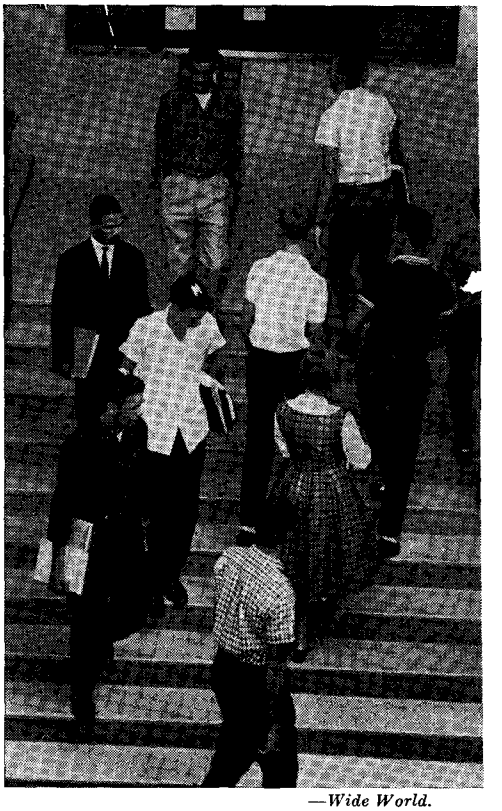
The Desegregation Decision



—*Wide World.*

"The practice of racial equality can alter attitudes when argument and moral suasion cannot."

By HARRY S. ASHMORE, *Chairman of the Executive Committee, Fund for the Republic, and Director of Editorial Research and Development, Encyclopaedia Britannica. Mr. Ashmore was executive editor of the Arkansas Gazette when in 1958 he and the Gazette were awarded the first double Pulitzer Prizes in history for distinguished reporting of the Little Rock integration controversy. Mr. Ashmore is author of three books: "The Negro and the Schools," "An Epitaph for Dixie," and "The Other Side of Jordan."*

ON the morning of May 17, 1954, the laws of seventeen of the United States, and the federal statutes governing the District of Columbia, required racial segregation in public education. By noon this legal vestige of slavery was invalid, the Supreme Court having proclaimed that the public schools of the vast region must be opened to Negroes.

Predictions were freely made on the day outraged Southern politicians promptly labeled Black Monday, and they ranged from roseate to dire. Perhaps the only prophecy that has stood the test of ten troubled years is that of a judicial expert who forecast that the *Brown* decision would launch a generation of litigation.

Cases before local, state and federal courts turning on the *Brown* precedent now number in the thousands, and the tide is still rising. The reason, of course, is that the landmark decision was far more than a directive to desegregate five local school districts. It was, as the nine justices in a rare display of unanimity clearly intended, the enunciation of a public policy intended to rid the nation of every manifestation of overt racial discrimination.

The structure of law erected upon the *Brown* precedent is largely judge-made. The Congress, hamstrung by Southern intransigence and a sharp national division of public opinion, only this year has seriously addressed itself to fundamental civil rights legislation. Still the cumulative reach of the court decisions is enormous, going far beyond the issue of segregation in education, which still remains central and unresolved.

In striking down the variety of legal devices by which Southern states have attempted to maintain their segregated schools, the Supreme Court has employed the Fourteenth Amendment as its constitutional instrument. In the process it has abrogated states rights to impose federal standards not only upon the organization of the schools but upon the conduct of a wide variety of public functions. Time after time the Court has affirmed the federal government's obligation to uphold the Bill of Rights, no matter where its guarantees are being violated, or by whom. In practice this has meant that the reluctant executive branch has had to exercise police powers in a fashion virtually unheard of before 1954. In three states the Justice Department has been pushed to the extreme of taking over law enforcement from local officials with a massive show of arms.

AT the end of the decade the implications of these developments loom far larger than the actual results. The citadels of segregation still stand across much of the South. But they are under constant attack now by an increasingly militant Negro leadership, solidly supported by the Negro rank and file. And the Rights Movement itself is the direct product of the *Brown* precedent. Negroes everywhere read the 1954 school decision as a declaration that the essential neutrality of the federal government in racial matters had come to an end. The law of the land now did not merely permit but affirmatively supported the minority's crusade for equality, and in Arkansas, Mississippi, and Alabama Negroes would see the federal presence literally standing between them and the resistant white majority.

