Brown is Dead? Long Live Brown!

A Commemorative Symposium Analyzing the Influence of Brown v. Board of Education

Monday, April 26, 2004

Keynote Speakers

Gary Orfield
Harvard Graduate School of Education

Derrick A. Bell Jr.
New York University School of Law
Brown Is Dead?
Long Live Brown!

On May 17, 1954, the Supreme Court decided the case that is, more than any other single factor, responsible for the racial variation that we experience in our everyday lives in the United States. *Brown v. Board of Education* shook the foundations of Jim Crow and announced a new vision of a just American society.

Many law schools around the country have organized symposia celebrating the 50th anniversary of that seminal case, but, having taught and written about Brown for the past decade, I find it difficult to be entirely celebratory on this occasion. The fact is that despite a half century of activists and lawyers struggling to force America to live up to the promise of *Brown*, our schools are still racially isolated and racism is still endemic. Although that case worked tremendous changes in our society, things have not turned out as well as we hoped they would.

With this in mind, in addition to celebrating the 50th anniversary of the Supreme Court decision, our symposium is intended as a critical examination of *Brown*’s legacy. The symposium will consist of a two-pronged inquiry. The first will examine the impact of *Brown* in the field of American education law. The second prong of inquiry will explore how the rationale of *Brown* has been applied in other legal realms.

We will open our discussion with a keynote address by Gary Orfield, who will give an overview of the current state of racial segregation in American public schools. We will follow this with our first panel, entitled “Is Brown Dead?” Our panelists will attempt to answer that question by examining recent litigation in the fields of desegregation law, affirmative action, and school financing.

Our midday keynote by Derrick Bell will explore the possibilities for African American educational advancement that were precluded by the Supreme Court’s approach in *Brown*. Finally, our afternoon panel, “Long Live Brown!” will examine the impact of the case in fields such as environmental litigation and immigration law, as well as *Brown*’s repercussions overseas.

We have yet to fulfill the promise of *Brown*, but the case lives on in our hearts and minds. Our symposium will not treat that case as an historical event, but rather as an archetype of American legalism that continues to influence our society.

We hope that you will join us on April 26.

Denise C. Morgan
Professor of Law
New York Law School
Symposium Chair
As an integral part of New York Law School’s Harlan Honors Program, the Justice Action Center brings together students, academics, and practicing attorneys in an ongoing critical evaluation of public interest lawyering. Through scholarship and fieldwork, the Center seeks to evaluate the efficacy of law as an agent of change and social betterment. The Center fosters collaborative efforts by faculty and students to engage the specific problems presented in the fields of antidiscrimination law and economic justice, civil liberties, criminal law and death penalty, environmental law, family law, immigration law, labor and employment law, and mental disability law. In addition to a focused curriculum, symposia, and research opportunities, students involved in the Center have the opportunity to gain direct exposure to the field of cause lawyering through externships, clinics, and workshops.

Through these initiatives, the Center seeks to instill in students a deeper intellectual understanding of the law regardless of their final career goals, and to present opportunities to maintain their ties to the social justice community beyond law school. Recognizing that students will pursue varied careers, the Center aims to provide a framework for analyzing the pervasive questions and contradictions relating to social justice in American society, irrespective of the context in which they may arise.

In this spirit, the Center is proud to sponsor our first symposium, *Brown Is Dead? Long Live Brown!*, focusing on perhaps the most well recognized litigation story in world history: *Brown v. Board of Education*. Going beyond a simple commemoration, the Center’s spring symposium will offer a critical analysis of the landmark case. We will examine the state of American education law today, and question *Brown’s* legacy. We will also explore the relevance of the case outside of the field of education law and beyond America’s borders. By doing so, we seek to further the analytical approach to law that is the driving purpose of the Justice Action Center.
9:30 A.M.  WELCOME MESSAGE
Richard A. Matasar  
*Dean and President*  
New York Law School

Lenni Benson  
*Professor of Law*  
Codirector of the Justice Action Center  
New York Law School

Denise C. Morgan  
*Professor of Law*  
New York Law School

10:00 A.M.  MORNING KEYNOTE ADDRESS
Gary Orfield  
*Professor of Education and Social Policy*  
Harvard Graduate School of Education

11:00 A.M.  MORNING PANEL:  
**IS BROWN DEAD?**
Moderator: Denise C. Morgan  
*Professor of Law*  
New York Law School

Danielle Holley  
*Associate Professor of Law*  
Hofstra University School of Law

Miranda K. S. Massie  
*Associate*  
Scheff & Washington, P.C.

