

SPEECH ON BROWN V. BOARD OF EDUCATION,
MAY 1, 1981*

Paul E. Wilson

Each spring for the past few years Professor Wilson spoke at the noon forum on his involvement in Brown v. Board of Education. Each year the talk grew more popular. The text below is a near verbatim transcription of last spring's talk. It would be remiss if we did not emphasize this fact, because Professor Wilson is a craftsman with the written word, and this speech, transcribed by students, is not as smooth nor as organized as Professor Wilson's writing. It is, however, one imperfect way of preserving, for all of his students, the vision of Professor Wilson in the classroom. This memory deserves preservation.

I am greatly pleased that so many of you have chosen at this very busy season to put aside an hour to listen to an elderly man reminisce about his brief visit to Camelot. I am going to talk about things that happened long ago. I am not going to attempt to analyze the issues or the impact of *Brown v. Board of Education*. I'll leave that to scholars like my brothers Heller, Kissam, and Westerbeke. (Laughter) I am going to talk about facts; facts as I remember them, and remember, I am remembering a long time. The world has turned over more than 10,000 times since the events about which I will speak, and memory grows indistinct; so, if I remember some things less than accurately, or if I remember things that really didn't happen, but ought to have happened, I hope you will be patient.

I suppose that everyone here knows that *Brown v. Board of Education* is the case that ended legally sanctioned racial segregation in the public schools of this country. Possibly not

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everyone here knows that *Brown* was not one case, but five cases. Along with Kansas in defending policies that produced racial segregation in public schools were Virginia, South Carolina, Delaware, and the District of Columbia. The District of Columbia case involved an issue somewhat different from those in the state litigation, but each of the cases raised the ultimate issue of whether the Constitution permitted racial segregation in the public schools.

The state cases were disposed of in a single opinion which is captioned *Brown v. Board of Education of Topeka*. You may wonder why we call the case *Brown v. Board of Education of Topeka*, because obviously, the South Carolina and Virginia cases affected more people and were more spiritedly contested. It's just a matter of chance. The Kansas case happened to be appealed first; it occupied the highest position on the docket of the Supreme Court. Therefore, it provided the name by which the consolidated opinions in the four cases have from that time been known.

There were some other matters of chance, matters of fortuity, in this case that have interesting if not significant implications. For instance, Linda Brown is a folk heroine of the civil rights movement. There is talk of building a statue of her on the campus of Washburn University, where I went to law school. (Laughter) Actually, Linda Brown was only one of many plaintiffs in these cases. There were 20 plaintiffs in the Kansas case and there were multiple plaintiffs in each of the others. But whoever heard of Victoria Lawton, or James Emmanuel, or Nancy Jane Todd—probably no one in this room. But we've all heard of Linda Brown for the purely fortuitous reason that her name appeared first in the list of plaintiffs in the first case to be docketed in the Supreme Court. We may have thought that her name appeared first because Brown appears earlier in the alphabet, but the attorney who prepared the complaint in the Topeka case told me that they put the names on the pleading at random, and the way the ball bounced put Linda at the head of the list.

There was another fortuitous circumstance I'll talk more about later; my own role in the case. Certainly I had not planned on it, nor was I prepared for it. There was nothing in my professional experience that indicated that I was an appropriate

person to even participate in a case of this magnitude. I just happened to be the person who was beckoned by the fickle finger of fate. (Laughter) And here I am. (Applause)

HISTORICAL BACKGROUND

Frequently the question was asked and is asked: Why Kansas? After all, Kansas is the bastion of freedom. In proportion to population, Kansas sent more men to the Union Army than any other state. Kansas is the place where John Brown got his start. How in the world did Kansas happen to be aligned with Virginia, South Carolina, and Delaware in defending this vestige of black slavery? In order to answer that question, let me look briefly at history. Now I'm sure there are historians here, and I'm sure I shall make some mistakes, but please don't embarrass me in front of all these people by correcting me. (Laughter)

We all know that until the time of the Civil War, slavery and its extension was a paramount political and social issue in these United States. Slavery existed in the South as the basis for the economy and the way of life, and people in the South were anxious to protect the institution. Slavery, economically, was less feasible in the North, so the people of the North could afford to be righteously concerned about the moral issues. This contention continued from the beginning of the United States until it was terminated in the Civil War. The Free State areas were more heavily populated than the South, so the South saw its principal protection in the United States Senate. By preserving a balance between free states and slave states in the United States Senate, the South could prevent Congress from enacting legislation unduly prejudicial to the existence of slavery. Consequently, in the period before the Civil War, as new states were created the South competed for the allegiance of the new states to reserve this balance in the Senate.

