INSIDE: HEROES ON THE ROAD TO RACIAL JUSTICE

DELAWARE LAWYER

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BROWN V. BOARD OF EDUCATION

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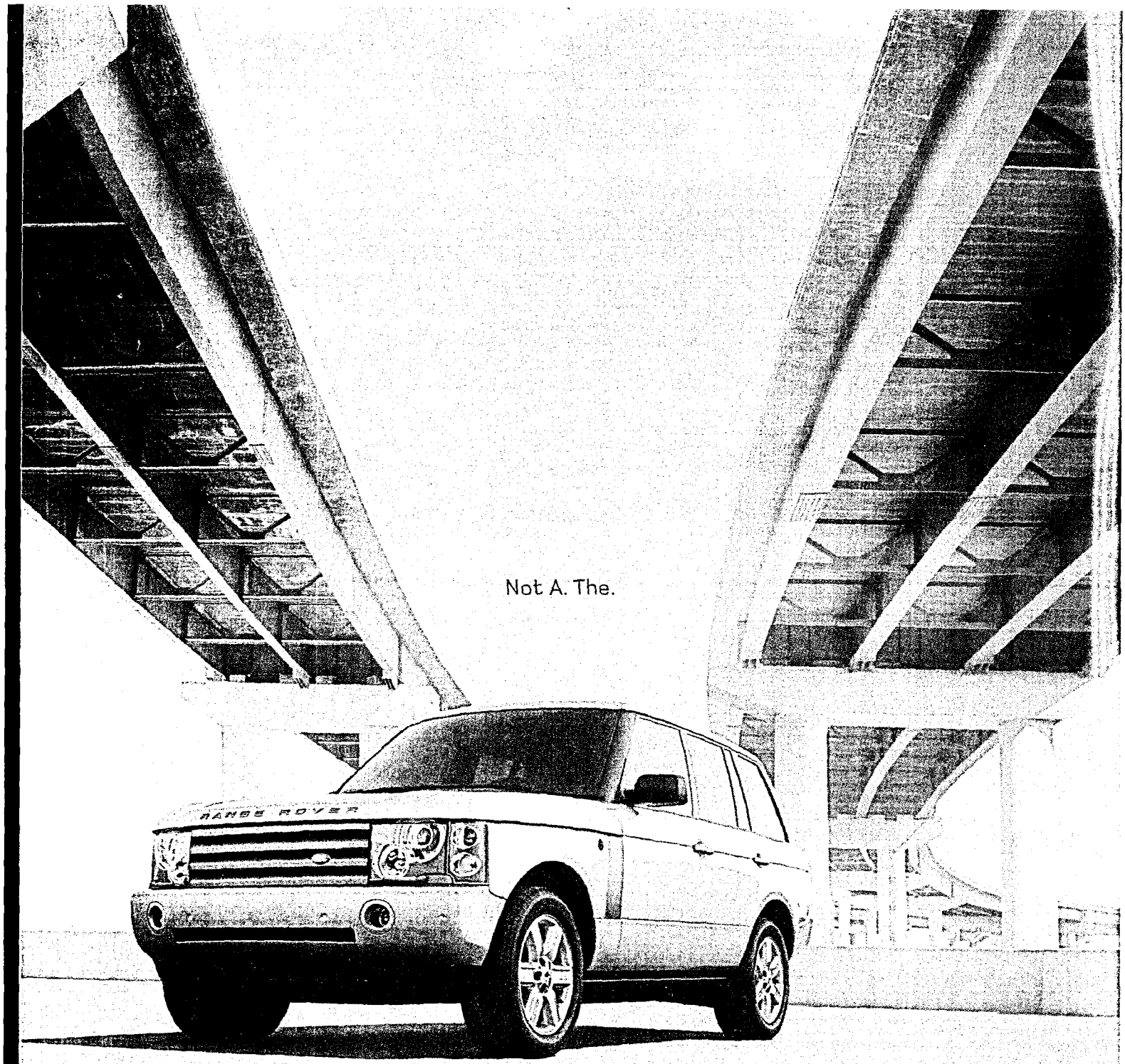

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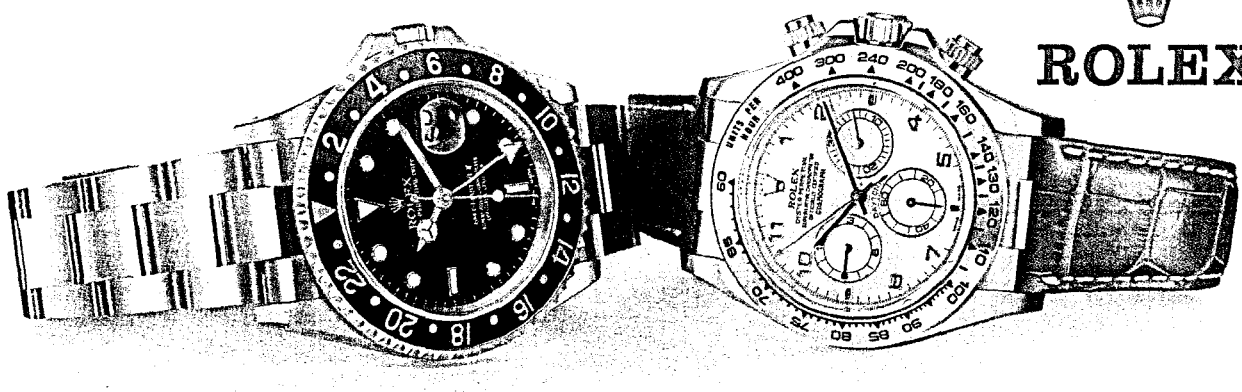

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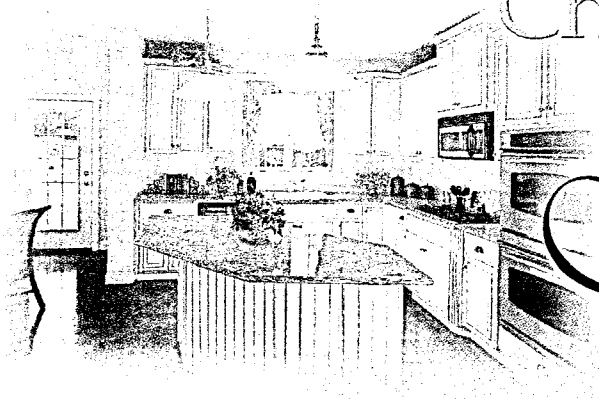

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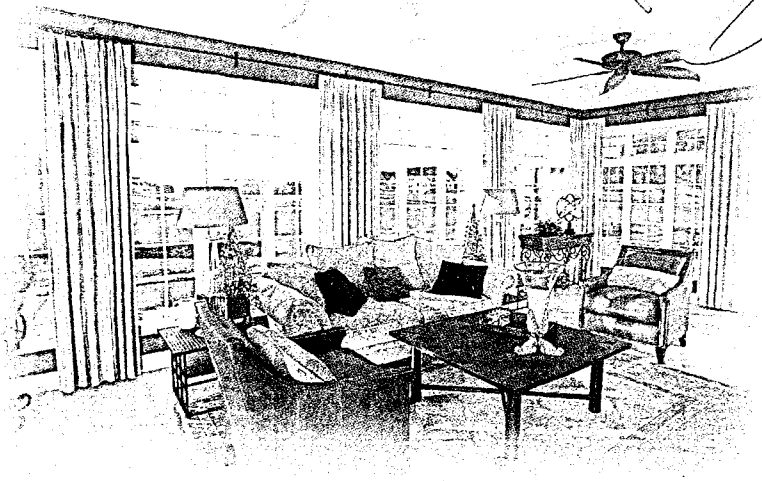

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EDITOR'S NOTE

[E]ducation is perhaps the most important function of state and local governments. . . . It is required in the performance of our most basic public responsibilities. . . . It is the very foundation of good citizenship. . . . [It] is a right which must be available to all on equal terms.

* * *

[I]n the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated . . . are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

— *Brown v. Board of Education*, 347 U.S. 483, 493 & 495 (1954).

Brown v. Board of Education, decided 50 years ago May 17, is the most well-known Supreme Court decision in the 20th century. It ended segregated education in America. And it did so for the most basic of judicial principles — simple justice (the apt title of Richard Kluger's seminal work in 1976 on the *Brown* decision).

Little mentioned in recounting *Brown*'s history is that, of the four decisions under review, one was from Delaware — *Belton v. Gebhart*, 87 A.2d 862 (Del. Ch. 1952). (In fact, *Belton* was the consolidated decision involving two plaintiffs: Ethel Belton — attempting to integrate the Claymont, Delaware public schools, and Shirley Bulah — seeking the same for public schools in Hockessin, Delaware.) Delaware's decision, written by then-Chancellor Collins J. Seitz, was the only one ultimately affirmed by *Brown* in 1954. Indeed, *Belton* was the first decision in our Nation that integrated public schools and, in the words of former Justice Thurgood Marshall, was "the first real victory in our campaign to destroy segregation of American pupils in elementary and high schools." *Belton* followed by only two years then-Vice Chancellor Seitz's opinion in *Parker v. University of Delaware*, 75 A.2d 225 (Del. Ch. 1950), the first ruling to integrate a public undergraduate university in America.

In addition to Collins Seitz (and, of course, Louis L. Redding — the

Delaware lawyer who brought the *Parker* and *Belton* cases), who were some of the key persons on the battleground to *Brown*? How did *Brown* affect students in Delaware's black and white communities? And, while *Brown* spawned much hope (many believe it launched the civil rights movement of the 1950s and 1960s), what were the frustrations and disappointments (especially in Delaware) in implementing its mandate?

We address each topic in this issue with thanks to our authors. Virginia Seitz, Collins Seitz's daughter and an exceptional attorney in Washington, D.C., writes of her father's perspective on school integration. Judge Louis Pollak, formerly the Dean at both Yale and Penn Law Schools, relates his eyewitness experience as a member of the NAACP Legal Defense Fund team that brought about *Brown, Belton, et al.* Its focus, as it should be, is on the Defense Fund's leader — Thurgood Marshall.

Turning back to Delaware, Ed Dennis, well-known in Philadelphia as a former U.S. Attorney and head of the Criminal Division at the federal Department of Justice, presents the effect of *Brown* on the black community in Dover where Ed grew up. John Taylor, *The News Journal*'s Editorial Page Editor, does the same with respect to the white community in Wilmington. Each piece's personal reflections recreate the feel of the *Brown* era and shed insights on its meaning to those affected directly.

Leland Ware, the Louis L. Redding Professor of Law and Public Policy at the University of Delaware, deals in depth with the frustrations, both nationally and in Delaware, in implementing *Brown*'s "with all deliberate speed" school integration mandate.

Our issue closes with yet another perspective — that of a young black attorney — Chip Flowers, currently an associate at Skadden Arps' Wilmington office and this fall entering the John F. Kennedy School of Government at Harvard.

Brown v. Board of Education culminated a century-plus craving for equality in education. Law caught up with the hope for human dignity. Of selfish satisfaction is that Delaware was first to be on the right side of history.

