BEHIND THE *BROWN* DECISION: A CONVERSATION WITH JOHN HOPE FRANKLIN

John Hope Franklin*

I was born in a village, in Rentiesville, Oklahoma, on the second of January, 1915. My mother was a schoolteacher and my father was a lawyer. They had met in Tennessee, where they both were in college, and after a period of time they married and moved to Oklahoma. It was still Indian territory, of course; it became a state in 1907.

My father sought to practice law in Rentiesville, but in a village that had not much more than a hundred people, the practice of law was not a very viable and promising profession. And so, in 1921, after consultation with my mother, he decided to move to Tulsa, Oklahoma, where he could perhaps attract more clients and make a decent living for us. He moved there in February 1921.

We were to move in June after school was out, after my mother completed her teaching and my sister and I had finished our school year. We were all packed and ready to go, and then we didn't hear from him. And we didn't hear. And we didn't hear. Eventually, after several days, my mother read in the newspaper that there was a terrible race riot raging in Tulsa and that there were many casualties. She was not certain that my father had survived.

Dr. John Hope Franklin spoke in February 2004 at both a Stetson University College of Law Symposium on *Brown v. Board of Education* and at a community forum sponsored by the University of South Florida in collaboration with the City of St. Petersburg, Fla., the St. Petersburg Chapter of the NAACP, and the St. Petersburg Bar Association. These comments are a synthesis of his remarks at the two events, including material shared in both presentations and expanded comments from one event or the other. The community forum included an opportunity for members of the audience to ask questions, and some of those questions and Dr. Franklin's responses are included as well. Dr. Raymond Arsenault, John Hope Franklin Professor of Southern History at the University of South Florida, introduced Dr. Franklin at both events and moderated the discussion at the community forum.

After a few days she heard from him directly, and he said that he was unharmed but that what he had accumulated and used as resources to bring us there—the home, and his money—were gone up in smoke. He could barely find the house—there was no house. He was fortunate in having the good luck not to be harmed himself, but he pointed out that he didn't have any money at all, and didn't have any resources. He had his good health. And he was going to spend the next period of time trying to help his clients who had their property destroyed. So he sued the city, he sued the State of Oklahoma, and he sued the insurance companies—all to no avail at that time. But he was steadfast and determined—practicing law in a tent for several months. He was able to carry forward a program of trying to get black citizens of the community to rehabilitate themselves, develop their self-respect, self-esteem, so that they could move forward.

We didn't get a chance to move to Tulsa until four years later, 1925, at which time we were once more together, never to be separated except at death.

I went to school in Tulsa and finished high school there in 1931. I then went to Fisk University, determined to become a lawyer and to go back to Tulsa and to assist my father. I did not recognize the fact that I was vulnerable on several accounts, not the least of which was the impression that could be made on me by my teachers. One young, white professor at Fisk University was the chairman of the history department. He was only twelve years older than I was: I was sixteen, and he was twenty-eight. He made an impression on me from which I never recovered. I was so taken up by what he was talking about, that I forgot that I had gone to college to study to become a lawyer, and soon declared that I was going to be a historian. That was the one thing I wanted to do with my life. I've never regretted it, and I went on to study history at Fisk.

When I graduated from Fisk, we were still virtually bankrupt back in Tulsa, and I didn't have the money to go to Harvard. And the same white professor, Theodore Currier, went down to the bank in Nashville, Tennessee, and borrowed $500 and put it in my hand and said, "money should not keep you out of Harvard." With that I took the train and went to Harvard and studied there in due course, and in five years completed my work with a Ph.D. degree.

I set out on a career of research and teaching, writing, and trying my best to correct some of the wrongs as I understood them in the history of the United States. And so, in my first book, *The Free Negro in North Carolina*,[1] I sought to set the record straight with respect to the whole question of whether or not all blacks in this country were slaves, and whether or not all blacks in the South were slaves. And that was not so. And I tried to establish that.

Then I was asked to write a book called *From Slavery to Freedom: A History of African Americans*.[2] I did not want to do it. I never had a course in African-American history. And I had other writing plans, other research plans. But I went on and was persuaded by thousands of dollars dangling before me. So I wrote *From Slavery to Freedom*. It has gone through, as you probably know, eight editions, innumerable printings, and is, I hope, a valuable book that people can use.

I was not certain in 1935, or '41 when I got my Ph.D., or even in '45 or '46, that I could do more than write history. And then I was called upon in 1947, not merely to go to Howard University as a full professor, but more importantly to involve myself in an entirely new venture, namely to serve as an expert witness in a lawsuit. There had already been some lawsuits in which an effort was made to get blacks into institutions of higher education, but they had all floundered, really, without much success.

But in 1947, the first year that I taught at Howard University, I met Thurgood Marshall. He was in and out of Howard University, helping to shape the new program for civil rights courses at the law school and indulging in his customary social activities with his colleagues, former teachers, and so forth. In the course of our discussion when I first met him, he said, "I think what we ought to do now is try to get some sense of what we can accomplish by starting out in a single case." That case turned out to involve Lyman Johnson,[3] a young, black, high school history teacher in Louisville and a graduate of Kentucky State College for Ne-

1. John Hope Franklin, *The Free Negro in North Carolina: 1790-1860* (U.N.C. Press 1943)

2. John Hope Franklin & Alfred A. Moss, Jr., *From Slavery to Freedom: A History of African Americans* (8th ed., Alfred A. Knopf 2003).

3. *Johnson v. Bd. of Trustees of U. Ky.*, 83 F. Supp. 707 (E.D. Ky. 1949).

groes, who wanted to do some graduate work in history, and so he applied to the University of Kentucky. The University of Kentucky responded by first turning him down and refusing to admit him on the ground that he was not eligible, not being a white person, and, secondly, suggesting that whatever he wanted in the way of graduate studies he could get at Kentucky State College for Negroes. Well, he had been there. He knew better. So he declined to be led into this activity by the officials of the University of Kentucky.

And so Lyman Johnson went to the NAACP Legal Defense Fund and said, "I want your assistance." Thurgood Marshall grabbed this with great alacrity and said, "I will be happy to take the case." And he took it.

Now, it involved, first, proving that Lyman Johnson was capable of doing graduate work. Secondly, that the graduate work that he was seeking was not at Kentucky State College for Negroes. And, thirdly, pointing out that the only place he could get that training in the state of Kentucky was at the University of Kentucky. And so they sued the University of Kentucky.

Then Marshall asked me to serve as the expert witness in the case, mainly that person who was trained in the field of history and could very carefully examine the two institutions to see the extent to which the Kentucky State College was not qualified to provide the graduate education that Johnson was requiring. I loved that, because it was in a sense doing something in the legal area, and a chance to do penance and make amends for my neglect of the legal profession in the first place. I thought it was going to be wonderful for me to go out there and do the research and to prove that Lyman Johnson ought to be admitted to the University of Kentucky and not Kentucky State College, which, after all, was quite an inferior institution by any standards.

And so I went to Kentucky. I had friends at the University of Kentucky; some of whom I had met in graduate school, some of whom I met in Raleigh, North Carolina, when I was waiting on my own doctoral dissertation. They were very enthusiastic about our venture, despite the fact that they were teaching at the University of Kentucky. They thought it ought to be open to blacks. And so they helped me as much as they could in gathering information. I cannot tell you how important it was for me to have the association with the members of the faculty at the University of

Kentucky. And they were saying, "Here's what we have at the University, and here's what they don't have over in the State College for blacks."

By the time the case opened before Judge H. Church Ford, the federal judge in Frankfort, I was ready. I was loaded. I couldn't wait to get on the witness stand and say what I thought was the discrepancy between University of Kentucky and Kentucky State College for Negroes.

