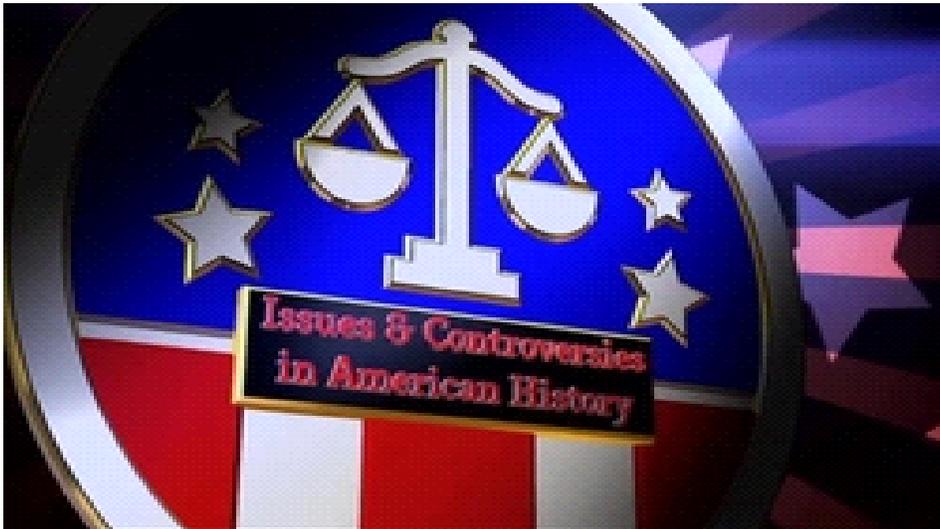




Brown v. Board of Education

Challenging the Principle of 'Separate but Equal' in Education

The Issue



The issue: Should states that segregate their schools according to race be forced to abandon those policies? Or is segregation allowed under the Supreme Court precedent of "separate but equal?"

- **Arguments in favor of desegregation:** Segregation is unconstitutional. Segregation and "separate but equal" facilities violate the fourteenth Amendment, which requires equal protection under the law, because "separate" can never be "equal." Furthermore, segregated schools harm black children by teaching them that they are inferior. And since the states have proven unwilling to desegregate, the Supreme Court needs to intervene in the matter. Through its power of "judicial review," the Supreme Court has the power to strike down laws that it deems to be unconstitutional, such as school segregation.
- **Arguments against desegregation:** In the 1896 case *Plessy v. Ferguson*, the Supreme Court established the principle that separate accommodations are acceptable as long as those accommodations are of equal quality. Under this ruling, segregated schools are acceptable. Furthermore, legislating education falls to the states, not the federal government, so it is up to the states to decide whether to desegregate. In choosing to go against established precedent, the Supreme Court would unacceptably broaden its powers and write new laws.

Background

Following the Civil War (1861-65), the United States ratified the Thirteenth Amendment to the U.S. Constitution in 1865, abolishing slavery and ratified the Fourteenth Amendment in 1868, guaranteeing black citizenship and equal protection of all people under the law. Despite these constitutional amendments, racial discrimination persisted and grew in the United States. Many Southern states passed laws legalizing the segregation of blacks and whites in public spaces such as restaurants, trains, and schools. In 1896, the Supreme Court upheld the principle of segregation and "separate but equal," with its ruling in the case of *Plessy v. Ferguson*. This decision essentially legalized discrimination and made African Americans second-class citizens.

As racism became more entrenched in the early 20th century and segregation permeated more and more aspects of American society, an interracial group of blacks and whites gathered in 1909 to form the National Association for the Advancement of Colored People (NAACP) to fight for civil rights and end racial discrimination. Initially, the organization focused on ending lynching and fought for fair trials for black defendants. By the 1930s, however, the NAACP set its sights on achieving integration, and won several cases.

Segregation, however, remained entrenched in many parts of the United States in the mid-20th century. In 1950, 17 states and the District of Columbia mandated the segregation of public schools on the basis of race, and four states permitted but did not require segregation. Most of the states that mandated segregation were located in the South; because nearly 70 percent of blacks resided in this region, most of the country's black population was affected by segregation.



Carl Iwasaki/Time & Life Pictures/Getty Images

A segregated classroom at the Monroe Elementary School in Topeka, Kansas. In this class are Linda Brown (front row, right) and her sister Terry Lynn (far left row, third from front). The lawsuit against the Topeka school board by their parents and 12 other black families led to the landmark Supreme Court decision that brought about school desegregation throughout the country.