Dennis D. Parker  
*Civil Rights Bureau Chief*  
New York State Attorney General’s Office

Juan F. Perea  
*Cone, Wagner, Nagent, Johnson, Hazouri & Roth Professor of Law*  
University of Florida  
Levin College of Law

1:30 P.M.  AFTERNOON KEYNOTE ADDRESS
Derrick A. Bell Jr.  
*Visiting Professor of Law*  
New York University School of Law

2:30 P.M.  AFTERNOON PANEL:  
**LONG LIVE BROWN!**
Moderator: Edward A. Purcell Jr.  
*Joseph Solomon Distinguished Professor of Law*  
New York Law School

Penelope Andrews  
*Associate Professor of Law*  
CUNY School of Law

Rachel D. Godsil  
*Professor of Law*  
Seton Hall Law School

Hiroshi Motomura  
*Dan K. Moore Distinguished Professor of Law*  
University of North Carolina School of Law

David S. Schoenbrod  
*Professor of Law*  
New York Law School

4:30 P.M.  COCKTAIL RECEPTION

**ALL EVENTS TAKE PLACE IN THE ERNST STIEFEL READING ROOM**
Gary Orfield is interested in the study of civil rights, education policy, urban policy, and minority opportunity. He is the director of the Harvard Project on School Desegregation, and codirector of the Harvard Civil Rights Project, which is developing and publishing a new generation of research on multiracial civil rights issues. Professor Orfield’s central interest has been the development and implementation of social policy, with a focus on the impact of policy on equal opportunity for success in American society. Recent works include studies of changing patterns of school desegregation and the impact of diversity on the educational experiences of law students. In addition to his scholarly work, Professor Orfield has been consistently involved in government and courts in issues related to his research. He has been a court-appointed expert in school desegregation cases in St. Louis, Los Angeles, San Francisco, and Little Rock, Arkansas, and has been called to give testimony in civil rights suits by the U.S. Department of Justice and many civil rights, legal services, and educational organizations. In 1997, Professor Orfield was awarded the American Political Science Association’s Charles Merriam Award for his “contribution to the art of government through the application of social science research.”
Morning Panel

Is *Brown* Dead?

*Panelists will attempt to answer this question by examining recent litigation in the fields of desegregation law, affirmative action, and school financing*

Moderator

**Denise C. Morgan**

Professor Morgan’s writing in the field of education law has addressed such topics as single-sex public schools, desegregation, school finance litigation, and the use of publicly financed vouchers to send students to private schools. She has filed several *amicus* briefs on behalf of the Black, Puerto Rican and Hispanic Legislative Caucus in *Campaign for Fiscal Equity v. New York*, the landmark case against New York State to establish adequate funding for New York City’s public school students. She teaches Federal Courts and Civil Procedure and has applied her expertise in education and antidiscrimination law to develop two new elective courses: Education Policy and the Law; and Race: A Historical & Legal Investigation of Antidiscrimination Principles.
Danielle Holley

Danielle Holley teaches and focuses her research in the areas of civil procedure, administrative law, race theory, and corporate law. Prior to joining the Hofstra School of Law faculty, Professor Holley was an associate at the Houston law firm of Fulbright & Jaworski LLP where she practiced in the areas of commercial litigation, antitrust, and securities litigation. Professor Holley graduated in 1996 from Yale College and in 1999 from Harvard Law School, where she was managing editor of the Harvard Civil Rights/Civil Liberties Law Review. Following law school, Professor Holley served as a law clerk to Judge Carl E. Stewart of the United States Court of Appeals for the Fifth Circuit. She has also held summer research fellowships at the American Bar Foundation and the Mellon/Ford Summer Research Program. Her publications include Narrative Highground: The Failure of Intervention as a Procedural Device in Affirmative Action Litigation, 74 CASE W. RES. L. REV. 1 (2004) and The Texas Ten Percent Plan (with D. Spencer), 34 HARV. C.R.-C.L. 245 (1999).