In the first 30 or 40 years of the nation, this balance was maintained pretty well. You may remember from history the Missouri Compromise of 1820, by which Missouri was admitted as a slave state, but prohibiting the further extension of slavery north of the line that is roughly the southern boundary of Missouri.

Between 1820 and 1854, eight new states were created, and five were admitted without slavery. The balance was being disturbed. Thus it became particularly important for those who sought to safeguard slavery to add to the numbers of states that were represented in the United States Senate by proslavery senators. In 1854, under the aegis of Stephen Douglas, the Kansas-Nebraska Bill was passed. The Kansas-Nebraska Bill provided that notwithstanding the Missouri Compromise, when the Kansas and Nebraska territories were ready for statehood, their character with respect to slavery would be determined by the voters of the territories: the principle of “squatter sovereignty.” Consequently, a race was on. In the words of a famous Civil War General, who could get their “fustus with the mostest men” got the mostest votes. (Laughter)

At the outset, the proslavery forces were in the ascendancy. They didn’t have to come so far; most came from Missouri, Kentucky, and Arkansas. The antislavery people also got organized and began to encourage immigration to Kansas. They came from New England and the Middle Atlantic States and the Middle West, and as you Kansas historians know, within a few months the competition had become intense, often erupting into overt warfare. This was the time when the journalists in the East spoke of the territory as “Bleeding Kansas.” As the conflict progressed, however, it became apparent that the antislavery people were going to win, and in 1861, Kansas became a state under a constitution prohibiting slavery. So much for your history lesson.

The fact that Kansas had rejected slavery did not mean that they had accepted racial equality however; quite the contrary. The antislavery forces in the Kansas territory coalesced in the Free State Party, and one of the consistent planks of the Free State platform was that blacks should be excluded from the territory and from the state. They didn’t want slavery, but they didn’t want black people either. The same view was expressed by early constitution makers. The proposed Topeka constitution contained a provision that excluded blacks from the territory. It was submitted to a referendum and passed by a vote of two to one, but was not accepted by Congress for other reasons. The Wyandotte constitution, which was adopted, both prohibited slavery and allowed black immigration. Still, Kansas practiced

discrimination both formally and informally. Initially, blacks could not vote, not until the post-Civil War amendments. They couldn't serve on juries in Kansas. They couldn't serve in the militia. In addition to these kinds of legal discriminations, our society was teeming with actual, informal discrimination. When I lived in Topeka before World War II, blacks were not permitted to swim in most of the public swimming pools. Blacks were not permitted to attend most of the movie theaters, and when they were allowed to do so, they were segregated in a special section in the balcony. I remember time after time being in restaurants with prominently displayed signs reading "Coloreds and Mexicans served in sacks only."

When I say these things, I'm not indicting Kansas. I love Kansas with all of its faults. But the things we saw in Kansas were simply indicative of an attitude toward race that was pervasive in this country until recently. This was part of the American culture, and Kansas was part of America. So when people say to me "Why Kansas," I reply, "Why not Kansas?"

SCHOOL SEGREGATION IN KANSAS

My assignment is to talk about public school segregation in Kansas and how it ended, but let me first consider how it began. In territorial days no provision was made for the schooling of black students. This may not have been very significant, because there were very few blacks in the territory. When Kansas became a state, the laws generally provided that local districts could determine their own policies and might or might not establish racially segregated schools. In 1876, the Kansas school laws were codified and the new school code contained no express authorization for the maintenance of separate schools, creating the inference that Kansas had abandoned the policy of segregation.