Kansas was one of the states that permitted but did not require segregation of public schools and left the decision to local school districts. Black and white students attended integrated schools throughout most of Kansas in 1950, but the schools in Topeka, the state capital, remained segregated. As a result, third-grade student Linda Brown had to walk a mile to a bus stop to attend a far-away black school rather than the white school just blocks away. At the urging of the NAACP, Oliver L. Brown, Linda's father, agreed to attempt to enroll her in a local white school in the fall of 1950. Other black families living in Topeka joined them,

knowing that the children's school-enrollment requests would be turned down. These rejections became the basis of a test case against the Board of Education in Topeka in 1951. Such cases were designed to challenge the constitutionality of segregation, forcing the courts to weigh in on issues of social justice. [See 1951 Complaint Against the Board of Education of Topeka (Excerpts) (primary document)]

Similar lawsuits were filed in South Carolina, Virginia, Delaware, and Washington, D.C. After segregation was widely upheld in state courts, *Brown* and four other lawsuits were packaged in an appeal to the U.S. Supreme Court in *Oliver L. Brown et. al. v. Board of Education of Topeka, Shawnee County, Kansas, et. al.* The other four cases were *Briggs v. Elliott* (South Carolina), *Davis v. County School Board of Prince Edward County, Va.* (Virginia), *Gebhart v. Belton* (Delaware), and *Bolling v. Sharpe* (District of Columbia).

In a unanimous ruling issued on May 17, 1954, the Supreme Court ruled in favor of *Brown* and the other plaintiffs. In the Court's opinion, Chief Justice Earl Warren wrote that "segregated schools are not 'equal' and cannot be made 'equal,' and that hence they [the plaintiffs] are deprived of the equal protection of the laws." He continued, "We conclude that, in the field of public education, the doctrine of 'separate but equal' has no place." [See *Brown v. Board of Education of Topeka, Kansas Supreme Court Decision*]



New York Sun/Library of Congress

The Supreme Court justices in 1953. In the front row are (left to right) Felix Frankfurter, Hugo Black, Chief Justice Earl Warren, Stanley Reed, and William O. Douglas. In the back row are (left to right) Tom Clark, Robert H. Jackson, Harold Burton, and Sherman Minton. In 1954, these justices ruled unanimously that public school segregation was unconstitutional.

With these words, the Supreme Court struck down the precedent of "separate but equal" established in *Plessy v. Ferguson* and ushered in an era of expansive civil rights legislation that would transform American society. Both before and after the Court's decision, the *Brown* case generated a heated national debate about racial equality in the United States. [See *Plessy v. Ferguson* Supreme Court Decision]

Did the "separate but equal" policy in fact violate the Fourteenth Amendment guarantee of equal protection for everyone under the law? Was it the role of the Supreme Court to interpret existing laws or to create new laws for a new time? Was education a state or national issue? Did the "separate but equal" policy cause psychological damage to black children?

Supporters of integration argued that segregated schools violated the Fourteenth Amendment because separate accommodations based on race could never be "equal." These supporters believed that the Court should interpret the Constitution in a way that upheld true equality of

all citizens. They cited the states' failure to address racial issues as the reason why the federal courts should intervene in such matters. Proponents also claimed that by essentially treating black children as inferior, segregated schools harmed their psychological well-being.

Critics of integration, however, accused the Supreme Court of broadening its powers and writing new law. The Supreme Court had established the precedent of "separate but equal" decades earlier, opponents pointed out, and there were no strong grounds to overturn that precedent. Opponents also argued that the Tenth Amendment to the Constitution provided states with rights not relegated to the federal government and that education fell within the realm of rights reserved for the states. In forcing states to desegregate against their wishes, critics claimed, the *Brown* ruling violated states' rights.

