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EARLY CIVIL RIGHTS ACTIVISM IN TOPEKA, KANSAS, PRIOR TO THE 1954 BROWN CASE

JEAN VAN DELINDER

On an early spring day in the city of Topeka, Kansas, a father walked his child to their neighborhood school. His child was refused admission and was instructed to attend one reserved for “colored children.” The parent filed a lawsuit and sued the Topeka Board of Education, demanding that his child be received and instructed at that school, regardless of race. The case went to the Kansas State Supreme Court where it became a precedent for maintaining school segregation in Topeka and other cities in Kansas. The year was 1902. Despite its outcome, this lawsuit illustrates the local-level

issues and distinctive color-line practices that characterized challenges to segregation in Topeka before the civil rights movement. Like the famous *Brown v. Board of Education of Topeka* some fifty years later, the issues in the 1902 *Reynolds v. Board of Education* grew out of efforts by the local board of education to maintain school segregation against challenges from African Americans dissatisfied with the status quo. The ongoing legal battles in Topeka revolved around segregation contingencies not addressed in the Kansas state constitution written in 1861. Confrontations over maintaining the color line erupted as public schools began to develop junior high schools separate from elementary schools (which were covered under segregation statutes) and high schools (which were exempt).¹ Challenges to the color line also occurred as the city limits of Topeka expanded to incorporate rural communities in outlying areas that had already established their own informal, yet distinctive, patterns of integration and segregation. Each annexation created new fault lines along the color line as its practices were renegotiated as part of the confrontations between real estate developers, city government

KEY WORDS: *Brown v. Board of Education*, *civil rights*, *Reynolds v. Board of Education*, *school segregation*, *Topeka*.

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officials, the board of education, and parents of school-age children.

The important role that the community of Topeka played in the events that eventually led up to the famous 1954 Supreme Court case has been underemphasized. This lack of interest might be related to the fact that Topeka, Kansas, was not located in the deep South and did not have the same history of violence in race relations as, for instance, a place like Birmingham, Alabama. There were no spectacular events such as bombings, race riots, mass marches, or boycotts that characterized the mass mobilizations in the South. Little acknowledgment has been given to Topeka's own unique history of race relations and the fact that its subsequent type of resistance to segregation is related to that history.

HISTORICAL LEGACY OF RACE RELATIONS

Kansas's distinctive color-line practices regarding public education are illustrated by the shift back and forth between integration and segregation in school legislation. Instead of mandating a uniform system of segregated schools, the original constitution left that determination up to local school districts and local custom. This allowed a small window of opportunity for African Americans to establish some legal basis from which to challenge the constitutionality of segregated schools in their own communities. It also gave them the right to appeal to the local board of education to review its policy of segregation if the policy did not conform to state statutes. The National Association for the Advancement of Colored People (NAACP) in Topeka did this in 1948, before pursuing the actions that resulted in the *Brown* case. Challenges to school segregation resulted in modifications to the school segregation laws in 1867 and 1879.² The paradoxical role Kansas would come to play in outlawing national school segregation is illustrated by events in 1867; it ratified the Fourteenth Amendment the same year it passed a law that empowered its larger cities

to segregate their schools.³ The equal protection clause of the Fourteenth Amendment was the basis upon which the "separate but equal" was later found to be unconstitutional in *Brown*.⁴ The 1867 statute that permitted school segregation did not specify separate schools; it simply denied African Americans admission to its public schools. Later that same year, this exclusionary action was tempered by an inclusive policy that fined school boards and threatened them with imprisonment if they denied eligible children to enroll, regardless of race.⁵ If a school district wanted to segregate its schools, it would have to be able to afford the cost. It could not simply deny children an education because of their race. The ambiguous pattern of inclusion and exclusion had begun.

The reaction to the requirement that school districts integrate their schools if they had no separate facilities for African Americans was similar to the actions in the post-*Brown* era in the South nearly a century later: they closed their public schools and opened private ones for whites only.⁶ This practice to circumvent integration was noted in the 1867 annual report of the Kansas state superintendent:

It is a notorious fact that in many districts of the State, the public schools have been broken up and discontinued the moment that an attempt was made to force colored children into such schools with white children, and that in such districts the schools have been discontinued entirely, or replaced by subscription schools.⁷

Three years later, in 1870, a bill was defeated that would have "required racially separate schools."⁸ The bill's sponsors rationalized their actions by arguing that "equality of opportunity for African American students could be assured only in separate African American schools subject to the same standards and supervision as other schools. It was contended that in mixed schools discrimination was inevitable."⁹ Once again, the rationalization for segregation was similar to the arguments used

in the twentieth century against desegregation: the fear that integration meant African Americans would not be treated fairly.

Although after 1867 segregated schools were lawful in any community whose school district could afford them, the implementation of a uniform system of segregated schools remained unresolved. There was another effort toward integration in 1874 when the Kansas legislature passed a civil rights act prohibiting discrimination “on account of race, color or previous condition of servitude” that applied to “schools and public institutions on all levels, to common carriers, and to places of public accommodation and entertainment licensed by municipalities.”¹⁰ Several factors could be related to this legislation, both regional and national, but one significant demographic change was that in first part of the 1870s, the African American population decreased in Kansas, while its white population increased.¹¹ This suggests that a decrease in the African American population contributed to an increase in toleration toward racial integration, as indicated by the civil rights act of 1874. Consistent with this interpretation, a significant increase in the African American population after 1877 was followed by a significant reversal regarding segregated schooling—the 1879 law that made it constitutional for some cities to segregate their schools.

