



# Simple Justice

**RICHARD KLUGER**

The history of Brown v. Board of Education, the epochal Supreme Court decision that outlawed segregation, and of black America's century-long struggle for equality under law

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The History of  
*Brown v. Board of Education*  
and Black America's  
Struggle for Equality

Richard  
Kluger



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# Simple Justice

FOR  
MATTHEW AND TEDDY  
AND MINA'S GIRLS

## Foreword

From the start, the United States aspired to far more than its own survival. And from the start, its people have assigned themselves a nobler destiny, justified by a higher moral standing, than impartial scrutiny might confirm. Success added high luster to their character, and when Americans looked into the mirror, they admired with uncommon keenness what they saw.

Only lately, on the eve of the nation's bicentennial of independence, has the dazzle of America's achievement dimmed enough for her people to sense the need to distinguish their conceits from a set of humbling truths. Not all progress, Americans have started to see, can be measured in numbers. Not all wars can be won, and fewer still are worth the spilling of blood and surplus energies. Not all problems can be engineered out of existence without giving rise to yet more severe ones. The skies will not fall if next year's profits do not exceed this year's level. And the world is nobody's oyster forever; he who would hoard its pearls may wind up choking on them.

Material values in themselves, in short, can neither explain nor sustain the American achievement: the nation must exploit its inner resources as well if it is to linger long at the center of the global stage. This is a book about the resurrection of those inner resources.

Of the ideals that animated the American nation at its beginning, none was more radiant or honored than the inherent equality of mankind. There was dignity in all human flesh, Americans proclaimed, and all must have its chance to strive and to excel. All men were to be protected alike from the threat of rapacious neighbors and from the prying or coercive state. If it is a sin to aspire to conduct of a higher order than one may at the moment be capable of, then Americans surely sinned in professing that all men are created equal—and then acting otherwise. Nor did time close the gap between that profession and the widespread practice of racism in the land. The nation prospered mightily nonetheless, and few were willing to raise their voices and suggest that what might once have been forgiven as the excesses of a buoyant national youth had widened into systematic and undiminishing cruelty.

Some protested, to be sure. But no political leader risked all of his power and no sector of the nation's governmental apparatus was fully applied against this grave injustice—until the Supreme Court of the United States took that step. There was irony in this because the nine Justices, as has often

been said, constitute the least democratic branch of the national government. Yet this, most likely, was one reason why the Court felt free to act: it is not compelled to nourish the collective biases of the electorate; it may act to curb those unsavory attitudes by the direct expedient of declaring them to be intolerable among a civilized people.

It is to these insulated nine men, then, that the nation has increasingly brought its most vexing social and political problems. They come in the guise of private disputes between only the litigating parties, but everybody understands that this is a legal fiction and merely a convenient political device. American society thus reduces its most troubling controversies to the scope—and translates them into the language—of a lawsuit. In no other way has the nation contrived to frame these problems for a definitive judgment that applies to a vast land, a varied people, a whole age.

What follows is a history of one such lawsuit (or, to be more technically accurate, five cases raising the same question and consolidated under a single title). Yet this book has not been conceived as a study of law and its permutations. It has been designed to suggest how law and men interact, how social forces of the past collide with those of the present, and how the men selected as America's ultimate arbiters of justice have chosen to define that quality with widely varying regard for the emotional content of life itself.

This is a long book because of the nature and subject of the lawsuit with which it deals. Probably no case ever to come before the nation's highest tribunal affected more directly the minds, hearts, and daily lives of so many Americans. Already, just two decades later, scholars have assigned the cases known collectively as *Brown v. Board of Education of Topeka* a high place in the literature of liberty. The decision marked the turning point in America's willingness to face the consequences of centuries of racial discrimination, a practice tracing back nearly to the first settlement of the New World. The process of ridding the nation of its most inhumane habit cannot be properly presented by dwelling on only the climactic moments of that effort.