Several members of the faculty of the University of Kentucky and several officials, including the president, were put on the witness stand first to show how the University of Kentucky was not all that good anyway. Marshall found they were pleading that they were not nearly as advanced as had been claimed. After all, they were not that much better, and Kentucky State College for Negroes would provide adequate facilities, and Lyman Johnson could do just as well going to Kentucky State College for Negroes.

At the recess following the opening of the trial, Marshall said to his colleagues—not to me, I didn't count, I'm not a lawyer—he said to his legal colleagues, "I am sick and tired of people carrying on like this, and I'm going to go back after recess and I'm going to ask the Judge[—without putting any witnesses on the stand at all he was going to ask the judge—]to order that Lyman Johnson be admitted to the University of Kentucky. We're just playing, just playing games."

And his colleagues said, "Are you sure you want to do that?" He said, "Yes. I'm certain. That's what I'm going to do in this case. It's what I'm going to do in all cases from here on. I'm just sick and tired of this – of this play acting." And so when he went back into the courtroom when the recess was over and it was Marshall's time to speak, he said,

> Your Honor, may I respectfully request you to direct a verdict in favor of my client, Lyman Johnson, and order the University of Kentucky to admit him forthwith? This is because the University of Kentucky has not only not made a case, they do not have a case to make. And I'm going to ask you to open the University of Kentucky and admit this young man to the University of Kentucky.

And Judge Ford said, "I'm going to do just that." And then he said, "I'm ordering the University of Kentucky to admit Lyman Johnson forthwith." And then he turned to the officials of the

University of Kentucky and said, "You ought to be ashamed of yourselves. You've been boasting about the superiority of the University of Kentucky in every respect. Now you come here this morning and say it's not all that good, and that the Kentucky State College for Negroes is just as good." He said, "It's patently untrue. We all know it. And, therefore, in the next term Lyman Johnson must be admitted to the University of Kentucky."

Well, that broke up the case. There I am, sitting with all my papers, ready to vindicate my having neglected the legal profession in the first place and make amends to my father and all my family for being just a historian and not a lawyer. That was a frustration that I could accept, in view of the fact that it was a remarkable victory for Thurgood Marshall and the Legal Defense Fund. And it helped to shape what the strategy would be from that point on and would make it possible for the Legal Defense Fund to proceed with its long-range program of opening up not only the graduate schools, not only the colleges, but the secondary and elementary schools as well. I wanted to celebrate, but it was difficult. But I did join them in celebration of this first—and very notable—victory of Lyman Johnson.

I can only add this in this case: namely that many years later, when the University of Kentucky conferred on me an honorary degree, the University cited my role in the case of Lyman Johnson as at least one of the reasons why they were happy to confer on me an honorary degree, pointing out that I had been instrumental in the desegregation of the University of Kentucky. And that was enough—probably not enough—but that was one of the factors that moved them to invite me to receive an honorary degree. Lyman Johnson never did get his Ph.D. at the University of Kentucky, but I got my honorary doctorate.

DR. ARSENAULT: John Hope, perhaps you could talk about the very important years between the Lyman Johnson case and the cases that led up to your second chance to be a lawyer—in 1953, the next time you worked with Thurgood Marshall.

JOHN HOPE FRANKLIN: Well, within the next few years, the NAACP, led by Thurgood Marshall, proceeded with its legal actions against various states, particularly in the area of higher

education. And so they used the experiences that they had accumulated in an earlier case, the Maryland case,[4] and in this case—the Lyman Johnson case—to press the University of Oklahoma and later the University of Texas to open their graduate and professional facilities to African Americans.

I make that point because, after all, the Legal Defense Fund had had some question of how direct and how forcefully they could go in the direction of demanding the desegregation of schools. This is before Sweatt against Painter.[5] It's before Ada Sipuel against the University of Oklahoma.[6] So this is the strategy that was developed for *Brown*[7] and for all the other cases. And it's, I think, well to understand that this strategy, which would go through *Sipuel* and through Sweatt against Painter, was developed in Kentucky in 1948. And it would become the strategy that would be used even in the secondary school cases, *Brown* and the others, in 1953 and '54. The background of this is very important from the strategy that was developed and that would become the strategy in the '40s, in the '50s, and in the '60s. It's very important to understand it as developing that early.

And so, in the cases of Ada Sipuel against the University of Oklahoma and Heman Sweatt against the University of Texas, the juggernaut began to roll. It rolled most successfully in those two instances. And in 1948 and 1950, the University of Oklahoma and the University of Texas were open wide to the admission of African Americans.

It ought to be said here that there were some efforts to postpone the inevitable, particularly by trying to establish a separate-but-equal graduate school at the University of Oklahoma, the University of Texas, and various other places for blacks. But they were not successful. And in the *Sweatt* case, it became quite clear that there could be no substitute for the admission of African Americans to the regular graduate programs, for Marshall was able to establish the fact that it was not merely the training that one got, but what distinguished an institution like the University

4. *Pearson v. Murray*, 182 A. 590 (Md. 1936)

5. *Sweatt v. Painter*, 210 S.W.2d 442 (Tex. Civ. App. 1948), *rev'd*, 339 U.S. 629 (1950).

6. *Sipuel v. Bd. of Regents of U. of Okla.*, 180 P.2d 135 (Okla. 1947), *rev'd,* 332 U.S. 631 (1948).

7. *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954), *supplemented*, 349 U.S. 294 (1955).

of Texas law school was the experience of rubbing shoulders with persons who would later be your opponents in the courtroom—the persons who would later be your colleagues in the courtroom—nothing was a substitute for that. And so that by 1950 or '51, it was quite clear that, in higher education, there was no substitute for the integration of races in those institutions.

So, Oklahoma and Texas and later Georgia[8] and others became open at the level of collegiate and professional education. And so this is the great triumph in the movement—to open up education generally.

And there was one very, very important area left. Namely, public schools. Therefore, Thurgood Marshall began to think of the possibility of opening up those schools to everyone. This involved the renunciation of the idea of separate but equal and the embracing of the notion that only one kind of school would be equal, and that was one school for all races, and that was a big step. In 1951, '52, and '53, Marshall brooded over these subjects.

Meanwhile, in various states, individuals were taking the step—at first a tentative step—and then the bold step of pressing their colleges, pressing their states. First, equalize educational opportunity. And then, to equalize it, not by separate schools but by one school for all children. That was a big leap. It was taken very tentatively and with some misgiving and some criticism, really, in some quarters.

But, by 1953, Marshall was determined that there was no substitute for integrated schools. That there could be no new equality in separate schools. So he challenged the very powerful argument that had been set forth in the decision of 1896, *Plessy v. Ferguson*,[9] before the Supreme Court of the United States. It established the doctrine that you could have separate facilities and public accommodations and transportation and education without them being the same. As long as they were separate, they could be equal, and as long as they were equal, they could be separate. That was what the doctrine of *Plessy v. Ferguson*, sanctified by the Supreme Court from 1896 when *Plessy* was decided and in

8. *Holmes v. Danner*, 191 F. Supp. 394 (M.D. Ga. 1961) (opening the University of Georgia to African Americans).

9. 163 U.S. 537 (1896).

1953 when we were on the threshold of a very new, daring, and risky venture before the United States Supreme Court.

DR. ARSENAULT: Perhaps you could tell us the specifics of how you came to become directly involved in preparation of the *Brown* decision, when the cases came together.

Perhaps you could also talk, if you will, John Hope, about some things you and I have talked about before: the notion of contingency, of contingent events, of unexpected developments in the historical equation, of things happening that you couldn't foresee. I'm thinking here, of course, of Chief Justice Vinson.