Miranda K. S. Massie

Miranda Massie is a civil rights attorney at Scheff & Washington PC in Detroit, Michigan, a civil rights and union law firm. She was lead counsel for the student intervenors in Grutter v. Bollinger, the case which resulted in a June 2003 Supreme Court victory for affirmative action. Their legal case, which featured testimony from experts such as John Hope Franklin, Gary Orfield, and Walter Allen, received wide attention and was the subject of an academic conference and a special issue of the Berkeley La Raza Law Journal as well as numerous press reports. In May 2003, Massie received a Dean's Medal from CUNY Law School for the intervenors’ role in the case. Massie is an honors graduate of Cornell University and the NYU School of Law. She also earned a master's degree in American Studies from Yale University, attending graduate school on a Yale University Fellowship while serving as a union organizer. Ms. Massie has been an active force in organizing efforts for civil and reproductive rights, for educational equity, and for affirmative action throughout her career.
Dennis D. Parker

Dennis D. Parker is the bureau chief for the Civil Rights Bureau of the Office of New York State Attorney General Eliot Spitzer and is responsible for overseeing the enforcement of state and federal laws protecting New Yorkers from discrimination in housing, places of public accommodation, employment, voting, credit, law enforcement, and education. Prior to joining the Civil Rights Bureau, Parker served for fourteen years as assistant counsel for the NAACP Legal Defense and Educational Fund, Inc., where he headed its Education Litigation Program and was responsible for the supervision of the education docket and trial and appellate work in cases involving affirmative action, school desegregation, and equal educational opportunity. Other legal experience includes the New York labor and employment discrimination firm Vladeck, Waldman, Elias and Engelhard, the New York State Department of Health, Office of Professional Medical Conduct, assistant attorney general in the New York State Attorney General’s Office, Civil Rights Bureau, and a staff attorney at the Legal Aid Society, Criminal Defense Division. He has litigated scores of civil rights cases throughout the United States, including the landmark Connecticut education case *Sheff v. O’Neill*. His publications include a book and numerous articles on housing discrimination, educational equity, affirmative action, and educational testing, and he is a frequent lecturer at conferences and law schools on civil rights issues. Parker has served as an Adjunct Professor at New York Law School. He is a graduate of Middlebury College and the Harvard Law School, where he was an editor of the *Civil Rights/Civil Liberties Law Review*.

Juan F. Perea

Professor Perea is the Cone, Wagner, Nugent, Johnson, Hazouri & Roth Professor of Law at the University of Florida, Levin College of Law, where he teaches constitutional law, employment law, and race and race relations. Professor Perea has been a visiting professor at Harvard Law School, University of Colorado School of Law, and Boston College Law School. Professor Perea received his J.D., *magna cum laude*, from Boston College in 1986, where he served on the *Law Review*. From 1986–87, he clerked for the Honorable Bruce M. Selya of the U.S. Court of Appeals for the First Circuit. During 1987–89, he was an associate at Ropes & Gray in Boston, where he specialized in labor and employment law. After working as an attorney for the National Labor Relations Board in Boston during 1989–90, he joined the faculty at the University of Florida. He is the author of *Race and Races: Cases and Resources for a Diverse America* (West Group, 2000) (with Richard Delgado, Angela Harris, and Stephanie Wildman). The second edition of *Race and Races* will be appearing in 2004. He is editor of and contributor to *Immigrants Out! The New Nativism and the Anti-Immigrant Impulse in the United States* (NYU Press, 1997). He has also written extensively on the law and history of language regulation and discrimination in the United States. His current research interests include the history of race relations and the history of conquest in the United States.
Derrick A. Bell Jr.
Visiting Professor of Law
New York University School of Law

Will explore the possibilities for African American educational advancement that were precluded by the Supreme Court’s approach in Brown

Professor Bell is a compelling voice on issues of race and class in this society. Throughout his forty year career as a lawyer, activist, teacher, and writer, he has provoked his critics and challenged his readers with his uncompromising candor and original progressive views. He became the first tenured black professor at the Harvard Law School in 1971. He relinquished the post in 1992, when he refused to return from a two-year, unpaid leave of absence he took to protest the lack of women of color on the faculty. In 1980, he left Harvard for five years to accept the deanship at the Oregon Law School. Professor Bell left the post in Oregon when the faculty directed that he not extend an offer to an Asian American woman faculty candidate. Prior to the positions at Harvard and the University of Oregon, Professor Bell served as Executive Director of the Western Center on Law and Poverty at the University of Southern California Law School, counsel for the NAACP Legal Defense Fund, and deputy director of the Office for Civil Rights in the Department of Health, Education and Welfare. He has been widely published in professional journals, national magazines, and newspapers. His book Race, Racism, and American Law, published initially in 1973, is now in its third edition, and his book Constitutional Conflicts, published in 1997, is a text intended for basic constitutional law courses. Professor Bell’s autobiographical work, Confronting Authority: Reflections of an Ardent Protester, offers an honest appraisal of his struggles as an educator, writer, and nonconformist in a society plagued by racism. His most recent book, Silent Covenants: Brown v. Board of Education and the Unfulfilled Hopes for Racial Reform, questions the efficacy of the 1954 ruling.
Afternoon Panel

