

## From *Brown* to Topeka to the Future\*

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*Dean Alexander considers the lessons of Brown v. Board of Education, reflecting on what the case personally means to him and what it can teach us about the future of the country.*

¶1 Borrowing liberally from President Abraham Lincoln: Four score and seven years from now, our descendants will bring forth upon this continent a renewed nation, reconceived in liberty and rededicated to the proposition that all *people* are created equal. In eighty-seven years, America will be preparing to celebrate the end of the twenty-first century and to welcome the twenty-second. It is my hope that the issues that plagued this great nation throughout the twentieth century, and continue to do so in this new one, will be mere history lessons. However, for the United States of America to be a nation of equality, much work must be done.

¶2 It has been fifty years since the United States Supreme Court issued its ruling in *Brown v. Board of Education*<sup>1</sup> on May 17, 1954. The decision, appropriately called “landmark” by many, resulted in the overturning of *Plessy v. Ferguson*<sup>2</sup> and the demise of Jim Crow, which author James T. Patterson describes as “the state-sponsored, constitutionally protected system of racial discrimination and segregation that deliberately disadvantaged more than ten million Black people in the South and parts of the border states.”<sup>3</sup>

¶3 Many people in our country understand the basics of *Brown*. School children can probably tell us that *Brown* was hugely important to the civil rights movement. Our senior citizens can probably tell us that the Court’s decision was very controversial and hotly debated. And our history books have told us that Thurgood Marshall, then the head of the NAACP Legal Defense and Educational Fund and later the first African American appointed to the Supreme Court, played a very important role in *Brown*.<sup>4</sup> However, there is much more to know about this case

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\* © Peter C. Alexander, 2004. This is a revised version of a speech presented at Southern Illinois University, Carbondale, Illinois, on Feb. 2, 2004, as part of a program of Black History Month events commemorating the fiftieth anniversary of the 1954 United States Supreme Court decision in *Brown v. Board of Education*.

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

2. 163 U.S. 537 (1896).

3. JAMES T. PATTERSON, *BROWN V. BOARD OF EDUCATION: A CIVIL RIGHTS MILESTONE AND ITS TROUBLED LEGACY*, at xvi (2001).

4. *See, e.g.*, GREAT DECISIONS OF THE U.S. SUPREME COURT 73 (Maureen Harrison & Steve Gilbert eds., 2003).

and, once we've taken a closer look at *Brown*, there will be much more to think about and to understand as we work to prepare society for four score and seven into the future. In this short piece I cannot possibly consider all of the issues raised in *Brown*. However, since many will use the occasion of its fiftieth anniversary to study the history and impact of this great legal case, I do wish to offer my own reflections on what it has personally meant to me—and what it can teach us about the future of our country.

### A Brief History Lesson

¶4 So let's start with the *Brown* decisions. Yes, I said "decisions" with an "s." There were actually two rulings by the Supreme Court in *Brown*. In 1954, the Justices wrote, "Does segregation of children in public schools solely on the basis of race . . . deprive the children of the minority group of equal educational opportunities? We believe that it does."<sup>5</sup> *Brown I* was a unanimous decision and, in what have become the case's most quoted words, the Court continued:

To separate them [the African American children in grade schools and high schools] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.<sup>6</sup>

In reaching this conclusion, the Court relied, in part, on social science data, including psychological theories advanced by Kenneth and Mamie Clark whose research with black and white dolls and school children concluded that racial segregation in the schools caused Black children to be ashamed of themselves.<sup>7</sup>

¶5 And who was "the Court"? Nine White men, some appointed by Franklin Roosevelt,<sup>8</sup> some by Harry S. Truman,<sup>9</sup> and one—Governor Earl Warren of California—appointed by Dwight Eisenhower to be Chief Justice. A majority espoused "judicial restraint," a belief that the high Court should restrain from striking down state or federal laws passed by democratically elected legislators. Others believed in judicial activism, especially in civil liberties cases, insisting that the rights guaranteed in the U.S. Constitution trumped state laws that compromised those rights, even if the laws were passed by the so-called "democratically elected legislators."<sup>10</sup> A few of the justices were liberal and a few were doggedly conservative. And a couple of them absolutely hated each other.

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5. *Brown*, 347 U.S. at 493.

6. *Id.* at 494.

7. *See id.* at 494 n.11.

8. Of the Justices who participated in *Brown I*, President Franklin Roosevelt had appointed Hugo L. Black, Stanley F. Reed, Felix Frankfurter, William O. Douglas, and Robert H. Jackson.

9. Of the Justices who participated in *Brown I*, President Harry S. Truman had appointed Harold H. Burton, Tom C. Clark, and Sherman Minton.