JOHN HOPE FRANKLIN: Well, the cases, the five cases that were involved in what eventually came to be the *Brown* decision in 1954 had come up from Delaware,[10] the District of Columbia,[11] Virginia,[12] South Carolina,[13] and Kansas.[14] The people who were instrumental in bringing these suits were risking their lives, literally their lives. And they not only lost in many cases their jobs, they lost more—their churches were fire-bombed. Their homes were attacked. Their children sometimes were set upon. It was a very, very dangerous situation.

And I watched all this with interest, and I watched it, I must say, with growing personal involvement.

At the time I went to Washington, D.C., as the professor of history of Howard University in 1947, I became more and more involved, publicly involved in problems relating to segregation and the like. With my own personal and professional life I was put in a position constantly of seeing what was going on, and I became involved in it in a very special way.

In 1950, I was invited to be a visiting professor at Harvard University, an unheard-of development, and I accepted it with great pleasure. I was honored. I had received my graduate degrees there. I went up there and I taught for a summer. And there

10. *Gebhart v. Belton*, 91 A.2d 137 (Del. 1952), *aff'd sub nom. Brown*, 349 U.S. 294.

11. *Bolling v. Sharpe*, 347 U.S. 497 (1954), *supplemented sub nom. Brown*, 349 U.S. 294. The lower court's opinion was not reported.

12. *Davis v. County Sch. Bd. of Prince Edward County, Va.*, 103 F. Supp. 337 (E.D. Va. 1952), *rev'd sub nom. Brown*, 349 U.S. 294.

13. *Briggs v. Elliott*, 103 F. Supp. 920 (D.S.C. 1952), *rev'd sub nom. Brown*, 349 U.S. 294.

14. *Brown v. Bd. of Educ. of Topeka*, 98 F. Supp. 797 (D. Kan. 1951), *rev'd,* 349 U.S. 294.

were students at the university who were most cordial and acted as though they were interested in my becoming more than a visiting professor. But by the time I had finished teaching there and had gone back—was *brought* back—to Howard University, I realized that if I was ready to go to Harvard, Harvard was not ready for me to come there. And so I tried to forget Harvard University.

In 1952, I was invited to be the visiting professor at the University of Wisconsin at Madison. I went there and taught for a semester and, by the end of the semester, I was sure that Wisconsin was not as ready for me as I was ready for Wisconsin. And I went away.

In the summer of '53, I was invited to teach at Cornell University, and at Cornell University I walked into my class one day and students were passing among themselves a sheet of paper. I was curious as to what they were doing, but I didn't ask them. But they were sensing the fact that maybe I was suspicious. And in order to make certain that they were straight with me and that they were not doing something that I would frown upon, one of them came to me at the end of the class and said, "You might be interested in knowing what we were doing when you came in." He said, "We were circulating a petition asking the Department of History to invite you to be a member of the department." And I thanked him. And I walked away. And I left knowing that I wasn't going to be invited to Cornell. They were not interested in having a regular slot filled by an African American. They just weren't "ready" for it. That's "ready" in quotation marks, in case you want to know.

And it's about that time—and I'm giving you that background in order for you to see how I might be impatient with these people—I'm just about sick and tired of going around preaching for a call, as we sometimes call it. And after that I was not going to preach for the cause anymore. And it was at the end of that summer that I got a call from Thurgood Marshall. He asked me what I was going to be doing in the fall. I had been at Guggenheim in the first part of the year; to the University of Madison, Wisconsin, in the second part of the year; and Cornell University in the summer. When he asked me what I was going to be doing in the fall, I told him, "There's nothing else I'm going to do in the fall except go back to Howard University and teach." And he said, "You know what else you're going to be doing?" I said, "Oh, no."

He said, "You're going to be working for me." And I said, "Doing what?" He said, "Doing what you've done before. You've got to work and help to shape the argument in a case." And then he told me of the re-argument in *Brown* and what I had to do.

And then, as only Thurgood Marshall could put it, he threatened me in a way that I knew that I was going to be in danger if I didn't accept his invitation or his command. So I said, "All right," and I decided to join forces with him.

I joined Thurgood Marshall in the late summer of 1953, as sort of the director of the nonlegal-research program, trying to provide answers to questions that had been raised by the United States Supreme Court.[15] These five cases had been argued earlier

15. The Court asked for briefs and oral argument addressing the following questions:
1. What evidence is there that the Congress which submitted and the State legislatures and conventions which ratified the Fourteenth Amendment contemplated or did not contemplate, understood or did not understand, that it would abolish segregation in public schools?
2. If neither the Congress in submitting nor the States in ratifying the Fourteenth Amendment understood that compliance with it would require the immediate abolition of segregation in public schools, was it nevertheless the understanding of the framers of the Amendment
(a) that future Congresses might, in the exercise of their power under section 5 of the Amendment, abolish such segregation, or
(b) that it would be within the judicial power, in light of future conditions, to construe the Amendment as abolishing such segregation of its own force?
3. On the assumption that the answers to questions 2(a) and (b) do not dispose of the issue, is it within the judicial power, in construing the Amendment, to abolish segregation in public schools?
4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment
(a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or
(b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?
5. On the assumption on which questions 4(a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4(b),
(a) should this Court formulate detailed decrees in this case;
(b) if so what specific issues should the decrees reach;
(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;
(d) should this Court remand to the courts of first instance with directions to frame decrees in this case, and if so what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?
Gebhart v. Belton, 345 U.S. 972, 972–973 (1953).

that term, and when the term was over, there was no decision handed down. Everybody was waiting in the summer of '53 for the Supreme Court to hand down its decision, and it didn't. Instead, it asked a number of additional questions that were largely historical questions. And only historians or people trained as historians could answer those questions.

What were the intentions of the framers of the Fourteenth Amendment regarding segregation in public schools? What was the intent of the persons who voted for the Fourteenth Amendment at the various conventions, state conventions, state legislatures, regarding segregation in the public schools? Did they think that the Fourteenth Amendment outlawed segregation or not?

Those were questions that both sides, the plaintiffs and the defendants in those cases, were faced with. As to how they would answer, I can only say that the members of the legal staff of the NAACP Legal Defense Fund were simply petrified. Frightened out of their wits, they didn't know what to do. And that was why Thurgood Marshall was soliciting not only my support or my assistance, but the assistance of large numbers of others: nonlegal researchers in history, political science, sociology, psychology, and whatnot.

Now, one of the remarkable things that happened about this time was that the—the Chief Justice of the United States had died. Died in his sleep. Fred Vinson, of the State of Kentucky.

Now, I had met the Chief Justice. I'm not name-dropping here; I just had met him. My father wanted—wanted more than anything in the world in his life—to be admitted to practice before the United States Supreme Court. He didn't have any cases to go before the Court; he just wanted to say that he had been admitted to practice. And so he was presented by a lawyer from Tulsa who had credentials to practice, and the lawyer recommended my father to be admitted to practice before the United States Supreme Court.

I went that day. And I was never more proud than I was to see my father stand up and to see Chief Justice Vinson welcome him to the Court and invite him to bring his cases to the Court. My daddy had no cases to bring to the Court, but he was welcome there. That's the occasion on which I met Chief Justice Vinson.

He died shortly after that, and a new judge was appointed by President Eisenhower. A man who had never been a judge. He

had been Attorney General and Governor of the State of California, but not a judge. He had no legal—no judicial—training at all. That was Earl Warren, who now became the Chief Justice of the United States Supreme Court.

Warren was anxious to bring *Brown* to some kind of resolution, and so the case was to be reargued. This is when I entered and tried to do something, along with a large number of nonlegal researchers. From students from Yale to Alfred Kelly of Wayne State University to Herbert Gutman to Kenneth Clark, the psychologist, to John Davis, the political scientist at City College. And so forth. We were all to work on these questions and try to provide the answers for them.