Thomas L. Ambro

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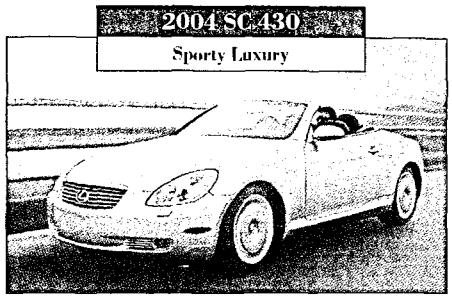

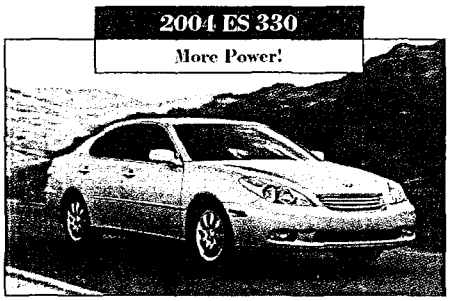

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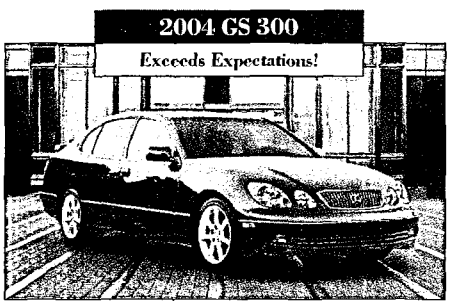

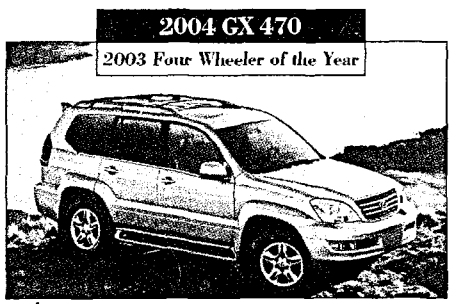

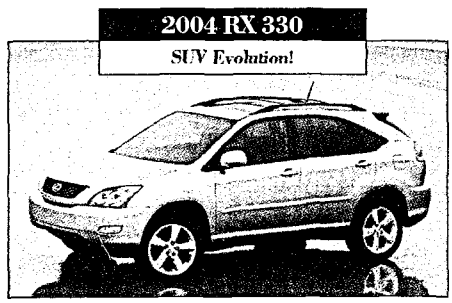

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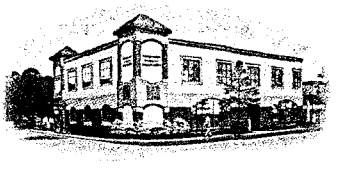

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CHANCELLOR SEITZ'S PERSPECTIVE ON *BROWN V. BOARD OF EDUCATION*

I conclude from the testimony that in our Delaware society, State-imposed segregation in education itself results in the Negro children, as a class, receiving educational opportunities which are substantially inferior to those available to white children otherwise similarly situated. . . . I believe the "separate but equal" doctrine in education should be rejected, but I also believe its rejection must come from [the Supreme] Court. *Belton v. Gebhart*, 87 A.2d 862, 865 (Del. Chancery 1952) (Chancellor Seitz).

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated . . . are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. *Brown v. Board of Educ.*, 347 U.S. 483, 495 (1954).

Here in Delaware, we could have celebrated the 50th anniversary of school desegregation two years ago, with the 50th anniversary of Chancellor Seitz's decision in *Belton v. Gebhart*. In *Belton*, my father, Chancellor Seitz, made a finding of fact, based on the testimony that he heard, that segregation by itself results in inferior educational opportunities, and called on the Supreme Court "to re-examine its [separate-but-equal] doctrine in the light of [his] finding of fact."[1] In addition, and unlike other judges who found unequal white and black schools, Chancellor Seitz ordered the *immediate* admission of black students to the white schools "shown to be superior." He explained that "[t]o do otherwise is to say to such a plaintiff: 'Yes, your Constitutional rights are being invaded, but be patient, we will see whether in time they are still being violated.'"[2]

There is little that has been easy in race relations through the history of the United States, but I can with complete confidence give you the perspective of Chancellor Seitz on *Brown v. Board of Education*: He thought it was an easy case. He heard the evidence presented by counsel for the plaintiffs, the brilliant Louis Redding of Wilmington and Jack Greenberg of the NAACP, and made a finding of fact — that segregation itself resulted in unequal educational opportunities for black students. He therefore reached a conclusion of law — that segregation violates the Equal Protection Clause of the Constitution. As he later explained, "I never could see how the equal protection clause could be read any other way."[3] There can be no question that in 1952 this issue presented to most judges and public officials a profound professional and moral dilemma. Of my father, it can only be said that "[h]e passed this test of professional courage and integrity so easily that he never understood there had been a test."[4]

In 1954, the Supreme Court accepted Chancellor Seitz's implicit invitation to reconsider the separate-but-equal doctrine and decided to hear the *Belton* case from Delaware along with three other school desegregation cases, under the heading of *Brown v. Board of Education*. Speaking for a unanimous Court, Chief Justice Earl Warren concluded that, as a matter of simple justice, there is no place for the separate-but-equal doctrine in public education. The Supreme Court quoted Chancellor Seitz's factual finding that "State-imposed segregation in education in itself results in the Negro children, as a class, receiving educational opportunities which are substantially inferior to those available to white children similarly situated." As my father later said, "It is a matter of great satisfaction to me that my judgments were the only ones affirmed by the Supreme Court that day. More to the point, the United States had come somewhat closer to keeping faith with its Declaration of Independence."[5]

Collins Seitz grew up in a wholly segregated world; he lived in a white neighborhood, went to segregated schools, worked in segregated workplaces, and lived a life without social relationships with black persons. In this background, there is little to explain where he got his perspective on the issue presented by *Brown v. Board of Education* — his clear conviction that racial segregation violates our Constitution. Having grown up with him and read through his extensive personal files, the Seitz children can provide some partial explanations for our father's ability to see so clearly in the early 1950s.

My father himself has speculated that one source of his sensitivity with respect to racial injustice was his own status as an "underdog." He was the youngest of five brothers and felt aggrieved, as many younger siblings do, by his treatment at the hands of his older brothers. He grew up in an exceedingly poor family during the Great Depression, with the

additional hardship of the loss of his father during his youth. It is no exaggeration to say that the family was often without sufficient money for food and other necessities. My father has also cited the anti-Catholic prejudice he encountered as a young man – including the dismay of the neighborhood when his large Catholic family moved in, the unkind remarks when he sought a place on the local little league team, and the opposition of Delaware politicians to his appointment as Chancellor. (He was the first Catholic member of the Delaware state judiciary.)

These factors, however, might have led to bitterness and a narrower sensitivity to religious injustice, rather than to the open and generous conception of humanity that Collins Seitz developed. There are two reasons that did not happen.

First, my father was a deeply religious Catholic who encountered at a crucial period in his life a priest with a passion for interracial justice and brotherhood. Early in his professional life, in the 1940s, my father joined forces with Father Thomas Reese in the effort to persuade the Catholic Church and Delaware society that racial segregation and racial injustice should be anathema to the Church and to any person of faith and decency. He wrote editorials for the Catholic periodical "Truth In Deed," and broadcast editorials on local radio. For example, we found in my father's personal papers a March 31, 1948 editorial broadcast on WILM in support of federal civil rights legislation:

> All too often we use the excuse that the time is not ripe to justify ourselves for not taking some affirmative action requiring moral courage. The President's Committee [on Civil Rights] does not and need not apologize for recommending the enactment of specific legislation by the federal government for the protection of the civil liberties of all of its citizens. Such legislation will be tangible evidence to the oppressed that their government can — within the democratic framework — make the words "civil rights" a meaningful part of their daily lives — not just so many empty words.

Even before this date, my father broadcast a March 5, 1947 editorial on WDEL on behalf of the National Conference of Christians and Jews on the topic of bigotry:

> In connection with the Negro problem, can we of the white race analyze the reasons for some of the conditions extant among the Negroes without ourselves being seriously embarrassed? . . . To those who have studied the problem with a real desire to see that every individual in this country moves toward a realization of the fruits which grow from practicing our theory of democracy, the so-called Negro problem is the joint responsibility of all citizens who *practice* democracy and *live* the Ten Commandments. Lip service is not enough. (Emphasis in original.)

"How can we say that we deeply revere the principles of our Constitution and yet refuse to recognize those principles when they are to be applied to the American Negro in a down-to-earth fashion . . ."

– Collins J. Seitz

In words that foreshadow *Belton*, he concluded that "racial and religious bigotry are foreign to our theory of democracy *not only before the law* but in our daily social and economic contacts." (Emphasis in original.)

The religious and moral source of Collins Seitz's view of the Constitution is most evident in his greatest speech, the June 4, 1951 Commencement Address to Salesianum High School. It was an astounding speech for its time, particularly in light of the fact that within days the Delaware Senate was to act on his nomination to be Chancellor.

> Many of us would become fighting mad were we told that we did not *really* believe in the great principles of the Declaration of Independence and the Constitution of the United States. Yet I submit that too many of us talk out of both sides of our mouths at the same time on this important subject. How can we say that we deeply revere the principles of our Declaration and our Constitution and yet refuse to recognize those principles when they are to be applied to the American Negro in a down-to-earth fashion? . . .
> A person has real moral courage when, being in a position to make decisions or determine policies, he decides that the qualified Negro will be admitted to a school of nursing; that the Negro, like the white, will receive a fair trial no matter what the public feeling may be; that every Catholic school, church and institution shall be open to all Catholics — not at some distant future time when public opinion happens to coincide with Catholic moral teaching — but now. (Emphasis in original.)

It was only shortly after giving this speech that Collins Seitz again exemplified the moral courage he described by desegregating Delaware's schools and doing it "now." Speaking about Christopher Columbus to the Sons of Italy and other Italian-American societies on Columbus Day in 1951, Collins Seitz said that it is "often the case where a man entertains a burning resolve to accomplish some great objective, he [i]s able to procure the assistance of some far-sighted religious men of the day." The civil rights movement found such a man in my father.

The factor other than faith that led my father away from bitterness and toward fairness and clarity was most assuredly his legal training. He fully embraced the rigor of legal reasoning and the habits of mind that it engendered as pathways to the truth – more specifically, the true meaning of the law. As he explained in 1965 to new members of Phi Beta Kappa:

> We humans do not seem to come by an objective attitude naturally. For some psychological reason, once our mind has made a judgment or an evaluation, it tends to shield itself from ideas which unsettle it in such areas. Thus, true objectivity of mind must be consciously cultivated by young

Top left: Collins J. Seitz receiving the oath of office as Chancellor from Justice Daniel F. Wolcott, June 19, 1951. Bottom left: Justice William J. Brennan, Jr. and Judge Seitz in 1984 (upon Judge Seitz stepping down as Chief Judge of the Third Circuit). Center: Chancellor Seitz in 1954. Top right: Virginia as a baby on her father's lap (1956). Bottom right: Judge Seitz in repose (1981).

> and old alike. It is a state of mind which welcomes new ideas or formulations. It does not raise barriers of intellectual self-contentment or fear of the unorthodox.

My father was speaking so affectionately, as he always did, of the mind that results from assiduous legal training.

And so his objective analysis of the facts demonstrated incontrovertibly to him that black elementary and secondary schools in Delaware were markedly inferior to white schools and that the segregation of the black race uniformly led to inequality. His analysis of the words of the Constitution, using the tools that legal training had provided him, led him inexorably to the conclusion that segregation in public education was a violation of the constitutional right of equal protection of the laws. It is no wonder he had an abiding faith in and love for the law: He believed strongly, fervently and to the end of his life that legal objectivity and reasoning would lead him to the meaning of the law and that the application of the law in our Nation, embodied in the United States Constitution, would lead us to justice for all.

There is a second aspect of *Brown* that my father found easy, but that the Court and the country struggled with for many years, and that is the question of the appropriate remedy for the constitutional violation of school segregation. As stated above, in *Gebhart* he ordered the immediate admission of black children to the white elementary and secondary schools that he had found superior in quality. This was the first time, after a finding of inequality, that blacks were admitted at once to white schools at the elementary and secondary levels.

In *Brown v. Board of Education*, however, the Supreme Court ordered additional argument and briefing on the appropriate remedy for segregation and ultimately ordered only that it take place "with all deliberate speed." We now know that this language was used as a device to maintain the status quo. But, as my father later put it, "the Constitution on equal protection didn't say it was to be deferred for some students. It was to apply to all students. . . . [W]e weren't to wait to educate their grandchildren. They were supposed to get the benefit of the education."[6] To paraphrase my father's words at Salesianum, the Constitution and its commands require that the schools be open to members of all races — "not at some distant future time when public opinion happens to coincide with [the Constitution] — but now."[7]

In 1951, Collins Seitz told Salesianum's graduates: "Do not be led astray by the siren call that the people are not yet ready for any particular change you may mention. I say this to each of you bluntly. You will never be worth your salt if, at some time during your life, you don't take up a worthwhile cause and fight its fight." Because he and others lived by these words, we are celebrating the 50th anniversary of *Brown v. Board of Education*. Perhaps here in Delaware, however, we are celebrating instead the 50th anniversary of the Supreme Court's affirmance of Chancellor Seitz's decision in *Belton*. ◆

This article was written in consultation with my brother Collins J. Seitz, Jr.