The Foundation of Segregation in the United States

In 1846, Dred Scott, who was born a slave, filed a case in Missouri, a slave state, asking that he and his family be granted their freedom. The legal basis for his case was that his family had lived for a time in a state (Illinois) and a territory (Wisconsin) in which slavery was prohibited. Scott asked the court to declare that once he and his family had become free, that freedom could not be rescinded based on their state of residence. [See *Dred Scott Decision*]

After multiple hearings, the case came before the U.S. Supreme Court in 1856. In 1857, the Court ruled that neither slaves nor free blacks were citizens of the United States and that the section of the 1820 Missouri Compromise that outlawed slavery in the northern part of the Louisiana Purchase was unconstitutional. Chief Justice Roger Taney wrote that blacks "were so far inferior, that they had no rights which the white man was bound to respect." The Court's decision legalized discrimination against blacks—which had long existed both informally and under state and local laws—prominently upheld states' rights, and further inflamed the tensions over slavery that would ultimately lead to the outbreak of the Civil War.

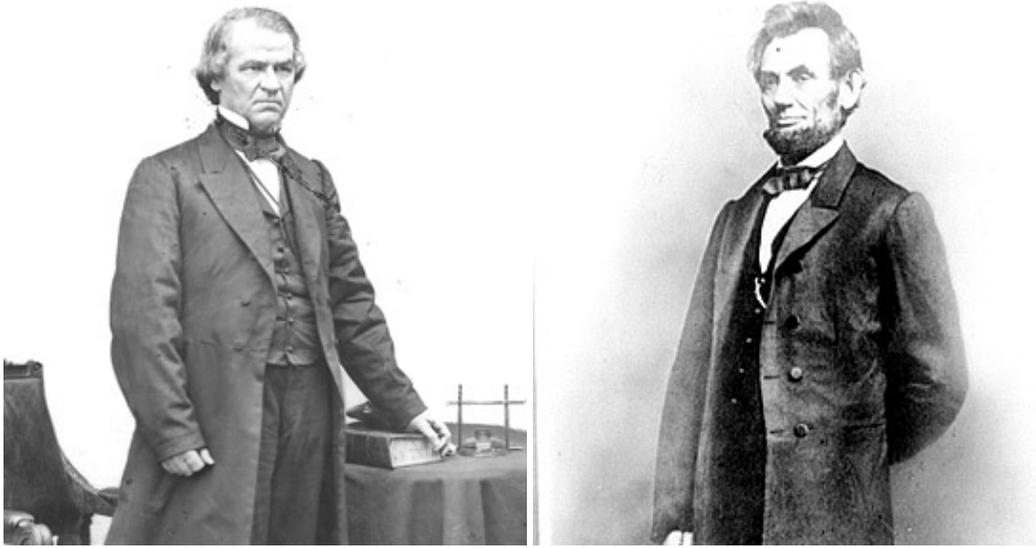


Missouri Historical Society

Dred Scott

Years later, however, the adoption of the Thirteenth, Fourteenth and Fifteenth Amendments negated Taney's ruling. The Fourteenth Amendment, ratified in 1868, stated that all people born in the United States were citizens and possessed equal rights, and the Fifteenth, ratified in 1870, gave black men the right to vote. Congress passed four civil rights bills between 1866 and 1875, attempting to further safeguard basic rights and to end discrimination in public places. [See Civil Rights Act of 1875 (primary document), [See 13th, 14th and 15th Amendments to the Constitution]

Andrew Johnson (R, 1865-69) became president after the assassination of President Abraham Lincoln (R, 1861-65) in 1865. As a condition for returning to the Union, President Johnson required Southern states to ratify the Thirteenth Amendment, thereby ending slavery. Most Southern states complied but also passed new laws that came to be known as Black Codes, which limited the rights of blacks. The Black Codes provided for the segregation of public schools. [See Civil War: Reconstruction]



Library of Congress

Presidents Andrew Johnson (left) and Abraham Lincoln (right).

In 1873, the Supreme Court began chipping away at the basic rights that the Fourteenth Amendment and various civil rights laws aimed to protect. That year, the Court declared in a series of cases that came to be known as the Slaughterhouse Cases (due to the involvement of a Louisiana butchers' association) that citizens' rights fell under state rather than federal authority. The Slaughterhouse cases helped establish the argument that school segregation was a states' rights issue. In 1883, the Supreme Court further weakened blacks' civil rights by declaring that the Fourteenth Amendment did not protect them from discrimination by individuals or businesses in the private sector.

States throughout the South enacted discriminatory Jim Crow laws, named after a stereotypical minstrel character. These racist laws separated blacks and whites in virtually all areas of public life. Separate trains, stations, streetcars, schools, parks, and cemeteries became common across the region. In Alabama, there was even a law preventing blacks and whites from playing checkers with each other.