KANSAS SCHOOL SEGREGATION AFTER 1879

The end of Reconstruction, the Compromise of 1877, and the subsequent withdrawal of federal troops out of the South accelerated the migration of African Americans to the north and west. This mass “exodus” was directed toward Kansas in particular, and those former slaves or freedmen who rode the wave of this migration were called “Exodusters.” The Exodust migration was the first significant African American migration after the Civil War.¹² This migration had such a dramatic impact that the US Senate formed a special committee to investigate “the causes of the

removal of the Negroes from the Southern States to the Northern States.”¹³ A consequential and direct response to the Exodust movement was the modification made to the color line in 1879 law *permitting* segregation in elementary schools in cities of the first class, or those with a population over 15,000.¹⁴

In 1879 only three cities were large enough to legally segregate: Leavenworth, Atchison, and Topeka.¹⁵ This did not prevent smaller cities from trying to implement segregation. The local school boards in Ottawa and Independence were both sued for establishing illegal segregated schools. The Ottawa (1881) and Independence (1891) cases involved plaintiffs who had experienced some difficulty in traveling to a segregated school. Since neither Ottawa nor Independence were cities of the first class, segregation was not legal according to the 1879 law. In a statement dated 19 May 1880, the Ottawa Board of Education’s Committee on Building and Grounds announced that because of overcrowding in Ottawa’s schools, “colored children of school age” would be assigned to a smaller wood building across the street from the main school. Elijah Tinnon objected to his son being assigned to a segregated school and sued the local school board to admit his son. In a decision reported in the 1881 July term of the Kansas Supreme Court, William Wheeler, principal of public schools in Ottawa, was ordered to admit Leslie Tinnon “to the white school house, second grade.”

In Independence, the parents of Bertha and Lilly Knox objected to their children being required by the Board of Education to pass by a white school to attend a segregated school. They filed a lawsuit against the board in 1890, and since Independence was a city of the second class, it was ordered to integrate. Meanwhile, in Topeka, attorney James Guy initiated activism resulting in a strategic “accommodation” to the color line. Guy demanded that Topeka begin employing African American teachers in Topeka’s segregated schools. The practice of hiring white teachers to teach in its segregated schools began in 1876 when two of the three teachers hired were white.¹⁶ This

practice was continued until Guy challenged it in the early 1890s.¹⁷ Pressure from Guy and other African Americans in the community resulted in the exclusive hiring of African American teachers for the segregated schools after 1894.

Guy's actions could be interpreted as accommodation and submission to the color line. In an article in the *Times-Observer* on 28 May 1892, Guy stated, "We should not attempt to be in places that we are not wanted. We should recognize our differences and need to establish race pride and confidence." Given the historical social situation and opportunity for success, this action could also be evaluated as a challenge to the boundaries of segregation. Though it was not a direct challenge, Guy's actions were not exclusively an accommodation to the color line. African Americans had gained an important element of control over the quality of instruction in their schools by hiring teachers of their own race, though they still had to contend with the stigma of attending separate schools. Thomas C. Cox interprets this as "reinforced segregation" and a detriment to the African American community, but not all African Americans favored integrated schools.¹⁸ This ambivalence toward inclusion and exclusion was felt on both sides of the color line.

THE REYNOLDS CASE, 1902-1903

The *Reynolds* case was the first significant confrontation over the configuration of the color line in Topeka's neighborhood schools between real estate developers, city government officials, the Topeka Board of Education, and African American parents. Reynolds objected to his son being forced to attend a segregated school several blocks away when Lowman Hill Elementary was close by. The plaintiff's brief described the segregated school, Buchanan Elementary (Fig. 1), as "unsanitary, inconvenient, and, undesirable . . . a veritable cesspool."¹⁹ Overlooking the physical condition of the school and its location several blocks away from Reynolds's neigh-

borhood, the school board defended its segregation policy on the basis that African American children and white children had "somewhat different intellectual requirements."²⁰

William Reynolds and his son lived in an area of Topeka called Lowman Hill. Originally designated as an "outlying area" under the jurisdiction of the county school district, it was annexed by the city in 1890. Lowman Hill had "been a mixed school for both races, and was continued as such by the Board of Education until the year 1900. The reason for this was that the Board of Education was financially unable to provide separate schools." After Lowman Hill was incorporated into the Topeka school district, segregation was not implemented until after the old Lowman Hill School burned down on 20 July 1900, six weeks before classes were scheduled to begin. This forced the school board to find temporary school facilities for the 175 white and 35 African American children affected by this catastrophe. Although a building called Campbell Court was found to serve as a temporary school, it could not accommodate all the students. The decision was made that it was easier to transfer the 35 African American students to Buchanan School, which was eight blocks away, than to transfer the 175 white students to Clay Elementary School, which was thirteen blocks away. Meanwhile, construction was planned to build a new Lowman Hill School.²¹ William Reynolds was outraged that his son, who had previously attended an integrated neighborhood school, was now being forced to travel several blocks to a segregated school. In the lawsuit pursued by Reynolds, he claimed that the school board had promised that the new Lowman School would continue to be integrated. Reynolds objected to the implementation of segregation of his son and other children sent to Buchanan School on a permanent basis. The school board denied they had promised that the new school would be integrated, arguing that the two schools were equal, in compliance with *Plessy v. Ferguson* (1896).



FIG. 1. *Buchanan Elementary School (1881-1887)*. Courtesy of the Kansas State Historical Society, Topeka, Kansas.

Rather than file a lawsuit, other African Americans living in the Lowman Hill area petitioned the superintendent to provide a neighborhood segregated school in the Lowman Hill area for their children. These parents did not petition for integration: they just requested their children attend a school that was closer. Their stated objection to attending Buchanan was its distance, not that it was segregated. As the brief for the defendants in the *Reynolds* case relates: "After this decision, a committee waited upon the Superintendent asking him to provide a building in the Lowman Hill locality and the committee was told that the Board would be glad to provide such a building if one could be found." The reason for this request by the African

American parents is described by the brief for the board of education as follows: "All these committees of colored people which called upon the Superintendent during this time expressed themselves in favor of separate schools. It was school accommodations in their immediate vicinity they desired, and not the mixing of schools."²² The school superintendent found a building at Tenth and Spruce Streets that served as a temporary school building for the African American children in time for the 1902 fall term. Though Reynolds and the rest of the African American community lost this important challenge to segregation, it would not be the last time that an African American would challenge the status quo of race relations in Topeka, Kansas.

THREE CHALLENGES TO SEGREGATED SCHOOLS IN TOPEKA

The *Rich* (1928), *Wright* (1929), and, *Foster* (1929) cases were almost concurrent challenges to the color line in Topeka in the late 1920s. They involved plaintiffs who had lived in outlying areas that were now incorporated into the city of Topeka. These three cases were all instigated during a time when the school board was acting in ways that increased segregation. The historical sources used in this study (newspapers, documents, letters, etc.) were supplemented with oral history interviews I gathered as a principal researcher for the *Brown v. Board of Education of Topeka Oral History Project* on the history of school desegregation in Topeka, Kansas. This study was funded by the Hallmark Cards Foundation and was commissioned by the Brown Foundation and the Kansas State Historical Society in 1991.