10. PATTERSON, *supra* note 3, at 48.

¶6 So how did the Court reach its unanimous ruling that separate-but-equal in public schools was unconstitutional? No one really knows. The Supreme Court always deliberates in secret so there is no record of who said what to whom or who persuaded whom to change his mind. However, there is one story that may shed some light on the situation. Sometime before the Court announced the first of the *Brown* decisions, Chief Justice Warren decided to go to Virginia to tour Civil War sites. His Black chauffeur drove him from Washington, D.C., to the various sites. At the end of the first day, he checked into a hotel and assumed that his driver would do the same. The next day, the Chief Justice found his driver in the car and learned that he had spent the night not in a hotel but in the car because he couldn't find accommodations for himself in segregated Virginia. Warren said of his reaction upon hearing this: "I was embarrassed, I was ashamed."<sup>11</sup> He cut short the trip and returned immediately to Washington. He had come as close as any White person could to the racial discrimination to which a Black man was commonly subjected and he did not like it.

¶7 A year later, the Court ruled in *Brown II*, again unanimously, that the desegregation of America's segregated schools must be carried out with "all deliberate speed."<sup>12</sup> However, it wasn't until the turbulent 1960s that most southern schools had to confront the realities that separate really was not equal.

### Overlooked in *Brown*: Benefits for the Majority

¶8 Okay, the history lesson is done. Now let's look toward the future. How do we create a society that provides equal opportunity for all of its citizens? What impediments keep us from attaining this goal? Some of the answers actually lie in *Brown*. Remember, the Court wrote: "Does segregation of children in public schools solely on the basis of race . . . deprive the children of the minority group of equal educational opportunities? We believe that it does."<sup>13</sup> Well, I think that segregation of children in schools solely on the basis of race deprives *all* children of equal educational opportunities. I believe that the Court sincerely wanted to give a helping hand to those poor, downtrodden minority students—the kids who were clearly disadvantaged and who could only benefit from interaction with White children. This opinion was widely held and well-intended, but it was wrong. The Court was enlightened enough to see the benefits of desegregation for the students of color, but it failed to recognize that there were also benefits for the White students.

¶9 What Chief Justice Warren experienced when he discovered that his chauffeur had to sleep in the car is an example of what I am talking about. The interaction

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11. *Id.* at xii.

12. *Brown v. Bd. of Educ.*, 349 U.S. 294, 301 (1955).

13. *See supra* note 5.

with his driver during an extended trip exposed the Chief Justice to the horrible underbelly of racial intolerance. The judge was the student; he was learning—first hand—that a Black man in Virginia in 1954 could not just check into a hotel or even a motel because innkeepers in Virginia chose not to rent rooms to Blacks. But for his desire to journey far enough away from Washington, D.C., to require overnight accommodations, he might never have had *any* personal experience with segregation because, normally, the driver would just pick the Justice up at his home, deliver him to the Supreme Court building, possibly drive him to a meeting or to lunch, and then, at the end of the day, take him back home.

¶10 In fact, I could well imagine a breakfast table conversation in which the Chief Justice and Mrs. Warren questioned why Black people were so concerned about ending separate-but-equal. “After all, look at our driver, Sam. He has a good job and earns a good living. He can provide for his family. What sense is there in allowing the Blacks and Whites to mingle? Sam has a good life and he knows his place.”

¶11 But the incident in Virginia changed the stakes; the Chief Justice learned that his driver, with the good job and the good pay, was still—to some—just another Black thing that would stink up their motel if he laid his head on a bed. He saw a man stripped of his dignity because no one would allow him to take care of one of life’s basic needs—shelter.

¶12 I have to believe that the Chief Justice’s experience empowered him to work toward consensus in *Brown*. Somebody had to do some consensus building to achieve unanimous decisions from a group of justices who could hardly speak to one another. It would have been hard to predict that they would come together and issue these two dramatic rulings without dissent.

¶13 But *Brown*, for all of its good, still misses the point. The Court did not place any importance on the unique experiences of the Black children. The Court did not ask how White children were denied the opportunity to learn about Black culture and history; the Court just concerned itself with those poor Black kids and what they were missing.

¶14 Yes, blacks and whites and all races and ethnic groups should be educated together but that is because that they *all* will benefit from the interaction. They all will benefit *from* the shared experiences and *by* sharing their individual experiences. And that is the only way our society will transform itself into a nation where all people are equal.