Many unheralded people persevering in widespread communities over long, hard decades contributed to what the Supreme Court decided on the seventeenth day of May 1954. This is, in large part, their story. In a larger sense, it is a chapter in the biography of a nation that has begun to understand that history may measure its ultimate worth not by the lilt of its slogans or the might of its arsenals or its troyweights of gold, but by how evenhandedly it has dealt with all of its citizens and how consistently it has denied dignity to none.

RICHARD KLUGER  
Ridgefield, Connecticut  
March 1975

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*Part I*

# Under Color of Law

*. . . we are of the humble opinion that we have the right to enjoy the privileges of free men. But that we do not will appear in many instances, and we beg leave to mention one out of many, and that is of the education of our children which now receive no benefit from the free schools in the town of Boston, which we think is a great grievance, as by woful experience we now feel the want of a common education. We, therefore, must fear for our rising offspring to see them in ignorance in a land of gospel light when there is provision made for them as well as others and yet can't enjoy them, and for not other reason can be given this they are black. . . .*

*We therefore pray your Honors that you would in your wisdom some provision would be made for the free education of our dear children. And in duty bound shall ever pray.*

—FROM A PETITION TO THE STATE LEGISLATURE OF  
THE COMMONWEALTH OF MASSACHUSETTS BAY, 1787



# 1

## Together Let Us Sweetly Live

Before it was over, they fired him from the little schoolhouse at which he had taught devotedly for ten years. And they fired his wife and two of his sisters and a niece. And they threatened him with bodily harm. And they sued him on trumped-up charges and convicted him in a kangaroo court and left him with a judgment that denied him credit from any bank. And they burned his house to the ground while the fire department stood around watching the flames consume the night. And they stoned the church at which he pastored. And fired shotguns at him out of the dark. But he was not Job, and so he fired back and called the police, who did not come and kept not coming. Then he fled, driving north at eighty-five miles an hour over country roads, until he was across the state line. Soon after, they burned his church to the ground and charged him, for having shot back that night, with felonious assault with a deadly weapon, and so he became an official fugitive from justice. In time, the governor of his state announced they would not pursue this minister who had caused all the trouble, and said of him: Good riddance.

All of this happened because he was black and brave. And because others followed when he had decided the time had come to lead.

At first, he acted gingerly. Not quite six feet tall, on the slender side, with a straight-back bearing that seemed to add inches to his height and miles to his dignity, he was no candidate for martyrdom. In his fiftieth year, he had not enjoyed good health for some time. A nearly fatal bite from a black-widow spider—they could find no medical help for him for fifteen hours—and recurring bouts with influenza had drained his constitution, and the emotional demands of teaching and preaching all over the county had taken their toll as well. It was therefore natural that when he began the activities that, a few years later, were to become the profound business of the Supreme Court of the United States, he would begin in a small way.

His name was Joseph Albert DeLaine. His skin was a medium shade of brown, and his friends described him as “handsome” and “clean-cut.” Ceremonial photographs in the late Forties and early Fifties show him in a well-worn black suit with a black vest, looking bright-eyed and attentive behind austere glasses. His hair was short and beginning to gray. He was convinced that it grayed rapidly after they decided to ask for the bus.

A school bus. There were thirty school buses for the white children. There was none for the black children. A muscular, soft-spoken farmer named James Gibson remembers what the chairman of the school board said when they asked for the bus. His name was Elliott, R. W. Elliott, he ran a sawmill, and he was white. Everyone who ran anything in the county was white. What he said was: "We ain't got no money to buy a bus for your nigger children." But there was always money for buses for the white children. "And you'd know it," farmer Gibson recalls, "because they was always muddyin' you up."

And so a lawsuit was filed. A black man sued white officials who he claimed were denying him and his three children the equal protection of the law as guaranteed by the Fourteenth Amendment of the Constitution of the United States. No such thing had happened before in the memory of living men in Clarendon County, South Carolina. For if you had set out to find the place in America in the year 1947 where life among black folk had changed least since the end of slavery, Clarendon County is where you might have come.

