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Shades of Brown

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LAW TOUCHED OUR HEARTS

A Generation Remembers Brown v. Board of Education



EDITED BY

Mildred Wigfall Robinson

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Law Touched Our Hearts

A Generation Remembers

Brown v. Board of Education

Mildred Wigfall Robinson

and Richard J. Bonnie, Editors

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33 Shades of Brown

Charles Marvin

My sister-in-law Patricia says that Kansas can be thought of in terms of shades of brown—the earth on the ground, the dust in the air, and the burnt grass by the end of the long, hot summer. Thus my first memory of it is the picture of the scorched earth as our family arrived by train from New York City in the small county seat and university town of Lawrence in July of 1948. But my professional memory is of another Brown, my school contemporary Linda Brown, who lived with her parents in the neighboring community of Topeka, Kansas.

When we were both ten going on eleven years old, the lawsuit filed on Linda Brown's behalf was big news in Kansas and across the country, as it had been joined with lawsuits from other jurisdictions in litigation to desegregate public schools, litigation that was being heard by the Supreme Court of the United States.

Although I was young, this lawsuit caught my attention. I was a news junky, the son of a university journalism school dean in a household that subscribed to four newspapers (including the *Topeka Daily Capital*). It was very interesting to me that a lawsuit was being entertained to deal with problems of the Negro (the perceived appropriate label at the time, for which the term "black" was substituted later on) population in Kansas, small as it was.

It was not that I was unaware of minorities. On the beginning day of classes in first grade in my primary school in 1948, I had entered the classroom somewhat on the late side, and noticed that the one place on the standard double-desk seat near the front was not taken; on the other side of it sat a little Negro boy. Not thinking much about it at the time, I sat down and introduced myself to Bobby Mitchell, who was to be one of my classmates up through Lawrence High School.

By the time *Brown v. The Board of Education of Topeka, Kansas*, got rolling in the court system, the situation in Lawrence had become somewhat clearer to me. Although Lawrence had been settled in the 1850s by rabid abolitionists from Massachusetts, had become the Free State Fortress during the years of "Bleeding Kansas" leading up to and through the Civil War, and had suffered from the slaughter of its unarmed menfolk by Missouri border raiders under

the hated Quantrill, by the turn of the century the town had become quietly segregated. Langston Hughes cited the pain he felt during his childhood there. By the 1930s and 1940s, the town (if not the gown) had cemented its reputation for being antiunion and antiblack. Although some children such as Bobby Mitchell went to integrated schools, there was one entirely Negro school in Lawrence, the Abraham Lincoln School. As of the 1950s, that school was in an appalling state—stinking toilet areas and a poorly maintained building, with insufficient funding for even minimally adequate educational supplies. (I am happy to say that this school was closed shortly after *Brown* came to the fore).

For the most part, the black population in Kansas kept a low profile. Its presence was not much to be noted outside of major urban areas. In fact, it was so small, it is not surprising that when my younger brother Bob first developed substantial speaking skills at age two, he should exclaim at seeing a different peer on Massachusetts Street in the heart of downtown Lawrence, “Look at the chocolate baby!”

Kansas politicians and the Kansas public did not have any desire to take flak on their public schools, so school systems across the state were integrated, at least in a formal sense, within a short period of time after *Brown* was heard a second time by the U.S. Supreme Court, and the Court unanimously, under its new chief justice, the frustrated proactive presidential candidate Earl Warren, rendered the surprising and resounding judgment overturning the old separate but equal doctrine enshrined in the law by that same court in *Plessy v. Ferguson*.

Long after the *Brown* decision came down, discriminatory practices against minorities continued in Lawrence. There were more than a few lunch counters across Douglas County (named for Senator Stephen Douglas of Illinois, of Douglas-Lincoln debates fame) where signs were still posted and acted upon that stated: “We reserve the right to refuse service to anyone.” It was difficult for minority college students enrolled in either the University of Kansas or the equally locally enshrined Haskell Institute (now Haskell Indian Nations University, one of the two formerly preeminent Native American boarding schools, along with the now defunct Carlisle Institute in Pennsylvania) to find housing or employment. It took public marches, sit-ins, and other demonstrations, and the civil rights legislative and administrative revolution carried out in Washington and elsewhere, finally to get a whole series of reasonably positive results, and that only by the early 1970s.