Even before the leading edge of the Negro crusade impatiently departed the courtroom in favor of the sidewalk, events were forcing the Supreme Court away from its initial narrow application of the anti-discrimination precedent to official institutions and actions. The end of legal segregation did not mean the end of *de facto* segregation, and here the pattern in the nation at large differed little from that in the South. Below the thin crust of the Negro middle class, the Negro mass was walled off from the white community as effectively, and in some ways more inhumanely, in the ghettoes of New York, Chicago, and San Francisco as it was in the "niggertowns" of Richmond, Atlanta, and Memphis.

IT was in the private sector that the embattled Southern states proposed to erect their final defense against integrated education. The threatened last resort would be the total abandonment of the public system, with white children presumably attending white schools supported wholly by private funds. The obvious practical difficulties of the scheme have confined it largely to the oratorical level, but in Prince Edward County, Virginia, the attempt ac-

tually has been made. In its current session the Supreme Court will decide whether the Constitution can be read to require a once-sovereign state to provide a free education for all of its children, whether or not a majority of white voters wants to tax itself for the purpose.

The great sit-in campaign, aimed at forcing Negro admission to accommodations called public although privately owned, also has forced the Supreme Court to take a new look at one of the most revered of all American institutions, private property. The issue here is whether an entrepreneur who makes a general offer of goods or services, whether he is operating Mrs. Murphy's boardinghouse or Harry Truman's haberdashery, can arbitrarily choose his customers. If the Court holds that he cannot, it will write a significant new definition of private ownership, with implications that go well beyond the immediate issue of race.

It is quite clear that some of the Supreme Court Justices have not been easy in their own minds about the great expansion of federal authority inherent in this progression. The unanimous vote in *Brown* has dwindled to five-to-four in some recent applications of the precedent, and it is by no means improbable that the anti-discrimination majority may actually become a minority in the key public accommodations cases presently looming large on the docket.

IF the Court should decide that it has, for the time being at least, reached the outer limits of the law, the *Brown* precedent will still stand as the great constitutional monument of our time. The Rights Movement, which it served as catalyst, is well past the point where it can be turned back by an adverse Supreme Court ruling. Indeed, it is being argued in a nervous Congress that the need for civil rights legislation is not to advance the Negro cause, but to control and contain it.

Underlying the surface tensions is a stern reality. The *Brown* precedent provides for, and the minority is avidly demanding, new relationships between whites and Negroes that are unacceptable under prevailing white attitudes. This is a national, not a uniquely Southern condition. Moreover the collision has come at a time when, in vital employment areas affecting most Negroes, the economic growth that could ameliorate the most immediate grievances has virtually come to a standstill.

Ten years ago, when the *Brown* decision came down, the shortage of manpower was such that the automobile manufacturers were sending teams south from Detroit to recruit Negro workers. This meant that an ambitious colored man at one stroke could escape the overt oppression of his Southern homeland, vastly improve his income and living standards and, perhaps most important of all, find a place in a skilled labor group where his status was equal to that of whites. This year the industry, harvesting the fruits of automation, will produce 25 per cent more automobiles with 80 per cent of the 1954 work force, and Detroit, with a restless mass of unemployed Negroes, is one of the tinderboxes of racial unrest.

Experience with the theoretically open school systems of non-Southern cities also has compounded Negro frustrations. With most child-bearing white families safely ensconced in solidly white neighborhoods, the effort to redistribute children to obtain an effective pattern of integration has required such drastic, essentially artificial devices as bussing children of both races long distances across crowded cities. Even where these experiments have been conscientiously supported by school and municipal officials, success has been limited and white dissatisfaction wide-

How the Court Saw It

"Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

"We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does."

—Chief Justice Earl Warren, in the unanimous decision of the United States Supreme Court in the case of *Brown v. Board of Education,* May 17, 1954.

"A Clear Abuse of Judicial Power"

"The unwarranted decision of the Supreme Court in the public school cases is now bearing the fruit always produced when men substitute naked power for established law.

"The Founding Fathers gave us a Constitution of checks and balances because they realized the inescapable lesson of history that no man or group of men can be safely entrusted with unlimited power. They framed this Constitution with its provision for change by amendment in order to secure the fundamentals of government against the dangers of temporary popular passion or the personal predilections of public officeholders.

"We regard the decision of the Supreme Court in the school cases as a clear abuse of judicial power. It climaxes a trend in the Federal Judiciary undertaking to legislate, in derogation of the authority of Congress, and to encroach upon the reserved rights of the States and the people.

"The original Constitution does not mention education. Neither does the 14th amendment nor any other amendment. The debates preceding the submission of the 14th amendment clearly show that there was no intent that it should affect the system of education maintained by the States."

