The Promise of

Brown v. Board of Education

A Monograph

Arizona Attorney General Terry Goddard

In Commemoration of the 50th Anniversary of Brown v. Board of Education

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"I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin, but by the content of their character."

Martin Luther King, Jr.

August 1963

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Introduction

On May 17, 1954, the United States Supreme Court published its decision in *Brown v. Board of Education*,[1] striking down the doctrine of *"separate but equal"* in public education.[2] That decision forever changed race relations in the United States and promised a new era of racial harmony.

Now, 50 years after the *Brown* decision, it is time to consider whether the promise of equality, mutual respect and understanding between races offered by the Court in *Brown* has been fulfilled.

Arizona History

Arizona has a turbulent history of race relations. Segregation of public schools, impediments to voting by racial minorities, and other forms of discrimination have marred the Arizona experience.

Early in the 1900s, racial segregation of education was legal in Arizona. In 1909, the Territorial Legislature passed a law allowing school districts to segregate students of African ancestry from other students.[3] Governor Joseph Kibbey vetoed the legislation, but the Territorial Legislature overrode his veto and the new law took effect on March 17, 1909.[4] When the Phoenix Elementary School District Board of Trustees subsequently adopted a segregation policy, Kibbey, then an attorney in private practice, filed a lawsuit on behalf of African-American plaintiff Samuel F. Bayless, who opposed sending his children to a segregated school. Maricopa County Superior Court Judge Edward Kent enjoined the school district from requiring Mr. Bayless' children to attend a school reserved for African American children. Mr. Bayless' children had to travel a greater distance to reach the Madison Street School than white children had to travel to attend their schools. In addition, the children had to cross the railroad tracks on their way to school. Judge Kent found that African American children *"for these two reasons . . . were 'not afforded educational facilities substantially equal to the educational facilities given and afforded'"* to white children in the district.[5]

In 1912, the Arizona Supreme Court reversed Judge Kent's decision and remanded the case to the Maricopa County Superior *Court "with directions that the injunction be vacated and the case dismissed."* [6] In upholding the constitutionality of the Arizona statute authorizing segregated schools, the Arizona Supreme Court cited *Plessy v. Ferguson*[7] and other state court cases.[8] The Supreme Court concluded that the constitution did not require that school districts ensure that students travel an equal distance to school. As to the railroad tracks, the Supreme Court found*: "The crossing of railroad tracks as another inconvenience is attended with risks of being run down; but in these days of automobiles and street railways it behooves a pedestrian, wherever he is, to keep a sharp lookout."* [9]

Mr. Bayless' unsuccessful legal challenge did not deter others from filing lawsuits to stop segregation in Arizona schools. Parents who challenged these practices and, very often, the lawyers who represented them were a special breed. They risked the loss of employment, friendships and standing in the community, especially when they lived in a small town like Tempe, Arizona in the 1920s.

In 1925, Adolpho "Babe" Romo brought an action in the Maricopa County Superior Court against William E. Laird and the other Trustees of the Tempe Elementary School District asking that his children be admitted to the 10th Street School on the same terms and conditions as all other children their age in the area. The district required his four children to attend the 8th Street School,

which was reserved exclusively for students of Spanish or Mexican descent. Mr. Romo was represented by Edward B. Goodwin and Harold J. Janson. The Tempe School Board relied on a 1913 state statute that authorized school districts *"to make such segregation of groups of pupils as they may deem advisable."*[10]

This statute provided public officials the discretion to discriminate against people of color.

Aldopho "Babe" Romo
Photo Courtesy of
Frank Family

At that time, the State of Arizona classified Mexican Americans as "Caucasian" for census purposes.[11] However, the Tempe School Board segregated the Romo children and other students because they spoke Spanish.[12] Although "separate but equal" originally targeted African Americans, it was often applied to Hispanics and other minority populations.[13] Maricopa County Superior Court Judge Joseph S. Jenckes ruled in favor of Mr. Romo, finding that the teachers at the 8th Street School, who were not certified, were *not* equal to the teachers in the 10th Street School and other whites-only facilities. The Board voted to hire certified teachers for the 8th Street School,[14] which brought the Tempe school district within the "separate but equal" mandate of *Plessy*. Arizona school districts continued to segregate students based on whether they spoke Spanish.