In 1878 and 1879, a phenomenon occurred that history sometimes calls the "Black Exodus." Due to black apprehension at the ending of Reconstruction and the effective promotion of counterparts of our present day real estate developers and travel agents, a great many black people migrated from the South to Kansas, Nebraska, and other states in the area. It is estimated that in 1878 and 1879, 30,000 (there is no accurate census)

blacks moved from Mississippi and Tennessee and elsewhere in the South to Kansas. Thirty thousand may not seem like a very large number, but Kansas was not as heavily populated then as now, and the migration did produce an impact. These people were poor; many came up the Mississippi and Missouri rivers in boats, getting off in Kansas City, Leavenworth, and Atchison, and working their way into Topeka and beyond. As I said, they were poor. At least a third became objects of public charity, and this aroused the resentment of the people in the towns. This resentment may have led to the passage in 1879 of a law permitting, but not requiring, cities of the first class (over 15,000 people) to maintain separate schools on the elementary level only. You may think the impact of that legislation was fairly limited, but for the black people, it was not limited, because most lived in cities of the first class, and most black students who went to school did not go beyond the elementary grades. Therefore, this limited legislation permitted the racial segregation of most of the blacks who went to school in that day. That 1879 law remained the law of Kansas until 1954, when it was stricken down in *Brown v. Board of Education*. There was only one amendment before 1954, and that permitted Kansas City, Kansas to maintain a black high school, also.

Segregation in the public schools was assumed at that time to be a valid policy. It was justified on the basis of *Plessy v. Ferguson*, decided in 1896, in which the Supreme Court said that so long as public facilities were equal in their objective characteristics, there was no denial of equal protection of the law because of mere separation. *Plessy v. Ferguson* involved public transportation, not public education. Nonetheless, on the basis of that opinion, the courts justified separate but equal segregation policies in many different areas. Around the fourth and the fifth decades of this century, blacks became increasingly impatient with the results of separation in public education because, in most parts of the country, the facilities for the blacks were not equal to those provided for others. They were separated, and then neglected. Under the leadership of the NAACP in the 1930s and 1940s, black plaintiffs successfully carried a great deal of litigation to the Supreme Court attacking racial separation in public education. You remember some of these cases: *Missouri ex. rel. Gaines v. Canada*; *Sipuel v.*

Oklahoma; Sweatt v. Painter; McLaurin v. Oklahoma State Regents. All of these cases, though, involved higher education, and each involved something more than mere separation, usually inequality or actual discrimination. Therefore, none of the cases brought into issue the constitutional validity of the separate but equal doctrine in public education. By about 1950, the NAACP was ready to test the validity of separate but equal on elementary and secondary levels. They filed several lawsuits, one in Topeka.

In 1950 there were twelve cities in Kansas that were authorized to maintain separate schools, and of course, Topeka was one of the cities. There were then twenty-two elementary schools in Topeka; eighteen were white and four were black. Both sides conceded, and the federal court found, that they were of equal quality, according to objective criteria: they had equally good buildings, equally good equipment, equally qualified teachers. The only difference in the treatment of the blacks and the white students was that the blacks were bussed. The four black schools were scattered throughout the city, and consequently the Board of Education provided the black students with bus facilities that were not provided to the whites who attended school closer to home. Of course, this was quite a different bussing than we now experience in litigation, because bussing was then employed to implement a policy of segregation, not integration.

As I said, Topeka was selected as one of the target areas for the attack upon separate but equal. Topeka was selected because it was one of the few districts in the country, I suppose, where there were separate schools which were in fact equal. Therefore, it was one of the few places where the doctrine of separate but equal could be challenged without some extraneous considerations of inequality.

Early in 1951 a group of plaintiffs in Topeka, with the assistance of the NAACP Legal Defense Fund, filed a case in the federal district court seeking to enjoin the maintenance of separate schools in Topeka on the grounds that the statute was unconstitutional. In a case like this a three judge federal court is convened, and it was convened. And when a suit seeks to enjoin enforcement of a state statute on the claim of unconstitutionality, notice must be given to the governor. Notice was given to the

governor, and he was given the opportunity to answer the suit and defend the statute. The governor and the attorney general had a conference. They decided the attorney general would file an answer, and he did file an answer, but in that answer, he simply denied that the statute was unconstitutional. He did not say anything about what Topeka was doing; for all the pleadings showed, he didn't know and didn't care what Topeka was doing. (Laughter) The trial was in the summer of 1951, and the Attorney General's Office did not participate in the trial, except to enter an appearance. Eventually, after the trial was ended, the case was decided by the three judge court in favor of the Board of Education and against the plaintiffs. But the three judge district court made one interesting finding, that later assumed significance in the opinion of the Supreme Court of the United States.

