially in the South, resulted in steady progress toward a more just society. For example, in *Alston v. School Board*,¹⁴ we established legal precedent for equalizing teacher salaries in Virginia.¹⁵ Members of our legal team included Thurgood Marshall, Bill Hastie, and Andy Ransom.¹⁶ I served as local counsel.¹⁷

Alston, decided in 1940 by the Court of Appeals for the Fourth Circuit, reversed a long-standing practice throughout the state of paying white teachers significantly more than black teachers.¹⁸ For example, when I came to Richmond in 1939, the starting salary for Negro teachers was \$396 per year and the maximum salary that a Negro teacher or principal could make in Richmond was \$999 per year. For white teachers the starting salary was \$1,000 per year, and the maximum range went up to \$1,800 per year. In the Richmond schools, the result was that no Negro teacher, no matter how experienced or well-qualified, could make as much money as the most inexperienced, academically limited white teacher. This pattern was replicated statewide.

Even after the Fourth Circuit's opinion in *Alston*, school districts across the state ignored the court's order. We had to sue the school systems of Newport News, Chesterfield, and numerous other jurisdictions around the state to enforce the law.¹⁹ Moreover, a number of courageous Negro educators who were activists in the Negro teachers association and the Virginia Teachers Association ("VTA"), were fired when their fellow teachers dared to vindicate their rights in court. In Newport News, for instance, when we filed *Roles v. School Board*²⁰ to enforce the Fourth Cir-

14. 112 F.2d 992 (4th Cir. 1940), *cert. denied*, 311 U.S. 693 (1940).

15. *Alston*, 112 F.2d at 996–97.

16. *Id.* at 993.

17. *Id.*

18. *Id.* at 993–94.

19. *See, e.g.*, *Freeman v. County Sch. Bd.*, 82 F. Supp. 167 (E.D. Va. 1948); *Roles v. Sch. Bd.*, 61 F. Supp. 395 (E.D. Va. 1945).

20. 61 F. Supp. 395 (E.D. Va. 1945).

cuit's mandate to equalize teacher salaries, Mr. Palmer, a high school principal, and Mr. Packard, an elementary school principal, were both fired. Palmer and Packard were both activists in the VTA.

On a related note, government authorities throughout the state provided public schools for the Negro children with inferior facilities. For example, local government officials consolidated smaller white neighborhood schools into larger centralized high schools, and routinely authorized spending taxpayer money for white children to ride school buses to school. In contrast, consolidated schools for Negroes sometimes resulted in Negro children having one Negro high school which attempted to serve the educational needs of Negroes in several counties. This arrangement forced some Negro students to make school bus rides of over sixty miles per day just to go to school.²¹ In other counties, while white children rode for free, Negroes walked or paid private individuals to take them to school. In short, busing across county and other governmental boundaries to maintain segregation was not unusual. In fact, when segregationists deemed it to be to their advantage, they required such busing. Ironically, the Supreme Court of the United States later severely limited busing to desegregate city schools despite longstanding discrimination not only in city and adjoining county schools, but also in housing and credit financing.²²

Brown v. Board of Education made segregation unconstitutional, and in so doing, made it much easier for additional civil rights activities like sit-ins and other protests to go forward. Without *Brown*, the sit-ins, wade-ins, and other protest activities would have been legally impossible because segregation was legal and pervasive in restaurants, buses, libraries, and even in the seating of members of the general public in courts. *Brown* established the precedent to ensure that not only public education, but also other areas of public life would require the government to cease segregating its citizens.