Parents who challege long-standing practices and, very often, the lawyers who represent them are a special breed. They risk the loss of employment, friendships and standing in the community, especially when they live in a small town like Tempe, Arizona.

In 1951, the separate but equal doctrine was challenged again in Arizona. The case of *Gonzales v. Sheely*[15] was filed by Ralph Estrada and Greg García of Phoenix, Arizona, and A.L. Wirin, of Los Angeles, California, representing Porfirio Gonzales and Faustino Curiel, on behalf of their four minor children and about 300 other people of Mexican descent, against the Tolleson Elementary School District Number 17 Board of Trustees.[16] The District required children of Mexican descent to attend the school reserved solely for children of Mexican descent and refused to admit them to other schools within the District.[17] United States District Court Judge J. Ling ruled the matter could proceed as a class action.[18]

The plaintiffs relied on the 1947 California decision in *Mendez v. Westminster School District of Orange County*,[19] which challenged the practice of segregating students solely on the basis of ethnicity. The district court found that the practices of the Tolleson School District were similar to the practices of the Westminster School District. Both districts claimed the segregation of the students was based on the belief that the students lacked sufficient English-language skills. The court rejected this argument, observing that the tests used to assess the students' language ability were not reliable and *were "not conducive to the inculcation and enjoyment of civil rights which are of primary importance in the public school system of education in the United States."* [20] The court concluded that the district was actually segregating students based on their Spanish surnames. In issuing a preliminary injunction against the District, the Court ruled that:

> *Segregation of school children in separate school buildings because of racial or national origin, as accomplished by regulations, customs and usages of respondent, constitutes a denial of the equal protection of the laws guaranteed to petitioners as citizens of the United States by the provisions of the Fourteenth Amendment to the*

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> *Constitution of the United States . . . . A paramount requisite in the American system of public education is social equality. It must be open to all children by unified school associations, regardless of lineage.*[21]

The *Gonzales* decision had little statewide impact since plaintiffs challenged the customs and practices of a single school district, not the constitutionality of the Arizona statute that allowed the racial segregation of students in the first place.

The constitutional issue was raised in 1953 in a case involving Carver High School. The Phoenix Union High School and Junior College District required all African American students to attend Carver High School. The parents of Robert B. Phillips, Jr., Tolly Williams and David Clark, Jr. brought the lawsuit in Maricopa County Superior Court through their attorneys, Herbert Finn, Hayzel B. Daniels and Stewart Udall. The lawsuit challenged the right of the District to refuse to admit African American children to Phoenix Union and West High Schools. The District was represented by Attorney General Ross Jones, Assistant Attorney General James S. Bartlett, and County Attorney William P. Mahoney, Jr.[22]

On February 9, 1953, 14 months before the U.S. Supreme Court decided *Brown*, Superior Court Judge Fred C. Struckmeyer, Jr. ruled that the Arizona statute permitting school boards to segregate African American students constituted an unlawful delegation of power by the Arizona legislature:

> *It is fundamental to our system of government that the rights of men are to be determined by laws and not by administrative officers or bureaus . . . . If the legislature can confer upon the school board the arbitrary power to segregate pupils of African ancestry from pupils of Caucasian ancestry, then the same right must exist to segregate pupils of French, German, Chinese, Spanish, or other ancestry. . . . or for any reason as pure fancy might dictate. [citing Yick Wo*

Eighth Street Training School Outside Reading Class, Tempe Elementary School District #3

Courtesy of the University Archives Photographs, Arizona State University Libraries

v. Hopkins, 118 U.S. 356, 30 L.Ed. 220, 6 Sup. Ct. 1064] [23]

