Education Week
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Brown v. Board of Education: 70 Years of Progress and Challenges

People mill around the third floor of the Kansas Statehouse in front of a *Brown* v. *Board of Education* mural before hearing from speakers recognizing the 70th anniversary of the landmark Supreme Court case on April 29, 2024, in Topeka, Kan.

Evert Nelson/The Topeka Capital-Journal via AP

By Mark Walsh

After 70 years, what is left to say about *Brown* v. *Board of Education*?

A lot, it turns out. As the anniversary nears this week for the U.S. Supreme Court's historic May 17, 1954, decision that outlawed racial segregation in public schools, there are new books, reports, and academic conferences analyzing its impact and legacy.

Just last year, members of the current Supreme Court debated divergent interpretations of *Brown* as they weighed the use of race in higher education admissions, with numerous references to the landmark ruling in their deeply divided opinions in the case that ended college affirmative action as it had been practiced for half a century.

Meanwhile, some school district desegregation cases remain active after more than 50 years, while the Supreme Court has largely gotten out of the business of taking up the issue. There are fresh reports that the nation's K-12 schools, which are much more racially and ethnically diverse than they were in the 1950s, are nonetheless experiencing resegregation.

At an April 4 conference at Columbia University, speakers captured the mood about a historic decision that slowly but steadily led to the desegregation of schools in much of the country but faced roadblocks and new conditions that have left its promise unfulfilled.

"I think *Brown* permeates nearly every aspect of our current modern society," said Janai Nelson, the president and director-counsel of the NAACP Legal Defense and Educational Fund, the organization led by Thurgood Marshall, who would later become a Supreme Court justice, during the Brown era.

"I hope that we see clearly now that there is an effort to roll back [the] gains" brought by the decision, said Nelson, whose organization was a

conference co-sponsor. “There is an effort to recast *Brown* from what it was originally intended to produce. If we want to keep this multiracial democracy and actually have it fulfill its promise, because the status quo is still not satisfactory, we must look at the original intent of this all-important case and make sure we fulfill its promise.”

Celebrations at the White House, the Justice Department, and a Smithsonian Museum

On May 16, President Joe Biden will welcome to the White House descendants of the original plaintiffs in the cases that were consolidated into *Brown*, which dealt with cases from Delaware, Kansas, South Carolina, and Virginia. (The companion decision, *Bolling* v. *Sharpe*, decided the same day, struck down school segregation in the District of Columbia.) On May 17, the president will deliver remarks on the historic decision at the Smithsonian Institution’s National Museum of African American History and Culture.

Attorney General Merrick B. Garland and U.S. Secretary of Education Miguel Cardona marked the anniversary at an event at the U.S. Department of Justice on Tuesday.

“*Brown* vs. *Board* and its legacy remind us who we want to be as a nation, a place that upholds values of justice and equity as its highest ideals,” Cardona said. “We normalize a culture of low expectations for some students and give them inadequate resources and support. Today, it’s still become all too normal for some to deny racism and segregation or ban books that teach Black history when we all know that Black history is American history.”

On May 17, 1954, then-Chief Justice Earl Warren announced the decision for a unanimous court that held that “in the field of public education, ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.”

That opinion was a compromise meant to bring about unanimity, and the court did not even address a desegregation remedy until a year later in *Brown II*, when it called for lower courts to address local conditions “with all deliberate speed.”

“In short, the standard the court established for evaluating schools’ desegregation efforts was as vague as the schedule for achieving it was amorphous,” R. Shep Melnick, a professor of American politics at Boston College and the co-chair of the Harvard Program on Constitutional Government, says in an assessment of the *Brown* anniversary published this month by the American Enterprise Institute.

The paper distills a book by Melnick published last year, *The Crucible of Desegregation: The Uncertain Search for Educational Equity*, which takes a fresh look at the 70-year history of post-Brown desegregation efforts.