Long Live *Brown*

*An examination of the impact of the case in fields such as environmental litigation and immigration law, as well as Brown’s repercussions*

Moderator

**Edward A. Purcell Jr.**

Penelope Andrews

Professor Andrews was born in Cape Town, South Africa, and received her B.A. and LL.B. degrees from the University of Natal in Durban. She worked at the Legal Resources Center, a public interest law firm in Johannesburg, before pursuing graduate studies at Columbia University, where she received an LL.M. degree. She spent a brief period at the NAACP Legal Defense and Educational Fund in New York before being appointed the Chamberlain Fellow in Legislation at Columbia Law School. Prior to joining the faculty at CUNY, she taught in the areas of Antidiscrimination Law and Policy, and Aborigines and the Law in Melbourne, Australia. She has also visited at the University of Maryland, where she taught a comparative South African/American course on Race and the Law. In 2002 she was the Stoneman Visiting Professor of Law and Democracy at Albany Law School and the Parsons Visitor at Sydney Law School in Australia. She sits on several boards, including that of the Welfare Law Center in New York, the Law and Society Association, Friends of the Constitutional Court of South Africa, and the Columbia Law School Association. She is president of the alumnae association of the University of Natal in the U.S. She has written extensively on international human rights issues in the South African and Australian contexts, focusing particularly on race and gender.

Rachel D. Godsil

Professor Godsil teaches Equality Under American Law, Property, and Zoning and Land Use Policy at Seton Hall University School of Law. Professor Godsil has been involved in environmental justice law and policy, and has recently been working with attorneys representing the South Camden Citizens in Action. She is the outgoing chair of the American Association of Law Schools’ Poverty Law Section. Professor Godsil has written and published extensively on the convergence of race, poverty, and the environment. Prior to joining the Seton Hall School of Law faculty in 2000, Professor Godsil was an assistant United States attorney for the Southern District of New York. She was an associate counsel at the NAACP Legal Defense and Educational Fund, focusing on environmental justice, an associate with Berle, Kass & Case and Arnold & Porter in New York City, and a law clerk for the Honorable John M. Walker Jr., United States Court of Appeals for the Second Circuit. She received her B.A. in Political Science from the University of Wisconsin, Madison, and her J.D., magna cum laude, from the University of Michigan Law School. At Michigan, Professor Godsil served as the executive article editor of the Michigan Law Review, was awarded the Henry M. Bates Memorial Award, and was elected to the Order of the Coif.
Hiroshi Motomura

Professor Motomura is Dan K. Moore Distinguished Professor of Law at the University of North Carolina School of Law. He joined the UNC faculty in 2003, after twenty-one years at the University of Colorado. Professor Motomura is the coauthor of the widely used law school casebook, *Immigration and Citizenship: Process and Policy* (West, 5th ed. 2003) (with Alex Aleinikoff and David Martin) and the author of many influential articles and essays on immigration and citizenship. He will soon complete a book, *Americans-in-Waiting: The Lost Story of Immigration and Citizenship in the United States*, to be published by Oxford University Press. Professor Motomura has served as co-counsel or a volunteer consultant in several recent immigration cases in the U.S. Supreme Court, as well as in immigration cases in the federal appeals courts. He is one of the cofounders of the Rocky Mountain Immigrant Advocacy Network (RMIAN), which trains and coordinates volunteer lawyers for indigent noncitizens in immigration court. In 1997, Professor Motomura was named President’s Teaching Scholar, which is the highest teaching distinction at the University of Colorado, and he has won several other teaching awards. He teaches courses in Immigration and Citizenship, Refugees and Asylum, and Civil Procedure. In Fall 2004, he will be at the American Academy in Berlin as the first Lloyd Cutler Fellow.