The three sampling techniques used to identify informants were snowball, stratified and purposive.²³ Personal recommendation or snowball sampling was initially used to draft a list of possible informants involved in school desegregation. One important criterion for selection was longevity in the community, which led me to former segregated schoolteachers, school board employees, and ordinary citizens who were living in Topeka during segregation.

The informant list was then expanded through stratified sampling to obtain as many different perspectives as possible. In New York I interviewed three former national NAACP Legal Defense Fund attorneys who were involved in researching and preparing the briefs for national desegregation cases. In Topeka I interviewed surviving rank and file members of the Topeka NAACP branch. The three former Legal Defense Fund attorneys I interviewed were Constance Baker Motley (who later represented James Meredith in his attempt to enroll at the University of Mississippi in 1962), Robert Carter, and Jack Greenberg. Carter and Greenberg both traveled to Topeka in 1951 when the *Brown* case

was first argued in Federal District Court. Robert Carter would later argue the *Brown* case before the U.S. Supreme Court. Currently, Motley and Carter are both Federal District Judges in Lower Manhattan. Greenberg was Dean of Columbia College in New York at the time of the interview and is now a law professor at Columbia Law School.

Informants were also identified through the use of purposive sampling. This sampling technique was used to find those persons who opposed desegregation or might have been employed as teachers and administrators in the segregated schools and lost their jobs when desegregation was implemented. Purposive sampling was also used to identify informants from white Topeka, such as Summer Elementary School principal, Frank Wilson, who turned away Oliver Brown when he tried to enroll his daughter, Linda, on that fateful day in September 1950.

Through these interviews I learned of a system of informal integration operating during the 1920s at the discretion of individual principals and tolerated by the school superintendent and local school board. Former teacher and long-time Topeka resident, El Dorothy Scott, remembered that as a child in the late 1920s, she

could have gone to Highland Park, and that was all white. . . . They would have had to accept me. . . . Oh now there was a time in Topeka where African American children went to white schools. . . . They went to Sumner. They didn't go to . . . [segregated] Buchanan School. They do tell this story that some of the African American principals wanted the African American schools so that some of the African American women and men could get jobs. Now you could go to the white schools but they didn't hire the African American teachers. That's where the rub came. . . . And then as they began to plead for some schools where they might hire some African American teachers, we got our African American schools. They said that the African

American principals tried to hold onto that. But before that time, I could have gone down to a [white] school called Parkdale, where I later taught.²⁴

The *Rich* (1928) and the *Wright* (1929) cases both involved African American plaintiffs petitioning to attend Randolph Elementary School. In September 1928, Mrs. Maude Rich tried to enroll her three children in Randolph School, which was five blocks from her home. School Superintendent A. J. Stout ordered Blanche, age 12, Richard, age 8, and Yvette, age 5, to attend the segregated Buchanan School that was twenty blocks away from their home. Mrs. Rich stated “as her cause of action that she lived within five blocks of Randolph . . . and that some colored students were permitted to enter Randolph. . . Mrs. Rich declared the board’s ruling arbitrary.”²⁵ The Topeka Board of Education did not deny Mrs. Rich’s claim that African Americans had been attending Randolph School prior to 1928. Superintendent Stout admitted that two African American families were attending classes at Randolph in the present term. His reason for this, however, was that both of the families had lived in the area before it had been annexed by Topeka. When the rural school was closed, all pupils were placed into Randolph School, including the children in the two African American families who had been attending the white school. About letting the few African Americans who were permitted to attend Randolph, Stout said, “Perhaps we have been wrong in doing that but those children grew up with the school. I understand that the Rich family has just moved into the neighborhood. If this case goes to court and it becomes a matter of throwing all the schools open or excluding these older pupils from Randolph, I suppose we will have to take them out of the school.” Superintendent Stout was willing to modify the color line on a case-by-case basis, but he would not go so far as to “throw all the schools open.”

The limited flexibility of Superintendent Stout was what William Reynolds wanted for

his son in the annexed Lowman Hill area, which when annexed resulted in his son being moved from an integrated to a segregated school. The willingness of Superintendent Stout and the school board to negotiate outside the legal boundaries of segregation stopped far short of changing the general effects of the segregation policy. In the 1920s and 1930s, there was an apparent tightening of policies that excluded African Americans from white schools, as indicated by these cases. The growth in Topeka’s population, partially due to its annexation of outlying areas populated by African Americans, caused an increase in the number of African Americans living nearer white schools. The school board handled this on a case-by-case basis, as indicated by the court cases examined. However, by the late 1920s the number of instances of African Americans being allowed to attend white schools outside the legal boundaries of segregation had increased enough to capture the attention of both African Americans and whites. When there were only a few African Americans in a white school, they were tolerated, but when that number threatened to substantially increase, the status quo was little challenged. On the other side of the color line, African Americans wanted to be able to attend their neighborhood schools rather than being transported several blocks away. Preference toward attending neighborhood schools contained a hidden economic threat: fewer pupils meant less demand for African American teachers. The enforcement of segregation protected the continued employment of African American teachers in the segregated schools. This fear was realized in 1940 with the *Graham* case, as will be discussed later.

After 1929 segregation began to be uniformly enforced. Wilhemina Wright was transferred to a segregated school (Buchanan) after having attended Randolph School. Although a court case was filed to prevent her transfer to Buchanan School in 1929, she lost the case and subsequent appeal to the Kansas State Supreme Court. Even though she lived within a few blocks of Randolph School, the court

ordered her to attend Buchanan, as “[n]o contention is made that the Buchanan school is not as good as a school and as well equipped in every way as is the Randolph school.” Furthermore, the school district provided “transportation to and from the Buchanan school without expense to her or to her parents . . . [and] . . . [t]here is no contention that this transportation is not adequate, appropriate or sufficient.”²⁶

That same year, Howard K. Foster tried to enroll his children into the new Gage School, which had opened that September. His children had also previously attended an integrated school, in this case the old Gage School. Foster was told in 1929 that because of their race, his children would have to ride a bus to the segregated Buchanan Elementary School. Foster filed a lawsuit against the Topeka Board of Education and superintendent A. J. Stout.²⁷ In a decision written by Judge Whitcomb, Second Division, District Court, it was determined that the school board had no authority to hire buses in order to segregate children living in outlying districts. Since the Fosters lived in Mission Township, an outlying district from Topeka, they were allowed to attend the new Gage School at Eighth and Prospect Avenues. The new situations created with the expansion of Topeka are illustrated in this case. As long as the Fosters remained outside the boundary of the city, they could attend the Gage School. Once their area was annexed by the city, the Foster children were subject to segregation. According to the *Topeka Kansas Capital*, dated 14 October 1929, a mass meeting attended by over three hundred people was held at Calvary Baptist Church to discuss the Foster lawsuit and the recent actions of the school board toward segregation.