The district court found that the

segregation of white and colored children in public schools has a detrimental effect upon the colored children. Further, the impact is greater when it has the sanction of law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. This sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to retard the education and mental development of the Negro children, and to deprive them of some of the benefits they would receive in a racially integrated school system.

In spite of that finding, the district court felt that it was obligated to find for the Board of Education based on *Plessy v. Ferguson*, and because by objective standards the schools were equal. The Supreme Court of the United States relied on this same finding to find a denial of equal protection under the law. You may be wondering when and how I get into this case. Well, now let me tell you; from here on it is kind of a personal memoir.

ENTER, PAUL WILSON

In late 1951, I went to work in the Attorney General's Office. I was not particularly young. Professionally, I was kind of a slow starter. Maybe I'm a slow finisher, too. (Laughter) I had been out of law school for twelve years. I had been in the

military service four years, and I'd practiced down in Osage County, south of Topeka. I'd been a county attorney. I'd been an attorney for a state department. And in 1951, I went to work in the Attorney General's Office. One of the reasons I went there was that I had no appellate experience, and I wanted to get some experience on that level. (Laughter) Shortly after I got into the office, the attorney general had a conversation with me.

First, I guess I neglected to mention, but you may have inferred, the plaintiffs who lost in the district court appealed to the Supreme Court. In the case of a three judge district court, you don't go through the court of appeals, but appeal directly to the Supreme Court. Anyway, the attorney general said that we had this case, and he wanted to go and argue it, but he wanted me to work on the brief and he also wanted me to go to Washington when he argued it, and he would get me admitted to the bar of the Supreme Court of the United States. And of course I was overjoyed. There are lots of lawyers who practice a lifetime and are never admitted to the bar of the Supreme Court of the United States, and here I was on the threshold of that achievement. So, I began to get familiar with the case; I began also to get familiar with the rules of the Supreme Court. I got my papers for admission on file, so I would be ready to be admitted when I arrived there. Then, to my dismay, I discovered I didn't have anything to wear. (Laughter)

The traditional dress before the Supreme Court is a black morning coat and gray striped trousers. But I was so recently out of Osage County, Kansas, that I suppose it is understandable that my wardrobe did not include garb of that kind. (Laughter) As an alternative, the rules permitted appearance in a dark business suit, but I didn't have that either. (Laughter) I had a tan gabardine, I had a black and white, known as a pepper-and-salt tweed, I had some sport jackets and some miscellaneous pants, but nothing that would fit the rule. So, I decided I'd better get a dark suit. I went down to the Palace Clothing Company that used to be in Topeka, as some of you may remember; it was kind of a poor man's Jack Henry. (Laughter) I looked around and I found a double-breasted, dark blue suit, that then fit me like a glove, and I decided, that's what I am going to wear to the Supreme Court. So I had them lay it away for me. It cost \$40, and I didn't have \$40 available then. And besides, I wanted it to

be new when I wore it to Washington, so I paid \$5, and had them lay it away.

Then some things happened that I had not anticipated. Segregation had been a controversial matter in Topeka, and there was a vocal minority of the school board that wanted to eliminate segregated schools as a matter of local policy. In the election in the spring of 1952, the anti-segregation minority became the majority and took control of the Board. Shortly after the Board was reorganized, it announced its intention not to resist the appeal in *Brown v. Board of Education*. The attorney general was dismayed when he learned of this, because he had many friends in the black community and he had always enjoyed their support and prized their friendship. So, he announced that this was the Board of Education's case, and if they were not going to resist it, then the attorney general was not going to take care of their dirty linen for them by making an appearance assuming responsibility for defense of the trial court's decision. He told me to put the file aside, and go out and look for slot machines. (Laughter)

So, I stopped work on *Brown*, but it caused me a lot of misgiving. It seemed to me that as a matter of professional responsibility, when you have a case in the Supreme Court of the United States, you ought to do something about it: you ought not to let it go down the drain, summarily. And besides, I had my blue suit laid away, and it didn't look like I'd have anywhere to wear it. (Laughter)