FOOTNOTES

1. *Belton*, 87 A.2d at 865.
2. *Id.* at 869-70.
3. Address by Collins J. Seitz, University of Virginia School of Law, Nov. 1990, "What is Past is Prologue" (hereafter "Seitz Address"). To similar effect is a remark of my father in a June 12, 1998 interview with Edmund N. Carpenter II, where he said, "desegregation to me was easy." Tr. at 32 (hereafter "Carpenter Interview"). See also *id.* at 26 (describing *Parker v. University of Delaware*, 75 A.2d 225 (Del. Chancery 1950), as "an easy case," because "to compare the University of Delaware with Delaware State College at that time was sort of ludicrous").
4. Eulogy for Collins J. Seitz, Oct. 1998.
5. Seitz Address at 15.
6. Carpenter Interview at 27.
7. See also Collins J. Seitz, "Civil Rights and the Pressures of Our Times," at May 27, 1971 Meeting of the A.C.L.U. ("[I]n 1954, the Supreme Court said 'separate but equal is not equal,' but many cry that they proved to be hollow words").

Louis H. Pollak

ASPECTS OF THURGOOD MARSHALL: The Lawyer-Patriot Who Repaired His Country

Thurgood Marshall in 1957.

The Supreme Court Advocate

As a young lawyer, just a couple of years out of law school, I had the measureless good fortune to be able to join the band of lawyers that assisted Thurgood Marshall, the head of the NAACP Legal Defense Fund, in structuring the Legal Defense Fund's assault-by-litigation on racial segregation in public schools. The opportunity to play a small part in Thurgood Marshall's historic campaign — the campaign that was to overturn state-imposed segregation in Kansas, South Carolina, Virginia and Delaware, *Brown v. Board of Education*, 347 U.S. 483 (1954) (*Brown* I), and federally-imposed segregation in the District of Columbia, *Bolling v. Sharpe*, 347 U.S. 497 (1954), and led to the "all deliberate speed" remedial decision, *Brown v. Board of Education*, 349 U.S. 294 (1955) (*Brown* II) — came about through the good offices of my friend William T. Coleman, Jr.

Bill Coleman and I had been law clerks in the Supreme Court's 1948 Term — Bill clerking for Justice Frankfurter and I for Justice Rutledge. In 1949, at the conclusion of our clerkships, we both went to New York as associates at Paul, Weiss, [Rifkind a year later], Wharton & Garrison. Not long after we started at Paul, Weiss, Bill asked me whether I would like to join the lawyers helping Mr. Marshall in the school segregation cases. I jumped at the chance. I had not met Thurgood Marshall but I was familiar with the important civil rights cases in which he had already been engaged, in association with Charles Hamilton Houston, the Dean of Howard Law School in the 30s (when Marshall was a student), and with William H. Hastie, the subsequent Dean who in 1949 was appointed by President Truman as a Judge of the United States Court of Appeals for the Third Circuit — the first black Article III judge in the history of the Republic. Also I looked forward to working for the Legal Defense Fund on civil rights issues in partnership with Bill Coleman, whose extraordinary legal skills — skills that were to take him to the top of the profession, and to a cabinet post in President Ford's administration — were already well known to me.

From the moment Bill and I started working with the other members of Marshall's team, it was clear to me that this was a very high-powered lawyer-cohort. They fell into three groups:

First, there were the staff lawyers of the Legal Defense Fund serving under Marshall's direct command. They were Robert Carter, Constance Baker Motley and Jack Greenberg.

When the school segregation cases reached the Supreme Court, Carter argued the Kansas case and Greenberg argued the Delaware case. (In later years, Carter and Motley were both to be appointed federal District Judges in the Southern District of New York (Manhattan). And in 1961, when Marshall became a Judge of the United States Court of Appeals for the Second Circuit, Greenberg was to succeed Marshall as Director-Counsel of the Legal Defense Fund. After upwards of twenty years of remarkable leadership Greenberg was to leave the Legal Defense Fund to become a professor at Columbia Law School).

Second, there were the lawyers from the trenches — the lawyers from the venues in which the cases originated – most of whom, in conjunction with Marshall and his Legal Defense Fund staff, were active in the cases from their inception. Principal among these were Louis L. Redding of Delaware who, together with Jack Greenberg, argued the Delaware case in the Supreme Court; Harold R. Boulware of South Carolina; Oliver Hill and Spottswood Robinson, III, of Virginia, the latter of whom argued the Virginia case in the Supreme Court; and several District of Columbia lawyers: Charles T. Duncan, Julian R. Dugas, Howard Law School professor James Nabrit, Jr., and practitioner/Howard professor George E.C. Hayes, the latter two of whom argued the District of Columbia case in the Supreme Court. (In later years, Dugas was to become a Howard professor, Nabrit, Robinson and Duncan were each to serve as Dean of the Law School, and Nabrit, following his deanship, was to become President of Howard University. Robinson, after his deanship, was appointed to the federal bench in the District of Columbia, serving first on the District Court and subsequently on the Court of Appeals for the District of Columbia Circuit.)

Third, there was a trio of immensely gifted professors: Charles L. Black, Jr., of the Columbia Law School, and later of the Yale Law School; Robert Ming of the University of Chicago Law School; and Jack Weinstein of the Columbia Law School, who later was to become a federal District Judge in the Eastern District of New York (Brooklyn).

Notwithstanding that every member of this talented legal team was articulate, un-shy, full of opinions, and possessed of a reasonable amount of ego, it was plain that, after hours of noisy and often contentious debate about optimal legal theory or optimal litigation strategy, only one opinion mattered — that of Thurgood Marshall. Big man with a big voice, pragmatist, formidable litigator, intrepid captain of a cause in which he deeply believed, Marshall would listen to the debate, put questions, argue, shout, give ground, reclaim the ground. And tell a story — a funny story. And laugh. And decide.

Humor — the joking anecdote, or the puncturing of pomposity — was an important aspect of Thurgood Marshall. But some of it was instrumental. Kenneth Clark, the City College social psychologist who contributed importantly to the social science phases of the *Brown* litigation, cogently observed that "it's a mistake to think of Thurgood as a comedian. He had this unique capacity to deal with profoundly serious matters and then alleviate the mood with a remark that cut to the human predicament at the core of the problem." Consider the mock argument at Howard Law School — a rehearsal for real argument in the Supreme Court – in which a faculty member impersonating one of the Justices asked Marshall whether the Court, unaided by Congressional legislation, had the power to end racial segregation in public schools. Marshall dropped to his knees, and, spreading his arms in an Al Jolson gesture, replied, "Power? Power? White boss, you got the power to do anything you want."

So much for mock argument. Real argument was a different matter. The several state cases constituting *Brown* had been argued in the fall of 1952, when Fred Vinson was Chief Justice. In June of 1953 the Court directed that reargument be had the following fall, and that in additional briefs counsel were to address several questions about the history of the Fourteenth Amendment. After extensive research, new briefs were filed. In September of 1953, Chief Justice Vinson had a massive heart attack and died. Reargument took place in December of 1953, with Earl Warren, the new Chief Justice, in the center chair. The South Carolina case was the one Marshall was to argue. His adversary was eighty-year-old John W. Davis — former Solicitor General, former Ambassador to Britain, in 1924 the Democratic candidate for President, and the Davis of Davis Polk & Wardwell —who, until he met up with Thurgood Marshall, was the most celebrated Supreme Court advocate of the twentieth century.

Marshall's opening argument was not his best effort. Davis, in response and in what was to be his last Supreme Court argument, noted that South Carolina had been made aware that its black schools were not on a par with its white schools and, cognizant of those shortcomings, had committed tens of millions of dollars to bringing the black schools up to parity. For plaintiffs to press for the mystique of desegregation, rather than to accept the tangible benefits about to be forthcoming, was, Davis argued, not in the plaintiffs' own self-interest:

> I am reminded — and I hope it won't be treated as a reflection on anybody — of Aesop's fable of the dog and the meat: The dog, with a fine piece of meat in his mouth, crossed a bridge and saw the shadow in the stream and plunged for it and lost both substance and shadow. Here is equal education, not promised, not prophesied, but present. Shall it be thrown away on some fancied question of racial prestige?. . .
>
> I entreat them to remember the age-old motto that the best is often the enemy of the good.

Marshall's rebuttal came the following day. He addressed Davis's closing argument in the following terms:

> As Mr. Davis said yesterday, the only thing the Negroes are trying to get is prestige. Exactly correct. Ever since the Emancipation Proclamation, the Negro has been trying to get what was recognized in *Strauder v. West Virginia* [invalidating a state statute excluding blacks from jury service], which is the same status as anybody else regardless of race.

And then Marshall moved to his conclusion:

> I got the feeling on hearing the discussion yesterday that when you put a white child in a school with a whole lot of colored children, the child would fall apart or something. Everybody knows that is not true. Those same kids in Virginia and South Carolina — and I have seen them do it — they play in the streets together, they play on their farms together, they go down the road together, they separate to go to school, they

Hill, Robert Carter, Thurgood Marshall and e Court Justice Thurgood Marshall in 1976.

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The only thing [that] can be is an inherent determination that the people who were formerly in slavery, regardless of anything else, shall be kept as near that stage as possible, and now is the time, we submit, that this Court should make it clear that that is not what our Constitution stands for.

The Old Supreme Court Justice

Appointed to the Second Circuit by [illegible] course it never will be [illegible] challenge anybody to tell me that it isn't the type of goal we should try to get to as fast as we can.

In the Devoted Memory of his Fellow Citizens

Elena Kagan, one of the last of Thurgood Marshall's law clerks, is a law professor who is now Dean of the Harvard Law School. After Marshall's death she wrote an "In Memoriam" about the man she and her co-clerks addressed as "Judge" or "Boss" and

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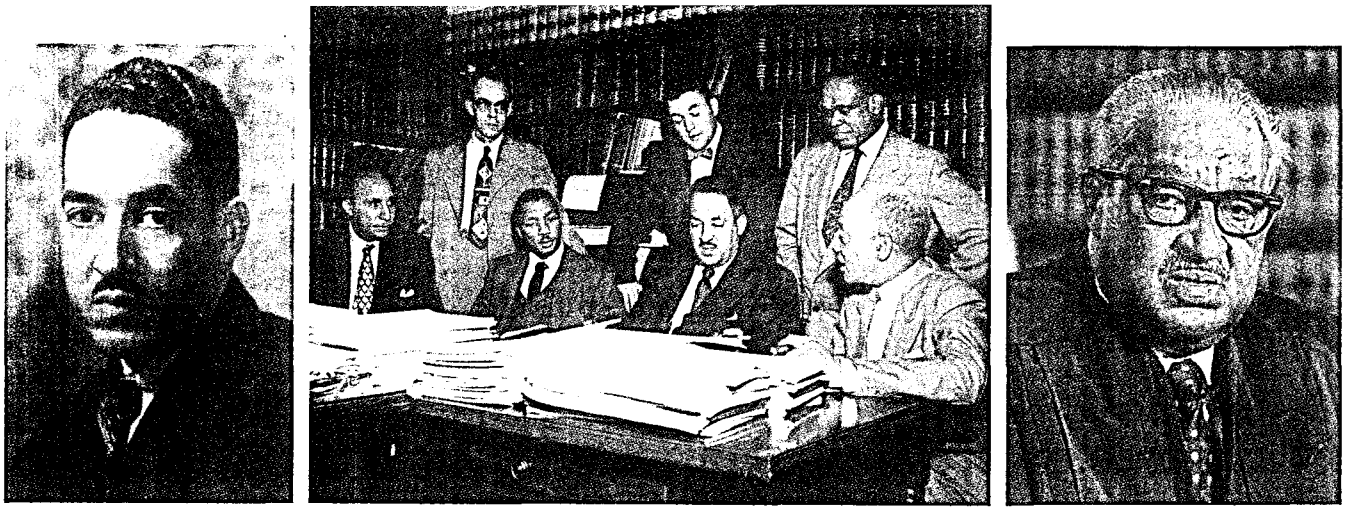

Left: Thurgood Marshall, c.1935. Center: The NAACP Legal Defense Fund team, 1953; front row: Oliver Hill, Robert Carter, Thurgood Marshall and James Nabrit, Jr.; back row: Spottswood Robinson, Jack Greenberg and George E. C. Hayes. Right: Supreme Court Justice Thurgood Marshall in 1976.

come out of school and play ball together. They have to be separated in school.

There is some magic to it. You can have them voting together, you can have them not restricted because of law in the houses they live in. You can have them going to the same state university and the same college, but if they go to elementary and high school, the world will fall apart. And it is the exact same argument that has been made to this Court over and over again, and we submit that when they charge us with making a legislative argument, it is in truth they who are making the legislative argument.

They can't take race out of this case. From the day this case was filed until this moment, nobody has in any form or fashion, despite the fact I made it clear in the opening argument that I was relying on it, done anything to distinguish this statute from the Black Codes, which they must admit, because nobody can dispute, . . . the Fourteenth Amendment was intended to deprive the states of power to enforce Black Codes or anything else like it. . . .