THE GRAHAM CASE, 1940-1941

The case that desegregated the junior high schools in Topeka was again filed on behalf of one named plaintiff, Oaland Graham, although newspaper accounts about the story state that a group of citizens were involved in support-

ing the case.²⁸ Oaland Graham was twelve years old at the time of the court case, and his uncle U. A. Graham appeared as his “next friend” on the complaint. The plaintiff, Oaland Graham, lived with his mother, Beatrice Graham, at 1418 Munson Avenue in Topeka. Before trying to enroll in Boswell Junior High School (Fig. 2), Oaland Graham had attended Buchanan Elementary School. Prior to this lawsuit, all African American children in Topeka attended seventh and eighth grades at one of the four segregated schools elementary schools or attended segregated Roosevelt Junior High.

On 26 January 1940 Oaland Graham Jr., accompanied by his uncle, Ulysses Graham, tried to enroll in seventh grade classes at Boswell Junior High in Topeka, Kansas. He was refused admittance on the basis of his race. Graham had just graduated from the sixth grade at Buchanan Elementary School and desired to start junior high in January rather than waiting until September. The “normal” sequence of schooling for African Americans was that they went to Buchanan Elementary School through the eighth grade and either went to Boswell for ninth grade or to Roosevelt Junior High for one year. Roosevelt was farther away than Boswell, and it was also segregated. After the ninth grade, all students, regardless of race, went to Topeka High School for the tenth through twelfth grades.

Graham's challenge to the color line in Topeka arose from the change in educational segregation in Topeka. On 20 March 1925 the junior high system was adopted in Topeka through the Laws of 1925, chapter 240. Though the school district could lawfully segregate elementary grades but not its high school, Kansas's law did not specifically say whether junior highs were elementary schools. One way to determine the line between elementary and high school grades would be to challenge it in court. Prior to *Graham*, the practice followed by African American children in Topeka was to remain in segregated schools through the eighth grade, choosing either to enter an integrated ninth grade at



FIG. 2. *Boswell Middle School, 1938.* Courtesy of the Kansas State Historical Society, Topeka, Kansas.

Boswell or to remain in a segregated class by electing to attend Roosevelt Junior High.

Graham's lawsuit also challenged the assumption that the course of instruction at Buchanan Elementary was equal to that at Boswell Junior High. Boswell was built for the express purpose of being a junior high, and it contained many more classrooms than the elementary schools, allowing for specialized teaching. In the segregated schools, one instructor taught most of the subjects. At Buchanan School, Miss Mamie L. Williams, an outstanding African American teacher, taught a wide variety of math and English courses. At Boswell Junior High, different instructors taught all these subjects. In the testimony provided by witnesses in the *Gra-*

ham case, the home economics teacher at Buchanan, Miss Ruth Ridley, reported that although her students were well prepared when they graduated from the eighth grade, they did not have the modern sewing and cooking rooms that Boswell did. But it was her opinion that there was no real difference between the two schools. Mr. J. B. Holland, principal of Buchanan, reported that the quality of instruction and the well preparedness of his students going on to high school were equal to those of the students attending the integrated school.

The only witness to express dissatisfaction with the course of instruction at the segregated school was Daniel S. Sawyer, a serviceman for the city water department. He testified that the schools were the same as far as he

could tell, but he also remarked that Buchanan seldom failed students. If student's did not "pass" a grade, they were obliged to go to summer school, where they did remedial work that sometimes did and sometimes did not bring them up to par with the other students. Regardless of their "actual" improvements, at the end of the summer students were promoted to the next higher grade.

After the *Graham* case, eight African American teachers lost their jobs due to the integration of the junior highs. Mamie Williams, Ruth Ridley, and J. B. Holland all kept their jobs for several more years. J. B. Holland was one of the first African Americans to be hired in an integrated school after the *Brown* case.²⁹ Daniel Sawyer, who had expressed some dissatisfaction with the quality of instruction in the segregated schools, had a sister who had taught in the Topeka school district for twenty years prior to the *Graham* case. She lost her job in 1941 after the junior high was integrated.³⁰

THE BROWN CASE, 1946-1955

The eventual desegregation of Topeka's schools developed out of civil rights actions that began by challenging segregation in public accommodations during the 1940s. These challenges were initiated by individuals addressing singular grievances and were joined by others who were affiliated with various types of organizations, including the civil-rights-oriented NAACP as well as the community-based American Veterans Committee (AVC) and Parent-Teacher Association (PTA). Challenges to segregated schools were orchestrated through the NAACP but included an ad hoc Citizens Committee, as well as individual efforts from attorneys Charles and John Scott (Fig. 3), along with their law partner, Charles Bledsoe.³¹ School desegregation was furthered by challenges undertaken by white elites opposed to Superintendent McFarland's administration, including a campaign to remove unsympathetic school board members. Other efforts to eliminate school segregation were

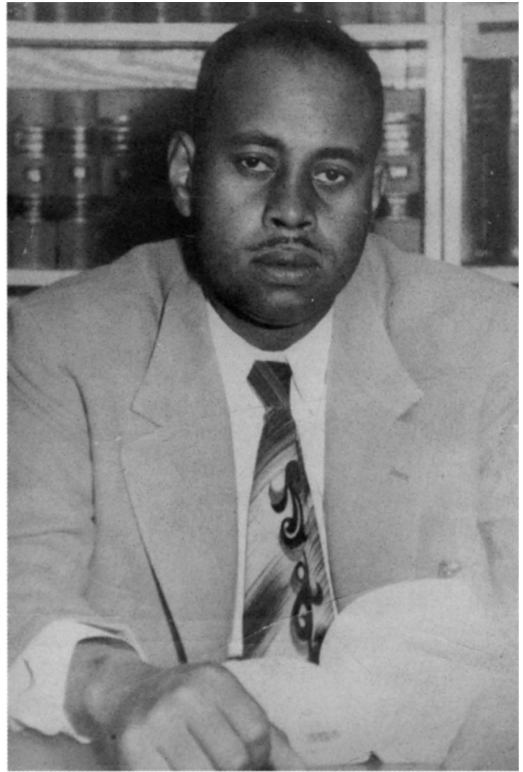


FIG. 3. Charles Scott. Courtesy of the Kansas Collection, University of Kansas Libraries.

directed through the white PTA, and were opposed by the black PTA and African American teachers. Diverse actions, separately controlled, loosely combined into what became the 1954 *Brown* case.