Six hundred square miles of gently rolling fields and pasture and woodland, mostly in gum trees and pine, the county lies dead center in a thirty-mile-wide plain that sweeps diagonally across the state on a northeast-southwest axis dividing the flat, marshy, tropical low country along the Atlantic coast from the sand hills farther inland and the more rugged Piedmont beyond them. The soil here is a gray-brown sandy loam on the surface, turning to a slightly sticky clay of brownish yellow or yellowish red when you plow it under. It rains a lot in Clarendon, nearly fifty inches a year, the temperature averages an agreeable 64 degrees, and the frost is out of the ground by the middle of March. It is a good place to grow things, and what they grew most of in the late Forties was just what they had always grown there since the white planters had come eighty miles up the Santee River from the coast a century and a half earlier. Cotton.

Soon after word was out that the Connecticut Yankee Eli Whitney had built an "engine" that could swiftly and inexpensively separate the cluster of fiercely clinging green seeds from the fiber of a cotton boll, South Carolina planters were the first to clamor for the machine. The state went so far as to pay the then unheard-of sum of \$50,000 to make the invention available to anyone in the state who wanted to build one, with no royalty due the inventor. The cotton rush was on.

Up the Cooper River from Charleston, up the Santee from Jamestown, they came past unbroken moss-draped forest walls to plant cotton in the fertile alluvial plains that rolled away unending from the banks of the serene waterways. The Santee, a network of ramified rivers snaking 450 miles from the ramparts of the Blue Ridge in the north down to the sea, was the great commercial lifeline of its day, bisecting the richest of the cotton land. Midway between Charleston, the throbbing depot where the baled white produce was dispatched by the boatful to hungry spindles on both sides of the ocean, and the state capital of Columbia, built 120 miles to the northwest at the insistence of upland farmers, the Santee River makes a horseshoe bend

that to the early planters was an ideal place to load their cargo. The Clarendon people called their river port Wright's Bluff, and each day the small hubbub at the post office, freight depot, and cotton market built there at water's edge came to a stop when a steamboat paddled around the bend, whistle blasting, to bring wares and finery from Charleston to the plantation houses and, throughout the long autumns, to return to the coast with bulging hold.

In summer, it grew hot and damp, and the anopheles mosquito came swarming out of the marshes and the swamps to infect the residents in the low-lying cotton fields close by the river. The malaria was attributed in that age not to the insects but to the "miasma," the evening mists that seeped dolorously across the moist landscape. The black men who grew the cotton were required, miasma or not, to stay in their fields, for it was commonly agreed by their owners that, their high mortality rate notwithstanding, the Africans were somehow better able to withstand the disease than white men. Having so decided, the planters then repaired ten or so miles to the north, where they built a small summer colony to be cool, healthful, and sociable, yet close enough to preserve easy contact with their riverside domains. It was called at first "The Summer Town," then simply "Summertown," and finally Summerton. In time, there were shops, a few businesses, and eventually even a once-a-day train stopping by. The population never got much above a thousand, even in season, but Summerton became the closest thing to an urban center at the southern end of the county. As river transport ebbed and the railroads took over, traffic clattered in steady wagon caravans over the ten-mile road between Summerton and the county seat of Manning to the northeast. Named for the politically influential family that eventually gave the state three governors, Manning was a relative beehive, but it never outgrew Summerton by more than two or three times, and so the county fanned out along the road linking the two little towns.

As the twentieth century came, time stood still in Clarendon County and the population rose or fell by perhaps a thousand every decade. In 1950, the population was the same as it had been forty years earlier—32,000, give or take a few hundred. The closest thing to excitement after dark in Summerton was to drive down Route 15 from Sumter to where the highway met and doglegged with the west end of Main Street, a block and a half of drab brick-front stores, a small bank, a smaller post office, and a tacky movie house. There, just off the highway and across the railroad tracks, clanking and crunching away all through the floodlit night, stood a huge shed with corrugated metal siding running its entire length of maybe 150 feet and up about forty feet to the roof. From September onward, when they started bringing in the cotton by wagon and mule, the McClary Anderson Ginnery operated around the clock. A great, ungainly contraption that hums and clatters as it eats up the yield of an entire acre—some 30,000 handpicked plants—the gin combs out the thirty-five or so seeds adhering to every boll by pressing the cotton between spiked rollers spinning in opposite directions. The seeds fall away into a jellied mass collected in pans beneath the printing-press-like rollers, and the seed-free cotton is sent whooshing upward

by compressed air in foot-wide tin tubes that conduct it through a washing and drying process until the whole acre's worth of blossom is compressed into a single 500-pound-or-so bale. Then, for six or seven months of planting and fertilizing and spraying and thinning and weeding and picking and carting, an endless labor involving more than likely every able-bodied member of the family, you got paid between \$100 and \$200 per bale, depending on a lot of factors over which you had no control.