Melnick argues that even after 70 years, *Brown* and later Supreme Court decisions remain full of ambiguities as to even what it means for a school system to be desegregated. He highlights two competing interpretations of *Brown* embraced by lawyers, judges, and scholars—a “colorblind” approach prohibiting any categorization of students by race, and a perspective based on racial isolation and equal educational opportunity. “Neither was ever fully endorsed or rejected by the Supreme Court,” Melnick writes in the book. “Both could find some support in the court’s ambiguous 1954 opinion.”

The Supreme Court issued some 35 decisions on desegregation after *Brown*, but hasn’t taken up a case involving a court-ordered desegregation remedy since 1995 and last spoke on the issue of integration and student diversity in the K-12 context in 2007, when the court struck down two voluntary plans to increase diversity by considering race in assigning students to schools.

Citations to Brown pervade last year’s sharply divided opinions over affirmative action

Chief Justice John G. Roberts Jr., in his plurality opinion in that voluntary integration case, *Parents Involved in Community Schools* v. *Seattle School District*, laid the groundwork for last year’s affirmative action decision, which fully embraced Brown’s “race-blind” interpretation.

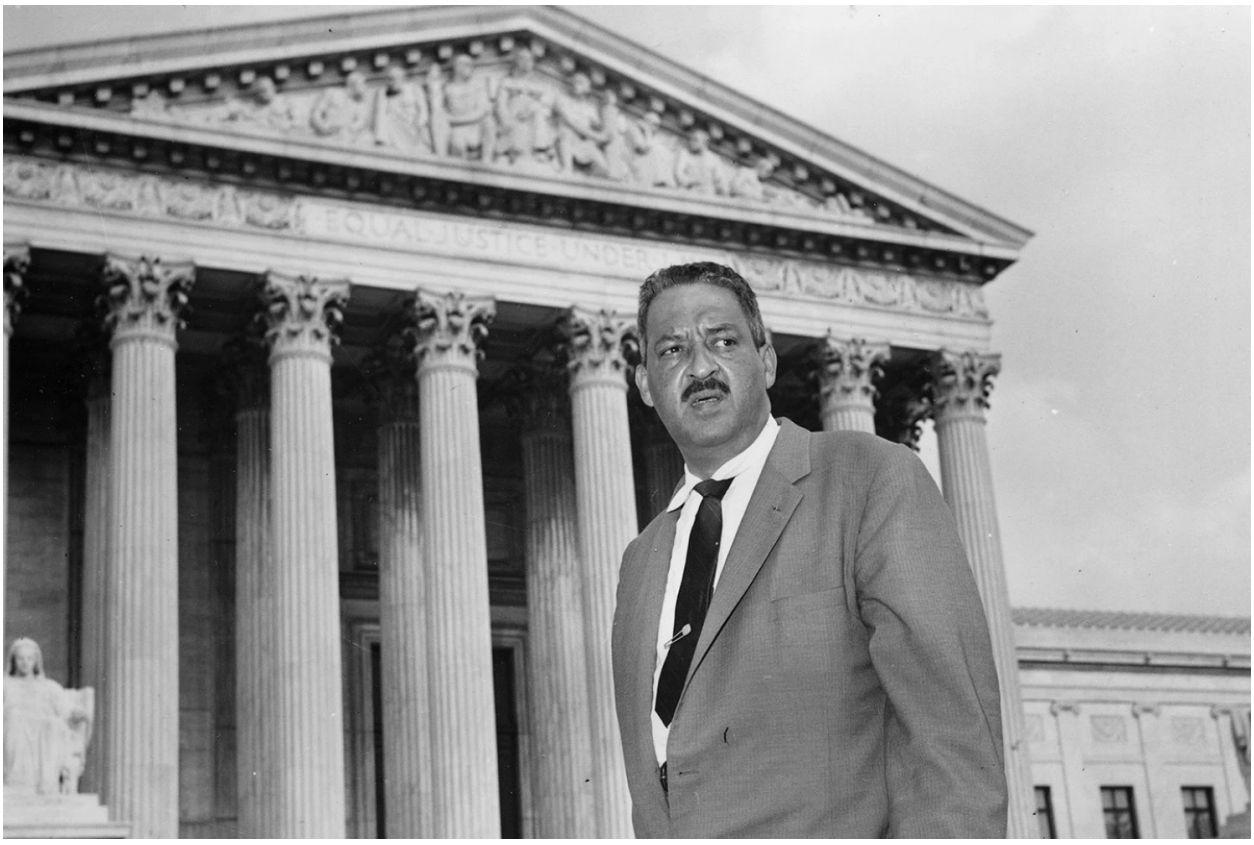
Last term, the high court ruled that race-conscious admissions plans at Harvard and the University of North Carolina violated the 14th Amendment’s equal protection clause. (The vote was 6-2 in *Students for*