CHALLENGES TO SEGREGATED PUBLIC ACCOMMODATIONS, 1944-1948

Topeka's color-line practices limited the movements of African Americans in the 1940s:³²

There was one colored hotel, the Dunbar, and all the rest were for whites. Almost no restaurants downtown served colored customers. Before the Second World War, a

number of . . . [restaurants] had a sign in the window reading: 'Negroes and Mexicans served in sacks only,' meaning they could take out food in bags but not eat on the premises. One movie theater in town admitted colored people to its balcony. Another, called the Apex, was for colored only. The other five movie houses were for whites only. The swimming pool at Gage Park was off-limits to colored, except one day a year when they were allowed in for a gala picnic.

This limited access to public accommodations in Topeka resulted in a challenge to the color line in 1944. It came about when the local NAACP protested the proposed repeal of a municipal licensure requirement that "prohibited state universities, colleges, public schools, inns, hotels, or vehicles of public transportation" from discriminating on the "basis of race, color, or previous condition of servitude."³³ The president of Topeka's local chapter of the NAACP, R. J. Reynolds, stated that by repealing this law "Topeka will be showing the rest of the cities in Kansas how to find a loophole in the law to deny Negroes of their rights."

Reynolds's action stalled the tightening of the color line for three more years, another instance of ambivalence toward segregation. This ambivalence soon shifted toward exclusion when an African American patron named Phillip Burton sued a local movie theater after he was denied admission because of his race. The theater managers were found guilty of violating the local municipal ordinance prohibiting discrimination on the basis of race, color, or previous condition of servitude. They were both fined ten dollars.³⁴ This successful challenge to segregation resulted in a backlash against integration when a few weeks later, on 1 October 1947, the Topeka city commission repealed its permissive licensing requirement for local theaters.³⁵

Three days later, on 4 October 1947, Ava and Arthur Lee Stovall were refused admission to the same Dickinson Theater that Bur-

ton had sued a month earlier.³⁶ Though once again the local NAACP protested, as it had done in 1944 to prevent reinforcement of the color line, this time their efforts were unsuccessful: the legal grounds to sue local businesses over limited access to public facilities had been removed.³⁷ Movie theaters, as well as any other public facility in Topeka operating under a municipal license, could segregate as they wished.³⁸ This setback caused the NAACP to shift attention from public accommodations to public schools: another phase of civil rights activism was initiated in 1948.³⁹

Another organization seeking to redress race issues was the American Veterans Committee. It attracted newly hired staff members employed at the Menninger Foundation, many of whom were Jewish and from the East Coast. They had a reputation for "leftist" activities, which included campaigning for Henry Wallace's Progressive Party in the 1948.

The AVC nucleus included a number of Jewish staff members at the Menninger Foundation, who were seen as menacing "pinkos" from the East Coast. . . . [The AVC] helped the Scotts raise money to cover the costs of their action to de-Jim Crow the public pool in Gage Park and other legal measures.⁴⁰

Years later, Marita Burnett Davis, daughter of then-president McKinley Burnett of the Topeka NAACP, argued that school desegregation in Topeka was secretly funded by some Jewish physicians who worked at the Menninger Clinic.⁴¹ Although there is no hard evidence of their involvement, the AVC was involved in efforts to desegregate public facilities in Topeka during the 1940s.

CHALLENGES TO ELEMENTARY SCHOOL SEGREGATION IN TOPEKA, 1948-1950

After losing ground to segregation in late 1947, the NAACP decided on a low-key approach to school integration. The Legal Redress Committee of the local NAACP studied



FIG. 4. *Elisha Scott*. Courtesy of Kansas Collection, University of Kansas Libraries.

the options available to legally challenge Topeka's segregated schools and decided to draw attention away from the recent failure of the NAACP by using an intermediary group called the "Citizens Committee."⁴² The Legal Redress Committee included two brothers, Charles and John Scott, who were both serving on the committee while attending Topeka's Washburn University Law School. They were following in the footsteps of their father, Elisha Scott (Fig. 4), a noted civil rights attorney. They also became the attorneys for the 1954 *Brown* case. Charles Scott later recalled that in 1948 he and his brother John began to "research for a sound legal theory on which to proceed" to challenge elementary school segregation after the attempts to desegregate the local movie theaters.⁴³ The first action selected

was to simply ask the local school board to end segregation.⁴⁴

The 1940 *Graham* case was the last time the NAACP had involved itself in school desegregation, it almost self-destructed. On one side were the African American teachers and administrators who sought to protect their jobs and found themselves aligned with white community leaders also hostile to integration but for different reasons: whites wanted to preserve the racial status quo. On the other side were those people in the community—black and white—who were sympathetic to desegregation and anxious to redress the injustice of segregation. It was this faction, oriented toward civil rights and desegregation, that had gained control of the local NAACP after 1940 and remained in power throughout the desegregation era.

Soon after the *Graham* case, Topeka School Superintendent Stout, a moderate on segregation, had been fired and replaced by Dr. Kenneth McFarland, who took a hard-line approach toward maintaining segregation. McFarland immediately tightened the boundaries of the color line by announcing that "separate schools are here to stay."⁴⁵ Under his leadership, the school board solidified school segregation begun during Topeka's urban expansion and population growth in the 1920s and early 1930s. According to Topeka resident Samuel McFarland "held back the tide" of desegregation that was gathering momentum in Topeka according to local resident Samuel Jackson.⁴⁶ McFarland later defended his segregation policy as consistent with the status quo in Topeka's schools:

[W]e were operating the schools under essentially the same structure that we took them over in 1942. . . . We have no objective evidence that there is any substantial desire for a change among the people that the board represents. . . . [T]here is nothing in the record historically, that it's the place of the public school system to dictate the social customs of the people who support the public school system.⁴⁷