DR. ARSENAULT: If you could, please talk about what it was like to work with Thurgood Marshall and maybe also talk about Earl Warren on the unanimity question.

JOHN HOPE FRANKLIN: All right. So I'm on the job to work for Thurgood Marshall. I started in late August. And despite the fact that I had a full teaching load at Howard University, the chair of the department was gracious enough to arrange my teaching load so that I was free by noon on Wednesdays every week. So I had from Wednesday until Sunday to serve my second master, namely, Thurgood Marshall.

And I would leave on the train—no flying in those days. I would leave on the train shortly after noon on Wednesday and get up to New York and be there shortly after dinnertime. Then I would check in at the hotel; we had regular reservations. And I would go around the corner to Thurgood's office, where there would always be a number of other people. Lawyers were there. Nonlawyers were there. All working—trying to answer these questions.

As an aside, I observed something. On one of the trips up to New York I went on a Friday. This was before Pope John XXII had, through the Vatican Council, suspended certain rules with respect to the observance of Friday as a fast day. I knew by that time to go to the dining car at the time it opened, and I was ready to move in and be seated.

Well, those of you who can remember back in the days when there were diners, you know that there were four seats at each table. And I would go over and sit at one of those tables. The din-

ing car would fill up, and people would be standing. No one would come and sit at my table. No one. I didn't worry about that. If they wanted to fast by standing up, that was their problem.

And it interested me that at times they would come in and, well, I didn't rush to eat. I took my time. And then some people would be eating and then leaving. They would vacate the tables across from me. And then I would hear the conversations that ran something like this on this Friday afternoon. The waiter would come, show the menu, and ask them what they wanted. And I remember one person said, "Well, I can't have meat. This is Friday." This person was fasting. This great Christian was fasting in commemoration of the crucifixion of our Lord, Jesus Christ. But he couldn't sit by me. You see, he wasn't that much of a Christian. He just was observing the fact that he couldn't eat meat. And I suppose that he couldn't sit by black meat anyway.

Well, that showed me, told me a lot about where we were and how far we had to go. People were that particular about their own lives and were that deep in the most remarkable manifestation of prejudice. But I didn't worry about it then. I worried about what I had to do when I got to New York.

When I'd arrive in New York, either that day or any day, Thurgood Marshall was in his office working. I never saw a man work as hard as he worked. He was always there. I don't care what time I arrived. When I went the next morning, he was there. And he sometimes, most of the time, ate a snack at his desk and worked in the afternoon, worked into the night. And there were people around him, like Spottswood Robinson,[16] Oliver Hill,[17] Constance Motley,[18] and other lawyers. And there we were—the nonlegal research staff in the room—working on papers and preparing seminars to conduct for other lawyers.

16. Richard Kluger, *Simple Justice: The History of* Brown v. Board of Education *and Black America' s Struggle for Equality* 197, 575–578 (Vintage Books 1975) (noting that Robinson later became a federal judge, and describing his participation in arguing *Brown* before the Supreme Court).

17. *Id*. at 128 (describing Hill as a leader of the NAACP legal fight in Virginia and his role as the first African-American to serve on the Richmond, Virginia city council).

18. *Id*. at 273, 638, 760 (describing her as having joined the staff of the NAACP Legal Defense Fund in 1945 as a law clerk, passing the bar in 1948, and staying at the LDF for twenty-four years; she was a member of Marshall's "inner circle," and later became the first African-American woman to serve as a federal judge).

And it was an enormous task. For we did not know, really, where to turn at first, except to do research. And we all worked and did the research. Worked in the Archives, worked in the library, worked in the Supreme Court library. Trying to get some view, some notion of what the framers of the Fourteenth Amendment had in mind with respect to segregation in the schools. And what the other persons, participants, legislators, and constitutional authorities had in mind with respect to this question of segregation in the schools. Very, very difficult. Very, very—very nearly impossible to find out what this was.

And Thurgood never permitted us to speculate on how the case was going to come out. Not ever. Not *ever*. We were not allowed to mention the fact that the judges are going to do this, or the judges might do this. No, no, no. You just take that away. Just work and try to develop an argument that would make it impossible for the judges to do anything but decide in favor of Linda Brown and the others in the case.

And so that's the way it was. Sometimes, after working all day and into the evening, around midnight he would say, "How about a fifteen-minute break?" And I would break away to the hotel. I knew that, if I was going to work the next day, I couldn't work all night. But he could and did. He would be there in the morning when I got there. I never arrived at the office before him, and I was always there early in the morning.

We had to write papers. We had to run seminars. We had to do various things to shore up the lawyers and their arguments, to provide them data, to give them information about the intent of the framers of the Fourteenth Amendment, to the extent that we could find that information, and the other people who were involved in ratifying the Fourteenth Amendment. I'm not at all certain that we succeeded in providing grist for the mill, as it were, or tangible, hard information about the intent of the framers of the Fourteenth Amendment. But I think we did something that was very important. We gave the lawyers a sense of security in dealing with the philosophical problems.

You could see that self-confidence rising in the lawyers from week to week. They got to the point where they could quote Thad-

deus Stevens[19] on the floor of the House of Representatives. Or they could quote Charles Sumner[20] on the floor of the Senate. And they could improvise—*at least* improvise—what these members were thinking and saying and doing. And so we had the feeling that, even if we didn't find the smoking gun, as it were, with respect to intent, we gave the lawyers a sense of confidence that made them stand up tall when they got to the arguments in the Supreme Court. And that they would be able to do as well as the opposition, the defendants.

Meanwhile, not only were we trying to find information on these subjects, but we were also trying to find out whether or not the opposition was doing any kind of research and studying what we were doing. And we didn't find that they were doing it.

We even had the notion that, if there were papers or magazines or volumes in the Archives or in the Library of Congress or in the State Department, that we might just check them out and keep them—just in case the other side might want the same materials.

The astounding thing is that we never found that the opposition requested any materials that we knew they would need to discuss these questions of intent or whatever the legislatures and the Congress were thinking and doing and saying about these matters. They never did. And that persuaded us—and this is the thing Marshall would never let us do—to think that they weren't working the way we were working, and that we could mow them down with information that we had and they didn't have, and that we had and we were going to try to keep them from getting.

But we later realized that they were not interested in that kind of research and effort. That John W. Davis[21] and his team were going to "wing" it, as it were. They were going to make these eloquent statements—he would even shed a few tears in his arguments. But he was not going to bother with the kind of research

19. *Id*. at 46–47 (describing Stevens as a founder of the Republican Party and a driving force behind Reconstruction legislation in Congress in 1866).

20. *Id*. at 50 (referring to Sumner as "Thaddeus Stevens' comrade-in-arms through the early stages of the Reconstruction drive," and as the director of the legislative fight leading up to passage of the Civil Rights Act of 1875).

21. *Id*. at 525–529 (describing Davis's background as a lawyer and statesman, including service as Solicitor General of the United States, Ambassador to England, and as having participated in more cases heard by the Supreme Court than any other lawyer in the twentieth century).

that we were doing. And so it was sort of one-sided in that respect.

But what is, I think, important here is to recognize the fact that the strategies in this case as well as in succeeding cases would be shaped by—not so much by the law as by the prospect of—being able to extend the law beyond the courtroom and into the community. So that, all along, I think the Court was thinking about the consequences of *Brown*. And, all along, the legal staff had to think more in terms of the consequences of *Brown*. As we shaped the case, we were shaping the post-*Brown* strategies and approaches. And in that sense I think that the Legal Defense Fund was in a position to proceed—to participate in—not only in *Brown I*[22] but in *Brown II*[23] and in subsequent years.