Fair Admissions v. *President and Fellows of Harvard College*, with Justice Ketanji Brown Jackson not participating because of her recent membership on a Harvard governing board. The vote was 6-3 in *SFFA* v. *University of North Carolina*.)

The *Brown* decision was a running theme in the arguments in the case, and in the some 230 pages of opinions.

Roberts, in the majority opinion, said a fundamental lesson of *Brown* in 1954 and *Brown II* in 1955 was that "The time for making distinctions based on race had passed."

Brown and a generation of high court decisions on race that followed, in education and other areas, "reflect the core purpose of the Equal Protection Clause: doing away with all governmentally imposed discrimination based on race," the chief justice wrote.



Thurgood Marshall appears outside the U.S. Supreme Court on Aug. 22, 1958. Marshall, the head of the NAACP's legal arm, led arguments for the Black plaintiffs challenging racial segregation in public schools in Brown v.

Board of Education. He went on to become the Supreme Court's first African-American justice in 1967.

AP

Justice Clarence Thomas, who succeeded Thurgood Marshall, joined the majority opinion and wrote a lengthy concurrence that touched on views he had long expressed about the 1954 decision. He cited the language of legal briefs filed by the challengers of segregated schools in the *Brown* cases (led by Marshall) that embraced the view that the 14th Amendment barred all government consideration of race.

Thomas said those challenging segregated schools in Brown "embraced the equality principle."

Justice Brett M. Kavanaugh also joined the majority and acknowledged in his concurrence that in *Brown*, the court "authorized race-based student assignments for several decades—but not indefinitely into the future."

(The other justices in the majority were Samuel A. Alito Jr., Neil M. Gorsuch, and Amy Coney Barrett.)

Writing the main dissent, Justice Sonia Sotomayor rejected the view that *Brown* was race-blind.

"*Brown* was a race-conscious decision that emphasized the importance of education in our society," she wrote, joined by justices Elena Kagan and Jackson. "The desegregation cases that followed *Brown* confirm that the ultimate goal of that seminal decision was to achieve a system of integrated schools that ensured racial equality of opportunity, not to impose a formalistic rule of race-blindness."

Jackson, in a separate dissent (joined by Sotomayor and Kagan), said, "The majority and concurring opinions rehearse this court's idealistic vision of racial equality, from *Brown* forward, with appropriate lament for past indiscretions. But the race-linked gaps that the law (aided by this court) previously founded and fostered—which indisputably define our present reality— are strangely absent and do not seem to matter."

Amid reports on resegregation, some legal efforts continue

As the *Brown* anniversary arrives, there are fresh reports about resegregation of the schools. Research released this month by Sean Reardon of Stanford University and Ann Owens of the University of Southern California found that students in the nation's large school districts have become much more isolated racially and economically in recent years.

The Civil Rights Project at the University of California, Los Angeles, which has been sounding the alarm about resegregation for years, says in a new report that Black and Latino students were the most highly segregated demographic groups in 2021. Though U.S. schools were 45 percent white, Blacks, on average, attended 76 percent nonwhite schools, and Latino students went to 75 percent nonwhite schools.

The CRP says the *Brown* anniversary is worth celebrating, but "American schools have been moving away from the goal of *Brown* and creating more 'inherently unequal' schools for a third of a century. We need new thought about how inequality and integration work in institutions and communities with changing multiracial populations with very unequal experiences."