Anyhow, things went along in that posture all summer. There was a lot of concern expressed by the southern lawyers, because these cases were assigned for argument one after the other; the first Kansas, then South Carolina, then Virginia, then the District of Columbia, and then Delaware. Virginia and South Carolina thought that if Kansas failed to appear and let the matter go by default, it would not do much for the atmosphere in which their cases were to be heard and decided. They exerted all kinds of pressures on people in Kansas to get the attorney general involved, but he was determined that he would not.

The case was set for argument on December the 8th, 1952. On November 24 of 1952, the Supreme Court made an interesting order. It's found in the U.S. Reports, at 344 U.S. 141. It concludes:

Because of the national importance of the issue presented, and because of its importance to the state of Kansas, we request that the state present its views at oral argument. If the state does not desire to appear, we request the attorney general to advise us whether the state's default shall be construed as a concession of invalidity.

Kansas was on the spot. At the time the order came over the wire, the attorney general was out of state. He didn't get back until two or three days later. Obviously, we could not concede the invalidity of a statute that had been passed by the legislature, and in at least six cases had been held valid by the supreme court of the state. We had to do something. So, the attorney general sent a wire to the Clerk of the Supreme Court saying: Kansas will be there. Kansas will appear and argue and file a brief.

Then, he called me to his office, pointed to a stack of files, and said, "Take the damn thing and do what you can with it." (Laughter) When I think of these events, I am reminded of something that I read long ago in my course in Shakespeare Rapid Reading: (Laughter) "Some are born great, some achieve greatness, and some have greatness thrust upon them." (Laughter) I went to work. The first thing to do was to write a brief, because I had no brief.

I worked weekends, and I worked during Thanksgiving vacation; there really weren't very many weekends. I have a quote here from a book I wanted to read to you, mainly to call your attention to the fact that I'm mentioned in a book. (Laughter) This is Kluger, *Simple Justice*. He said:

Working steadily, sleeping little, Wilson turned out a concise, direct, and clearly competent brief. Kansas was not coming to the Supreme Court to argue the economic, sociological, ethical, or religious desirability of school segregation. Its only concern in appearing was to defend the state's right to permit such a practice.

Then he further discusses our argument, but that, of course, was the gist of it: under the federal concept, under all the precedents that we knew, the maintenance of public education policy within a state was the business of the state, not of the Supreme Court of the United States.

I got my brief written. I had arranged with the state printer to expedite its printing and on a Saturday morning, before the

case was set to be argued on Tuesday, I got on a train headed for Washington, with forty copies of my brief in my briefcase. I wanted to go on the train because I hadn't had any time to think about my argument, and it took 28 hours for the train to get from Topeka, Kansas to Washington. I had a drawing room, and in that 28 hours, I thought and made notes and arrived in Washington on Sunday evening, ready to argue in the Supreme Court.

When I got off the train, I bought a newspaper in the station. I looked at the headlines and it said, "Legal Titans to do Battle in the Supreme Court." (Laughter) I began to read, and it occurred to me, "Why, they're talking about me." (Laughter) But I read a little further, and I discovered they were really talking about the attorneys in the Virginia and South Carolina cases; John W. Davis, Thurgood Marshall, Spottswood Robinson, and Attorney General Lindsay Almond. In the last line it did say, "The State of Kansas will be represented by Assistant Attorney General Paul *Williams*." (Laughter)

Anyhow, from the station I went to the hotel—the Carlton Hotel, a gracious old hotel. When I registered, there were two messages waiting for me; one from my adversaries who wanted to get a copy of my brief, and one from the attorneys for the other states, who wanted to be sure I was really there, if there was such a person as me. (Laughter) So I went first to the hotel of my adversaries across the street, and there I met men who have since become great. Well, actually they were great then—Thurgood Marshall, Robert Carter, and Spottswood Robinson III. They were confident, cordial, agreeable men.

I delivered my brief to them, and went back and made contact with the attorneys from the other states who, if not my colleagues, shared a common interest with me. And they, too, were clearly confident, gracious, and agreeable men. I delivered my brief to them, and we agreed to meet the following evening to plan our strategy. Then I went to my room, and I was there only a short time when the phone rang.