That was what you got if you owned the land. But most of the people in Clarendon County did not own their own land at the end of the first half of the twentieth century. Seven out of every ten people there were black, the highest percentage in the state, and almost every Negro in Clarendon lived on a farm. There were 4,000 farms in the county, and fewer than a quarter of them belonged to the people who worked them. Most of the land—as much as 85 percent, lifelong residents guessed—belonged to whites, many of them absentee owners.

If you were landless and black then, you had a choice of three ways to avoid starvation as a tenant farmer in Clarendon County. The most common way was to rent the land for an annual fee, ranging between \$8 and \$15 per acre. The tenant provided his own seed, fertilizer, and equipment, the last of which consisted largely of a mule (only one Clarendon farm in nine had a tractor in 1949). Or you could contract-farm, a throwback to the period just after the Civil War, whereby the black farmer was paid a dollar or two per week for his labor and, if he stayed the course through harvest time, received as a bonus the yield of a single acre, be it in cotton or produce. Or you could sharecrop, whereby the white boss provided the land, the seed, the fertilizer, and the pesticides, and the black man provided all the muscle, his own and his mules', and they divided the proceeds evenly between them. Under all three arrangements, the tenant also received a roof over his head, the better kind made of galvanized tin. Supporting the roof would be a building that you might call a cabin if you were poetic or blind, or a shack if you wished to face the physical fact. Some of them had a thin coat of paint on the outside, but most did not. Inside, they had no paint, no plumbing, no electricity. Through the walls you could see daylight and through the floorboards you could feel the breeze when it rose.

By official count of the United States government, there were 4,590 black households in Clarendon County in 1950, and the average annual income for two-thirds of them was less than \$1,000. Only 280 of them earned as much as \$2,000. They averaged more than five mouths to feed per household, but only every second household could claim a milk cow on the premises. Pigs were abundant, however, and so they ate pork and fatback but precious little milk, and there was scant raising of fruits or vegetables other than corn, and their diets suffered accordingly. The median age of Clarendon blacks was eighteen, youngest of any county in South Carolina, which meant there were a great many children of school age. But very few of them, in the middle of the twentieth century, attended school beyond the fourth grade. A dozen years earlier, the last time anybody had counted, 35 percent of all Negroes in Clarendon County over the age of ten were illiterate.

"We knowed it was wrong," a group of them agreed, looking back more than twenty years later, "but we didn't know how to attack it."

It was nothing short of economic slavery, an unbreakable cycle of poverty and ignorance breeding more poverty and a bit less ignorance, generation upon generation. "We had to take what was given us," says a Clarendon farmer, "or leave." And a lot of them did leave, for urban ghettos far from the sweet scents and bright sun of their native county. But wherever they went and whatever they tried to do with their lives, they were badly disabled, irreparably so for the most part, by the malnourishment that the poverty and meanness of their Clarendon birthright had inflicted upon the shaping years of their childhood. Their minds had not been fertilized half so well as their cotton, their hands had not been trained for more than steering a mule in a straight furrow. Nothing seemed to change. The land abided, eroding imperceptibly year by year but keeping them alive so long as they could work it.

For all the grim burden of the blacks, there was nothing till then that could have been labeled racial unrest. The white man, as he always had in South Carolina, held the whip hand, though the blacks were no longer his personal, disposable property. "Oh, there was a lot goin' on that we didn't like," says Joseph Richburg, a Negro teacher back then and a barber in his later years, "but everything was fine on the face of it, so long as we kept saying 'Yes, sir' and 'No, sir' and tipping our hat." And so, in Summerton, no Negro was surprised when a store clerk serving him would turn abruptly aside to attend the first white man coming through the door. The booths by the drugstore soda fountain were for whites only, and you ate your ice-cream cone on the sidewalk before or after climbing to "Buzzards' Roost," the balcony where all black moviegoers were required to sit.