The only thing [that] can be is an inherent determination that the people who were formerly in slavery, regardless of anything else, shall be kept as near that stage as possible, and now is the time, we submit, that this Court should make it clear that that is not what our Constitution stands for.

The Old Supreme Court Justice

Appointed to the Second Circuit by John Kennedy in 1961, Marshall remained a circuit judge for only four years. In 1965 Lyndon Johnson picked Marshall to be Solicitor General, the post in which, forty years before, John W. Davis had rendered distinguished service. Two years later, in 1967, Johnson appointed Marshall a Justice of the Supreme Court. After twenty-three years of dedicated service to the Court, Marshall, in 1991, at the age of eighty-three, retired. He died two years later. Marshall's second law clerk, James O. Freedman — a law professor who served as Dean of the University of Pennsylvania Law School, as President of the University of Iowa, and then as President of Dartmouth — has recorded the words of the retired Justice at the last gathering of the Justice's scores of law clerks:

> The goal of a true democracy such as ours, explained simply, is that any baby born in these United States, even if he is born to the blackest, most illiterate, most unprivileged Negro in Mississippi, is merely by being born and drawing his first breath in this democracy, endowed with the exact same rights as a child born to a Rockefeller. Of course it's not true. Of course it never will be true. But I challenge anybody to tell me that it isn't the type of goal we should try to get to as fast as we can.

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Elena Kagan, one of the last of Thurgood Marshall's law clerks, is a law professor who is now Dean of the Harvard Law School. After Marshall's death she wrote an "In Memoriam" about the man she and her co-clerks addressed as "Judge" or "Boss" and referred to behind his back as "TM." Kagan's tribute begins with these words:

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Ed Dennis, Class of 1962

EARLY STUDENT REFLECTIONS ON THE DESEGREGATION OF DOVER HIGH SCHOOL

It was August of 1957. A thick blanket of humid air hung over the grounds of Dover High School as Mrs. Virginia Dennis and her twelve-year-old son Butch marched up the broad white masonry steps leading to the school's entrance. Her brow was set in such concentration that the very air seemed to be intimidated into stillness. Her son lagged a few steps behind her. He only saw the white steps before him and the heels of his mother's shoes as she climbed toward the doors above them. Butch didn't know whether his mother had ever been inside Dover High School, but for him it was terra incognita.

In 1952 Delaware Chancellor Collins J. Seitz ordered racial integration of the public schools of Claymont and Hockessin, Delaware. An appeal of that order delayed its implementation until the United State Supreme Court could rule in the case. The Delaware case was filed by the illustrious Delaware counsel Louis L. Redding, himself a product of Delaware's segregated system of public education. A graduate of the then all-black Howard High School, Redding went on to earn degrees at Brown University and Harvard Law School. Lawyer Redding, as he was often called, was the first, and at the time the only, black attorney admitted to the Delaware bar.

The Supreme Court consolidated the Delaware appeal with three other cases raising similar constitutional issues. The three cases were from Kansas, Virginia and South Carolina. The Kansas case was listed first on the caption of the consolidated appeal, and thus the decision was forever known as *Brown v. Board of Education.* On May 17, 1954, in what would become one of the most celebrated federal court decisions in American history, the Supreme Court concluded that "in the field of public education the doctrine of 'separate but equal' has no place," and later ordered the desegregation of public schools "with all deliberate speed." This broad ruling sounded the death knell for *de jure* segregation by skin color in public education and eventually led to the end of Jim Crow laws in all walks of American life.

As he walked up the steps of Dover High School Butch was only dimly aware of the details of these legal developments. He was too taken with a longing to emulate the black sports heroes of the day to get excited about a legal opinion. He remembered the pride in the voice of his Uncle Floyd Mitchell as he sat on his front porch recounting the exploits of heavyweight boxing champion Joe Louis. He reminisced about the trip his uncle and his grandfather had made to drive him two hundred miles from Huntington, West Virginia to Cincinnati, Ohio to see Jackie Robinson lead the Brooklyn Dodgers over the Cincinnati Reds, and how the Brooklyn Dodgers with Robinson had won the 1955 World Series against the arrogant traditionally all-white New York Yankees. So when in the spring of 1955 the *Delaware State News* announced try-outs for Dover's first baseball Little League, the announcement got Butch's immediate attention. His father cautioned him not to assume too much. Colored children might not be allowed to play.

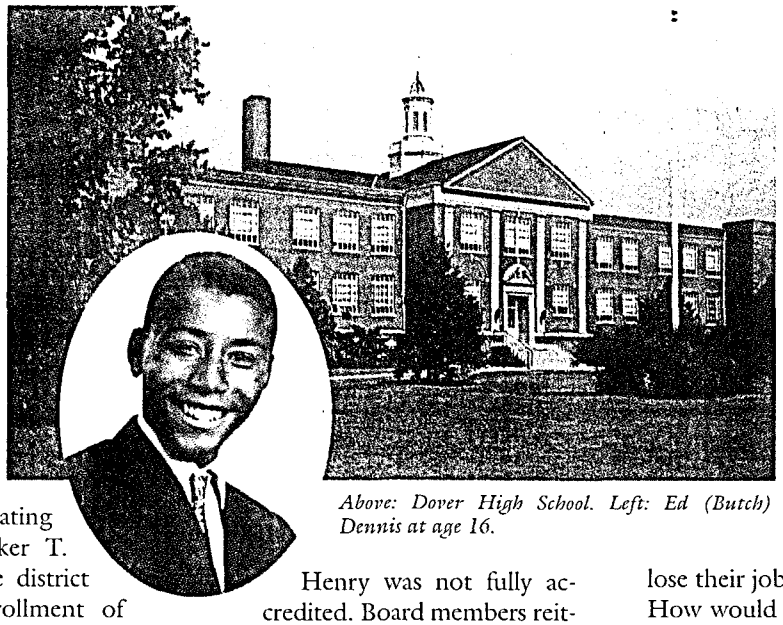
Butch should have known better than to get his hopes up. Blacks couldn't go to the skating rink. There were separate beaches for blacks and whites at Dover's tiny Silver Lake. Blacks could sit only in the balcony of Dover's one movie theater. Eating at a lunch counter was forbidden. On car trips his father patronized Esso gas stations because he could count on them to allow a black family to use their bathroom facilities. Butch remembered the time his family was traveling from Dover to Huntington, West Virginia to visit his mother's side of the family. His father pulled their car into the driveway of the Blue Bird Motel under a big sign that read "Colored TV." Butch ran to the registration desk asking about the rooms with the color televisions only to hear the desk clerk solemnly intone, "No son, there are no color televisions. That's the name of our people." Why would Dover's first Little League be any different?

But that time it had been different. The league was open to all (boys at least) and he had made the cut that spring playing first base for Dover Air Force Base. Three of his friends also made teams in the new league: Anthony Powell and Jimmy Young (Dover Merchants) and Richard Wynder (Del-Vets). It was a significant event for a ten-year-old who loved sports. At the time a historic court ruling didn't quite fire his imagination as much as the expectation of an at-bat in the late innings of a close game. Yet he realized that what his mother and he were doing at Dover High School on that August day

in 1957 was important.

Three years earlier, in response to the *Brown* decision upholding the order of Chancellor Seitz, the Dover Board of Education had designed a school desegregation plan it called "limited integration." The school district limited the enrollment eligibility of black students into the all-white Dover Community School to those graduating from the all-black Booker T. Washington School. The district further limited the enrollment of black students to those who tested eligible for the academic course of study at Dover High School. The limited integration plan had the effect of limiting integration in the 1954–1955 school year to one grade, the ninth grade. Black students in grades 1-8 and grade 10–12 remained segregated. Under the plan grades 9–12 were to be opened as the black students enrolling in 1954 progressed through the upper classes of Dover High School. Butch had graduated from Booker T. Washington School in the spring of 1957, and under Dover's limited integration plan he was not eligible for integration because he had not reached the ninth grade. A personal plea to the Dover school district superintendent by his father, Dover physician Dr. Edward S. Dennis, was denied. The Dover Board of Education meeting minutes of August 14, 1957 read:

> Mr. Green [superintendent of schools] reported that Dr. Dennis talked to him regarding the entrance of the latter's son in the [D]over Community School's eighth Grade. Mr. Green had told him the policy of the Board and that there had not been any change. Mrs. Henry [first black board member] asked what this policy was [she had been on the board for only six weeks]. When she asked where B.T.W. students would go when they completed the 7th grade, she was told they were to go to William Henry [the all-black high school run by the county]. Mrs. Henry expressed the opinion that [it was] unfair to send the students out of the Dover district and that William Henry was not fully accredited. Board members reiterated the feeling that every possible effort should be made to bring B.T.W. School up to the Dover Community School.



Above: Dover High School. Left: Ed (Butch) Dennis at age 16.

Unpersuaded by the school board's logic, Mrs. Dennis decided to go directly to the school superintendent herself with her son in tow to demand his immediate admission.

Mrs. Dennis pushed open the school doors and they entered the main corridor. What little light penetrated the corridor came from a glazed windowpane stenciled with large block lettering reading "OFFICE." They entered. Two secretaries sat quietly at their desks behind a high counter. "I'm Virginia Dennis and I'm here to see Superintendent Green." The secretary closest to the counter got up quickly and went into the superintendent's office. Superintendent Green came out of his office immediately. He looked pretty determined too.

"Yes, Mrs. Dennis?"

"Superintendent Green, I'm here to register Edward for eighth grade at Dover Middle School this fall." (His mother never called him Edward except on the most formal occasions. He guessed this was one of them.)

"Mrs. Dennis, you know it's the policy of the school district not to admit your son until he reaches the ninth grade."

"Thank you very much." Mrs. Dennis said curtly. Butch and his mother left the office, walked down the dimly lit hallway, out the sturdy front doors and back into the bright sunshine of a humid summer day.

Within less than two weeks Louis L. Redding initiated a civil suit in Superior Court against the Dover Board of Education on behalf of Edward S. Dennis, *et al.* in a challenge to the board's limited integration plan.

In 1954 after the Board of Education opened Dover High School's academic curriculum to black students graduating from Booker T. Washington School, black community leaders encouraged these students to enroll there, but there were many questions for black families to consider before sending their children to Dover High School. Would parents lose their jobs if their children enrolled? How would their children be received? Would white teachers be fair with them? Weren't the black teachers who had taught their sons and daughters, worried over them and pushed them toward excellence, competent to teach them anymore? Would their children encounter violence if they attended? Would their children feel themselves somehow superior to the black classmates they were leaving behind? And wouldn't their children be socially isolated in a sea of hostile or indifferent faces?

Seventeen black students enrolled in the freshman class of Dover High School in the fall of 1954. Four black students left in the first week. Several said they had left because they were under the impression that all of their Booker T. Washington classmates were coming to Dover High School and they preferred to join them at William Henry High School. One student expressed a desire to pursue a commercial course of study, which the student was not permitted to do at Dover High School even though that curriculum was an option for white students. All but two of the remaining students eventually left Dover High to complete their high school education at the all-black William Henry High School. The two who remained were Cherritta Laws and Marshall Arnell. They were the first black students to graduate from Dover High School.

Cherritta Laws was precocious. Her parents, both outstanding educators, enrolled her at the age of 11 for her freshman year at Dover High. She recalls being interviewed by a high school counselor as a prerequisite to her admission. Although Cherritta's parents went with her to the interview, they

Virginia M. Dennis is sworn in as Delaware's state elections commissioner. U.S. Attorney Edward Dennis, Jr., holds the Bible for his mother. Dr. Edward Dennis, center, looks on as Judge Joshua W. Martin, III, administers the oath.

waited outside the guidance office while Cherritta was asked questions like "Why do you want to attend Dover High School?" Later groups of black students were subjected to testing as a prerequisite for enrollment. Dover High School would only admit black students into its academic curriculum, a limitation that applied only to black students. Cherritta was the first student enrolled. She recalls winning a magazine-selling contest in her freshman year that entitled her entire homeroom class to a party. At that point she was seen by many of her classmates as an asset rather than a mere curiosity. Cherritta won the contest the next year too. She was active as a clarinetist in the Dover High Band, joined the debate team and was an academic standout all four years. Cherritta is very grateful to her parents, both educators, for preparing her for her experience at the Dover High where she graduated in 1958. Dr. Cherritta Laws Matthews is now retired after a career of outstanding service to Delaware public education. Dr. Matthews was the first speech pathologist in the Capital School District and served in the Delaware Department of Education as an administrator in the Research and Evaluation Division and later in the Exceptional Children/Early Childhood Education Division.