Another related area involved housing. Where a person lives plays a major part in where he attends school. From the creation

21. See *Corbin v. County Sch. Bd.*, 177 F.2d 924, 927 (4th Cir. 1949).

22. See *Milliken v. Bradley*, 418 U.S. 717, 751-53 (1974); *Bradley v. Sch. Bd.*, 462 F.2d 1058, 1069 (4th Cir. 1972), *aff'd*, 412 U.S. 92 (1973).

of the Federal Housing Administration (“FHA”) in 1934 until the middle of the Kennedy administration, the government mandated that in financing home ownership, taxpayer money had to be used to maintain homogeneous neighborhoods.²³ In other words, in issuing home loans, the government required segregation. The result was that as late as 1960, not one of the 82,000 residents of Levittown, Long Island was a Negro.²⁴

While *Brown* was a key legal precedent for the civil rights movement of the 1950s, 1960s, and beyond, there were some serious limits to *Brown*’s effect. The uniform practice of the courts had been that when the courts found that a constitutional right had been violated, the courts ordered a remedy to speedily enforce the right. *Brown v. Board of Education* (“*Brown I*”)²⁵ departed from this practice. In *Brown I*, the Court retained jurisdiction of the case and set it down the following term for further argument on the remedy.²⁶ Unfortunately, in *Brown II*,²⁷ the Court enunciated the “all deliberate speed” doctrine which effectively undermined the constitutional rights of Negro children.²⁸ “All deliberate speed” was translated by southern segregationists to mean drag out the process as long as you want, and ultimately never abide by the Supreme Court’s decision. This was illustrated by massive resistance efforts throughout the South.

The position of Judge Smith, a Virginia Congressman and massive resistance leader, illustrates what we were up against. In a memorandum known as the Southern Manifesto, Smith urged Congressmen and members of the general public to resist the Supreme Court’s decision in every lawful way possible and work to reverse it.²⁹ This position was preposterous. The Supreme Court had just held in *Brown* that segregation in public schools was unconstitutional. Congressman Smith and his fellow massive resisters were bound to obey the law. If they felt such strong opposition to the law, Smith and his cohorts should have done the gentle-

23. SHERYLL CASHIN, *THE FAILURE OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM* 110–13 (2004).

24. MELVIN L. OLIVER & THOMAS M. SHAPIRO, *BLACK WEALTH / WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY* 18 (1995).

25. 347 U.S. 483 (1954) [hereinafter “*Brown I*”].

26. *Id.* at 495.

27. 349 U.S. 294 (1955) [hereinafter “*Brown II*”].

28. *Id.* at 301.

29. See also KLUGER, *supra* note 4, at 752–53.

manly thing and resigned from public office. Smith and his colleagues were urging their supporters to disobey the law especially in areas where they had political control. Either you obey the law or you do not.

In fact, beginning in 1940, as part of a project in which my wife and I willingly participated, we disobeyed segregation laws hoping to get arrested so that we could challenge the laws. For example, my wife and I rode in the white section of segregated trains and hoped that one or both of us would get arrested, but neither one of us ever did. We wanted a test case. We were willing to break the law and take the consequences.

In contrast, in the aftermath of *Brown*, it was not reasonable for Congressman Smith and other massive resistance leaders to bring a test case challenging the law before the law could even be implemented. How reasonable would it be to think that after deciding *Brown*, the Supreme Court would change its mind the next day? Besides, the segregationists already had sixty years of experience with segregation which had served as a formidable barrier to the social and economic progress of Negroes and had retarded the development of American society as it attempted to become civilized.

As part of my concluding reflections, I would especially like to drive home this point: more research, discussion, and publicity needs to be given to those persons who stood up for freedom in the aftermath of *Brown*. I have in mind individuals like the Reverend Francis Griffin, who was a black preacher in Prince Edward County and led the movement there to both desegregate the schools and to increase the opportunities of all people, particularly Negroes.³⁰

Similarly, the story of Barbara Johns, the teenage student-leader of the strike in Prince Edward County needs to be widely told as an example of the courage, compassion, and commitment of a young person who was determined to obtain justice.³¹ The Prince Edward County case³² was consolidated as one of the cases which made up the *Brown* legal quintet. Because it was feared that she would be physically harmed, Barbara Johns, while still a

30. *Id.* at 478-79.

31. *Id.* at 466-71.