In 1892, Homer Plessy—a light-skinned man with an African-American great-grandmother—was arrested and charged with breaking the law for taking a seat in a white railroad car in Louisiana. Plessy filed a lawsuit, alleging that the state law that required "separate but equal accommodations" violated his constitutional rights guaranteed under the Fourteenth Amendment, which provided citizens with equal protection under the law. District Court Judge John Howard Ferguson ruled against Plessy, but the *Plessy v. Ferguson* case was subsequently appealed to a higher court.



Left: Smithsonian; Right: Library of Congress

NAACP lawyers Charles Hamilton Houston (left) and later Thurgood Marshall (right) challenged the "separate but equal" policy of universities and graduate schools.

The NAACP sought out black families to seek to enroll their children in white schools, knowing that the schools would not permit them to. The Browns were just one of just 13 black families living in Topeka, Kansas; all 13 families would become part of the class-action lawsuit. The NAACP initially argued that segregated schools violated the Fourteenth Amendment because the schools for black students were of lesser quality than the schools for whites, and thus were not "equal." The Supreme Court, however, considered the wider question of segregation: Did segregated education violate the U.S. Constitution? Speaking for the Court, Chief Justice Earl Warren answered, "We believe that it does."

Civil rights supporters hailed the ruling. "The highest court in the land, the guardian of our national conscience, has reaffirmed its faith—and the undying American faith—in the equality of all men and all children before the law," proclaimed an editorial in the *New York Times* on May 18, 1954.

White Southerners, however, strongly criticized the ruling. In Mississippi, the *Jackson Daily News* declared that the *Brown* decision was "the worst thing that has happened to the South since carpetbaggers and scalawags took charge of our civil government in reconstruction days" and that "Mississippi cannot and will not try to abide by such a decision." Some state officials immediately declared that they would not comply with the Supreme Court's ruling, and other states sought to find ways around integration. Mississippi considered abolishing the public school system and making all education in the state private so that schools would not have to comply.

In the wake of the Court's decision, many Americans wondered how the nation's segregated schools would be integrated. In fact, while the *Brown* ruling stated that segregation was unconstitutional, it did not provide a strategy for desegregation. In 1955, one year after the first *Brown* ruling, the Court reconvened to discuss a means for ending segregation. After four days of discussion, Warren issued *Brown II*, ordering the federal district courts to implement desegregation with "all deliberate speed."

Some school districts immediately complied with *Brown II*, such as Washington, D.C. However, the vague wording of the decision made it possible to delay compliance, which some states, such as North Carolina and Kentucky, did until the 1970s. Even then, those states had to be prodded to comply with *Brown II* via new court orders.

Mississippi, too, eventually followed suit, although staunch segregationists pulled their children out of public schools rather than allow them to sit in classes with black students. School integration would take years to accomplish. Despite widespread opposition by white Southerners, however, *Brown v. Board of Education* marked a critical turning point in American history and helped spark the civil rights movement of the 1950s and 1960s.

The Case for Integration

Lawyers in *Brown v. Board of Education* called for integration on two main grounds: that segregation was unconstitutional, and that it harmed black children. Integration supporters claimed that segregation violated the Fourteenth Amendment guarantee of equal protection under the law, which declared, "No State shall make or enforce any law which shall...deny to any person within its jurisdiction the equal protection of the laws." And since separate accommodations could never be equal, they argued, segregation was unconstitutional. "The act of separation and the act of segregation in and of itself denies [students] equal educational opportunities which the Fourteenth Amendment secures," attorney Robert Carter argued on behalf of the plaintiffs.

Supporters rebutted critics' claims that the Supreme Court's refusal to overturn *Plessy v. Ferguson* in the past implied acceptance of the principle of separate but equal by the courts. They pointed out that *Plessy* specifically referred to segregation in railroad cars. There had been no reason, they argued, for the Court to reconsider the *Plessy* ruling in regard to the education cases the Court had been considering. In his dissent in 1951 in *Briggs v. Elliott*, one of the cases combined in *Brown*, District Judge Waites Waring wrote:

Of course, the Supreme Court did not consider overruling Plessy. It was not considering railroad matters, had no arguments in regard to it, had no business or concern with railroad accommodations and should not have even been asked to refer to that case since it had not application or business in the consideration of an educational problem before the court.