Marshall Arnell felt he was well prepared to enter Dover High School by his teachers at the all-black Booker T. Washington School. He didn't find better teaching at Dover High School, but he did find the facilities were far superior to those at Booker T. Washington. Marshall was motivated by a sense of mission for what the *Brown* decision meant for the future. But he was also acutely aware of his isolation from Dover High's social life. His academic life was at Dover High, but his social life remained with his former classmates who were now at William Henry High School. Marshall won a position on the football team. In the last quarter of his first downstate game the coach put him in the game only to watch the opposing team walk off the field while Cherritta and the rest of the Dover High School contingent looked on in amazement. When both teams went to the locker room, Marshall showered with the players from both teams without incident. Such were the contradictions of school life in the twilight years of school segregation in Delaware. Marshall graduated from Dover High in 1958 and continued his education. He returned to Dover High six years later as its first black teacher.

The law suit notwithstanding, Edward "Butch" Dennis remained segregated for his 1957–58 school year and enrolled as a freshman at Dover High School in the fall following Cherritta's and Marshall's graduation. He was the only black student in his freshman class. The only familiar face in the sophomore class was the irrepressible Tyrone Baines from Little Creek. After four years of limited integration there were only eight black students attending all four grades of Dover High School, which had a total enrollment of over four hundred students.

The next fall Anthony "Tony" Powell and Richard "Dick" Wynder joined Dennis at Dover High. The three friends were inseparable. Indeed they dubbed themselves the "you all boys" in honor of Mr. William Laws, Cherritta's father, who had taught them industrial arts at Booker T. Washington Elementary School, and Mr. Marcellus Blackburn, its principal. When either man saw any of them he would invariably ask, "How many of you all are over there now?" That question became a greeting the three invoked with a smile to each other long after they had graduated from Dover High. For these three students sports was the doorway to acceptance at Dover High. They bathed in the imaginary glory of heroic feats in athletic competition. Occasionally their play was inspired, but not often enough for any colleges to notice. Nonetheless athleticism fortified them against the uneasiness of being outsiders and they clung tenaciously to it and to their friendship. In 1963 Powell and Wynder graduated in a class that included three other black students, Gwynette Henderson, Bernellyn Mishoe and Perry Limes.

Racial epithets were the most painful aspect of student life in these early days of school desegregation. A verbal assault was guaranteed on a school bus and so black students didn't ride them. At school black students often ignored racial taunts. At times a menacing look or a sharp retort would end the matter. Butch confronted a freshman for using a racial insult with his sister Carol. The young man apologized to Carol, which gave her some degree of satisfaction. An egregious incident could get a parent involved with the school. Woe to the offending student that came to the attention of a father over a racial epithet hurled at his daughter. That student was about to learn the dictionary meaning of the word "misery." Such incidents were sporadic and certainly didn't represent the conduct of the white students at Dover High, many of whom went out of their way to make black students feel accepted.

School desegregation was somewhat a family affair. Marshall Arnell's brother followed him at Dover High in 1956. Dick Wynder's sister, Anne, preceded him graduating in 1959. Butch's sister Carol succeeded him, entering as a freshman in the fall of his senior year. The younger Dennis brothers, Tim and Lee, were among the first black youngsters to desegregate Dover's elementary schools. In 1961 Wilma Mishoe, Bernellyn's younger sister, led an all-out assault on Dover's limited integration plan when she convinced six of her classmates who had recently graduated from Booker T. Washington to just show up unannounced at Dover Junior High school and start going to classes. By the end of her first year there Wilma

Left: Cherritta Laws, Dick Wynder and Anne Wynder. Center: Cherritta Laws and Marshall Arnell in front of Dover High School in 1999. Right: Class President Willie Clarritt (seated) and Vice President Bruce Hemphill discuss the year's objectives (1967).

was both a member of the Honor Society and the Student Council. The Dover Junior High Seven may hold the record as the youngest band of students ever to employ successfully civil disobedience against a school district policy by just showing up for school and going to class. All seven graduated in 1967 along with many of their former Booker T. Washington School classmates who were transferred out of William Henry High School into Dover High School when full integration was implemented in the fall of 1966. The Dover High School class of 1967 was also special because a black senior, Willie Clarritt, was elected Class President.

The twilight years of school segregation at Dover High School lasted from 1954 until 1966 when the student bodies of William Henry High School and Dover High School finally merged. Twenty black students graduated from Dover High School over this twelve-year period. In 1967, the first school year in which limited integration was abandoned, there were over thirty black graduating seniors. It has been observed that these early students tended to be from families in the professional ranks from Dover's black community. Dr. Ruth Laws was the first African American to hold a professional position in the Delaware Department of Public Instruction and played a key role in influencing the process of desegregation of Delaware public schools. Mrs. Minnie Wynder was also very influential during this period as the mother of two Dover High graduates and the President of the Booker T. Washington School Parent Teachers Association. Dr. Richard Wynder was Dean of the Department of Agriculture at Delaware State College. Dr. Luna Mishoe was the President of Delaware State College, a post he held for twenty-seven years. Willis Powell was an educator and high school principal in Smyrna, Delaware. Gwynette Henderson was the daughter of a faculty member at Delaware State.

These years were important for the personal growth of the early students in the desegregation of Dover High School. They learned a great deal about themselves and what they were capable of accomplishing. They learned to adjust and gained a maturity that strengthened them for the future. Stereotypes were shed on both sides of the racial divide. Black students didn't spend all their school days in high anxiety over unpleasantness, and most white students were friendly and tried to be helpful. All the students were curious.

Teenage years are difficult years. The students in the vanguard of the desegregation of the Dover public schools accepted the challenge to usher in an era of change in a society saturated with racial propaganda and prejudices reinforced by decades of ignorance. Change was long overdue, but it was not achieved without the courage of the students. It took courage for black students to leave their friends to enter a potentially hostile world foreign to their earlier experiences for the sake of an ideal. It took courage for white students to reach across the color line to befriend black students and risk the derision of some of their classmates for that same ideal. It's essential that the youth of today recognize the importance of fighting for the values they believe are worthwhile. They may be young, but they do count and they can make a difference.

Like mushrooms, race prejudice thrives in darkness. Today Tony Powell is the Director of the Employee Development Center for the Delaware Department of Corrections. One anecdote he recalls is telling. Tony was a Little League catcher. One of the pitchers on his Little League team was the grandson of J. Caleb Boggs, then-Governor of Delaware. This teammate invited Tony to practice at his home. After practice he invited Tony out for something to eat. Of course the restaurant wouldn't serve Tony. Upset by the incident, the boy proceeded to drag Tony through a good part of town trying to find out where else Tony couldn't go. When they returned to the boy's house, he went into his grandfather's study to speak to him. Tony didn't hear the conversation, and he could only imagine how it went. ◆

The author regrets that given the scope of this article he could not give credit to most of the individuals who played important roles in the fight to make the ideal of Brown *a reality in the Capital School District. He hopes to explore this subject more thoroughly in a subsequent article. He welcomes your comments at edsgdennis@yahoo.com.*

John H. Taylor, Jr.

A DIFFERENT KIND OF SEPARATION

First black students at Salesianum High School, November 19, 1950.

As a child, I lived in a white world. For years, it was a world segregated by law. Later, it was a world segregated by customs and living patterns that no law or court could change by degree. The world I inhabited was in fact doubly segregated. Within the white world was the Catholic world, which excluded most others. My father was Catholic, my mother Protestant, and so my isolation wasn't as complete as most of my school friends. But I was raised a Catholic and lived in the self-imposed world apart from which there were few forays. Association with organizations that were not strictly Catholic was discouraged.

I was just seven years old when Father Thomas A. Lawless broke new ground in 1950 by admitting five black students to Salesianum School, a private Catholic high school for boys. If I heard anything about it at the time, I no longer remember. But later, first as a student at Salesianum and then as a young reporter, I was to learn about the courageous and principled man who defied just about everyone by admitting blacks to "Sallies" four years before the U.S. Supreme Court ruled that separate but equal schools were not constitutional. When I came to understand the enormity of what Fr. Lawless did, it was the beginning of the end of my isolation.

Father Lawless became rector of Salesianum in 1944. He was a small man with a soft voice. This often caught people off guard when he took firm action or spoke out about what he thought was wrong. He knew that when he admitted the black students there would be a firestorm. He was correct. An editorial in the old *Evening Journal* said this when he died: "He will be remembered, too, for his courage in 1950, when he spoke out against racial segregation in education — and backed his words with action. That was when he opened the doors of Salesianum to Negro students, amid a furor that almost swept the good father off his feet."

Fr. Lawless said when he admitted the students that "I see nothing to apologize for other than the fact that it wasn't done years ago. I think it's a case of reaching a point of either stopping the preaching of democracy or starting to practice it."

When I entered Salesianum as a freshman in 1957, there were several black students there. (We respectfully used the word "colored" in those days.) The public schools of Wilmington had been officially desegregated without any serious incidents. But, in fact, most black and white children still attended different schools. Elementary schools were in

neighborhoods and though schools were legally being integrated, neighborhoods were not. Many restaurants and hotels still were segregated as were most other facilities. Laws guaranteeing access to public accommodations for everyone were not yet adopted and racial segregation continued.

Childhood memories are not always reliable but some things were burned into my psyche back in the 1950s, things that I've never forgotten. My grandfathers were none too happy about the Supreme Court's 1954 ruling. They were born in the 19th century and they could not think any other way. I do not know their private thoughts, but I do know that they were men in their 70s and ill prepared for the changes that the court ruling would certainly lead. Both men interacted with blacks on a regular basis. But the two had a sense of the order of things that did not include white and blacks interacting as equals. Their talk was political, but not hostile. One was a Roosevelt Democrat, the other a staunch Republican. They disagreed often, but not on this issue. It is fashionable today to engage in revisionist history, to assert that people should have thought and acted differently with regard to race. They should have. I am not proud that my grandfathers held racially prejudiced views. But I know that, given their backgrounds, these two minimally educated men were incapable of acting or thinking any other way. I know also that my parents, their children, had different views of race. Neither of my parents was a radical thinker. They did not march or protest against racial discrimination. But I was brought up at home to believe that all people were equal and should be treated that way. Racist words were never permitted in our house.

I didn't think much about race and segregation as a youngster; it was simply the way the world was. Blacks lived there, we lived here. Blacks and whites had their own stores and movie theaters. I do remember the August Quarterly, when streets were closed and the Eastside of Wilmington was alive with food and music at this important meeting of the Mother African Union Methodist Protestant Church. But it's a memory, not of a participant, but one gained through observation and the patronizing descriptions of other white people. The racial customs in Wilmington during the 1940s and 1950s replicated other northern cities. Cultural life was based on housing patterns; housing was segregated. I grew up in the Highlands section of Wilmington where, until the mid-1960s, the only black residents were servants or caretakers. The same was true in the Forty Acres, the Old Ninth Ward, Hedgeville and most other neighborhoods. Institutions, like churches and the YMCA, were also segregated. There was a sort of co-existence in the North; most black people and white people lived parallel lives, seldom interacting in any social way. They shared some public conveniences, like buses, but each person "knew his place" and acted accordingly.