Now this has always puzzled me, how these people knew I was there. A voice on the other end of the wire said, "Mr. Wilson?" and I acknowledged my identity. (Laughter) He said, "This is the 20th Century Escort Service. Would you like some company this evening?" (Laughter) Well, not being very

imaginative, and a little slow witted, I said no. But I've often wondered what might have happened if I had said yes. (Laughter)

The next evening I met with my colleagues. Included in that group was John W. Davis, who was representing the state of South Carolina. John W. Davis was perhaps the greatest constitutional lawyer of this century. He had held numerous high positions in the government, he had been the Democratic candidate for President in 1924, and, after his defeat, he had gone to New York and become the head of one of the great Wall Street law firms.

He was in the case because he was a personal friend of the governor of South Carolina. He was then in his eightieth year. That evening for two hours, he took me under his wing and gave me a course in appellate argument; I had never argued an appeal. I hadn't even had a course in appellate advocacy. (Laughter) But here I was, ready to go to the Supreme Court of the United States, in the case of the century, being instructed by the greatest constitutional lawyer of the century. It was great! When we separated, he inquired if I had been admitted to the bar of the Court, and I replied I had not. He said, that he'd be glad to move my admission. I had made arrangements for someone from the office of Senator Schoeppel to move my admission, but when Mr. Davis made his proffer, I thought, "To hell with Andy Schoeppel." (Laughter) The next noon when the Court convened, he stood up with me and vouched for my character and professional qualification, and his name will always appear on my certificate of admission to the Supreme Court, which I display in my office alongside the plaque indicating that I am a member of the Leavenworth County Bar's Order of the Smiling Bull. (Laughter)

Eventually, the cases were called for argument. My case was first, but fortunately I was the appellee, and my adversary, Mr. Robert Carter, had to speak first for the appellant. So I got to observe him, and the Court's treatment of him, before I had to stand on my feet. All this time I was sitting beside John W. Davis, and he was passing notes to me, telling me what to say in response to the argument, and if the Court asked me this question, what to say in answer to it. It did give me some security, but not much. Finally Mr. Carter sat down, and the

Chief justice, who was then Fred Vinson, smiled at me and said, "General Wilson." I was an assistant attorney general, and he was giving me the benefit of my dubious status. And so I stood up and began to talk. Surprisingly, I could make sounds, and the sounds were relatively coherent. (Laughter) Mr. Kluger says about my argument:

Paul Wilson climbed to his feet for the first time before the Supreme Court, and proceeded to deliver a perfectly able, if somewhat simplistic, argument for the State of Kansas, following closely the arguments he had made in his brief.

Kluger was writing in 1975, and we've become a lot more sophisticated than we were in 1952. Maybe if he'd been writing from the perspective of 1952, he wouldn't have found my argument so simplistic. (Laughter) I don't know whether Kluger liked me or not. In his book, at one point he made this, I guess, unsympathetic comment: "By eastern standards, Paul Wilson was a hayseed. His background and practice as a lawyer did not seem to qualify him very well for the roles thrust upon him, as a reluctant dragon defending his state's Jim Crow public schools." But still, in his book generally he treated me kindly, so he may have felt sorry for me. (Laughter)

Anyway, at the argument, after I began to talk, I enjoyed it. The Court asked me many questions and they were kind questions. They seemed designed to help me develop my argument. After using not all of my time, but as much as I needed, I sat down. And the next cases were heard.

I came back to Kansas, and we waited until Spring for word about the case. Finally the word came, and the cases had been restored to the docket for further argument the next December. This time the Court had directed that the arguments focus on the intent of the Congress that proposed the Fourteenth Amendment, and the intent of the legislatures that ratified it, as to its effect on public education. This time, of course, I had plenty of time. I was an experienced Supreme Court advocate. I was in touch with the outside world. (Laughter)

So I prepared a brief during the summer and got ready to go back and argue. But in the meantime, the city of Topeka sort of pulled the rug out from under me by announcing that they were going to abandon the policy of segregation. Still they hadn't abandoned it, and the plaintiffs still claimed that the statute was

unconstitutional, so I felt the case remained alive. Anyhow, I went back to Washington this time, and did not experience the uneasiness that I'd experienced on my first trip, but instead I felt sort of secure. Also, I had with me a prepared argument, a prepared speech, and I was going to stand there, and unless the Court digressed too much, I was going to present my prepared speech. The other time I had only some notes on the margin of my brief.