32. *Davis v. County Sch. Bd.*, 142 F. Supp. 616 (E.D. Va. 1956).

young teenager, was forced to leave the state and live with her uncle, Dr. Vernon Johns, a well-respected Negro civil rights leader who was pastoring Dexter Avenue Baptist Church in Montgomery, Alabama.³³ Dr. Vernon Johns was succeeded at Dexter Avenue by Dr. Martin Luther King, Jr., who led the bus boycott in Montgomery shortly after becoming pastor.³⁴

Other examples include Rev. Griffin's fellow laborers in the struggle in Prince Edward County—John Lancaster and Dr. M. Boyd Jones. They are individuals whose life stories and activities should be further researched and published. Mr. Lancaster was the Negro county agricultural agent in Prince Edward County, and Dr. Jones served as the principal of the Robert R. Moton High School where Barbara Johns led the student strike.³⁵ Both Dr. Jones and Mr. Lancaster were effectively exiled from the Commonwealth of Virginia following their activities in Prince Edward County.³⁶ They were fired from their jobs, had young families, and had to move out of Prince Edward County and eventually out of the Commonwealth, seeking employment elsewhere because they dared to stand up for the rights of Negro children in Prince Edward County.³⁷

Moreover, Mrs. Inez Jones, Dr. Jones's wife, was a music teacher at Moton High School and secretly advised Barbara Johns on her strike strategy.³⁸ Dr. Jones had no idea what his wife was up to until after the strike had begun.³⁹ Only in recent years has this remarkable teacher-student collaboration become known.

These types of stories need to be told and re-told to remind us of the courage and sacrifices made.⁴⁰ Many Americans have never heard of the situations which transpired in the lives of individuals like Rev. Griffin, Dr. and Mrs. Jones, Ms. Johns, and Mr. Lancaster. Others do not believe that such events happened, similar to those who do not believe that the Holocaust occurred. In fact,

33. KLUGER, *supra* note 4, at 479.

34. *Id.*

35. *Id.* at 463–64.

36. *See id.* at 478.

37. *See id.*

38. *Id.* at 467.

39. *See id.*

40. *See* Michael Paul Williams, *Prince Edward Residents Offer Profiles in Courage*, RICH. TIMES-DISPATCH, Apr. 7, 2004, at H3.

similar situations of courage and sacrifice were repeated throughout the country, and the effects of those events continue to today.

Continuing effects of racial prejudice are everywhere. Following *Brown* many whites left the cities and moved to the suburbs to avoid desegregation. The segregated suburbs tended to have more affluent persons. And the suburban schools have—even until this day—more resources than the city schools. We need look no further than the surrounding counties of Richmond. In Henrico County, the students have personal computers to take home and do their homework on the Internet. They can easily find the latest information on scientific, literary, and other matters of contemporary concern. In contrast, their fellow students in the City of Richmond have relatively limited access to such technology. In fact, a recent study by a high school student in the Richmond area demonstrates that as of the spring of 2003, one city high school, Armstrong High School, had less than a dozen working laptop computers in its library for over 500 students, whereas Hermitage High School, a school in Henrico County a few miles away, had laptop computers for all of the students to take home to do their work.⁴¹ Even today there are great disparities in the resources available to schools whose students are predominantly Negro and those where the students are predominantly white.

There is also a gap in resources between the schools in wealthier political subdivisions and wealthier school systems and those that have more impoverished students. In the twenty-first century, this is simply unacceptable, especially for a society that claims to be civilized.

Education is a human right for all students and the national government should ensure that each student has a high-quality education. If you look at the money being wasted on war, there is no question that we have the resources to make a first-class education available for America's children. The problem is that we lack national leaders with commitment to our children.

We also live in an age where historical revision is all too common. We need to correct the historical record with facts to help stop the substitution of fairy tales for history. America simply

41. Amanda E. Washington, *Educational Inequality in Richmond, Virginia* (2003) (unpublished manuscript on file with Jonathan K. Stubbs).

needs to move away from denial and recognize both the strengths and the shortcomings of historic figures and of our society as a whole.

In summary, we need to recognize that evolution is a fact of life, meaning that change is inevitable. Our challenge as human earthlings—that is humans living on planet Earth with many other living things—is quite straightforward. We must guide change for the good of the commonweal.