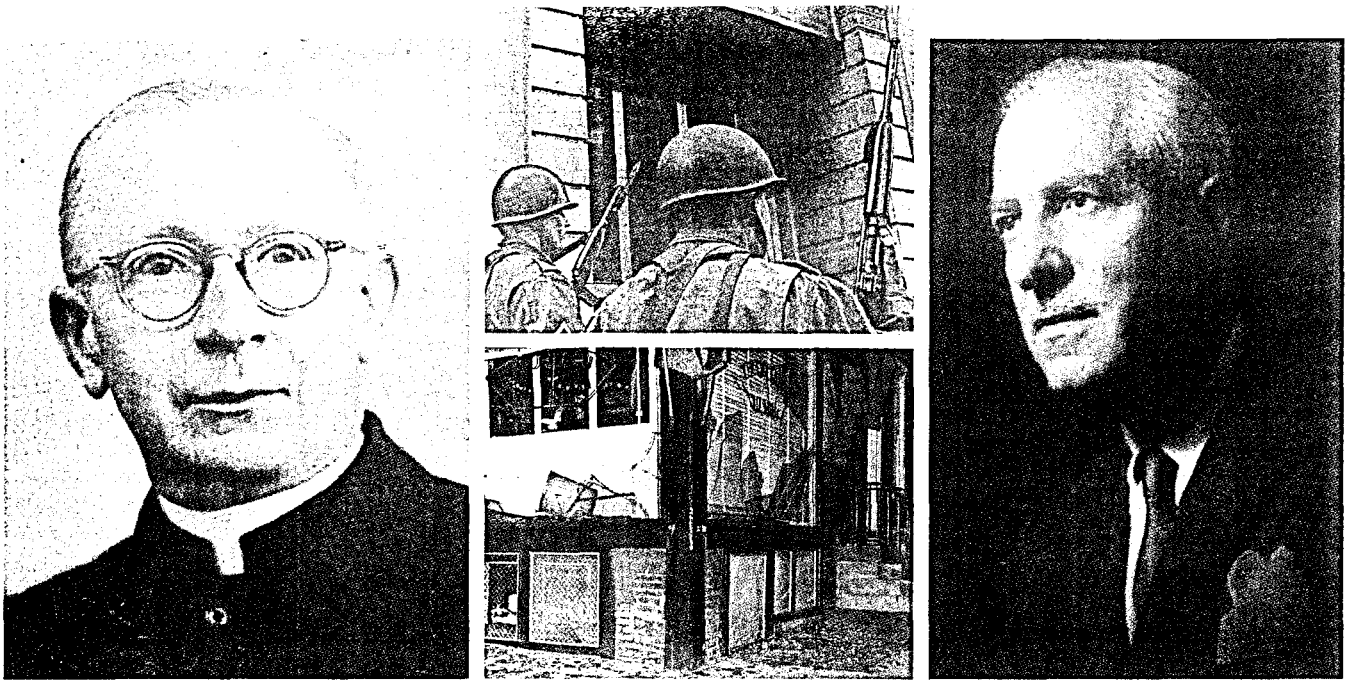
> **"I see nothing to apologize for other than the fact that it wasn't done years ago. I think it's a case of reaching a point of either stopping the preaching of democracy or starting to practice it."**
>
> *– Father Thomas A. Lawless*

Things were different in Kent and Sussex counties. There, the living patterns were more southern. Blacks and whites interacted more. They often lived near each other, or shared a facility like a movie theater (though segregation within facilities was strict). I don't know much about Kent County in those days, but I did experience Sussex County often. We spent vacations in Dewey Beach in the 1950s. Often, a number of young people would walk the beach to Rehoboth to enjoy the boardwalk or go to the movies. Once, when I was about 12, a bunch of us rushed up the stairs of the only movie house on Rehoboth Avenue. We intended to throw popcorn and candy down on those below — the kind of foolishness we did back in Wilmington. But we had hardly begun when a black man, a preacher judging by his collar, said to us: "Boys, you all had better get back downstairs where you belong. Or both you and all of us up here will get into a lot of trouble." The theater was segregated. It never occurred to us northern boys. We were used to separate facilities for black people. The man knew that if there was an ruckus because of our behavior it would be the colored people who would be blamed. We went downstairs quickly.

As a parochial school student in Wilmington, the *Brown v. Board of Education* decision had no direct effect on me. It was the public schools that were the subject of the decree. But I was a paper boy, I read the headlines. We listened to the radio news too. And, of course, my grandfathers always talked about the news. I became even more aware of the Supreme Court decision and its repercussions when the Milford schools decided to desegregate in 1954 and Bryant Bowles, head of the National Association for the Advancement of White People, arrived on the scene. His demagoguery and racist rhetoric incited big crowds. Most people in Sussex County opposed desegregation and so Bowles found willing listeners for his malicious pandering. He managed to halt the integration effort in Milford, for a time. And the ease with which he was able to muster angry crowds scared the heck out of a lot of people. And it presented Delaware's ugly, segregationist underside to the nation.

Only a few people openly stood up to Bowles. Attorney General H. Albert Young was one. He charged Bowles with conspiracy and had him arrested. And Joe Pyne, a local radio talk show host on WILM, was another. My family were faithful Pyne fans. I remember him mixing it up on the air with Bowles during all this ruckus. Pyne was a supporter of integration and was a skilled and often abusive questioner. Bowles's bellicose, bigoted rhetoric was met head on by Pyne's intractable bombast. My memory is Pyne won that debate.

When I arrived at Salesianum a few years later, I knew that black students would be there. I don't remember thinking too much about it. I became friends with some of the black students in my class and still see two of them once in a while. Some of them have gone on to success, others did less well.



Left: Father Thomas A. Lawless, Principal of Salesianum School from 1945 to 1958. Top center: 1968 riots — National Guard in Wilmington. Bottom center: 1968 riots — Charlie's Tailor Shop, 4th and Jefferson streets, Wilmington. Right: Attorney General H. Albert Young.

They were like the rest of our classmates — with one very crucial difference. I know now, but did not know then, the roadblocks — both personal and societal — that they and the other blacks faced to achieve anything of substance. Those who are now successful beat the odds even for well educated young men who had been prepared for college at a good private school.

After Salesianum, I spent four years at the University of Toronto in Canada and a year teaching just outside London, England. These were societies far more racially tolerant than ours. My understanding of the depth of America's racial dilemma grew when I lived in other cultures. And soon after I returned, I confronted the dilemma head on.

If the original *Brown v. Board of Education* decision had little direct effect on me, the later *Evans v. Buchanan* suit, in effect an aftermath of the *Brown* decision (and the Delaware cases — *Belton v. Gebhart* and *Bulah v. Gebhart* — affirmed in *Brown*), had an enormous impact on me and my family. There was some irony in that.

Soon after I became a reporter for *The News Journal* papers, I became the person covering Wilmington's black community. The paper had no black reporters or editors. It was the mid-1960s and there was considerable unrest on the streets in Wilmington. The old guard of the civil rights movement gradually but inevitably were being eclipsed by younger, more militant advocates. In 1967, Wilmington had initial outbreaks of racial violence. I helped to cover the disorders since I was one of only a few on staff who had contacts in the black community below the recognized leadership level. It was during this time that I persuaded the newspaper to change its characterization to black from Negro or colored. I was spending countless hours in the black community with protest organizers, civil rights activists and street gang members. In trying to open a window on the black community, I learned a lot about Delaware and myself.

In 1968, Wilmington, like a lot of other cities, erupted in violence following the death of Dr. Martin Luther King, Jr. The riots ripped the community apart. But it forced many in the white power structure to listen to the black protests about discrimination and exclusion.

All during 1967 and 1968 I was also reporting on education and I spent a lot of time covering the passage of the Educational Advancement Act, the law consolidating most of Delaware's school districts. The Wilmington Public School District, the largest in the state, was specifically excluded from consolidation. That was a mistake. At the time Wilmington was thought to be big enough to go it alone. And a deal had been struck by a few members of the General Assembly to let Wilmington remain unchanged. Some white suburban legislators didn't want the increasingly black Wilmington schools to become part of the consolidation mix. And some black legislators in Wilmington saw the district as a place where bright, educated blacks would soon have real sway, holding all the top jobs. Wilmington was excluded from consolidation. But it didn't take long for astute people to realize that those who sought to keep Wilmington's schools black made a bad bargain. A suit was filed by five black parents claiming that Wilmington was racially isolated by the Educational Advancement Act. They said the act perpetuated one school system for whites in the suburbs and another, inferior system for blacks in the city. They described it as an unconstitutional act of the General Assembly. It took three years, but a special three-judge panel of the Federal Court agreed and it ordered the schools of northern New Castle County desegregated — as soon as possible.

The ruling shocked and surprised everyone. Delaware had continued to live largely in racial isolation. Many in the state never really embraced integration and some continued to fight it openly, though without much success. (Remember, the W.C. Jason High School in Georgetown did not become desegregated until 1967.)

The courts in 1976 rejected the state desegregation plan and said that Wilmington and the districts surrounding it must be considered together. The remedy phase was assigned to Judge Murray Schwarz, who sincerely believed the Delaware General Assembly would

approve a desegregation plan. It refused and, ultimately, the Judge ordered what was in effect a countywide district be established. It was a disaster. I know because my children were involved. Delaware had gone from 56 school districts just a few years before to 26 districts and nobody was ready for the massive new district. The Judge was asked to revise his remedy, and after months of testimony he did so. In 1978, four desegrated districts were proposed and an attendance pattern that sent Wilmington students to the suburbs for nine years was set. Judge Schwartz approved this plan and his order remained in effect until 1995 when the federal District Court (Judge Sue Robinson was then assigned) was asked to declare the schools unitary. It did.

The schools had achieved desegregation, if not integration. When my children — regarded as black by the desegregation order because they lived in Wilmington — began school outside of Wilmington, my wife and I urged them to look out for their black friends and to try to smooth the way. They had attended school with blacks and other minority students for years and had difficulty

Louis L. Redding.

understanding what the whole desegregation fuss was about. Despite the outpouring of opposition to the second desegregation order and the emergence of another rabble rouser who, with meaningless bombast, seemed intent on combating the federal court ruling, the schools of New Castle County were effectively desegregated with a minimum of trouble.

One might think that the story would end happily (or at least contentedly) here. But it doesn't. Not long after Judge Robinson lifted the order from the desegregated schools, the Delaware General Assembly passed the Neighborhood Schools Law. It is, in my judgment, unconstitutional because it will effectively isolate minority students in Wilmington. It is a government action that will resegregate schools, just as the Educational Advancement Act did three decades earlier.

When Collins J. Seitz wrote his opinions on college and public school segregation, I think he had a vision of an integrated society, not just a desegregated one. I think the same was true of Fr. Tom Lawless and Louis L. Redding. But that vision, though much closer to reality than ever before, still remains elusive. Integration is much more difficult than desegregation. It is not a mechanistic concept, but one of social understanding. Integration is difficult to measure, but when it happens, it's obvious. ◆

Leland Ware

"DELIBERATE SPEED": Implementing Brown's Ambiguous Mandate

"...the cases are remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases."

– Brown v. Board of Education, 349 U.S. 294, 301 (May 31, 1955) (Brown II)

Introduction

On May 17, 1954, the United States Supreme Court issued its historic ruling in *Brown v. Board of Education*, 347 U.S. 483. The Court's ruling declaring segregation in public schools unconstitutional altered the direction of constitutional jurisprudence and dramatically transformed race relations in America. For example, it inspired the demonstrations and marches of the civil rights movement of the 1950s and 1960s. Those efforts ultimately resulted in the enactment of state and federal civil rights laws that eliminated legal barriers to racial equality.

Brown was a product of a long-range, carefully orchestrated legal strategy developed in the early 1930s by lawyers associated with the NAACP. They began with cases demanding that facilities provided for African American students be "equalized" to those maintained for whites, while carefully avoiding a direct challenge to the separate-but-equal principle established by *Plessy v. Ferguson*, 163 U.S. 537 (1896). After a series of victories during the 1930s and 1940s in equalization cases involving graduate and professional schools, a direct challenge to school segregation was launched in the early 1950s. The consolidated cases that are remembered as *Brown* represent the successful culmination of that effort.

The Supreme Court's 1954 decision in *Brown* did not address the remedy, however. The cases were held over and reargued in 1955 to determine the manner in which the Court's decision should be implemented. In *Brown II* the Court remanded the cases to the trial courts and ordered the school boards to proceed "with all deliberate speed" to develop desegregation plans under the supervision of the local federal courts.

As the following discussion indicates, efforts to implement *Brown* in Delaware and elsewhere were met with fierce opposition. School desegregation proceeded at a glacial pace. In New Castle County, the most populous of Delaware's three counties, school districts remained under federal court supervision until 1996. Today Delaware's public schools are racially mixed, but academic performance disparities between black and white students persist that are directly attributable to the state's history and legacy of segregation. Conditions are considerably different now for African Americans than they were fifty years ago when *Brown* was decided, but educational equity has not been achieved.

From Milford to Little Rock

The southern states reacted to *Brown* with extreme hostility, pursuing a strategy of "massive resistance." For years, southern states directly flouted the *Brown* decision or engaged in tactics that caused protracted delays in the desegregation process. Like its southern counterparts, Delaware engaged in dilatory tactics. Before the entry of the *Brown II* decree in 1955, the Milford, Delaware, Special School District took steps to desegregate its schools. At the beginning of the 1954–55 academic year, eleven African American students enrolled in a Milford high school. Local residents became apprehensive after they learned that black students were attending classes. After a series of meetings, parents petitioned the school board to re-segregate the school. Meetings were held with state officials, which ultimately led to the resignation of the School Board members who had approved the desegregation plan. A new Board was installed.