DR. ARSENAULT: I wonder if you could tell the story of your reaction when the decision came down on May 17, 1954. Do you remember the specifics of that period?

JOHN HOPE FRANKLIN: Well, we were not able—that is, the nonlegal research staff was not able—to hear the arguments before the Court. We didn't rate that high.

You can imagine the demand for tickets for the people who wanted to hear the arguments. The lawyers, of course, got tickets, and their associates got tickets. But we didn't rate high enough to get tickets. And so we didn't get to hear the arguments.

They gave us copies of the briefs, and we were pleased, especially if they had a footnote in one of the briefs or some reference that might have indicated that we had contributed something to the writing of the briefs. But we didn't hear the arguments.

When the arguments were made in December of 1953, the lawyers were just told, rest assuredly, that the only thing they could do was to wait until the spring of 1954. Perhaps toward the end of that term of the Supreme Court.

And so I suppose we thought perhaps the Court was going to hand down the decision in June. That's the last week before the Court breaks—before it takes the holiday—from July 1st to October 1st. And so we really weren't ready for the decision. And on the afternoon of May 17, 1954, I was sitting in my office. My wife,

22. 347 U.S. 483 (1954).
23. 349 U.S. 294 (1955).

who was a librarian at Springarn High School, called me and said, "Have you heard what the decision is?" I said, "No." She said, "Well, the Supreme Court handed down its decision today." And I said, "What was the decision?" And she said, "Linda Brown can go to an integrated school in Topeka, Kansas."

And I got out in the street, I'm sure. And I think it can be said that there was dancing in the streets in Washington, D.C., and a number of other places.

We felt for the moment that maybe the long and hard work in which we had been engaged was worthwhile—that at long last we had come to the end of a very wonderful road—and that the Supreme Court had declared that separate schools are inherently unequal and, therefore, unconstitutional. It was a sweet, momentous, historical decision. And if we had just a fraction to do with bringing about that decision, we could not be anything but grateful for it. And we all were, immensely grateful. Immensely moved.

I don't know how many of you have seen that marvelous picture of George Hayes and Thurgood Marshall and James Nabrit standing before the Supreme Court that day, arm in arm, obviously just ecstatic with joy.[24]

It was a wonderful occasion. And although I was not there and could not have been there, I nevertheless rejoiced with them in this triumph of which we all felt we were a part.

DR. ARSENAULT: John Hope, can you remember when you actually read the decision and had a chance to react to the fact that the decision was unanimous? Did that shock you? Did you know anything about Earl Warren's intent behind the scenes to make sure that the decision was unanimous?

JOHN HOPE FRANKLIN: No. I did not—I did not know anything about that. I was surprised that the decision was unanimous. Despite the fact that Marshall would not permit us even to speculate whose side—what side—which justice was going to be

24. Behring Center, National Museum of American History, *Separate Is Not Equal:* Brown v. Board of Education, http://americanhistory.si.edu/brown/pdf/unit3/28.photograph.hayes%20marshall%20nabrit.pdf (accessed July 21, 2004). George Hayes was general counsel at Howard University. Kluger, *supra* n. 16, at 578. Nabrit developed the nation's first law-school course in civil rights while on the faculty at Howard. *Id.* at 127. The two men shared the oral argument in *Bolling v. Sharpe*, the District of Columbia case consolidated with *Brown*. *Id.* at 578.

on, that sort of thing, we all guessed. Maybe it would be Felix Frankfurter. He was so technical and so particular, we thought he's just got to be cranky and he wouldn't go along.

As a graduate student at Harvard, I audited some of Frankfurter's courses. And when he was appointed to the United States Supreme Court, there were a bunch of us who wanted to see him on his last day lecturing. We were going to be there witnessing history. And, sure enough, we were there when Professor Warren came down and informed him.

Frankfurter was sitting in the front row. He was harassing a student who was trying to make a report. He wouldn't let the student say two words before he would interrupt him. Frankfurter was short and very feisty and an extraordinary genius. But he was hard on the students.

And then when Warren came down—we saw Dr. Warren come in the door in this amphitheater. And he was looking around. He was looking for Frankfurter. We suspected that he was coming with a message that Frankfurter had been confirmed by the United States Senate to be on the Supreme Court. And so we just—we held our breath, really. And finally Warren got down to him and handed him a note. And after that, Frankfurter really didn't bother that student anymore. He just sat there. And then when the student finished, he got up to make his farewell address. We were all sitting there listening to his farewell address.

That's a long way of saying that we already knew something about Justice Frankfurter. And we were fairly certain that he was not going to go along. Not that he was in favor of segregation, but he was just that technical, you know. We knew that he was. We didn't think it would be unanimous. But it was.

And I didn't know anything about the effort, the very careful effort that Chief Justice Warren was making to persuade his colleagues that the decision had to be unanimous. I would learn that much later. And I think he was right; it had to be unanimous. You couldn't have a divided court on something so momentous and so delicate and serious. It would be hard enough with a unanimous decision. And to have one that was split would be disastrous. Tragic.

And so we just celebrated and were awed by the unanimity of the Court. But we did not know that unanimity would not be

enough, and that the decision would be attacked before it was finished.

And it was attacked every day in every way by such large numbers of people. Not all of them in the South, but most of them in the South, condemning the United States Supreme Court and calling for utter and complete resistance. Those of you who are old enough to remember the late 1950s know how difficult it was to open up even one all white schoolhouse even to one young, black person.

And so the decision was a great one, but it was not universally well-received. And that happened on the 17th of May, 1954. And I'm afraid that it continued for decades and decades and decades.

DR. ARSENAULT: I don't want us to end before you talk for just a minute or two about the relationship between *Brown I*, the decision of May 17, 1954, and what we sometimes call *Brown II*, the implementation decision which came more than a year later on May 31, 1955. Can you recall your sense of things? Did you expect an implementation decision that would define what the first decision really meant and what the timetable would be? And when the decision came down, did you think that perhaps in a year or two there might actually be a desegregation of the public schools in the South, particularly in the Deep South?

JOHN HOPE FRANKLIN: Well, I can only say that I thought that the Supreme Court decision was a Supreme Court decision. It had to be obeyed. I didn't know—*I didn't know*—you could defy the highest court in the land. I didn't know you could turn your back on the Chief Justice and tell him to go jump off the pole or something. I didn't know that. I thought you had to obey the law. And that was not merely because I was the son of a lawyer, but also because I had studied constitutional law myself.

I thought judge-made law was as good as any other kind of law, and that you wouldn't dare—you wouldn't dare defy the United States Supreme Court. I was mistaken. Bitterly mistaken. Tragically mistaken. Completely mistaken.

And I stood in awe when the Southern Manifesto was issued that year. That the other expressions of defiance and rejection could be so absolute and so disrespectful. So I didn't expect there to be this kind of resistance. Not because I thought they were in-

capable of resisting, but because I thought the American people had too much respect for the law. And I simply was mistaken.

DR. ARSENAULT: Do you think that might reflect the fact that you had lived in Oklahoma and in Washington, D.C.? If you had spent most of your life in Mississippi or Alabama, perhaps in the Deep South, would you have been more pessimistic?

And can you also comment on how the Court came up with its doctrine of "with all deliberate speed"; whether there was any kind of deal made in the first decision that the justices would water it down in the second decision? Give with the right hand and take back with the left?