At the Columbia conference, Samuel Spital, the litigation director and general counsel of the Legal Defense Fund, noted that many jurisdictions are still under desegregation orders, some going back decades.

He highlighted one where LDF lawyers have been in federal district court, involving the 7,200-student St. Martin Parish school district in western Louisiana. Black plaintiffs first sued over segregated schools in 1965. In a 2022 decision, the U.S. Court of Appeals for the 5th Circuit, in New Orleans, noted that the case had been pending for "five decades," though largely inactive for long stretches. The court nonetheless affirmed the district court's continued supervision of a desegregation plan that addressed disparities in graduation tracks and student discipline, though it said the court overstepped in ordering the closure of an elementary school in a mostly white community.

As recently as this month, the LDF and the Department of Justice's civil rights division joined with the St. Martin Parish school board in a proposed consent order for revised attendance zones for the district's schools. The proposed order suggests that court supervision of student assignments could end sometime after June 2027.

"We try to make sure that with the vast docket of segregation cases we have, that we have not lost sight of what Brown's ultimate intent was," said LDF's Nelson, which was not just "to make sure that Black and white children learn together" but also to foster principles of equity and citizenship.

With a hostile federal court climate, advocates more recently have turned to state constitutions and state courts to pursue desegregation. Last year, a state judge in New Jersey allowed key claims to proceed in a lawsuit that seeks to hold the state responsible for remedying racial segregation in its many "racially isolated" public schools. In December, the Minnesota Supreme Court allowed a suit under the state constitution to move forward, ruling that there was no need for plaintiffs to prove that the state itself had caused segregation in its schools.

"We see a path forward through state courts with the very specific goal of trying to challenge state practices, which really boil down to segregative school district lines," Saba Bireda, the chief legal counsel of Brown's Promise, said at the Columbia conference. Bireda, a former civil rights lawyer in the Education Department under President Barack Obama's administration, co-founded the Washington-based organization last year to help address diversity and underfunding in public schools.

A Supreme Court exhibit offers the idealized take on Brown

At the Supreme Court, there has been no formal recognition of the 70th anniversary of *Brown*. But the court did open an exhibit on its ground floor late last year that tells the story of some of the first desegregation cases, including *Brown*.

The exhibit is primarily about the Little Rock integration crisis of 1957, when Arkansas Gov. Orval Faubus defied a federal judge's order to desegregate Central High School. The exhibit is built around the actual bench used by Judge Ronald N. Davies when he heard a challenge to Faubus' use of the Arkansas National Guard to prevent the nine Black high school students from entering the all-white high school that year. (Davies withstood threats and intense opposition from desegregation opponents, but he ruled for the Black students. The Supreme Court itself supported desegregation in Little Rock with its 1958 decision in *Cooper* v. *Aaron*.)

To tell the Little Rock story, the exhibit starts with *Brown* (and some of the prior history). A central feature is a 15-minute video featuring all current members of the court.

In the video, the justices set aside their differences over the meaning of *Brown* and provide a more idealized perspective on the 1954 decision.

"*Brown* was a godsend," Thomas says in the video. "Because it said that what was happening that we thought was wrong, they now know that this court said it was also wrong. It's wrong not just morally, but under the Constitution of the United States. It was like a ray of hope."

Kavanaugh says: "*Brown* vs. *Board of Education* is the single greatest moment, single greatest decision in this court's history. And the reason for that is that it enforced a constitutional principle, equal protection of the laws, equal justice under law. It made that real for all Americans. And it corrected a grave wrong, the separate but equal doctrine that the court had previously allowed."

Jackson, the court's third Black justice, who has spoken of her family moving in one generation from "segregation to the Supreme Court," reflects in the video on *Brown*'s legacy.

"I think I'm most grateful for the fact that my parents have lived to see me in this position, after a history of them and others in our family and people from my background not having the opportunity to live to our fullest potential," she says.

As the video comes to a close, Roberts speaks with evident pride in his voice.

“The Supreme Court building stands as a symbol of our country’s faith in the rule of law,” the chief justice says. “*Brown* v. *Board of Education*, the great school desegregation case, was decided here.”

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