Judge Struckmeyer acknowledged the U.S. Supreme Court had decided that a state, acting through its legislature, could segregate students, as long as equal facilities were provided. However, he made it clear he did not agree and found a legal basis to order the desegregation of the school district. His words were an eloquent precursor to the Court's decision in *Brown*. *"[D]emocracy rejects any theory of second-class citizenship. There are no second-class citizens in Arizona."* [24] Judge Struckmeyer observed that the principle established by the Declaration of Independence "that all men are created equal" required the constant evaluation of the status of minorities in our society.[25] Judge Struckmeyer issued a permanent injunction against the District.

Comité Movimiento Unido Mexicano Contra la Discriminación: Isuaro Favela, Rey Murrieta, Manuel "Lito"Peña, Lupe Ramirez Favela, Juan "Johnny" Camacho and Trinidad Gem – 2000 (Citizen organizing committee instrumental in bringing the lawsuit against Tolleson School District)

Courtesy Sony Peña Photograph, Chicano Research Collection, Arizona State University Libraries

"[D]emocracy rejects any theory of second-class citizenship. There are no second-class citizens in Arizona."

The school district appealed Judge Struckmeyer's decision. However, on July 7, 1953, the Board decided to end its segregated school system and close Carver High. On November 10, 1953, the Arizona Supreme Court dismissed the appeal as moot.[26] Considering that more than 14 years after its decision in *Brown* the Supreme Court found that many school districts had still not followed its mandate to integrate "with all deliberate speed," the Phoenix Union action was astonishingly swift.

Another Arizona case, decided on May 5, 1954, further strengthened the concept that a statute permitting a school district to segregate based on race was an "unlawful delegation of legislative power." Maricopa County Superior Court Judge Charles C. Bernstein ruled in *Heard v. Davis* that the Wilson School District did not have the power to segregate students solely based on race because the statute giving the school districts this authority was an unlawful delegation of power prohibited by the U.S. Constitution. Ruling in favor of the plaintiffs, Judge Bernstein also found that the *"educational opportunities, advantages and facilities afforded and available to the white children of elementary school age"* were not equally afforded to African American children.[27] The *Mendez* case, the Tolleson Elementary School case, and now the Phoenix Union High School and Wilson School cases previewed what was to come in *Brown*. In reaching their decisions, the courts in each instance relied on more than legal precedent. They heard from expert witnesses who testified about the impact of racial segregation on children.[28] Judge Bernstein observed in his opinion in *Heard*:

In all of the cases the courts have discussed the physical equality of facilities in teaching and school plant; however, there are intangible inequalities in segregation. These are more difficult to demonstrate. However, we know the impact on the child of the Negro Race. These children would seem either to be in conflict about their status or to have resigned themselves to inferior self-images. Our general experience as we observe human status each day, tells us that segregation intensifies rather than eases racial tension. Instead of encouraging racial cooperation, it fosters

mutual fear and suspicion which is the basis of racial violence.[29]

Brown v. Board of Education - The Case

"Today, education is perhaps the most important function of state and local governments."

By 1954, the stage was set for the U.S. Supreme Court to address the issue of school segregation in *Brown*. The analysis provided in the Arizona and California decisions hinted at the direction the highest court would take. Historian Rubén Flores observed that the *Mendez* case had a direct influence on the rationale in *Brown*.[30] Earl Warren, the Governor of California at the time of the *Mendez* decision, was now the Chief Justice of the Supreme Court. Thurgood Marshall, who had written the amicus brief for the NAACP (National Association for the Advancement of Colored People) in *Mendez*, was one of the five attorneys arguing *Brown* before the Supreme Court. The NAACP played a significant role and provided appellants with a different approach – the use of social science and educational research to show the impact of segregation on our society.[31]

The doctrine of separate but equal established in *Plessy* and its application to public education was directly before the Court in *Brown.*[32] Previous successful challenges to segregation had to prove unequal treatment or an unlawful delegation of power by the state legislature. Changes to racially discriminatory practices had to be imposed on a case-by-case basis. *Brown,* however, involved segregated schools that were acknowledged to be equal facilities, or at least schools in the process of "being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other 'tangible' factors." [33] The Court observed that:

Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of these cases. We must look instead to the effect of segregation itself on public education. . . . . [It is necessary to] "consider public education in the light of its full development and its present place in American life throughout the Nation."