David S. Schoenbrod

A pioneer in the field of environmental law, Professor David Schoenbrod has been at the forefront of environmental justice. As staff attorney for the Natural Resources Defense Council during the 1970s, he led the charge to get lead out of gasoline. In his current scholarship, Professor Schoenbrod asserts that Congress has inappropriately shifted its responsibility for the laws to regulatory agencies and courts. His widely-praised book, *Power Without Responsibility: How Congress Abuses the People Through Delegation* (Yale University Press, 1993), was the genesis for the 1996 Congressional Review Act, which deals with agency regulations. He has continued to focus attention on this issue as coauthor (with New York Law School Professor Ross Sandler) of the book *Democracy by Decree: What Happens When Courts Run Government*. His academic career has included positions at Yale Law School (1977) and New York University School of Law (1979-82). In addition to his current position at New York Law School, Professor Schoenbrod serves as an adjunct scholar at the Cato Institute. He contributes frequently to the editorial pages of *The Wall Street Journal*, *The New York Times*, and other newspapers and periodicals.
REGISTRATION FORM

To register online, please visit our Web site at www.nyls.edu/jac and click on the link for “Symposium Registration.”

To register by mail or fax, please complete this registration form and send to:

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New York Law School
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All inquiries for this CLE program may be addressed by e-mail to Chris Alan Kendall at ckendall@nyls.edu.

If you would like to receive a copy of this symposium issue, please send an e-mail to Chris Alan Kendall, program director of the Justice Action Center, at ckendall@nyls.edu. A limited number of complimentary issues will be available.
DIRECTIONS TO NEW YORK LAW SCHOOL
57 Worth Street, New York, NY 10013

BY SUBWAY:

7th Avenue line:
1, 9 (local) to Franklin Street. Exit at Varick Street and West Broadway. Walk two blocks south on West Broadway to Worth Street.
2, 3 (express) to Chambers Street. Exit at West Broadway and walk four blocks north on West Broadway to Worth Street.
Lexington Avenue line:
4, 5 (express) and 6 (local) to Brooklyn Bridge/City Hall. Exit at Foley Square. Walk north two blocks to Worth Street and west three blocks to Church Street.
8th Avenue line:
A (express) and C (local) to Chambers Street. Exit at Church Street. Walk four blocks north on Church Street to Worth Street.
E (local) to Canal Street, change for the A or C to Chambers Street.
Avenue of Americas (6th Ave.) line:
B, D, Q (express) and F (local) to West 4th Street/Washington Square. Change at West 4th Street for the A or C to Chambers Street.

Broadway line:
W, R (local) to City Hall. Exit on Broadway and walk north on Broadway to Worth Street. Walk west on Worth Street one block to Church Street.

Nassau Avenue line:
J, Z (express) and M (local) to Chambers Street. Exit at Foley Square. Walk north two blocks to Worth Street and west three blocks to Church Street.

BY BUS:

M1, M6 south to Broadway and Worth Street. Walk one block west on Worth Street to Church Street.
M20 south to West Broadway and Worth Street. Walk one block east on Worth Street to Church Street.

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Flat-fee parking is available in a lot adjacent to the Law School at 47 Worth Street.

From the Harlem River Drive/FDR Drive:
Take Exit 2 (Brooklyn Bridge/Civic Center). Bear to the right (toward Civic Center) and proceed down the ramp. Make a right at the light onto St. James Place. Go straight, at the third light (street ends), make a left onto Worth Street. Continue for approximately five blocks.

From the Henry Hudson Parkway/Westside Hwy.:
The Chambers Street exit. Follow Chambers Street three blocks and make a left onto Church Street. Follow Church Street four blocks to Worth Street. Make a left onto Worth Street.

From the Brooklyn Battery Tunnel:

At the exit of the tunnel, bear right onto Trinity Place (Trinity Place becomes Church Street after the World Trade Center site). Move to the far left lane. Continue on Church Street to Worth Street. (Worth Street is four blocks past Chambers Street). Make a left onto Worth Street.

From the Lincoln Tunnel:

Take the Westside Highway south (Refer to directions from Westside Highway above).

From the Holland Tunnel:

Stay in the middle lane and take the “Downtown” exit. Make a right onto Varick Street. Varick Street becomes West Broadway. Continue on West Broadway three blocks to Worth Street. Make a left onto Worth Street.

ACCESSIBILITY

New York Law School is wheelchair accessible. Please contact Chris Alan Kendall no later than one week prior to the event at 212.431.2314 or send an e-mail to ckendall@nyu.edu regarding any additional accommodations you may need.