¶15 Don’t get me wrong, the reason is secondary to the result. Racial justice, color blindness, liberal guilt, whatever the moral concern, led the Court to a brave stance on a hot-button issue at a troubled time in America. But, as an academic—and particularly as an academic of color—*Brown* presents a teaching moment, filled with lessons that were applicable in 1954 and with lessons that should guide us today and into the future. The one I want to focus on is the practice of the majority culture deciding for the minority culture what is in its best interest.

¶16 A half-century after *Brown*, I know that African Americans and other people of color have better lives. We have more and better opportunities, we have options, and we have hope. But we still lack self-determination and true justice. This situation is partly our own fault. Black on Black crime is the senseless genocide from within that continues to eat away at our inner cities. Likewise, our failure to support businesses in our communities of color eats away at the financial underpinnings of our citizens. We must stop these crises.

¶17 However, the lesson of *Brown* points the finger of shame outwardly as well as at our own people. To put it bluntly, White America must stop trying to legislate and to educate me on how it feels to be a person of color in society. The majority culture must stop deciding for me what it means to have equal opportunity and to be equal under the law. Let *me* tell *you* what *I* want for myself.<sup>14</sup>

### What Equal Opportunity Means to Me

¶18 Many people in power seem to believe that what we want is forty acres and a mule, the oft-quoted promise of the federal government after the Civil War. Indeed, there have been recent lawsuits—including one that was recently dismissed in northern Illinois<sup>15</sup>—seeking reparations for the enslavement of a people and the resultant damages to generations after the slaves were freed. But I don't want forty acres or a mule. I own three-fourths of an acre now and can hardly take care of it, and frankly a mule will do me no good. I'm not even sure if I can have a mule in my yard in the city of Carbondale!

¶19 I want, instead, to be heard on issues and to be included in discussions that will result in rules that govern me. I want children in my community to be able to check out library books and rent videos about Black militants and people whose approach to justice was a sort of scorched-earth assault on governmental buildings and business districts, and not worry that their names will be placed in a database somewhere in Washington, D.C., because of the USA PATRIOT Act.<sup>16</sup>

¶20 I want to see people in state and federal legislatures who look like me and who have had life experiences similar to mine. People who are elected because their ideas resonate with voters and their experiences suggest that they will be thoughtful representatives—not because they are from districts that have been specially designed to ensure their election. I want to see people engineering social change whose race is a permanent reminder to them that they are different and that “different” is a valuable thing. I don't need to see people who opt in and out of their race or ethnicity as if it were a coat they can shed when it is convenient to do so.

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14. I can't presume to speak for anyone other than Peter Alexander. However, I believe that my thoughts are representative of at least some people of color or else I haven't been paying close enough attention in my life.

15. In re African-American Slave Descendants Litigation, No. MDL 1491, 02 C 7764, 2004 WL 112646 (N.D. Ill. Jan. 26, 2004).

16. Pub. L. No. 107-56, 115 Stat. 272 (2001).

¶21 I want to work in an environment where rules affecting the status of people of color, including university affirmative action policies, arrive on the scene as the result of thoughtful, deliberate involvement of people of color. And I want to know that jobs all over campus, in every department, are available to all people so that we can move closer to all people being equal.

### ***Brown* Lessons: Even a Dean Is Not Equal**

¶22 Some readers may be nodding politely but thinking, “He is a dean; he cannot possibly have had an experience that is all that different from mine. After all, he is more like me than he is like the people he describes as lacking equal opportunity.” And that, again, is an example of the lesson in *Brown* to which I keep referring. Yes, we are all academics and we are all socioeconomic contributors to society; we have nice homes, nice cars, access to medical and legal services, and the like. However, I *am* different than my majority colleagues because, despite my success, I am perpetually reminded by White America that I am somehow not quite an equal.

¶23 I grew up in a two-parent home in suburban New York City. I was exposed to different areas of the United States and the Caribbean as a child and, although I grew up in the church, my mother expected us to understand other religions before we were confirmed in our denomination. I had success in a very competitive high school, attended college and law school, clerked for two federal judges, practiced law, and then became a law professor. And now I am a dean at a law school fully accredited by the American Bar Association. But, over and over, I am reminded that I am not an equal.

¶24 Years ago, as a student on the same campus to which I have returned as its law school dean, I had the privilege of traveling to a nearby elementary school to sing for children as part of a musical group called “Southern Singers.” Some of the children were in the gym watching us practice before the performance. After our warm-up, my African American buddy Don and I decided to run quickly to the bathroom. While we were in there, a kid came in, probably about the third grade, sized us up, and announced, “You know what you two are? You’re niggers!” He then walked by and used the facilities as if nothing was wrong. We, on the other hand, had to go back to the gym and perform for this young man and his friends.