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.[34]

In *Brown,* the Supreme Court made the

Carver High School
c.1954

Arizona Republic Photo

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Carver High School Students, c.1953
Courtesy of the Carver Museum, Phoenix

broad declaration that "separate but equal" was unconstitutional, sweeping away the painful legacy of *Plessy* in public education. The Court also requested further argument concerning what kind of relief was required considering the widely differing local circumstances in the four cases before it.[35]

The Court issued "*Brown II*" in 1955, after hearing arguments outlining the various issues surrounding implementation.[36] *Brown II* emphasized the importance that equitable principles play in fashioning remedies. *"At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis"* weighed against the school district's ability to carry out the Court's order *"in a systematic and effective manner."* [37] In remanding the cases, the Court recognized that local school districts might drag their feet in implementing the Court's order. So the Court ordered 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"* (emphasis added).[38]

The Brown *decision presented a clear challenge to our nation to reject any discrimination based solely on race.*

When the unanimous Supreme Court declared in *Brown* that *" in the field of public education the doctrine of 'separate but equal' has no place,"*[39] it fundamentally changed our education system and all aspects of race relations in our country. Congress later facilitated the national movement toward integration by passing the Civil Rights Act in 1964. The *Brown* decision presented a clear challenge to our nation to reject any discrimination based solely on race. We in Arizona should take pride that implementation of the Courts' orders to integrate schools took far less time in our State than other parts of this country.

Brown Impact in Other Areas

The Court's rationale in *Brown* created opportunities for change in other areas where the government provides services or benefits, among them public facilities and accommodations, voting, employment, and even marriage.

On October 6, 1959, Grace Gibson O'Neill, the Clerk of the Pima County Superior Court, refused to accept the application for a marriage license from Henry Oyama and Mary Ann Jordan because Arizona law prohibited the marriage of a person of "Caucasian blood" with a person of the "Mongolian race." [40] Rather than go to California, where such marriages were legal,[41] the couple wanted to be married in Arizona, in their church before their family and friends. On December 11, 1959, through their attorneys, Frank J. Barry, Charles E. Ares and Paul G. Rees, Jr., they filed a lawsuit seeking a declaration that Arizona's statute violated the First and

Fourteenth Amendments of the Constitution of the United States and Article II, Sections 4 and 13 of the Arizona Constitution.[42]

Hank Oyama
Photo courtesy of www.urbanmozaik.com

Mr. Oyama and Miss Jordan also requested a "mandatory injunction requiring the defendant to issue a marriage license to them."[43] Marvin S. Cohen, Chief Civil Deputy County Attorney for Pima County, represented the defendant.[44] After hearing the plaintiffs' testimony and the testimony of Dr. Edward Spicer, an anthropologist, Pima County Superior Court Judge Herbert F. Krucker granted the plaintiffs all of the relief requested on December 23, 1959.[45] Henry Oyama and Mary Ann Jordan were married in Tucson on December 28, 1959.[46]

The ruling was appealed to the Arizona Supreme Court, but the appeal was dismissed on May 1, 1962 as moot because the legislature amended the statute in March 1962 to delete the anti-miscegenation provision.[47] The record on appeal includes references to *Brown:*

> *"The law review articles cited in appellees' brief . . . point out more clearly than counsel could hope to, that whatever the prima facie constitutionality of miscegenation laws a generation ago, since Brown v. Board of Education such statutes can no longer be sustained. It is no answer in this enlightened day to rely on outdated stare decisis."* [48]