Proponents of integration also argued that segregation was harmful to black students. Citing a study by psychologists Kenneth Clark and his wife, Mamie Phipps Clark, the plaintiffs' legal team argued that segregation caused psychological damage to those students. In a study conducted by the Clarks, 16 black elementary school students between the ages of six and nine had been presented with a brown doll and a white doll. Of those, 10 students had designated the white doll as the "nice" one and 11 students had designated the brown doll as "bad." Furthermore, the Clark study found, seven students selected the white doll as being the one that most resembled them. The Clarks concluded that "the pressures which those children sensed against being brown forced them to evade reality."

Along similar lines, Hugh Speer, chairman of the department of education at the University of Kansas, had testified before the district court that heard the *Brown* case before it reached the Supreme Court that segregation harmed black children because they needed to learn to live in an integrated world. "[I]f the colored children are denied the experience in school of associating with white children, who represent 90% of our national society in which these colored children must live," he asserted, "then the colored child's curriculum is being greatly curtailed."

Chief Justice Earl Warren acknowledged the damage done to black students in his written opinion in *Brown*. Segregation, he wrote, "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to be undone."

Some supporters of integration further claimed that segregated schools violated the Fourteenth Amendment rights not only of black students but of their parents as well. Because black parents were often forced to send their children to schools out of the district in which they resided, attorney Charles Bledsoe stated in the 1951 complaint filed against the Board of Education of Topeka, "they must bear burdens and forego advantages, neither of which is suffered by parents of white children situated similarly to children of plaintiffs."

Supporters also rebutted the states' rights argument used by those who favored segregation. "[N]o state has any authority under the equal protection clause of the Fourteenth Amendment to use race as a factor in affording educational opportunities among its citizens," Robert Carter asserted. Proponents also maintained that federal action ending segregation was warranted due to states' inability to manage modern problems. The Supreme Court was forced to resolve the issue for the country, they asserted, since racial strife was rampant in the South and school desegregation cases were being filed in state after state. Backers of

integration alleged that the Court took on the necessary role of adapting the Constitution to modern times and modern problems with a liberal interpretation of the words "equal protection."

Many proponents upheld the Supreme Court's ability to interpret existing laws. They pointed out that in 1803, Chief Justice John Marshall had reasoned that the Constitution allowed courts to exercise the power of judicial review. Marshall had declared that "it is emphatically the province and duty of the judicial department to say what the law is." Backers of that position maintained that the Supreme Court's powers of judicial review included both clarifying the law and eliminating laws or behaviors that went against the Constitution.

Indeed, supporters of integration argued, although the power of judicial review was not expressly stated in the Constitution, Marshall firmly established the principle that it was implied by the Constitution. He reasoned that without the power to eliminate unconstitutional laws, the executive and legislative branches of government could operate outside the system of checks and balances intended by the writers of the Constitution.

The Case Against Integration

Critics of integration argued that the Supreme Court had overstepped its power with its ruling in *Brown v. Board of Education*. They believed that the practice of judicial review, inasmuch as it gave the Supreme Court the power to strike down laws that Congress and state legislatures had seen fit to pass, was ultimately unconstitutional. The Supreme Court did not have the power to interpret state laws or state constitutions, they insisted, and it did not manage state court systems.

Many opponents highlighted states' rights when discussing their opposition to the *Brown* decision. In particular, they cited the Tenth Amendment to the Constitution, which granted states all rights not specifically given to the federal government: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." These critics of integration who backed states' rights viewed the states as participants in a voluntary relationship with the Union. At any time, they insisted, states could refuse to act on federal mandates—such as the *Brown* decision—that violated their rights. They noted that the Constitution did not mention education, and so claimed that education policy fell under the control of the individual states.

In a letter to President Eisenhower in 1953, Louisiana governor Robert Kennon (D) made an appeal for states' rights to be respected: [See Louisiana Governor Kennon's Letter to President Eisenhower on Behalf of States' Rights (primary document)]

Throughout the history of our public school system every state has exercised the right to operate its own schools, and the United States Supreme Court has sustained this right in a series of cases extending back some three-quarters of a century.... I trust that the guiding principle of states rights, local self-government and community responsibility will be given the prime consideration it deserves, and that the position of the Department of Justice will be towards sustaining the fundamental American conception of state sovereignty.