¶25 These are *Brown* lessons.

¶26 Fast forward several years to my days as an attorney in central Illinois. I would often talk with potential clients on the telephone before they would come to the office for an appointment. On several occasions, potential clients meeting me in person for the first time at the receptionist’s desk visibly shuddered at the thought that I was about to become their lawyer. One told me that I was much younger than she had expected, that she preferred an attorney with more seasoning. Several said that I was not at all what they expected after speaking with me on the phone. I would always ask if that was a good thing or a bad thing, but no

one would ever bite; instead, most people would turn red. One older woman, however, did respond. She said that I was so well spoken on the phone that it startled her to meet me. I said to her that I did not understand her comment, and *then* she turned red!

¶27 A few years later, I found myself a law professor at a school in Pennsylvania. One Saturday morning during my first year there, I decided to go to the local department store to shop for ties. Since it was Saturday, I decided not to shave and wore jeans and a sweatshirt. Now one day's beard growth does not make me look significantly more sinister than I do when clean-shaven, but for some reason the young White woman in the men's department could not keep her eyes from following me. She asked me four or five times if she could help me, and each time I responded that I was fine and just wanted to browse through the store's tie collection. She hovered and continued to follow my every move and finally asked one last time, "Are you sure there isn't anything I can do to assist you?" I answered differently this time. "Yes, you can hold the door for me because I'm leaving and I will never shop in your store again." She became upset and began to backtrack with over-the-top apologies. She wanted to assure me that she meant no disrespect and that she was just concerned about whether I was being helped. I let her ramble on as I made my way to the door, but for the remaining ten years in which I lived in this community, I refused to set foot in that store. Now this was no small matter because I lived in a town with just one department store. Thus, shopping for ties, which happens to be a passion of mine, became a ten- to twelve-mile trip, each way. The store clerk, on the other hand, continued to shop at this store unaffected and received a fifteen percent employee discount to boot!

¶28 In February 2001, I was the host of the Mid-Atlantic People of Color Legal Scholarship Conference at my law school in Pennsylvania. We had approximately a hundred law teachers of color and another twenty or so majority teachers who gathered together for a weekend of intense, but supportive scholarly exchanges. After the last session, several participants remained in town because of flight schedules so I offered to arrange a dinner for them at our community's new show-place hotel, which not only was right downtown but had served as the conference hotel for our event. I made a reservation and a dozen of us showed up at the appointed hour. There were three other tables in use in the restaurant: two with three or four people dining at each, and one with what appeared to be a large family gathering, about fifteen people. We waited for the restaurant to push together three tables to accommodate us, then we sat down. An hour and a half later, after two inquiries by me and one by one of my guests, our orders were taken . . . and not by the white server or her manager to whom I had complained both times. Our orders were taken by the very busy bartender because, as he told us, "There's no excuse for this. I'm embarrassed and I will be happy to take your orders." When I subsequently complained about the event, in writing, to the hotel management, I was told that I had to take the matter up with the hotel's parent company, which is a large national hotel chain. I wrote the headquarters, copied our local chamber of

commerce and my dean, and received a letter apologizing for “uncharacteristically slow service” along with a coupon for a free dinner for four. In the aftermath, my dean decided that the law school would no longer house its guests at the hotel until practices changed, but a short time later we were again one of its best customers.

¶29 Fast forward once again to fall 2002, when I was a candidate for dean at the law school of my undergraduate alma mater. I was asked to give a thirty-minute presentation about my vision for the school, a typical requirement for dean candidates. In preparing for my interviews, I learned that this law school had only one faculty member of color and just a seven or eight percent student body of color so, at one point in my thirty-minute speech, I remarked that one of my priorities would be to help the law school improve its diversity because the existing numbers were just unacceptable. It took all of one minute, tops! In one of the faculty interviews that followed the speech, I was peppered with questions by three of my future colleagues about affirmative action and their belief that I was going to be the “diversity dean.” We never had the opportunity to talk about a broader vision or other issues facing this very fine school. All they wanted to focus on was their alarm that the “diversity dean” was coming and that this was a real concern for them.

¶30 The point of these stories—and there are others I could relate—is to point out to my majority friends that though we may share many similar experiences, we also have vastly different experiences; and many of those have a direct impact on how I view the world. It colors, if you will, everything.

¶31 It is doubtful that every White American will have or could have one of these first-person experiences. But most people of color have them everyday; and having more of us in classrooms and in boardrooms will help to shape future discussions and future solutions to our race problems.