"We got a good bunch of nigras here," David McClary, white owner of the main livestock, feed, and fertilizer business in town, used to tell visitors in those years. The same McClary clan that ran the big cotton gin a few hundred yards away over on Route 15.

McClary's cousin, attorney S. Emory Rogers, who for decades numbered the Board of Education in Summerton among his clients, would say in later years, "We understood each other here—the two races were living in harmony. When the man working my fields got sick, who do you think paid for his doctor?"

"Colored have made wonderful progress down here," ventured H. C. Carrigan, then in his twelfth term as mayor of Summerton. "I have several farms, and they all have Negroes on them. I sharecrop with them, and they are all as happy as can be."

"Yessir, we got good nigras in this county," echoed Charles Plowden, who ran the town bank and had 2,500 acres in cotton, corn, and soybeans. He also ran the Board of Education. And education was in very short supply among Summerton-area "nigras," however good they were in Charles Plowden's book. But after all, the banker noted, the white people paid the taxes and the white people were therefore entitled to the better schools. As with a single voice, the white taxpayers of Clarendon County agreed with



that premise, though it stood in dire contradiction to the very purpose of compulsory public education as it had evolved in the United States to become the pride of the nation and the envy of the world. In Clarendon County for the school year 1949–50, they spent \$179 per white child in the public schools; for each black child, they spent \$43.

Schools there were the largest, costliest, and most important public enterprise, as they were and are, of course, in most American municipalities. In Clarendon County, there were then sixty-one Negro schools, more than half of them ramshackle or plain falling-down shanties that accommodated one or two teachers and their charges, and twelve schools for whites. The total value of the sixty-one black schools attended by 6,531 pupils was officially listed as \$194,575. The value of the white schools, attended by 2,375 youngsters, was put at \$673,850.

In charge of this dual school system was a slender, gray-haired clergyman named L. B. McCord, who three years after winning election as county superintendent of schools in 1940 was also named pastor of the Manning Presbyterian Church, the pillar of Christendom in those parts. Given the places of honor accorded to education and religion in small American communities, his dual occupation made L. B. McCord a powerful citizen indeed in Clarendon County. “He is a capable man,” wrote the *Manning Times*, the county weekly, “with a keen perception of fairness to all, and the best interests of the school children of Clarendon are close to his heart.”

This, though, was not the unanimous estimate of L. B. McCord. Views of him tended to diverge along racial lines. “He was a white-supremacist, is all,” says Billie S. Fleming, owner of a Negro funeral home and insurance agency in Manning and perhaps the most successful black businessman in the county. “As a minister, he was fond of saying that God had intended things to be this way, and if you doubted it, he’d point to the sky and say, ‘Now if you just look up at the birds, you’ll see that the buzzards don’t mingle with the crows, and down here dogs don’t mingle with cats.’” Other blacks say he cared nothing for the caliber of the teachers in the Negro schools or the condition of the schoolhouses. “He was always shortchanging us,” a former black teacher recalls. “When you came in and asked for money for, say, window sashes, he’d say something like, ‘Look, you fellas do it yourselves—we can’t hardly pay the teachers. Go get some boards.’”

And they did. That was how it was with Superintendent McCord. If you crossed him, you were in trouble. If you were black and you crossed him, you were in worse trouble and not long for a place on the Clarendon County public-school payroll. One of the nearly 300 teachers on that payroll in the spring of 1947 was Joseph DeLaine, a Methodist minister. He had been teaching for nine years at the little colored school in Silver, a crossroads settlement four miles due north from his home in Summerton. “I was one of McCord’s good niggers,” is how the Reverend DeLaine put it. And then he became something else.

In the South, people often go by the initials of their given names, and so Joseph Albert DeLaine, born on his family’s 250 acres of farmland near