—From "The Southern Manifesto," a document signed by 101 Senators and Representatives from eleven Southern states and presented to Congress on March 12, 1956.

spread. In enlightened New York, state court decisions handed down in Brooklyn and Malverne have sustained white parents protesting against having their children arbitrarily transferred across neighborhood boundaries to predominantly Negro schools. In these cases the anti-discrimination precedent has been held to mean that a white child cannot be denied the school of his choice on racial grounds, and this irony also is on its way to the Supreme Court.

Integrated neighborhoods would, of course, produce integrated schools, but the black and white patterns of housing have remained largely inviolate. The small Negro middle-class has gained significant new mobility even in suburbia, but the great majority of colored Americans remains ghetto-bound, and its efforts to break out are encountering retrograde action.

All of this is commonly cited as evidence of a widespread backlash of white public opinion brought on by the excesses of the Negro rights demonstrations. Rather, it seems to me, it is simply a belated revelation of prejudicial white attitudes that have always existed and can no longer be cloaked beneath Fourth-of-July pieties. Sensitive white Americans are discovering, with shock and dismay, what Negroes have long since learned by experience—that white tolerance dissipates rapidly when the abstractions of racial equality are translated into practices that threaten the established system of caste. At the extreme we see Northern communities reacting in the traditional pattern of the South, where fear is often translated into anger, and anger into brutal repression.

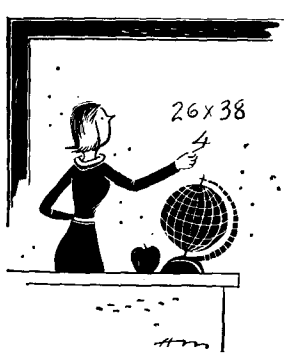
ON the other side, we are nearing the end of the time when the Negro cause could advance from goal to clearly defined goal, making a record of steady, measurable progress that would sustain the tactical demands of the leadership for discipline and restraint. Principles of equality of treatment have been established, and written into law, but only in peripheral areas has practice been brought into conformity. Negroes have been guaranteed the right of admission to an integrated community, but nowhere in this fair land does an integrated community yet exist—and so the demands for freedom now echo a general frustration that often renders them as incoherent as they are passionate.

It is possible to read these manifestations as the harbingers of revolution, and it is fashionable to do so. In each of the past ten springs the approach of warm weather has brought forth predictions of massive racial violence, first in the South and now in the great cities outside the region. Certainly no one could deny that in the present state of tension a major race riot with widespread bloodshed is possible and may even be inevitable. But there remains the remarkable fact that we haven't had one yet, and with it the salient question: If the situation does get out of hand in a given city, or cities, what happens next?

NO Negro leader can doubt that any outbreak of violence, whether spontaneous or organized, would be summarily put down by overwhelming white force. Thus the Negro revolution, if there is to be one, is practically denied the revolutionary's usual weapons—sustained campaigns of terror, sabotage, and guerrilla warfare. Nor does subversion offer any hope for the Negro revolutionary. While there is significant sympathy for his cause in the white power structure, nowhere is there any effective body of radical opinion that could be counted on to support the drastic remedies proposed by Black Muslims on the right, or the Freedom Now Party on the left.

We have, in fact, already had a reverse demonstration of the radical dilemma. In the South white activists have attempted to head off the Negro movement by mob violence, as in Little Rock and Oxford; by terror, as in the assassination of Medgar Evers; and by sabotage, as in the recurrent dynamiting of property owned by Negroes and sympathetic whites. Organized efforts on any significant scale have brought down the full weight of the federal government, in the person of armed U.S. troops. And so far at least those who have transgressed the red line of violence and have been caught have found themselves largely abandoned by respectable segregationists.

Finally, it seems to me the Negro movement is inherently devoid of true revolutionary character simply because its members do not seek to remake the community, only to join it. Social scientists, probing happily in the rich new territory of the Negro subconscious, turn up abundant evidence of alienation. Still the drive seems to be to obtain only what has been denied—a secure place in the larger commonalty whose standards, shabby though a moralist might find them, are those set by the white majority.



If I am correct in my view that a revolutionary resolution of the American racial issue is as unlikely as a sudden healing outburst of brotherly love, the prospect is for a protracted, wearing war of nerves. Most whites feel that they must give up something of value if Negroes are to gain their ordained place in society. I do not believe that this is so, but so long as it remains the conviction of the white community the drive for Negro rights will have the character of an adversary proceeding in which progress is possible but agreement in principle is not. This condition, inescapable now even for the white refugee in the most thoroughly restricted suburb, is ultimately intolerable and has its own force.