Again *Brown v. Board of Education* led off. Mr. Carter began to argue, but Justice Frankfurter interrupted him, and he said, "Mr. Carter, isn't your case moot?" Justice Frankfurter apparently read the newspaper. And Mr. Carter very graciously said, "Well, I'd like to have General Wilson address that question." There was nothing at all about mootness in my prepared speech. (Laughter) I responded as best I could, and finally Earl Warren, who had become the Chief Justice after the death of Fred Vinson said, "I don't think the case is moot. We've invited General Wilson to come here and speak, and I propose that we let him present his argument." And Justice Frankfurter said no more, but it was obvious to me that they did not want to hear extended argument in this case. So the argument I gave was quite an abbreviated one, and not the one that I had prepared. For 28 years I have cherished the manuscript of that speech, hoping to find a place to give it. (Laughter)

Again, the Court took the case under advisement, and again it was spring before an opinion was announced, and you know of course what the opinion was. There were further arguments, directed at how the decree should be implemented, that is, how segregation should be phased out. Those arguments were in the spring of 1955, about a year after the decision. But during these first two arguments I'd gotten pretty good press in this part of the country, so the third argument was made by my boss. (Laughter) I went along, but I just carried the papers. Anyhow, it was all a great experience.

Now, when I make these presentations, I ask a bit of personal license, to say a word in my own defense, my own behalf. It is commonly assumed that I was on the wrong side of this case. From the standpoint of winning or losing, I was. From many standpoints I was. You know, my children have always been kind of embarrassed about the role their daddy had in

standing before the Supreme Court defending racial segregation. They feel about this like they feel about all those times that daddy voted for Nixon. (Laughter) Frequently, I have been introduced at meetings as the lawyer who was on the wrong side of *Brown v. Board of Education*, and people look at me as though I must be some kind of a racist. My response is that I'm not a racist, I am a lawyer, and in our society a lawyer's role is a useful and honorable one. We choose to decide issues of this kind in an adversary process, and before wise decisions can be made by courts, the courts must be fully informed. The job of the lawyer is to inform the court as to the merits in the position he represents. Here, the Supreme Court was being asked to decide one of the most important issues of the century. It was being asked to reverse the trend of the law, because our decisions did support the policy that was under attack. It was being asked to reverse a trend that was supported by the values that society had traditionally held. If it was to decide the issue correctly, the justices needed to be fully informed. The Kansas position was not a frivolous one. It was supported by precedent, by tradition, by history, and the values in our culture. I think I probably said all that could be said for the State of Kansas. I said it as well as I could say it, and in doing that, I think I performed a service to the Court and to the State of Kansas.

And now, if I may exhibit a bit more paranoia. (Laughter) I suppose the person who was best able to evaluate my performance was my good adversary, Robert Carter. After the decision, we corresponded. In his first letter to me he said:

We are certain that your purely lawyerlike examination of constitutional power, unfettered with emotions and demagoguery, helped embolden the court to make its courageous and statesmanlike declaration of May 17. However poorly stated, this is meant as a tribute to your honesty and integrity as a member of the bar and an official of the State of Kansas.

(Applause) He may have been just being nice. I hope he meant it.

There is one more thing that I might say. I'm not at all sure that I lost in *Brown v. Board of Education*, because if I had not been in that case, I would not be here today, wearing my blue suit, and talking to you. And it is a pleasure. Thank you.

(Applause)

The single word applause is misleading. As Professor Wilson finished with "thank you," the entire room of people shot to its feet, and loud applause filled the air for over two minutes. Professor Wilson stood at the front of the room, wearing the same blue suit he wore before the Supreme Court, shaking his head and smiling in disbelief. Like Spottswood Robinson, John Davis, and the others in Brown, "clearly a confident, gracious, and agreeable man." And much more. Professor Wilson, thank you.