Brown also provided an impetus to address other long-standing discriminatory practices based solely on race. Beginning with the Civil Rights Act of 1964, Congress and many state legislatures began to prohibit discrimination on the basis of race and gender. The Voting Rights Act of 1965 prohibited the use of literacy tests and other barriers for people wanting to register to vote. Congress passed the Civil Rights Act of 1968 to prohibit discrimination in the sale or rental of housing. It also made it a federal crime to cross state lines to incite a riot, reflecting the continuing racial discord and tensions in this country. After the assassination of the Rev. Dr. Martin Luther King, Jr. in 1968, President Johnson successfully convinced Congress to enact the Fair Housing Act of 1968, ending a contentious battle that began in 1966.[49]

The economic divisions in the country were significant, as indicated by the findings made by President Johnson's National Advisory Commission on Civil Disorders (Kerner Commission):

- The country was divided along racial and socio-economic lines.
- 40 percent of non-whites lived below the federal government's poverty line.
- Black men were twice as likely to be unemployed as whites and three times as likely to be in low-skill jobs.[50]

Legislation attempted to address these economic disparities. President Johnson declared a "War on Poverty" during his first State of the Union address on June 8, 1964. Congress passed the Economic Opportunity Act of 1964, which included initiatives like Head Start, Job Corps, Work Study Program for University Students, Volunteers in Service to America (VISTA), Neighborhood Youth Corps (NYC), basic education and adult job training, and Community Action Programs (CAPs).[51]

The Arizona legislature passed statutes mirroring the federal legislation. Arizona established a Civil Rights Commission in 1965. The 1960s and 1970s focused public

and governmental attention on the civil rights of individuals and the elimination of discrimination on the basis of race, gender and disability.

Has the promise of racial equality and mutal respect envisioned in Brown been attained in Arizona?

Brown v. Board of Education - The Legacy

The 50th Anniversary gives us an opportunity to reflect on whether the promise of *Brown* has been fulfilled. Certainly the changes ordered by the Court have been frustratingly slow in coming in some parts of our country. The desegregation of schools, particularly in the South, did not proceed with "all deliberate speed." In Virginia, districts resisted integration by closing racially mixed schools.[52] In Arkansas, federal troops were necessary to protect African American students.[53] To avoid compliance, many school districts adopted "freedom of choice" plans, which slowed the integration of schools.[54] In 1971, almost 20 years after *Brown*, the Supreme Court ruled that courts had the power to order that students be bussed, if necessary, to eliminate state-imposed segregation.[55]

Has the promise of racial equality and mutual respect envisioned in *Brown* been attained in Arizona? Although Arizona courts were ahead of the Supreme Court in ordering desegregation and our schools did a commendable job of complying with court ordered integration, our State continues to struggle with racial issues. Overt racial discrimination has diminished for many years and opportunities have increased as minority individuals asserted their rights guaranteed by state and federal statutes and the U.S. Constitution.

Although racial confrontations have diminished in Arizona, if the economy weakens and unemployment and underemployment increase, racial tensions may also increase. In addition, the rise of "hate groups" causes concern about the possibility of violence.

Fair housing and employment discrimination complaints are still being filed with the Attorney General's Office and the Equal Employment Opportunity Commission, and complaints about violations of voting rights of Spanish speaking and Native American citizens continue to be filed. Predatory lending practices target Arizona's minority communities. Arizona remains one of only 18 states subject to Section 5 of the Voting Rights Act.[56] Racial minorities continue to lag far behind in educational achievement, and the State of Arizona is struggling to fulfill its responsibilities to meet the educational needs of children who do not speak English.

Arizona continues to struggle with the challenges posed by its diversity. Problems associated with undocumented immigration and controversies relating to the role of the English-language in schools and government prompt vigorous and often divisive political debate. As a State with 22 Indian nations, a growing Latino population and strong African American, Asian and innumerable other minority communities, it important to continue to work together to meet the needs of all Arizonans.