JOHN HOPE FRANKLIN: Well, I don't—I don't really know. I do have the feeling that the Court, in May 1954, expected its decision to be obeyed. I think that Chief Justice Warren wanted to believe that the American people were law-abiding. He might have had some misgivings about it, but having been elevated to that exalted position, his first time ever to be a judge, I think he felt that the weight of his position was so powerful that you couldn't do anything but obey him. It must have come—I don't know whether it came as a greater shock to him than to me as he watched what was happening to his own decision and how disrespectful the people were and how much pleasure they took, how they vowed to reject it. One man said, "I would give my life before I let one black child into the school where my white child is." Those were pretty strong words.

Now, if there was some misgiving on the part of members of the Court, I would say that it was on the part of the Chief Justice. There might have been some who believed that, well, we didn't have to make some concessions or some effort or to modify or to mollify or to water down the unanimous decision with its unequivocal stand on segregating schools. But if that was to happen, it was to happen later.

Now there was enough, though. By the time what we call *Brown II* was handed down in May 1955, there was enough experience with *Brown I* that they knew it wasn't working. It wasn't working. Not well. There was this blatant opposition to the Court. And so the Court made out some specifics, but when it said, as a general rule, that the enforcement of the law should go with all deliberate speed—with all *deliberate* speed—that could have

meant go slowly now, stopping for a while, and not doing too much of anything. What is "deliberate speed"? It's whatever you want it to be. It's as slow as you want to go. I think that gave the southern states and their leaders a kind of breathing spell, which they used to be more creative than ever in eluding and avoiding enforcement of the law.

DR. ARSENAULT: One final question before we throw it open to questions from the audience.

You know, we've been talking about the *Brown* decision. The declaration by the Court in 1954 that de jure segregation was unconstitutional and illegal. In other words, you could no longer segregate school children by law. The decision applied quite specifically to the South where the schools were segregated by law. But, of course, we know that in many parts of the United States the schools and other institutions were segregated de facto, by custom in fact.

But, I wonder if you could just speak for a moment or two about your experience in 1956 when you accepted the chairmanship of the history department at Brooklyn College. And perhaps what that told you about the difficulty or the complexity of the problem that Americans faced in terms of racial prejudice.

JOHN HOPE FRANKLIN: The decision in *Brown* was handed down in '54, *Brown II* in '55. I went to Brooklyn College as chairman of the department in 1956. I was confused. On the one hand here is *Brown*. Here are *Brown I* and *II*. *Brown* said something about desegregation in the public schools. But here is the experience I had which showed the laws of the South with respect to desegregation, and they weren't doing anything about it.

When I was made chairman of the history department of Brooklyn College, it was an appointment so noteworthy that it made the front page of the *New York Times*. My picture, you know, on the front page of the *New York Times*. Imagine—*imagine*—I just wanted to be a teacher. I just wanted to teach school. That's all. You know, there are all kinds of things that can be on the front page of the *New York Times*. But here I am, front and center on the *New York Times*.

Okay. So I went to New York with my wife and my little boy; he was four or five years old. And we got a place to stay temporar-

ily. An apartment. But we wanted to live in a house and I wanted to walk to work.

So, not long after I got there, we decided to live down near Brooklyn College. It's one of the best residential sections of the whole city. That's where we should be. And I could walk to work.

And I went to the real estate dealers, assuming that they were going to cooperate. I couldn't get a real estate dealer in the entire city of Brooklyn to show me a house—to show me one house—not one. I then realized that the real estate dealers were not going to show me a house. There were houses for sale. So I was going to get one myself.

And so I began reading the *New York Times*—the want-ad section, the classified section. We began to drive through the streets, especially down where we wanted to live. And we finally found the house that we thought we'd like to get. And we couldn't find a loan. First, my lawyer said, "Do you have any insurance?"

I said, "Yes. I have insurance. I have a $25,000 policy." And I told him it was with a certain company.

He said, "Well, our struggle is over. They just appropriated a hundred million dollars to loan money to their clients to buy houses. So you can go out and celebrate." And he said, "What's the name of your insurance agent?" I gave it to him.

The next morning, my insurance agent called me and said, "John Hope, I hope you understand. We've done a lot for you people."

I said, "What do you mean, 'you people'?"

He said, "Well, we've just given so much. We've done so much for them."

I said, "You haven't done anything for me."

So he began equivocating on that. "But we just can't let you have the money," he said. "You're skipping some blocks." He said, "You live on Eastern Parkway, and you want to go all the way down to New York Avenue." He said, "That's a long way."

I said, "No, no." And he replied, "There's no black between Eastern Parkway and"—he named the street. "You can't go down there. You have to take one step at a time," he said. "But we'll try to get your money for you."

I said, "From where?"

He said, "Well, maybe another company."

I said, "Another company?" I said, "That's the company I ought to be insured with."

I said, "As of this moment, you can consider my insurance policy canceled with your company. Canceled."

And that was the beginning. It's a long story. I don't want to go through it. As I said in my own autobiography, I could have written a book while I was trying to find a place for my family to stay. In any case, we finally found a house.

There's one thing I want to say: after we couldn't get the loan from the insurance company, my lawyer tried to get it from the bank. There was not a bank in New York City, including Harlem, that would lend the money to us. And I'm not talking about something that would shake the national debt. We're talking about $10,000. Something like that. Money I did not have.

I finally was able to get it because my lawyer's father was on the board of one of the banks. And that's the way I got it. Not through any merit, but through knowing somebody who knew somebody.

Well, that was the way the area—the neighborhood—was kept white, you see. When we moved in, there was not a black person in the school when my son went to school. And not only that, but they tried to run us out of the neighborhood after we moved in by harassing our son. Six years old. I don't see how adults can hound a little boy. That takes talent. That takes something evil. But they hounded him on his bicycle and when he walked down the street.

My wife dropped her career. She said, "I have to be home for him when he comes in the afternoon. I can't be away. He's being treated like this. I've got to be here when he gets here to give him some kind of security." And they harassed us by calling on the telephone at night, during the night. And by doing everything to make it unpleasant. Not a person on that block, not a person in that part of town, didn't know who I was. They had to know, because I had been in the newspapers—the newspapers on the front page. I had been on television, and all these things. It didn't matter. "We've got to keep this neighborhood white." And this is up North. Up *North*.

When everyone talks about the South, I say, "Well, it's bad, but the worst racial experiences I've ever had were up North." Up North. We don't want to get snow down here either, by saying

that. But it's bad down here, too. It's worse than some places up North.

So if you can't find a place to live, you can't put your kids in school—but they keep that neighborhood white, and they keep the schools white. And they keep the schools segregated. They keep the schools unequal, because they were not going to do as much for the ghetto schools as they do for the other schools. They're simply not going to do it. And that's what Warren had in mind when he said segregation is inherently unequal. It is inherently unequal.

DR. ARSENAULT: I wonder if you can just say a word or two about that point. You've told me, many times, that as bad as it was in Brooklyn for you and your family, the experience of Brooklyn College was quite different. And, of course, that was kind of a catapult for you to eventually go to the University of Chicago.

JOHN HOPE FRANKLIN: I certainly don't want to say that Brooklyn College was anything but cordial to me. After all, I was minding my own business at Howard University, thinking I would never get a chance to leave there. And all of a sudden, I was invited to be not only a full professor at Brooklyn College, but to chair the department at Brooklyn College, and I was received warmly and cordially. And, indeed, by the end of my second year, I was regarded as a father figure, not merely to the students but to most of those in my department who came to me for guidance, advice—for everything—and who had me speaking at the funerals of their departed, beloved ones and all the rest of it. I had the most wonderful, fruitful, marvelous time as a professor at Brooklyn College.

But these people that I mentioned earlier—they were not at Brooklyn College. They were with me in the neighborhood. It was one of the most attractive communities in the city—in the borough. But I finally, finally settled down and was fairly, fairly—I think fairly—well-accepted, even by my neighbors.