Critics also cited the legal precedent set by the Supreme Court in *Plessy v. Ferguson*. In that decision, the Court had ruled:

Laws permitting, and even requiring, their separation, in places where they are liable to be brought into contact, do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which have been held to be a valid exercise of the legislative power even by courts of states where the political rights of the colored race have been longest and most earnestly enforced.

Critics of integration argued that the Supreme Court had ignored states' rights, state laws, and long-standing legal precedent in the *Brown* ruling, usurping powers clearly reserved for the legislative branches of government. Additionally, they charged, overturning the *Plessy* decision violated the Court's general practice of *stare decisis* (let the decision stand).

Critics also took issue with the Clarks' position that segregation caused psychological

damage to black children. "[I]t seems to me that much of that which is handed around under the name of social science is an effort on the part of the scientist to rationalize his own preconceptions," asserted attorney John Davis during oral arguments before the Supreme Court on behalf of the Prince Edward County school board (in *Briggs v. Elliott*, one of the cases later combined in *Brown*). "They find usually, in my limited observation what they go out to find." Others pointed out that the Clarks had not studied Topeka schoolchildren, rendering their study irrelevant to the *Brown* case.

Furthermore, some opponents of integration argued, black students—and white students also—were actually better off in segregated schools. Children were more comfortable when surrounded by their peers, critics asserted, and so would better learn in a segregated environment. And black students would certainly be less comfortable in a school where they were not wanted, critics contended. Davis quoted educator and black activist W. E. B. DuBois: "We shall get a finer, better balance of spirit; an infinitely more capable and rounded personality by putting children in schools where they are wanted, and where they are happy and inspired, than in thrusting them into hells where they are ridiculed and hated."

Some other opponents of integration justified segregation by insisting that blacks were less intelligent than whites. During the 1920s, schools around the country began using standardized IQ (intelligence quotient) tests to place students into appropriate courses based on their perceived ability levels; the test results, opponents asserted, showed that black students were intellectually inferior to white students. In *A Study of American Intelligence*, Carl Brigham, a respected educator of the time, commented that "American intelligence is declining...owing to the presence here of the negro. These are the plain, if somewhat ugly, facts that our study shows."

Other critics of integration used religion to justify beliefs of white supremacy. Such beliefs rested on the notion that the British—and white Americans of British descent—were descendants of the lost tribes of Israel. Subscribers to that religious view saw themselves as God's chosen people as referenced in the Old Testament of the Bible. Consequently, such believers viewed themselves as superior to people of other racial and ethnic origins such as blacks and Jews. The Ku Klux Klan, a terrorist group that advocated white supremacy on the basis of that religious viewpoint, reemerged in the 1950s in response to the threat of integration.

Opponents' assertion that there was nothing inherently wrong with the laws that established segregation harkened back to the arguments of Supreme Court justice Henry Brown in the *Plessy* ruling in 1896: "We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority." Mid-20th-century critics of integration who shared that view contended that the problem with segregation lay in the schools' failure to establish equal facilities, supplies, and levels of instruction as the law required, not with the policy of segregation itself.

Finally, critics warned that integrating the schools would roil race relations, which up to that point, they claimed, had been calm. In a petition to the Virginia government in support of the state's stand against desegregation following the Supreme Court ruling, residents of Halifax County called on the government to "make every effort" to continue the policy of segregation, adding, "an admixture of colored and white children will bring unending violence and strife to the detriment of both races."

Brown v. Board of Education Ushers in Civil Rights Legislation

The Supreme Court's 1954 ruling in *Brown v. Board of Education* proved to be only the beginning of a long fight to end school segregation in the South. Indeed, Southern segregationists believed that mass resistance to the ruling would impede enforcement of the Court's decision. To protest the ruling, some terminated the employment of anyone willing to work with black students, closed schools, and organized boycotts of integrated schools. [See 'Southern Manifesto' Decrying *Brown v. Board* Decision (primary document)]

Furthermore, segregationists formed the White Citizens Council, which worked to both establish private white schools and terminate the employment of blacks who supported integration. Also reflecting many whites' resistance to court-mandated school integration, the Ku Klux Klan saw a rise in membership following the *Brown* ruling. The Klan utilized tactics such as harassment and even murder to fight integration.