THE ten abrasive years since *Brown* ought at least to have shucked us of the more debilitating of our national illusions. Chief among these was the happy notion that if we officially declared the Negro equal he automatically would become so—or at least would be able to stride briskly down the path that has led to effective accommodation of other racial minorities. It must be apparent by now that, morally and practically, the Negro's problem is special. If he is to get his just due he will need something more than the collected works of Horatio Alger and the support of a benevolent interracial committee.

Once we wear out the usual arguments over state and local responsibility, the primary burden is going to fall, inescapably, upon the central government. The immediate palliative must be more welfare services, already a federal preserve, and more jobs, which only the most addicted consumers of NAM propaganda now believe can be provided by the private sector in the range and quantity required by Negroes dispossessed by automation—three out of every five, according to the Urban League.

These unhappy facts belatedly have been noted in Washington. War on Poverty has become a slogan and inexorably will become a program. I do not know whether in the vagaries of a campaign year we can expect any more than warmed-over New Deal panaceas. But as Sargent Shriver's Poor Corps marches forth to battle, its intelligence reports clearly indicate that the mission is only incidentally to relieve resident and displaced white Appalachians. The primary attack must be upon the squalid Negro slums that stretch from sea to shining sea.

For the future, we still must look to

(*Continued on page* 90)

THE FIVE WHO SUED

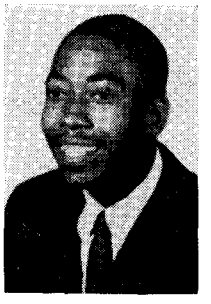
THE United States Supreme Court's historic decision of May 17, 1954, outlawing racial segregation in the nation's public schools and colleges was based on five cases that had come to the court from Kansas, South Carolina, Virginia, Delaware, and the District of Columbia. All five cases were brought by the NAACP's Legal Defense Fund. The first four attacked state laws requiring segregation in public education, and the fifth attacked federal statutes governing the operation of schools in the nation's capital.

Actually, there were two decisions on that day. The first, known as *Brown v. Board of Education*, disposed of the state cases, and a companion decision, *Bolling v. Sharpe*, dealt with the District of Columbia case.

The plaintiffs in the five cases are pictured here as they look today, with a brief biographical sketch of each.

ETHEL LOUISE BELTON was a seventeen-year-old senior at Howard High School in Wilmington, Delaware on May 17, 1954. She later attended Delaware State College, a predominantly Negro college in Dover, and the Goldey Beacom Business College. She has been private secretary to Louis L. Redding, the attorney who handled her school segregation case, and is now a dental assistant and secretary. She married William James Brown in 1955 and is the mother of three children: Andrein Geromie, seven; William James, Jr., five; and Brigitte Louise, four.

LINDA CAROL BROWN was attending McKinley Elementary School in Topeka, Kansas, as an eleven-year-old at the time of the Court decision. Her family subsequently moved to Springfield, Missouri, where she was an honor student at the integrated Central High School. She spent one year at Washburn University of Topeka and then received secretarial training at Clark's School of Business. A pianist and organist of talent, she is married to Charles D. Smith and is the mother of a one-year-old boy who is named after his father.



SPOTTSWOOD T. BOLLING, JR., was a fifteen-year-old student at Shaw Junior High School in Washington, D.C., when the Supreme Court handed down its historic decision. He later attended Spingarn Senior High—where one white student was enrolled in the 1,600-member student body during his junior year. This spring he is a senior at St. Augustine's College, a predominantly Negro college in Raleigh, North Carolina, where he is majoring in physical education and where he has participated in student civil rights demonstrations.

DOROTHY DAVIS was seventeen years old and a student at Moton High School in Prince Edward County, Virginia, at the time of the Supreme Court's decision. She later attended Virginia State College, a predominantly Negro institution in Petersburg, Virginia, where she took a nurse's training course for two years. She is now a practicing nurse, living in Jamaica on Long Island, New York, with her husband, Leon Bost, and their three young children.

HARRY BRIGGS, JR., was a thirteen-year-old seventh-grader in Clarendon, South Carolina, on May 17, 1954. He subsequently attended Scott's Branch High School, where he was a student council member and athlete. Briggs never attended a desegregated school and never had an opportunity to go to college. Since moving to New York City about five years ago he has worked at a number of jobs, from short-order cook to garage attendant. He is married and has a three-month-old daughter, Patricia.