The controversy in Milford was reported in the national press. Bryant Bowles, a segregationist and head of the National Association for the Advancement of White People, traveled to Milford to organize protests. An anti-integration rally held at a local airport attracted 3,000 to 5,000 people — an unusually large crowd for a small town in southern Delaware. Another rally was held on the same evening. Fearing outbreaks of violence, on September 30, 1954, Milford officials yielded to mounting pressures and removed the black students. In October of 1954, Louis Redding responded by filing a civil action in Chancery Court seeking to reinstate the students. The trial court ruled in Redding's favor and the Milford School Board appealed. When the case reached the Delaware Supreme Court, it reversed, after finding that the School Board had failed procedurally to submit the desegregation plan to the State Board of Education for approval. The schools in Milford remained segregated for more than a decade.

Similar episodes of violent opposition took place in several

other locations across the South. One of the most dramatic confrontations took place in Little Rock, Arkansas. On May 20, 1954, the Little Rock school board issued a statement indicating its intent to comply with *Brown*. On May 24, 1955, a federal court in Little Rock approved a plan that anticipated desegregation in stages, to be completed by 1963. In September of 1957, nine black students were slated to enroll in Little Rock's Central High School. Segregationists developed a constitutional interpretation called variously "interposition" or "nullification," in which states were supposedly authorized to "interpose their sovereignty between the Federal government and the object of its encroachment upon powers reserved to the states." On September 2, 1957, Arkansas Governor Orval Faubus, apparently acting on this theory, sent National Guard troops to Central High to prevent the students from enrolling.

The next day the school board petitioned the federal court for a delay in the implementation of the plan. The court refused the board's request and ordered it to proceed with desegregation. On September 4th, National Guard troops blocked the African American students at the door of Central High School acting on the Governor's order. A local NAACP lawyer, Wiley Branton, and Thurgood Marshall sought relief in the federal court. On September 20th the court granted the NAACP's request for an injunction to prevent Governor Faubus and the National Guard from interfering with the black students' efforts to enroll in Central High.

On September 23rd, the students entered the school through a side door to avoid a mob of angry whites that had gathered in front of the building. The students were unable to complete the day because rioting broke out on the school grounds. Reports of the confrontation at Little Rock generated international newspaper headlines. Television crews filmed scenes showing dozens of angry white adults crowding around young black students, uttering threats, and brandishing signs that protested integration. Events rapidly escalated to a breaking point. On September 25th, President Dwight Eisenhower dispatched federal troops to Little Rock. When heavily armed federal troops arrived in tanks and other military vehicles, the black students were finally allowed to attend classes. On November 27, 1957, Army troops were withdrawn but federalized National Guardsmen remained on duty at Central High School throughout the school year.

The federal court's denial of the request to suspend the operation of the school board's desegregation plan was appealed and affirmed by the Court of Appeals for the Eighth Circuit. That decision was appealed to the United State Supreme Court. In an opinion issued on September 29, 1958, the Supreme Court (again unanimously) in *Cooper v. Aaron*, 358 U.S. 1, reaffirmed *Brown* and strongly condemned the actions of the Arkansas officials. It held that "no state legislature or executive judicial officer can war against the Constitution without violating his undertaking to support it. . . . A governor who asserts a power to nullify a federal court order is similarly constrained."

Bryant Bowles addresses a crowd in Milford, Delaware 1954.

James Meredith and "Ole Miss"

In 1961, James Meredith, a native Mississippian and Korean War veteran, attempted to enroll in the University of Mississippi. When his application was rejected, Meredith wrote a letter to the NAACP's Legal Defense Fund asking it for assistance. It agreed. At the trial court level the NAACP lost. The University claimed that Meredith's application had been denied, not because of his race, but because he had failed to submit the required "alumni certificates," endorsements from University graduates. This, of course, would have been an impossible task for an African American in Mississippi in the early 1960s, but the trial judge accepted the subterfuge. The ruling was appealed to the United States Court of Appeals for the Fifth Circuit. The appellate panel issued a decision reversing the trial court and ordered Meredith's admission.

Not long after the Fifth Circuit issued its decision, Mississippi Governor Ross Barnett announced his intention to defy the federal court order by invoking state sovereignty and the "interposition" doctrine. On September 12th, the NAACP and the U.S. Department of Justice (which had intervened as a party to the case) filed an application for contempt in the federal proceeding seeking an order to require school officials to obey the ruling requiring Meredith's admission. During the hearing, school officials agreed to allow Meredith to matriculate. Unwilling to relent, Governor Barnett subsequently filed a civil action in state court seeking to enjoin Meredith's admission. The state court, ignoring the Constitution's Supremacy Clause, granted Barnett's request for an injunction.

On September 22, 1962, Meredith attempted to register for classes at Ole Miss. Governor Barnett refused to allow him to do so. The next day, Meredith, accompanied by federal marshals, again attempted to enter the University. State police and Mississippi's Lieutenant Governor prevented him from registering. On September 28th, the federal court issued an order holding Governor Barnett in contempt of court. Attorney General Robert Kennedy engaged in behind-the-scenes negotiations with Governor Barnett and other Mississippi officials in an effort to head off a violent confrontation. After negotiations failed,

on September 29th President John F. Kennedy signed a proclamation ordering federal troops to Oxford. On September 30th, 1,400 federal troops arrived. Meredith was taken, under guard, to a dormitory on the campus. Hundreds of whites gathered. During the riots that ensued, gunshots were exchanged. A French reporter was shot and killed in the fracas. Within a few hours, 2,500 armed federal soldiers occupied the Ole Miss campus with tanks and other military vehicles.

For several days the events of Oxford dominated national news reports. Television crews captured dramatic images of the violence, which were broadcast to an international audience. Two weeks after the first riot, however, Meredith was finally able to register for classes. Federal troops, numbering at times as many as 23,000, occupied the town of Oxford. As time went by, the federal troops were gradually withdrawn. The last 500 soldiers finally departed when Meredith graduated in 1963.

Too Much Deliberation, Too Little Speed

Despite the unprecedented number of mass marches, "sit-ins" and other forms of protest activities during the 1950s and 1960s, as well as the enactment of major civil rights legislation, very little progress was made toward school desegregation. Ten years after the *Brown* decision, only 1.2 percent of black students in the South attended schools with whites. In five states — Alabama, Mississippi, South Carolina, Florida and Georgia — there were no black students attending white schools. By the late 1960s, however, the Supreme Court finally decided to put an end to the South's massive resistance. In *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218, 229 (1964), a case in which a school board involved in the original *Brown* cases had closed all of its schools to avoid desegregation, Justice Hugo Black concluded that "[t]here has been entirely too much deliberation and not enough speed in enforcing constitutional rights which we held in *Brown*." Prince Edward County was ordered to reopen its schools.

In *Alexander v. Holmes County Board of Education*, 396 U.S. 19, 20 (1969), the Court ruled that the "continued operation of segregated schools under a standard allowing 'all deliberate speed' for desegregation is no longer constitutionally permissible . . . [and] the obligation of every school district is to terminate dual school systems at once and operate now and hereafter only unitary schools." In *Green v. County School Board of New Kent County*, 391 U.S. 430, 438 (1968), the Court held that states which maintained segregated schools had an affirmative duty to eradicate all vestiges of the formerly segregated system "root and branch" and that school boards were obligated to bear the burden of proving compliance with the new standard.

Ten years after the *Brown* decision, only 1.2 percent of black students in the South attended schools with whites. In five states . . . there were no black students attending white schools.

After the rulings in *Griffin*, *Alexander* and *Green*, Delaware officials continued to delay the desegregation of the state's schools. In 1968 the Delaware legislature enacted the Educational Advancement Act, which prohibited any school district with 12,000 or more students from consolidating with other districts. At the time, Wilmington was the only district that had a large proportion of black students. The law would have confined most of northern Delaware's black students to Wilmington schools. The Educational Advancement Act was challenged in *Evans v. Buchanan*, 379 F.Supp. 1218 (D. Del. 1974), on the grounds that it violated Delaware's duty to eliminate racially identifiable schools.

While *Evans* was pending, the Supreme Court issued an important ruling in *Milliken v. Bradley*, 418 U.S. 717 (1974), a case involving schools in Detroit, Michigan. The plaintiffs attempted to address demographic changes by including the suburban school districts surrounding Detroit in a metropolitan desegregation plan. As a consequence of racially segregated housing patterns and "white flight" to suburban communities, the schools in Detroit were rapidly shifting to predominately black populations. At the same time, enrollments in suburban districts were nearly all white. The plaintiffs in *Milliken* argued that racial balance could not be achieved without including the suburban districts in the desegregation plan. The Supreme Court held that suburban school districts could not be required to participate in court-ordered desegregation plans unless it could be proved that their actions contributed to segregation in the jurisdiction in which the case arose. Thus there could be no remedy requiring busing across district lines without a showing of an inter-district violation. In most jurisdictions the Court's ruling in *Milliken* frustrated desegregation efforts. Suburban districts were effectively insulated from the desegregation process.

Although a new and more exacting standard had been established in *Milliken*, the District Court in Delaware ruled in the plaintiffs' favor after finding that there was an inter-district violation in *Evans*. The Court ordered a metropolitan remedy. This was one of the few desegregation cases in which such a finding was made. The Court also ruled that the Educational Advancement Act contributed substantially to maintaining segregation in Wilmington and suburban New Castle County schools. The U.S. Supreme Court ultimately affirmed this ruling.

Retreat and Resegregation

Court-supervised school desegregation proceeded slowly in Delaware and elsewhere for several years. In the early 1990s, however, the Supreme Court's desegregation jurisprudence took a dramatic shift with the decisions in *Board of Education of Oklahoma City v. Dowell*, 498 U.S. 237 (1991), *Freeman v. Pitts*, 503 U.S. 467 (1992), and *Missouri v. Jenkins*, 515 U.S. 70 (1995). In *Dowell*, the Supreme Court held that the standard for determining unitary status was whether the school board "had complied in good faith with the [original] desegregation decree," and

Left: James Meredith walking to classes at the University of Mississippi accompanied by federal marshals, September 1962. Right: Martin Luther King, Jr. with his wife Coretta King marching in Alabama, c. 1960 (Howard Dobson of Wilmington is on the right).

whether all "vestiges of past discrimination had been eliminated to the extent practicable." *Dowell*, 498 U.S. at 249-250. In *Freeman v. Pitts*, a case involving a school district near Atlanta, Georgia, the Court found that when single-race schools continue to exist because of changes in the racial composition of neighborhoods or other external factors, school districts would not be held responsible unless those factors were caused by actions taken by school officials.

Dowell and *Freeman* effectively abandoned the *Green* standard, which imposed an affirmative duty to eliminate all vestiges of segregation "root and branch." Green, 391 U.S. at 438. Under the Court's revised formulation, school districts were obligated to eliminate lingering vestiges of segregation only to "the extent practicable." This was affirmed in *Jenkins,* where the majority explained that the test for determining unitary status was not a finding that all vestiges of the formerly segregated system had been eliminated "root and branch," but "whether the [school district] ha[s] complied in good faith with the desegregation decree since it was entered, and whether the vestiges of past discrimination ha[ve] been eliminated to the extent practicable." 515 U.S. at 71. The Court also found that external factors such as segregated housing patterns, which affected the racial composition of schools, would not figure into the remedial calculus unless they could be directly attributed to the actions of school officials.

Dowell, Freeman and *Jenkins* created a much lower threshold for finding that a school system had reached unitary status. Under *Green*, school districts were required to eradicate completely all remnants of the segregated systems. Now they need only show good faith compliance with the original desegregation decree and the elimination of most, but not necessarily all, lingering vestiges. The new standard essentially compelled courts to hold that the desegregation obligation had been satisfied, even when schools remained racially identifiable as a result of segregated housing patterns. This has resulted in unitary status findings in school districts across the nation.