Human rights activist Elías Garcia's perspective is significant if Arizona is to fulfill the mandate that *Brown* gave us 50 years ago:

> *The Brown v. Board victory has stood as a beacon of light, a source of inspiration to . . . minority populations in their respective struggles for peace and justice in this society. . . . People of color must take to heart the lessons learned from Brown and realize that . . . [o]ur enemies are racism, prejudice, discrimination, hate, envy, poverty, unemployment and lack of education, not each other.*[57]

The Promise of *Brown v. Board of Education*

Even though our record is far from perfect, it is important to take pride in the fact that Arizonans, through their legal system, have contributed much to the orderly desegregation of public schools. Courageous and foresighted individuals, school board members, school administrators, judges, and lawyers on both sides of the segregation cases, all contributed to challenging long-held traditions of segregated education and peacefully replacing them with integrated schools. Judges like Struckmeyer and Bernstein, lawyers like Estrada, Finn and Daniels, prosecutors like Mahoney and Cohen, and valiant citizens such as Oyama, Romo, Phillips and Heard, along with hundreds of others who saw a wrong and sought to right it, should live long in our memories.

"The Brown v. Board victory has stood as a beacon of light, a source of inspiration ."

Fifty years after *Brown*, we in Arizona have much to be thankful for and more work to do.

End Notes

1. *Brown v. Board of Education*, 347 U.S. 483 (1954).
2. *Plessy v. Ferguson*, 163 U.S. 537 (1896).
3. Bradford Luckingham, Phoenix: The History of a Southwestern Metropolis, 62 (1989); Mary E. Gill and John S. Goff, *"Joseph H. Kibbey and School Segregation in Arizona,"* The Journal of Arizona History, Vol. 21, No. 4 at 411 (Winter 1980).
4. Id.
5. *Dameron v. Bayless*, 14 Ariz. 180, 182, 126 P. 273, 274 (1912).
6. Id. at 185, 126 P. at 274.
7. *Plessy,* 163 U.S. 537 (1896).
8. *Dameron,* 14 Ariz. at 185, 126 P. at 275.
9. Id. at 184, 126 P. at 274.
10. Rev. Code 1913 § 2750.
11. Laura K. Muñoz*, "Separate But Equal? A Case Study of Romo v. Laird and Mexican American Education,"* at 1, Organization of American Historians [OAH] http://www.oah.org/pubs/magazine/deseg/munoz.html.
12. Id. at 2.
13. Elías García, *A Latino Perspective: The Impact of Brown v. Board of Education*, The Brown Quarterly, Vol. 3, No. 2, (Fall 1999), at 1, available at http://www.brownvboard.org/brwnqurt/03-2/03-2b.htm (May 24, 2004).
14. OAH, *supra*, n.11, Document C: Meeting Minutes of the Board of Trustees, Tempe School District No. 3, 9 October 1925, Tempe, Arizona.
15. *Gonzales v. Sheely,* 96 F.Supp.1004 (D.C. Ariz. 1951).
16. The Tolleson Elementary School District Number 17 Board of Trustees included Ross L. Sheely, James W. Johnston, Frank E. Babcock and Ken Dyer (then school principal). Former State Senator Manuel "Lito" Peña, Juan Camacho, Lupe Ramírez Favela, Isauro Favela, Rey Murrieta and Trinidad Gem were part of a committee, "Comité Movimiento Unido Mexicano Contra la Discriminación," that led the effort to force the desegregation of the District.
17. The School District was represented by County Attorney Warren L. McCarthy and Deputy County Attorneys Joseph F. Walton and Robert Renaud.
18. *Gonzales,* 96 F. Supp. at 1009.
19. *Gonzales,* 96 F. Supp at 1005; *Mendez v. Westminster School Dist. of Orange County*, 64 F. Supp. 544 (S.D. Cal. 1946), *affirmed*, *Westminster School Dist. of Orange County v. Mendez*, 161 F.2d 774 (9th Cir. 1947).
20. *Gonzales,* 96 F. Supp. at 1007.
21. Id. at 1008-09.
22. *Phillips v. Phoenix Union High Schools and Junior College District,* No. 72909, Opinion and Order (Ariz. Super. Ct., Feb. 9, 1953).
23. Id. at 2.
24. Id.
25. Id.
26. *Phoenix Union High School and Junior College District v. Phillips*, No. 5570, Certified Copy of Order Dismissing Appeal as Moot (Ariz. Nov. 10, 1953).
27 *Heard v. Davis*, No. 77497, Memorandum Opinion (Ariz. Super. Ct., May 5, 1954).
28 Vicki L. Ruiz, "*We Always Tell Our Children They Are Americans," Mendez v. Westminster and the California Board to Brown v. Board of Education*, The Brown Quarterly, Vol. 6, No. 3 (Fall 2004), available at http://brownvboard.org/brwnqurt/06-3/index.php.
29. *Heard* at 5.
30. Ruiz, *supra,* n. 28 at 8.
31. Id.
32. *Brown I*, 347 U.S. at 493.
33. Id.
34. Id.
35. Id. at 496.
36. *Brown v. Board of Education,* 349 U.S. 294 (1955) [Brown II].
37. Id. at 300.
38. Id.
39. *Brown I*, 347 U.S. at 495.
40. A.R.S. § 25-101(A) (1956). Mr. Oyama was and is a highly respected educator in Tucson and served as an officer in the military reserve unit that was previously commanded by my father, Sam Goddard.
41. *Perez v. Lippold*, 32 Cal.2d 711, 198 P.2d 17 (1948) (Anti-miscegenation statute violates the equal protection clause).
42. *Oyama v. O'Neill*, No. 61269 (Ariz. Super. Ct., Dec. 11, 1959). Frank Barry was my father's law partner and later Solicitor of the Department of Interior from 1961 to 1969, serving under Secretary Stewart Udall.