DR. ARSENAULT: John Hope, thank you so much for your remarks, and for honoring us with your presence.

Dr. Franklin responded to several questions from the audience at the community forum, including the following:[25]

QUESTION: Do you know of anyone in this nation who is black and who was against the forced busing of the schools, and who argued that Negro schools were not producing scholars?

JOHN HOPE FRANKLIN: Yes, I know some African Americans who were opposed to the desegregation of schools, who argued with some force that black children going to predominantly white schools would not get the kind of training or education they should get, that there was low expectation of them. And, therefore, they were not surprised that the children didn't perform well. They'd just let them sit there and not perform well. There were black parents who felt that their children's self-esteem would be destroyed by their going to predominantly white schools. So, yes, I know a number of people who were like that. But that's unfortunate.

What is also unfortunate is that a number of black teachers lost their jobs because they were regarded as redundant or not necessary because the schools were being united, being desegregated.

And the cost—the price—of desegregation is immeasurable. It's considerable. It's a question of whether or not you believe that that's the only way to destroy the poison in our society. As bad as it is, segregation is poisonous. Absolutely poisonous. And if you don't have good intentions with desegregation, it can end up disastrous for a generation.

But the antidote to that is, if you're going to send your children to a desegregated school—I don't care how good it is—parents have the responsibility themselves of making certain that the school lives up to what it's supposed to do. You can't send your kids to any kind of school, segregated or not, without your personal and deep involvement in those institutions. And if you're not involved, then if there's a school where you've got one little black child or the school has fifty black children and one white child, it's not going to be right unless the parents are getting involved and making certain that their children are given the right

25. These are edited versions of the questions, reflecting the essence of the questions asked rather than repeating the questioners' statements of personal introduction.

kind of treatment all the way around. That their children will not have their self-esteem destroyed by vicious teachers who think they can't do anything and who neglect them because they feel their responsibility is to train the white children and leave black children without any training.

By the same token, we must be very, very diligent, and very, very careful that our black students do what they're supposed to do. Parents have to do that. You can't leave it all up to the schools.

QUESTION: Are the opportunities equal in Florida? And, if not, how do we get there? How do we make it equal?

JOHN HOPE FRANKLIN: I hope you know that I'm not a specialist on Florida education. While I have some views, some opinions about it, they're not based on sound research, study, and personal knowledge.

I am strongly of the opinion that affirmative action, whatever it is, has to be used with insight and discretion. And it must not be regarded as a kind of make-believe shift to elude or evade equality in every respect.

Affirmative action, let me say, is not new. We've always had it. But until recent years, it has never been—well, blacks have never been the beneficiaries of affirmative action.

When I was a student, when I was graduating from high school, any white child could go to the University of Oklahoma but I couldn't. You know, *any* white child. But not me. And they were enjoying affirmative action. They were enjoying preferential treatment. All the other things you want to say that describe people who oppose affirmative action, they have been enjoying affirmative action all along. There is nothing new or strange about it. The new and strange thing about it is it gives blacks the opportunity to get training. And they're entitled to have that training, that opportunity, just like anyone else is.

And I don't know whether Florida's governor is seriously interested in making certain that every child in the State of Florida has an equal opportunity—I'm not sure. If that's what he means—jolly for him. Good. But if he has something else in mind in his affirmative action, then I'd raise my eyebrows at least. And maybe my voice, too.

QUESTION: Dr. Franklin, do you have any concerns or ideas about how President Eisenhower's decision in 1957 to nationalize the National Guard in Arkansas may have led to the successful implementation of *Brown I* and *Brown II*?

JOHN HOPE FRANKLIN: Well, I don't think there's a question about it, that when the City of Little Rock was opposed to admitting African-American students to Central High School and the whole city was driven by the controversy, the only way it could be settled was for the President to intercede with the National Guard and to bring about some semblance of order, if not peace, in the city. And, to that extent, I think he was probably right in doing it.

I hate to reach that conclusion, because I think that the public school is no place for the National Guard. On the other hand, that's an expression of what I feel is death-bed repentance on the part of President Eisenhower, who had said earlier that the greatest mistake he made in his entire life was to appoint Earl Warren to be the Chief Justice of the United States Supreme Court. So he was trying to keep the peace in Little Rock, if nothing else.

QUESTION: As a parent and teacher, I think of the problems that your son had to go through at such an early age. How did you prepare him?

I teach eighth grade. But children, the things that happen to them—in the Ruby Bridges case, in which this one little girl the whole year was in school by herself, and the students going to Little Rock, and the horror and the terror that was put upon them—what did you say to your son to make him understand? Was it important enough for him to go through the things and for our children to have gone through those things in the past? Was it important enough to be terrorized for the results that we've gotten? What did you say to your son?

JOHN HOPE FRANKLIN: Unfortunately, my wife probably said more to him than I did. She's no longer living. I don't know all the things she said to him. But, you know, we held his hand. And I say that figuratively, but you understand what I mean. We held his hand. And we gave him a sense of security. That's what my wife did. She wasn't going to work if she had to come home to a boy who had been destroyed by the neighbors.

Now, fortunately, she could afford not to work because I was working. And I could make a living for the three of us. But we, as parents, have to make sacrifices to protect our children. And sometimes those sacrifices are great. They've got to be made.

I don't know what else—when I say hold his hand, you know, I mean that in a figurative sense of giving him the strength to carry on and assuring him that he is somebody.

When I was six years old and we were thrown off a train and I was crying, my mother told me, "You're as good as anybody there on that train, and don't you waste your time crying. You use your time to make certain that you prove to them and to the world that you're as good as anybody else." My mother told me that when I was six years old. And we certainly told our son that when he was six.

We told him even more, because we were able to provide him with opportunities with alternatives, and with opportunities that gave him strength and understanding of what the problem was. And I say today I'm proud of him, the way he stands up tall. He's six-four anyway. But he stands up tall and tells people off whenever there's a problem that he confronts. He has the same attitude, position, that we had when he was six. And he has it now. And he's fifty-one.

DR. ARSENAULT: I would like to recommend to you a book that John Hope edited with his son that his father—John Hope's father—had written.[26] It is a wonderful book about his father's life as a black lawyer, an extraordinary story.

John Hope, I wish you could talk about your sense of Thurgood Marshall in his final years, about his sense of regret and sadness, and how he seemed to experience a kind of bittersweet quality as he looked back over his life and career and the *Brown* decision.

JOHN HOPE FRANKLIN: After Marshall went on the Court, I had very little contact with him except by telephone and by correspondence. I shall never forget when he was writing the opinion in what turned out to be his dissent in the *Bakke*[27] case. He called

26. Buck Colbert Franklin, *My Life and an Era: The Autobiography of Buck Colbert Franklin* (John Hope Franklin and John Whittington Franklin eds., La. St. U. Press 1998).

27. *Regents of the U. of Cal. v. Bakke*, 438 U.S. 265 (1978).

me one day and asked me to give him some references, to start some research on some matters. He didn't tell me what he was working on. I simply deduced later that he was working on the dissent, when I read his dissent and I knew his line of reasoning. But when I called him and gave him the references back, he said, "Thank you." I said, "Why are you so glum?" I said, "Why talk like that?"

He said, "Well, if you knew what I knew—if you knew what I know—you'd be glum, too." And the decision came down in the *Bakke* case that we now embrace. But when the *Bakke* case was handed down, we were not very happy with the decision, the majority decision of the *Bakke* case. We were not happy about it at all. And Marshall was not happy at that point.

One other point. When he was invited to address the bar association at its meeting in Honolulu in [1987], he sent me a copy of his speech, a manuscript copy of his speech. And he said, "What do you think of it? And what should I do about it? Is it all right? And should I modify it in any way?"