### Time for Action

¶32 I proposed earlier that we need equal justice and equal opportunity by the end of this century. Justice Sandra Day O’Connor, in last year’s University of Michigan affirmative action cases, actually put these issues on a much faster track. She suggested in *Grutter v. Bollinger* that twenty-five years from now, the issues the Supreme Court was forced to confront in the Michigan cases would no longer exist.<sup>17</sup> If she is correct, then action is necessary soon.

¶33 We must redouble our efforts to broaden the umbrella of experiences that are valued and included in policy making. We must work together to find new ways of measuring success, accomplishment, and quality.

¶34 Standardized tests and legacy admissions policies are among the most widely used devices for admission to colleges and universities, yet few members

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17. “We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.” 123 S. Ct. 2325, 2347 (2003).

of the majority population are willing to view these as affirmative action tools for White America. Standardized tests like the SAT, ACT, GRE, LSAT, and GMAT, were all developed by White America, drawn, I suspect, from the real-life experiences of the drafters. The topics for questions are the result of what happens in their world, and word choices reflect speech patterns of the people with whom they have historically interacted. People of color obviously relate to some aspects of their world, but often the language and construction become an issue separate and apart from just completing the standardized test. I can remember taking the ACT and thinking that I had to read and re-read some questions on the English portion of the exam just to make sure I understood what was being asked because I wouldn't have used the same wording as the drafters had. Reading and re-reading takes time and compromises one's ability to finish a timed exam within the allotted period. Likewise, legacy admissions policies reflect the preference for families to send their children and grandchildren to the same institution to cement the relationship between the school and the family and their probable financial contributions to the school. But, if you are first-generation college, as many are in communities of color, you have no chance of competing with someone who is fourth-generation Harvard or fifth-generation Yale. It is privilege paving the way for continued privilege.

### Conclusion

¶35 Justice Warren and the other justices in *Brown* helped America *begin* to turn a corner in race relations and racial justice. But fifty years later we are still having trouble negotiating that turn. Justice O'Connor and the other justices in the Michigan cases have told us that we are running out of time and that, in what has now become twenty-four years according to their timetable, the U.S. Supreme Court expects to be done with racial justice in this country, at least in terms of college admissions. It's now our turn. It is time we stop talking about equal opportunity and start *insisting* that all of our voices be heard. We have to provide adequate funding for programs that educate students about multicultural experiences. We have to challenge rules that say only people from a certain school or with certain test scores are "the best." We have to insist that people in positions of influence in hiring and promotion place value on experiences unique to people of color, even those experiences that our majority colleagues have never heard of or cannot relate to on any level.

¶36 It is time for action. Beginning in February 2004—Black History Month—and for the remainder of the year, institutions throughout the nation are paying particular attention to *Brown v. Board of Education* because 2004 marks its fiftieth anniversary. But when 2004 is over and 2005 is upon us, we have to continue the discussions about *Brown*, racial justice, and equal opportunity. We have to continue to press for changes that give people of color and other marginalized populations the chance to succeed. We have to share the stories of our people, the hopes

of our ancestors, and the songs from our struggle. We must fight those who want to keep us down. We must walk with heads held high. We must not stop until we have secured justice, not just for our people but for all people.

¶37 For African Americans, the words of the Negro National Anthem have provided inspiration in our struggle: “Lift every voice and sing, ’til earth and heaven ring, ring with the harmonies of liberty . . . .”<sup>18</sup> These words are not just part of a song; for us, they constitute an anthem, a rallying song. But the words of James Weldon Johnson are also a prescription for our nation. They tell us not that every voice should sing one note, but that our voices should come together and ring with different notes, the harmonies of liberty.

¶38 This is our chance, not just in Carbondale, Illinois, but throughout this country. This year is our opportunity to reflect on an important and extraordinary legal case and to find inspiration in what those nine White privileged men did fifty years ago. But this year is also an opportunity to redefine privilege in our society to include all people, and to provide justice for all people. We cannot afford to wait until the end of this century; time is clearly running out.

¶39 Four score and seven years from now, racial intolerance and racial injustice must be nothing more than a history lesson. In the words of President Lincoln:

It is rather for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion—that we here highly resolve that these dead shall not have died in vain—that this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people, shall not perish from the earth.<sup>19</sup>

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18. James Weldon Johnson & John Rosamond Johnson, *Lift Every Voice and Sing* (1900), available at [www.africanamericans.com/NegroNationalAnthem.htm](http://www.africanamericans.com/NegroNationalAnthem.htm).

19. Abraham Lincoln, Address Delivered at the Dedication of the Cemetery at Gettysburg (Nov. 19, 1863), in *COLLECTED WORKS OF ABRAHAM LINCOLN* 22, 23 (Roy P. Basler ed., 1953).