End Notes

43. Id. [R. 1 at 6].
44. At the trial before the Court, additional counsel for defendant appeared: Pima County Attorney Harry Ackerman, by Jack Podret, Deputy County Attorney, and Attorney General Wade Church, by Lawrence Ollason, Assistant Attorney General.
45. *Oyama,* Declaratory Judgment and Decree for Permanent Injunction (Ariz. Super. Ct. Dec. 23, 1959).
46. *O'Neill v. Oyama*, No. 7065, Appellant's Opening Brief on Appeal (Ariz. June 8, 1960), p. 3a.
47. *O'Neill,* Order Dismissing Appeal (Ariz. May 1, 1962). (**NOTE:** The Arizona Supreme Court now included Justices Fred C. Struckmeyer and Charles C. Bernstein; Robert W. Pickrell was Attorney General.)
48. *O'Neill*, Opposition to Petition for Leave to Abandon Appeal, (Ariz. Apr. 27, 1962) at 2.
49. Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, *Celebrating Fair Housing* http://www.hud.gov/offices/fheo/aboutfheo/history.cfm (Nov. 16, 2004).
50. Stanley K. Schultz and William P. Tishler, *The Almost Great Society: The 1960s,* American History 102, Civil War to the Present, Lecture 27 [referring to the Kerner Commission findings], http://us.history.wisc.edu/hist102/lectures/lecture27.html (Nov. 19, 2004).
51. Id.
52. *Griffin v. County School Bd. of Prince Edward Co.*, 377 U.S. 218 (1964).
53. *Cooper v. Aaron*, 358 U.S. 1 (1958).
54. Schultz, *supra* n. 50.
55. *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1 (1971).
56. 28 C.F.R. Part 51 App.
57. Garcia, *supra*, n. 13 at 3.