I read it. And I sent it back to him. I said, "Man, go. This is it. This is a very good speech. I wish I could be there to hear you deliver it."

In that speech, Marshall had said that the Constitution was a flawed document.[28] And it caused an uproar that he would dare, as a member of the United States Supreme Court, say that the Constitution was, itself, flawed.

Well, we knew it was flawed. It's full of flaws. It's full of racism. It's full of all kinds of things that are un-American. But you would have thought that he had held it up and burned it in public or something like that because of the way the criticism came down on him.

Now, by this time, Marshall was a different man from when I knew him. He was—in his younger days—not only handsome but gregarious and open in his personality and full of fun. A hard-talking, cigarette-smoking, whiskey-drinking kind of person. A *bon vivant*. He loved life. Enjoyed it.

28. Thurgood Marshall, Remarks, *Remarks of Thurgood Marshall at the Annual Seminar of the San Francisco Patent and Trademark Law Association* (Maui, Haw., May 6, 1987), available at http://www.thurgoodmarshall.com/speeches/constitutional_speech.htm (accessed Oct. 23, 2004)).

But there are several things. The first of which is that life on the Court is, at best, reclusive. You have to be—you can't go running around with all your buddies or hang out with the crowd—you can't go duck hunting, I suppose.[29] You've got to go and study law, and write your opinions, and talk with your clerks, and get things straight.

So it's a rather lonely life. Rather lonely. And he was—he got lonely. Not only that, but I should have said that his wife was dying when he was working on the *Brown* decision. He married again and had two wonderful sons that gave him a little light late in his life.

In addition to being reclusive as a result of the kind of court that he had to sit on, he was also standing on the sidelines looking at all that was going on in what we might call aggressive actions—demonstrations, sit-ins, the Freedom Riders, the deliberate violations of law on the part of people to get things going. And, you know, the more that happened, the less people thought of Brown against the Board, Sweatt against Painter, McLaurin against Oklahoma, and so forth. They were just marching and jumping up and down and singing and carrying on and not remembering the sacrifices that people like Thurgood had made.

He risked his life daily. All over the South. So did Charles Houston.[30] So did Leon Ransom.[31] So did so many others, like Bob Carter and Constance Motley.[32] They all risked their lives within the framework of the law, pleading for justice and so forth. Now they're almost forgotten. He's almost forgotten. Nobody is thinking about him. Everybody is thinking about Martin Luther King and his crowd. No denigration for what they were doing—what the King people were doing—but what I'm trying to say to you is why Thurgood Marshall felt that life had passed him by, whether he had been forgotten and sort of thrown away.

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29. Charles Lane, *Scalia Travel Sparks New Questions About Recusals*, Washington Post A2 (Feb. 9, 2004) (available at 2004 WL 55837390) (describing socializing between Justice Scalia and Vice President Cheney, which included a duck-hunting trip, at a time when Mr. Cheney was a named party in a matter before the Supreme Court).

30. Kluger, *supra* n. 16, at 105–118 (describing Houston's upbringing and achievements, including his election to Phi Beta Kappa and selection as the first African-American to serve on the staff of the *Harvard Law Review*).

31. *Id*. at 127 (introducing Ransom as a member of the faculty at Howard University Law School, having graduated first in his class at Ohio State).

32. *See supra* n. 18 (introducing Motley as part of Marshall's circle).

And I'll never forget that interview I saw with him. I just saw it on television. I think he was just about to retire from the Court, and somebody asked him why he was retiring. He said, "I am just old. I'm old." That's what he said. "So let me alone. I'm old." And that's the kind of life he led as he approached his own end. It wasn't a pretty picture at all.

And so, as *Brown* goes down through the decades, the man who's probably more important, more responsible for shaping it and bringing it about in the first place was a man who didn't enjoy what happened after *Brown*. And I think that's one of the consequences of *Brown*. So unfortunate, and somewhat tragic.

But that's the way the ball was bouncing in those days. And I think that, by the end of his life, Thurgood Marshall wasn't at all certain that what he had done was a significant contribution, despite the fact that it was probably one of the most important contributions that any lawyer had made to the development of our society.

QUESTION: After fifty years, we've had a lot of court supervision, intervention, and desegregation. In the last few years, the courts have been moving towards unitary orders and withdrawing their active supervision of desegregation plans. Can you look back and give us your impression as to the experience of, on a generalized basis, the African-American student, both educationally, socially, and otherwise in this fifty-year period? Society certainly has been served in a certain way by desegregation. But what has it done to the student experience?

JOHN HOPE FRANKLIN: Well, we've had pluses and minuses. Some things that happened were good, and some things that happened were bad. I think it's rather remarkable that we have so many upstanding achievers, outstanding achievers in the black community; that they have been able to weather the storm, as it were, and to be very positive in their movements toward the future and their own achievements. I think it's really remarkable.

On the other hand, it's not so remarkable that there are more black men in the penitentiaries than there are in colleges. It's not so remarkable that millions and millions of young black men find life in this country empty and not worth living. They live on the edges, in the lower economy—the illegal economy of drugs and the

like. And it's not very wonderful that they are enshrouded in a sense of hopelessness and helplessness.

And it's not very wonderful when we see some comments about equality and then we argue that this country is color-blind or is moving in a color blind direction when, as a matter of fact, we're not. And when the victims—the most serious victims—of this movement are young, black men.

We see it in St. Petersburg. We see it in Birmingham, Alabama. We see it everywhere. And that is a negation of everything we stand for.

Now, if we believe that people are equal and that everybody has the same chance and there's no inevitable fallibility in human beings as such, then how do we explain the lopsidedness of our society, particularly when it comes to the disadvantages under which the majority, the vast majority of black men labor? And not a small number of black women labor, too. But this is one of the greatest tragedies of America.

And I, for one, simply am appalled by the fact that in 2004 we have vast numbers, millions and millions of Americans, who feel that life is not worth living, and who feel hopeless and helpless.

Where is the equality? Where is the equality of opportunity? Where is the decency of this country? Where is the caring of people in this country? We don't have to go to Iraq to do some missionary work. We've got plenty to do here. I'm not an isolationist at all. Don't misunderstand me. I've spent much of my life trying to spread the Good Word all around the world. I've been around the world many times. So I'm not an isolationist. But I do think that some of the tension, talent, and resources that are put in other parts of the world could be put here. It would make us much stronger. You know—reaching out to other places—if we could say that we as Americans stand together, work together, and improve ourselves together, and then we want to help the rest of the world. And that's not happening.

QUESTION: Dr. Franklin, in light of the widely publicized achievement gap between African-American children and Caucasian children, do you see any merit within the thoughts of those African-Americans who had concerns about desegregating schools?

JOHN HOPE FRANKLIN: No. I don't see the merit. What I do see is the mistakes that we made when we moved away from segregation and toward the desegregation of our institutions.

The merit is not in going back or holding back and becoming and remaining segregated. The merit is in making desegregation work. Making desegregation *work*. That's where the merit is. We didn't work to do it. We haven't worked to do it—not hard enough. We haven't pressed our government. We haven't pressed our communities. We haven't pressed our educational systems to stand up and do what they're supposed to do.

We can't say we're going to run back to our segregated institutions and think that that's going to get us anywhere. I don't think so. I have not lived all these years to want to go back. I want to go forward. I want to improve what we've got. I want to make over what we've got, if necessary. But I don't want to go back to the ghetto. I don't want to go back to segregation. I don't want to go back to Jim Crow. Any of those things. And if you feel somewhat insecure in that, that's because you're not seeing what an optimum condition could exist so far as desegregation is concerned, so far as equality is concerned.

We fight for *equality*, and not for some few crumbs from the table.