In 1996, applying this modified standard, the United States Court of Appeals for the Third Circuit affirmed a 1995 trial court ruling that the school districts of New Castle County had achieved unitary status and were to be released from federal court supervision. In *Coalition to Save Our Children v. State Board Of Education*, 90 F.3d 752 (3d Cir. 1996), the Court rejected the arguments of opponents to the unitary status motion, including a contention that the performance gap between black and white students was a vestige of the segregated system. The opponents contended that schools were racially balanced, but black students were not receiving the same quality of instruction as white students. This, they argued, was reflected in disproportionate levels of disciplinary actions inflicted on black students and the over-representation of African American students in "special" education programs. The evidence supporting these claims did not prevent the Court from finding that unitary status had been achieved. It measured desegregation mainly in terms of the racial balance within schools. The undisputed evidence of substantial performance disparities and a disproportionate percentage of black students in special education classes and other non-college track programs were, in the Court's view, attributable to "socio-economic" factors external to the schools.

This was a bitter disappointment to those who hoped that *Brown* would mean that black students would have access to educational opportunities on the same basis as white students. In *Coalition to Save Our Children*, the evidence established an undisputed correlation between race, discipline, and academic performance. The educational outcomes for black students were, on average, different and far less favorable than white students in the same building.

These conditions have not changed. Today, educational attainment averages for African Americans still lag far behind white averages. African American students score well below the state average on mandatory student achievement examinations that were introduced in 1998. Test results released on July 17, 2003, by the Delaware Department of Education show that nearly 75% of the state's black eighth-graders did not satisfy the required standard in mathematics. Roughly half of those test-takers received scores that could justify their retention in the eighth grade for two

more years. At the tenth-grade level, roughly 57% of low-income and Hispanic students did not meet the reading standard. Approximately 75% of the students in both groups did not meet the mathematics standard.

The low test scores will have an irreparable effect on the academic careers of these individuals. Students who do not obtain passing scores on the examinations cannot be promoted to the next grade level. Those who are able to fulfill all other state and local academic requirements will only be eligible to receive a "Basic" high school diploma, the lowest of the three levels established under Delaware's new accountability regime.

For more than a decade urban schools have become more segregated, reflecting . . . racially segregated housing patterns. . . .

Conclusion

Brown was a critical turning point in constitutional law and in American race relations, but its legacy remains clouded and uncertain. After the *Brown* decision, most of the southern states engaged in years of delaying tactics and did not begin to make serious efforts to desegregate the state's public schools until the 1970s. During this period "white flight" to suburban areas resulted in increased levels of residential segregation. For more than a decade urban schools have become more segregated, reflecting the racially segregated housing patterns that prevail in those areas.

In Delaware, school districts in New Castle County remained under federal court supervision for almost twenty years. They were released from federal court supervision in 1996 based largely on a modified and considerably relaxed standard for determining unitary status. Despite this finding, the academic performance gap between black and white students persists. Conditions for African Americans in Delaware have improved dramatically since 1954, when *Brown* was decided, but educational equity has not been achieved. ◆

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Buttonwood School class, New Castle County, 1935; Courtesy of The Historical Society of Delaware, Sanborn Collection. NAACP Legal Defense Fund team; Courtesy of Hon. Robert Carter, U.S. District Judge.

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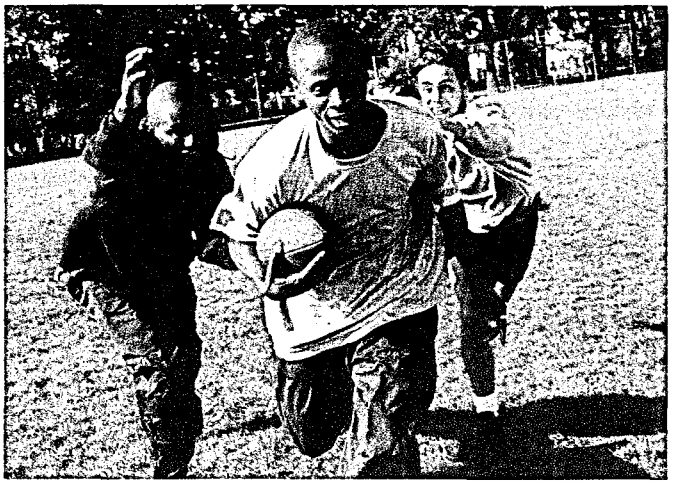
A special thanks to the producers of the film *"With All Deliberate Speed: The Legacy of Brown v. Board"* for their research and support.

OPINION

Chipman L. Flowers, Jr.

BRIDGING THE RACIAL DIVIDE . . . THROUGH OUR CHILDREN



On May 17, 2004, we will celebrate the 50th anniversary of one of the most important judicial decisions in our nation's history, *Brown v. Board of Education.* The U.S. Supreme Court, under the direction of Chief Justice Earl Warren, ushered in a new era of racial equality during a pivotal moment of history when our national character was not being defined by our words, but by our actions.

While this "new" era of racial equality had legal, moral and philosophical underpinnings firmly rooted in our nation's founding documents, the cruel reality of a dual society existed in America. This dual society affected generations of American children, often the same age living in the same community, who were unable to share a classroom environment or a playground swing due to a legal system that upheld and perpetrated the shameful act of segregation under the guise "separate but equal."

Even as the world awaited the *Brown* decision under the backdrop of an unfolding civil rights movement, many Americans did not know how America would cope with an inevitable change in the cruelties of racial division. However, the Warren Court knew bridging the racial divide through change had to begin with our children.

As an African American attorney educated in the post-*Brown* world, it is difficult to imagine a life composed of segregation. Clearly I am a beneficiary of the work of Louis Redding, Thurgood Marshall and the other unnamed heroes of that generation, all of whom risked their lives to ensure that racial equality among our children was more than an ideal concept learned by sociologists in academic institutions. No, I am not a beneficiary solely because I am part of a generation of African Americans born into an integrated American society when the conclusion of a painful chapter in our nation's history was being written. Rather, all of us, regardless of ethnicity, are beneficiaries of the *Brown* decision as we learned that embedded in the very concept of institutionalized segregation permitted by the Supreme Court's *Plessy v. Ferguson* decision was an implicit feeling of inferiority for some and superiority for others.

The "separate but equal" concept approved by *Plessy* served as the foundation for our dual society, perpetuating feelings of inferiority for so many minority children of generations past. They knew, like many others, separate was anything but equal as the legal system continued to ignore their cries for help. Separate, but equal, meant some of our children could experience the American dream, while others watched from afar.

On that spring day in 1954, the Warren Court, with its unanimous decision, took the first serious step in ending segregation. The Court knew that segregation had no place in American society, especially among our children. Integrating our schools meant perceptions of inferiority and superiority would end, while social education would begin. Minority and non-minority children alike would have to learn to appreciate their differences, cultures and experiences.

The Warren Court took the bold step of righting the wrongs of our past, in order to preserve the future for our children. This step changed the course of our nation's history and destiny.

Too often the effect of *Brown* is overshadowed by the constant debate over the strategies used to bring our children together. While such a debate is warranted, we should never lose sight of the true legacy of *Brown* . . . we must build this nation with our collective strengths, not our differences, and in doing so we are truly one step closer to forming a more "perfect union." ◆

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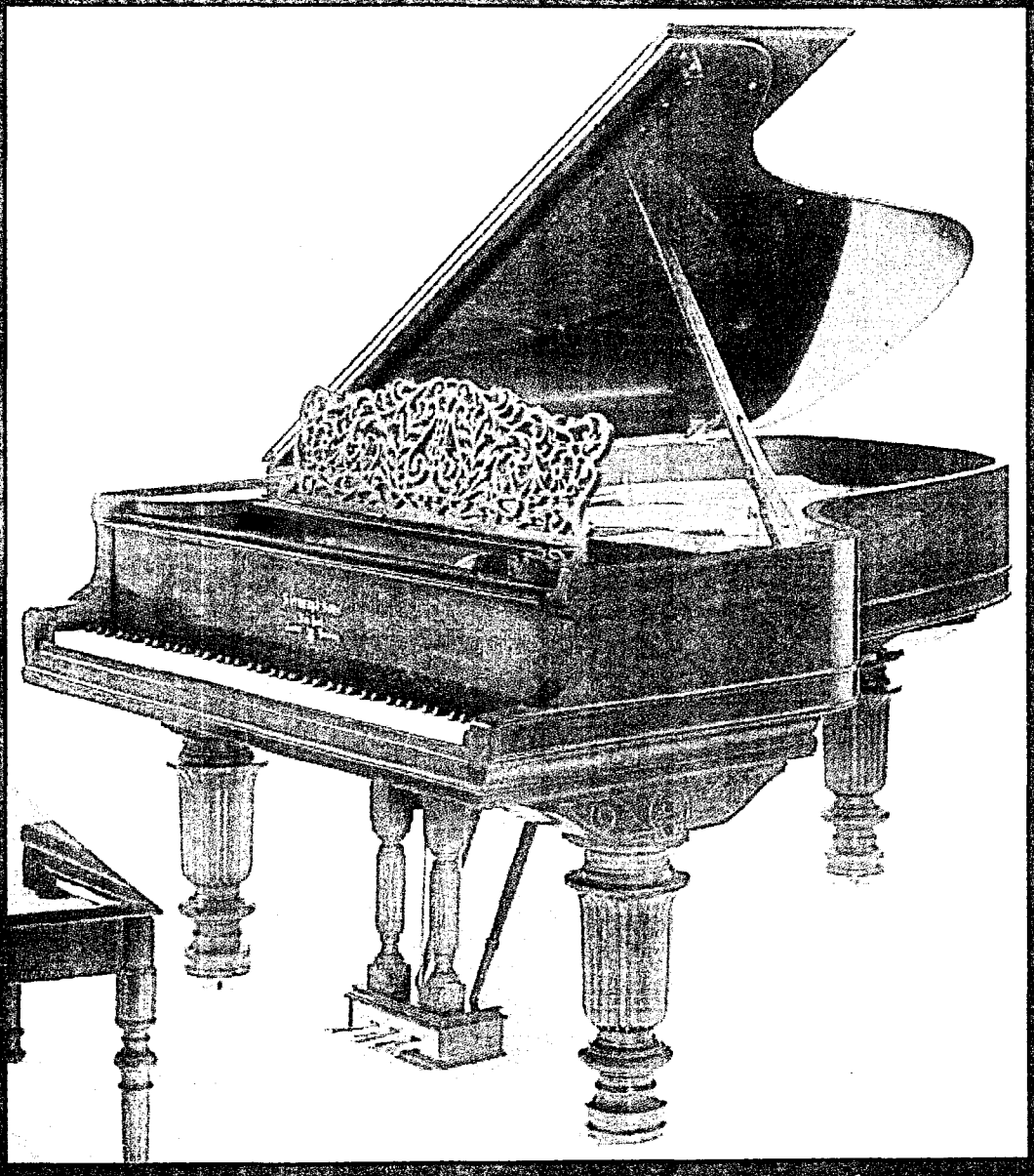

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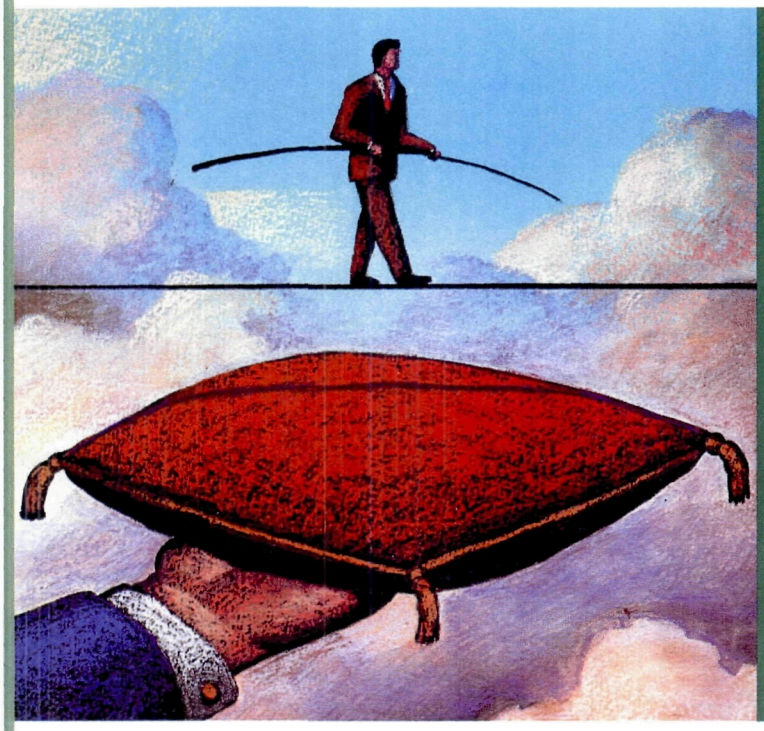

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