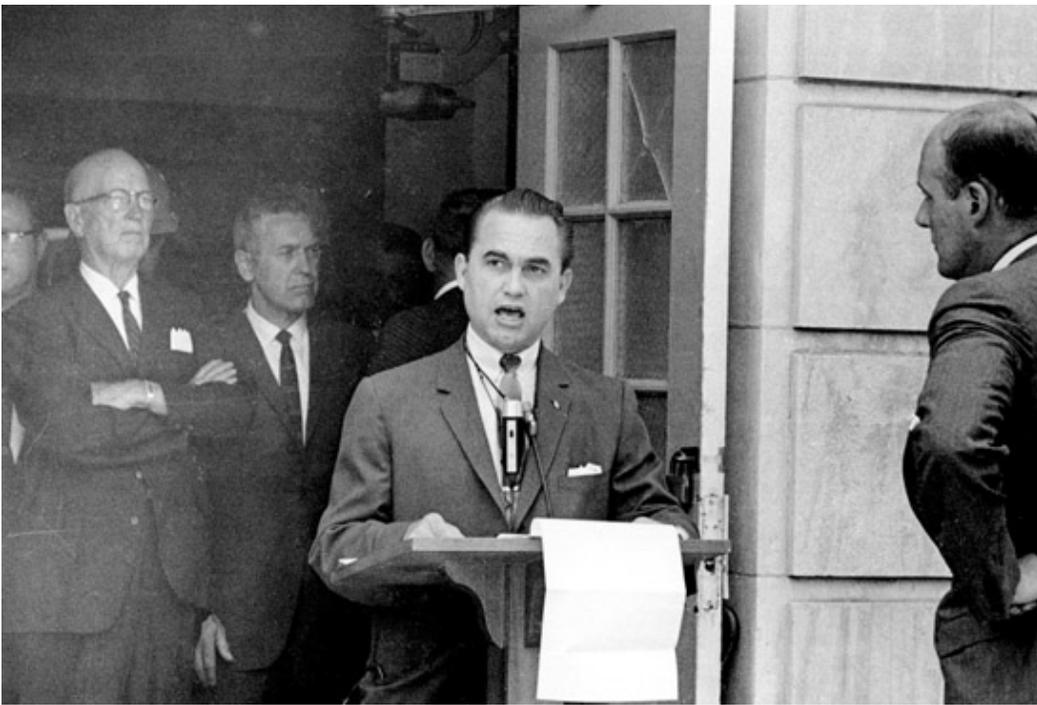


CBS Photo Archive/Getty Images

James Meredith is escorted by federal marshals for registration at the University of Mississippi in 1962.

The struggle to integrate schools garnered massive media attention throughout the 1950s and into the 1960s. For example, when Arkansas governor Orval Faubus (D) blocked the enrollment of nine black students at Little Rock Central High School in 1957, newspaper and television reports focused Americans' attention on the unfolding drama. President Eisenhower eventually had to dispatch federal troops to Arkansas to escort the "Little Rock Nine," as the students came to be called, into the school. [See President Eisenhower's 1957 Executive Order Authorizing Military Action in the Desegregation of Arkansas Schools (primary document)]

As the civil rights movement gained momentum, the *Brown* ruling continued to be strongly resisted. In 1962, James Meredith, an African-American student, attempted to enroll at the University of Mississippi. After being denied admission, Meredith took his case to court. Eventually, a federal court ruled that the university had to allow Meredith to attend, upholding the *Brown* decision. But Mississippi governor Ross Barnett (D) ignored the court's ruling, forcing President John F. Kennedy (D, 1961-63) to provide Meredith with the protection of federal marshals. A riot ensued, resulting in two deaths and a few hundred injuries.



Hulton Archive/Getty Images

Governor George Wallace blocks the entrance to the University of Alabama in an attempt to prevent the desegregation of that institution.

After the governor of Alabama, George Wallace (D), threatened to follow Barnett's lead in order to keep the University of Alabama segregated, President Kennedy employed the U.S. Army and other arms of the federal government to counter violence instigated by whites and enforce integration in the South. In 1963, Kennedy proposed major civil rights legislation.

Although Kennedy was assassinated in November of that year, his successor, President Lyndon Johnson (D, 1963-69), pressured Congress to pass the wide-ranging Civil Rights Act of 1964, which contained most of Kennedy's proposals. This landmark law, built upon the precedent set by the *Brown* ruling, officially ended segregation in all aspects of public life. [See Civil Rights Act of 1964]

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