That there was still some ambivalence toward segregation is illustrated by the willingness of the school board to negotiate and compromise. Jackson continued, "The school board might have gone along with desegregation . . . if McFarland had not resisted."⁴⁸ Charles Scott's law partner, Charles Bledsoe, also observed that the school board was divided over the issue of continuing segregation. He wrote Robert Carter at the NAACP in New York that

one of our good friends of the white race has polled every member of the Board of Education; two of them were bitterly against integration, and four of them would welcome a law suit, in order to take the load off their shoulders. . . . We interpret this as meaning that the Board will not wage an all-out defense; but this is opinion only.⁴⁹

Despite the ambivalence of some members of the school board toward rigid color-line boundaries, McFarland was adamant that school segregation be continued in the primary grades. All departments and divisions of the school system were unified under him, and he alone was responsible to the board for the execution of its policies. He had managed to consolidate his power by eliminating the autonomy of the school board committees, which allowed him to override the authority of the elected school board.⁵⁰ McFarland's actions raised concern on both sides of the color line. He played on the economic fears of the African American teachers by hiring Harrison Caldwell as the director of Negro School Education to administer the segregated schools.⁵¹ Caldwell continuously reminded the teachers that they would all lose their jobs if the schools were integrated.⁵² Caldwell conducted yearly performance reviews of the teachers that included weighing their teaching in the classroom against their attitude toward the administration.⁵³ Mamie Williams, who taught at Buchanan School and later was principal at Washington School, recalled that her fellow teachers did not protest this practice for fear

of losing their jobs: "Since nobody had tenure then and most of the teachers were unmarried women dependent on their salaries for their livelihood, you went along."⁵⁴

Divisions in the African American community toward integration also erupted through school organizations, such as the Negro PTA. According to Speer and Adler, the African American teachers in turn put pressure on Topeka's Negro PTA to further oppose challenges to segregation by influencing the parents of the children they taught.⁵⁵ This resulted in African Americans acting in support of a white supremacist segregationist policy in order to preserve community and economic stability. NAACP President Burnett stated that

the Negro PTA . . . [had] sent a letter to the Board of Education expressing their official support of the *Board* position. Public . . . [segregated] schoolteachers hesitated even to comment on the case as it was being prepared for court (emphasis in original).⁵⁶

The local NAACP tried to overcome the teachers' reluctance and win their support for school integration. President Burnett stated,

At one point we called a meeting of the team. First, we had a man from the National Office (NAACP), a lawyer, who was going to speak to us. . . . We invited the teachers to come. They didn't come, not a one.⁵⁷

Objections to McFarland arose on the other side of the color line by white elites who quickly grew tired of his autocratic policies. This white resistance had emerged by the late 1940s, about the time the NAACP began to target school segregation.⁵⁸ Efforts to remove McFarland focused on his overbearing management style. Frank Wilson, principal of Sumner Elementary School, indicated that during McFarland's era one was either a "company man" and went along with his policies,

or one sought employment elsewhere as it was too uncomfortable to remain.⁵⁹

The actions to eliminate school segregation and remove McFarland from office coalesced by early 1951. While the *Brown* brief was being prepared in April 1951, half of the school board responsible for hiring McFarland in 1942 was up for reelection.⁶⁰ On 3 April 1951 they were voted out of office.⁶¹ A few days after the election, on 5 April 1951, Superintendent Kenneth McFarland turned in his resignation effective August 1951.⁶²

The election of new school board members and the resignation of Superintendent McFarland changed the commitment of the board of education to segregation. In September 1953, two-and-a-half months before the State of Kansas was to reappear before the US Supreme Court in defense of its permissive segregation statute, the Board of Education of Topeka, Kansas, voted to abolish segregation in its elementary schools.⁶³

The types of civil rights actions utilized to end segregation in Topeka were shaped by the ambiguity of color-line practices in Kansas were organized around local-level issues. As the city limits of Topeka expanded to incorporate rural communities, it unknowingly created new fault lines along the color line as its practices were renegotiated as part of the confrontations between real estate developers, city government officials, the board of education, and parents of school-age children. The civil rights actions used to help eliminate segregation were shaped by Kansas's mixture of segregationist and integrationist cultural patterns. The state's permissive segregation statute prohibited publicly funded school segregation except for elementary schools in its "first class" cities with a population over 15,000.⁶⁴ The expansion of Topeka's city limits through annexation during the first part of the twentieth century resulted in some African Americans being moved from integrated rural county schools to segregated city grade schools. This shift in the boundaries of the city also shifted color-line practices in the newly annexed areas.

Those African Americans who were caught between pressures to preserve segregation within Topeka's city limits brought the resulting challenges to the color line to maintain the informal tradition of integration to which they were accustomed outside the city limits. The period between 1944, following the 1940 *Graham* case (which desegregated the junior high schools), and the 1954 *Brown* decision (which desegregated the elementary schools), can be characterized as a curious mix of accommodation and exclusion.

The civil rights actions undertaken between 1944 and 1954, the year of the *Brown* case, can be further divided into three phases, the first two of which were discussed in this essay. First, up to 1947 African Americans challenged Topeka's segregated public facilities—the municipal swimming pool and movie theaters. Next, local initiatives were shifted toward challenging elementary school segregation in a second phase beginning in 1948. These actions were undertaken by breakaway groups from the local NAACP who approached the Board of Education and whose efforts culminated in legal petition through the courts. Finally, in 1950 the third phase began when the lawyers of the national NAACP Legal Defense Fund carried the *Brown* case forward. The legal basis and significance of the case changed in this phase from addressing local grievances to national public interests as it was incorporated into the NAACP Legal Defense Fund's desegregation agenda, which resulted in the landmark school desegregation case, the 1954 *Brown v. Board of Education of Topeka*.

NOTES

A previous version of this paper was presented at African Americans and Their Great Plains Experience Conference, Lincoln, Nebraska, 20-22 February 1997.

1. The only legally segregated high school in Kansas was Sumner High School in Kansas City, Kansas. It was established in 1905 after a special act of the legislature changed the 1879 statute allowing segregation of a secondary school in this one instance. According to historian William

Worley, the African American population in Kansas City, Kansas, was concentrated north of the downtown area along Minnesota and State Avenues. Sumner High School was located in that general vicinity. See William Worley, "An Overview of the Ethnic Geography of the Kansas City, Region, unpublished report," 14 June 1994, Johnson County Museum, Shawnee, Kansas.