In the meantime, I had gone on with my schooling. Upon finishing an undergraduate degree from the University of Kansas in 1964, I headed off for an internship at the Department of State. Upon arriving in the District of Columbia, I went looking for an apartment to share with a friend of mine,

Arthur Spears, a black classmate from KU who was also taking up a summer internship at State. Thirteen places in a row turned us down. Finally, at the fourteenth, the fellow who was building superintendent, a black man who was cohabiting with the white landlady, provided me and Arthur a one-room basement apartment in a building that, as was usually the case at the time, lacked air conditioning. Arthur and I spent a sweltering summer in those facilities with one little floor fan; we were not entirely alone, however, as we could share social time with a couple of young ladies, one white and one black, who both had recently obtained employment in national security affairs and who together occupied a similar apartment down the hall.

Musing upon the case of *Brown* several decades later, I sat talking with my father-in-law, Paul E. Wilson, the man who, as a young assistant attorney general, had been given orders by the attorney general of Kansas (a politician who was preparing to run for governor, and who did not want to alienate the Negro population) to take the long train ride to Washington, D.C., and represent the Topeka Board of Education versus *Brown* in the U.S. Supreme Court. Paul had never litigated an appellate case in his life, let alone before the federal courts, and had certainly never dreamed he would be appearing before the highest court of the land (at least not this young and in this capacity). He did the best he could in his professional capacity, and he thought his side had the more legitimate law arguments at the time; but he was not unhappy that a pro-integration decision prevailed. Indeed, the Topeka Board of Education itself had backed off the case in midstream, and it was only because of what state law authorities perceived to be the required procedural etiquette of the case that led them to carry that particular litigation forward for final representation before the U.S. Supreme Court. In any event, late in his life and long after retirement from a chaired position at the University of Kansas Law School, a position he occupied from several years after his experience litigating *Brown*, Paul Wilson wrote a book of remembrances on the case, *A Time to Lose: Representing Kansas in Brown v. Board of Education* (University Press of Kansas, 1995). In 1998, three years before he died, he gave a speech reminiscing on *Brown* at a U.S. Supreme Court Historical Society forum in Washington. I would recommend to anyone interested in the case that they read his book or watch a copy of the video of his speech.

For me, sitting in my law professor's office at the Georgia State University College of Law in downtown Atlanta, I remain with my memories of the *Brown* case, and with a framed State of Georgia document hanging on my wall:

By His Excellency Herman E. Talmadge, Governor of said State To the
Honorable Paul E. Wilson

Greeting:

Know Ye, That by virtue of the power and authority vested in me as Governor of the State of Georgia, I do hereby appoint you

Honorary Assistant Attorney General of Georgia

with all the rights and privileges appertaining thereto. In Testimony Whereof, I have hereunto set my hand and affixed the Seal of the Executive Department of the Capitol, in the City of Atlanta, this thirtieth day of December in the year of our Lord, One Thousand Nine Hundred and Fifty-four.

Herman E. Talmadge

A similar tribute was paid by the Georgia governor to the lawyers representing each of the other jurisdictions joined in the case that had segregationist laws in effect for their public schools.

The state motto here in Georgia is “Wisdom, Justice and Moderation.” It coexists, of course, with another old Southern motto, “Forget, Hell!” Looking North from Atlanta, in the distance one can see the mountaintops of Lower Appalachia, but whether those mountaintops trigger the vision of dogged Confederate troops retreating South one row of hills at a time from Chattanooga or the dream of Dr. Martin Luther King Jr. remains open to question.

Charles Marvin was born in July 1942 in Chicago, Illinois, and attended elementary and secondary schools in Lawrence, Kansas, from 1948 to 1960. He is now a professor of law at the Georgia State University College of Law in Atlanta.