2. Paul E. Wilson, *A Time to Lose: Representing Kansas in Brown v. Board of Education* (Lawrence: University Press of Kansas, 1995), p. 29.

3. *Ibid.*, p. 37.

4. Attorneys are still debating the validity of this argument forty years after *Brown*. In a recent article in *Southern Illinois University Law Journal*, Michael J. Berry argues that the school desegregation cases were incorrectly decided on the Fourteenth Amendment (due process), but rather were in violation of the Fifth Amendment (individual rights) (20 [fall 1995]: 53-73). One of the cases was decided on the basis of the Fifth Amendment, *Bolling v. Sharpe*, the Washington, D.C., case. Since Washington, D.C., is not a state, it never ratified the Fourteenth Amendment. Indeed, according to the oral arguments before the Supreme Court in the *Brown* case, the Thirty-ninth Congress in 1866 enacted laws "to implement and expedite the administration of the segregated system of public schools" in Washington, D.C. (791).

5. Wilson, *Time* (note 2 above), p. 37.

6. See Bob Smith, *They Closed Their Schools: Prince Edward County, Virginia, 1951-1964* (Chapel Hill: University of North Carolina Press, 1965).

7. State Superintendent of Public Instruction, *Annual Report* (Topeka, Kans.: Kansas State Historical Society, 1867), p. 72.

8. Emphasis my own. House Bill 219 (1870), cited in Wilson, *Time* (note 2 above), p. 37, 234.

9. Wilson, *Time* (note 2 above), p. 37.

10. *Ibid.*, p. 39.

11. Nell Painter, *The Exodusters: Black Migration to Kansas after Reconstruction* (New York: W. W. Norton, 1986), p. 146.

12. See *ibid.* and Robert G. Athearn, *In Search of Canaan: Black Migration to Kansas, 1879-80* (Lawrence: Regents Press of Kansas, 1978).

13. See US Senate, "Report and Testimony of the Select Committee of the United States Senate to Investigate the Causes of the Removal of the Negroes from the Southern States to the Northern States," 46th Cong., 2d sess., 1880, S. Rept. 693, part 2.

14. Wilson, *Time* (note 2 above), p. 39.

15. By 1952, after the *Brown* litigation had begun, there were twelve cities of the first class, but only half were still practicing segregation (Coffeyville, Fort Scott, Kansas City, Leaven-

worth, Parsons, and Salina). Of the remaining six, one never exercised its option to segregate (Hutchinson), one had partial segregation (Lawrence), two had already terminated segregation (Pittsburg and Wichita), and two had begun to implement desegregation (Atchison and Topeka). See Wilson, *Time* (note 2 above), pp. 29-39.

16. The three teachers were Deacon Farnsworth, an African American, and a white couple from Ohio, Mr. and Mrs. James Abbot. See "Kukendall's Memoirs of Early Topeka," *Topeka Plaindealer*, 19 December 1902.

17. Thomas C. Cox, *Blacks in Topeka, Kansas, 1865-1915: A Social History* (Baton Rouge: Louisiana State Press, 1982).

18. *Ibid.*, In South Carolina, for example, teacher and activist Septima Clark worked hard to get African American teachers hired in the public schools. Since the public schools were limited for African Americans, many African Americans, including Clark herself, attended private high schools. However, in 1919 she and some other African American teachers tried to get that policy change. She felt that African American students in the public schools "were just at the mercy of the white teachers, who often didn't care anything about them" (see Eliot Wigginton, ed., *Refuse to Stand Silently By: An Oral History of Grass Roots Activism in America, 1921-1964* [New York: Doubleday, 1992], p.18). Clark and her friends gathered 22,000 signatures from African Americans stating that they did want African-American teachers in the public schools. In 1920 a few African-American teachers were hired in the city of Charleston. Because of segregation laws, there was not any legal way that teachers of different races could teach in the same school, just as there was no legal way for children of different races to attend the same schools. Any policy that stipulated that only African American teachers could be hired in African American schools would mean that the local school board would have to fire whites in order to maintain segregation. The introduction of African American teachers in the segregated schools was gradual and came twenty-five years later than in Kansas.

19: *William Reynolds, Plaintiff, v. The Board of Education of Topeka*. 66 Kan. 672 (1903).

20. *Ibid.* Also see Cox, *Blacks* (note 17 above), p. 113.

21. "Brief for the Plaintiff," *Reynolds v. Board of Education of Topeka*, 66 Kans. 672-37 (1903).

22. *Ibid.*, pp. 3-4.

23. Valerie Yow, *Recording Oral History: A Practical Guide for Social Scientists* (Thousand Oaks, Calif.: Sage Publications, 1994).

24. El Dorothy Scott interview by Jean Van Delinder, 27 January 1992, transcript *Brown v.*

Board of Education Oral History Project, Kansas State Historical Society, Topeka, Kansas.

25. "A.J. Stout, Supt. of Topeka City School Creates Race Prejudice: Ku Klux Klan Sentiment Entering Public Schools," *Topeka Plaindealer*, 28 September 1928, 1.

26. *Wright v. Topeka Board of Education*, 129 Kansas Supreme Court Reports 853 (1930).

27. One of the attorneys working on the Foster case was William Bradshaw, who would be involved in the *Graham* case as counsel for the plaintiff in 1940.

28. See *Topeka Plaindealer*, 26 January 1940, 1.

29. Stan Stalter, interview by author, Topeka, Kansas, 17 July 1994, transcript *Brown v. Board of Education* Oral History Project, Kansas State Historical Society. Stalter was principal of Lowman Hills School, where Holland integrated the teaching staff in 1955.

30. Connie Sawyer (niece of Daniel Sawyer) interview by author, Topeka, Kansas, 5 March 1992, transcript *Brown v. Board of Education* Oral History Project, Kansas State Historical Society. Daniel Sawyer's brother, Nathaniel, was involved with the NAACP faction that favored the lawsuit and remained active up until the *Brown* case, when his health forced him out of activism.

31. During the *Graham* case, the Topeka NAACP split into two rival factions. Civil rights attorney Elisha Scott, who did not support desegregation of the junior high schools in Topeka in 1941, led one faction. This faction represented the interests of African American teachers, including a relative of Scott, who taught in the segregated schools. As indicated above, some African American teachers did lose their positions after desegregation of the junior high schools. After *Graham*, Scott's group gave way to the faction in favor of desegregation, one which included Scott's two sons, Charles and John.

32. Richard Kluger, *Simple Justice* (New York: Vintage, 1975), p. 375.

33. *Kansas General Statutes*, sec. 21-2424 (1935)

34. *Ibid.*; *Kansas City Call*, 26 September 1947 and 24 November 1947.

35. *Kansas City Call*, 17 October 1947.

36. *Ibid.*

37. *Kansas City Call*, 10 October 1947.

38. Why Topeka revoked its permissive municipal ordinance at this time cannot be fully explained as simply a reaction to the indirect actions of the NAACP and other individuals involved in civil rights litigation. First, the NAACP was not the only organization involved in challenging segregation. Another biracial organization seeking to redress race issues was the local American Veterans Committee (AVC). The AVC was founded in 1946

by returning World War II veterans as an alternative to the American Legion, which was segregated. Also see Kluger, *Simple* (note 32 above), p. 391.

39. Among those individuals who belonged to both organizations were two recently returned veterans named Charles and John Scott. The Scott brothers were both sons of local civil rights attorney Elisha Scott and would later argue the *Brown* case in Kansas federal district court (Charles S. Scott Papers, [RH:MS:494:1] Box 1, Kansas Collection, University of Kansas Libraries).

40. Kluger, *Simple* (note 32 above), p. 391.

41. Marita Burnett Davis, interview by author, Kansas City, Kansas, 11 August 1994, transcript *Brown v. Board of Education* Oral History Project, Kansas State Historical Society.

42. "The NAACP meetings that McKinley Burnett chaired rarely drew more than a dozen or so people and usually degenerated into gripe sessions" (Kluger, *Simple* [note 32 above], p. 393). The Citizens Committee did not present itself as an NAACP delegation, since "mention of the NAACP, it was presumed, would have earned the back of the school board's hand" (*ibid.*).

43. Charles S. Scott Papers, RH:MS:494:1 Box 1, folder 1, Kansas Collection, University of Kansas Libraries.

44. The petition read: "Our main complaint is against Dr. McFarland . . . [who] says separate schools are here to stay and separate secondary schools are in the plans . . . [r]egardless of added expense, the extra drain on a short supply of teachers, . . . [r]egardless of the national trend toward integration; regardless of the fact that separation in our schools prevent[s] the educational process from acting positively in the field of race relations (Kluger, *Simple* [note 32 above], p. 393).

45. McFarland denied his or the school board's involvement in expanding an informal system of segregation in Topeka High School (see *Brown v. Board of Education*, 98 F. Supp. 797 [1951]), transcript of record in lower court, pp. 235-36. NAACP President McKinley Burnett later described the color line in the high school as: "Up there at the high school while they called it integrated, it was integrated only from the outside. When you got inside, it was just as Jim Crow as Alabama." See McKinley Burnett interview by Dr. Hugh Speer, April 1967, reported in Hugh Speer, "The Case of the Century: A Historical and Social Perspective on *Brown v. Board of Education*," unpublished (1968), p. 22. Written with the aid of a federal grant, the manuscript is available (as a photocopy) from Document Reproduction Service, Bethesda, Md. See also Kluger, *Simple* (note 32 above), p. 393.

46. Kluger, *ibid.*, p. 404.

47. *Brown v. Board of Education*, 98 F. Supp. 797 (1951), transcript of record in lower court, p. 234.

48. *Ibid.*

49. Correspondence from Charles Bledsoe to Robert Carter, Topeka NAACP Branch Files, Kansas State Historical Society, Topeka, Kansas.

50. Kluger, *Simple* (note 32 above), p. 380.

51. Caldwell had worked under McFarland in Coffeyville, Kansas (*ibid.*, p. 381). For a personal account of Caldwell, see Merrill Ross's interview by author, Topeka, Kansas, 9 October 1991, transcript, *Brown v. Board of Education* Oral History Project, Kansas State Historical Society. Ross was a coach and teacher under Caldwell during the 1940s.

52. Caldwell was described by the Citizens Committee as "stumbling block to our progress and had . . . reduced the morale of the colored teachers 'to an all time low'" (Kluger, *ibid.*, p. 393).

53. *Ibid.*, p. 381.

54. During the *Graham* case, Mamie Williams taught sixth and seventh grades at the Buchanan School. See Brief for the Defendants, *Graham v. Board of Education of Topeka*, 153 Kan. 840 (1941). During the time of the *Brown* case, Miss Williams was principal at Washington School. Also see Kluger, *ibid.*, p. 381.

55. Speer, "Case" (note 45 above), p. 27; Frank Adler, *Roots in a Moving Stream*, (Kansas City: Spangler Printing, 1972), p. 253, n. 103.

56. Speer, *ibid.*, p. 27.

57. McKinley Burnett interview with Dr. Hugh Speer, (note 45 above), p. 27.

58. Stan Stalter interview by author, Topeka, Kansas, 17 July 1994, transcript *Brown v. Board of*

Education Oral History Project, Kansas State Historical Society. Mr. Stalter, a former Randolph School principal, recalled that faculty at Washburn University who had children in Topeka's public schools were particularly opposed to Superintendent McFarland's policies. Stalter felt that the "movement" to remove McFarland began in the schools located in the vicinity of Washburn University.

59. Frank Wilson interview by author, Topeka, Kansas, 9 October 1994, transcript *Brown v. Board of Education* Oral History Project, Kansas State Historical Society. Mr. Wilson was principal of Sumner Elementary when Oliver Brown tried enroll his daughter Linda in 1950.

60. Wilson, *Time* (note 2 above), p. 25; Stalter interview (note 57 above).

61. Two years later, on 7 April 1953, the remaining half of the members of the Board of Education were voted out of office. All who had been on the board when the *Brown* lawsuit was filed were off the board by August 1953. The *Brown* case went to the US Supreme Court on 7 December 1952 (Memorandum on *Brown* compiled by the University of Kansas Law Library, Reference Desk, August 1995. Copy in the private collection of the author)

62. *Topeka Capital*, 4, 5 April 1951.

63. There was only one negative vote, by Mr. Oberhelman, who stated "he was no [sic] opposed to the policy, but felt that an orderly program should be worked out before the resolution was passed" (Segregation Policy, Topeka Board of Education, Charles S. Scott Papers [note 39 above]).

64. Wilson, *Time* (note 32 above), p. 39.